



ASSESSMENT of the ADOPTION SYSTEM in UKRAINE



Organization for Security and Cooperation in Europe
Project Coordinator in Ukraine

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of the
ADOPTION SYSTEM
IN UKRAINE

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ABBREVIATIONS

CoE Res. 33 (1977)	Council of Europe Resolution on Placement of Children (Adopted by the Committee of Ministers of the Council of Europe on 3 November 1977 at the 227th meeting of the Ministers' Deputies); https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=659762&SecMode=1&Admin=0&Usage=4&InstranetImage=48358 .
CoE Rec. 6 (1987)	Council of Europe Recommendation on foster families (Adopted by the Committee of Ministers of the Council of Europe on 20 March 1987 at the 919th meeting of the Ministers' Deputies); https://wcd.coe.int/ViewDoc.jsp?id=703761&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 .
CoE Rec. 1443 (2000)	Council of Europe Recommendation on International adoption: respecting children's rights (Adopted by the Parliamentary Assembly on 26 January 2000 at the 5th sitting); http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/%2FDocuments%2FAAdoptedText%2Fta00%2FEREC1443.htm .
CoE Rec. 1601 (2003)	Council of Europe Recommendation on Improving the lot of abandoned children in institutions (Adopted by the Parliamentary Assembly of the Council of Europe on 2 April 2003, 13th sitting); https://wcd.coe.int/ViewDoc.jsp?id=62783&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 .
CoE Rec. 5 (2005)	Council of Europe Recommendation on the rights of children living in residential institutions (Adopted by the Committee of Ministers of the Council of Europe on 16 March 2005 at the 919th meeting of the Ministers' Deputies); https://wcd.coe.int/ViewDoc.jsp?id=835953&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 .
CRC	1989 UN Convention on the Rights of the Child. Signed by Ukraine on the 21 February 1990 and ratified on the 28 August 1991; www.ohchr.org/english/law/crc.htm .
Dept	Department.
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe of 1950: www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf .
ECourtHR	European Court of Human Rights Case Law; www.echr.coe.int/echr .
FC	Ukrainian Family Code of Ukraine, as amended by the Law n 407-IV (407-15) of 26 December 2002.
Feldman's Law	Ukrainian Law, of 13 January 2005, on provision of organizational and legal conditions of social security for orphans and children without parental care.
FTH	Family type home.
HC	1993 Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption; www.hcch.net/index_en.php?act=conventions.text&cid=69 .
HK	International Council of Social Welfare and International Social Service (ed.), <i>Guidelines for practice on national and intercountry adoption and foster care</i> , (generally known as the Hong Kong (HK) Guidelines), 1996, www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/HongKongENG.PDF .

ISS/IRC	International Social Service / International Reference Centre for the Rights of the Child Deprived of their Family “ <i>Ethics and Principles on the Rights of the Child in Domestic and Intercountry Adoption</i> ”, 1999, revised 2004; www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/EthicalGuide04ENG.pdf .
LCP	Ukrainian Law n 2402-III, of 26 April 2001, on Childhood Protection.
LGAFIC	Ukrainian Law ne 2811-XII, of 21 November 1992, on Government Assistance to Families and Children.
Min	Ministry.
NAC	Ukrainian National Adoption Centre.
NGO	Non Governmental Organisation.
<i>Oblast</i>	Regional level in Ukraine.
Operational Manual	Manual Práctico, “El interés superior del niño y la adopción. Implementación de las Convenciones Internacionales en materia de protección a la infancia” (Operational Manual “The best interests of the child and adoption. <u>Implementation</u> of the international conventions on matters of child protection”), International Cooperation Project between Italy (Commissione per le Adozioni Internazionali) and the Governments of Albania, Bulgaria and Peru. With the collaboration of International Social Service – Italian Section and International Social Service – International Reference Centre for the Rights of Children Deprived of their Family, November 2004.
PAPs	Prospective adoptive parents.
Para	Paragraph.
Presidential Decree 1086/2005	Presidential Decree 1086/2005 of 11 July 2005 on “Top Priority Measures to Improve the Child Protection System.”
<i>Raion</i>	Local level in Ukraine.
Rec	Recommendation.
Res.	Resolution.
Resolution 1377	Resolution ne 1377, of 28 August 2003, of the Cabinet of Ministers “On approval of the Procedure for registration of children who may be adopted, of the persons who wish to adopt a child, as well as for control of the respect for rights of the adopted children.”
UNDSP	UN 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 41/85, of 3 December 1986); www.unhcr.ch/html/menu3/b/27.htm .
UAH	Hryvnia (currency in Ukraine).

EXECUTIVE SUMMARY

The findings of the assessment in two sentences...

Overall, the assessment finds that the current child welfare, protection and care systems together actively create an unwarrantedly high number of children available for adoption and that, despite appearances, intercountry adoption is then in reality privileged over domestic adoption. This situation, coupled with inadequate professional involvement in the adoption process and exaggerated attention to the fate of children adopted abroad as opposed to irregularities in adoption-related activities in Ukraine, is a spawning-ground for malpractice and undue financial gain.

This report by International Social Service (ISS) was commissioned by the office of the OSCE Project Coordinator in Ukraine. It responds to a request from the Minister for Youth and Sports of Ukraine in early 2005, who sought an assessment of the current legislation, mechanisms and practice regarding the adoption of Ukrainian children, against the background in particular of international standards and internationally-recognised principles in this sphere.

The report thus aims to identify the issues that need to be tackled within the overall context of child welfare and protection policy and practice in order for the adoption system in Ukraine to comply with international children's rights and protection standards, and to propose legislative and other initiatives to that end.

This Executive Summary is above all designed to set out the main issues of concern that we identified. The latter are substantiated and analysed in the main body of the report, with consequent proposals for action. Therefore this Executive Summary should be read notably in conjunction with the "Summary of Main Conclusions and Recommendations" which constitutes Chapter 6 of our report.

Chapter 1: Introduction

Our **approach to the assessment (1.2)** is founded on the need to examine adoption as an integral part of overall child and family protection services. We have therefore looked at, in particular:

- why children are, or are deemed to be, unable to live with their biological parents
- what alternative care services are provided to those children
- how a child's adoptability is determined
- how a child's need for intercountry adoption is determined

As an overall background to our assessment, we then situate Ukraine's experience in intercountry adoption **in the wider regional context of Central and Eastern Europe (1.3), demonstrating that many of the current concerns and problems faced by Ukraine have been or are shared by others in the region.**

Chapter 2: Children in the Care System

After briefly reviewing official responsibilities for child protection **(2.1)**, our first task in this regard was to assess **efforts made to maintain children with their birth families (2.3)**, both through the provision of financial and other support with a view to preventing problems arising and through appropriate reactions to problems that nonetheless occur.

This is all the more important in that the number of families in difficulty is rising significantly and rates of **abandonment and relinquishment** of children **(2.4.1)** continue to be a cause for concern. We find that there have been a series of recent improvements in financial assistance to at-risk families, but that the level of intervention by social services to enable these families to remain together is still weak.

Indeed, on the contrary, much of the child protection strategy seems to be founded on ensuring increased **recourse to removal of children** from “unfavourable” homes **(2.4.2)**, on grounds such as maltreatment and parental substance abuse, and more frequent subsequent moves to secure **withdrawal of parental responsibilities** so that the child can be declared adoptable. We point out that choosing options of this nature – which anyway should be considered as exceptional, last resort steps – is contrary to the rights of children and will simply increase the strain on an already “saturated” substitute care system.

The care system is still essentially grounded in placements in residential facilities (2.5). Despite central government policy pronouncements and the uneven development of foster care and family-type homes (FTH) throughout the country, the percentage of children without parental care who are looked after in a family setting remains very small.

Clearly **the “institutionalisation” approach to care** of the Soviet legacy will take many years to erase in practice. Residential care is still the automatic response to children deprived of parental care, and the invariable answer to “saturation” is therefore to build more facilities. Less obviously, however, it also means that administratively it is quite simply a far easier and more familiar procedure to arrange an institutional placement than to secure family-based alternative care for a child. Several other factors have played their part in hindering de-institutionalisation, over and above the natural resistance to change displayed by staff in residential facilities. One is the fact that **foster care and FTH have been conceived as long-term solutions** – tantamount to saying that for every three or four children newly in need of out-of-home care, an additional foster family has to be found or FTH created, a virtually impossible challenge. Another is the fact that institutional placements have been paid for from central government funds whereas local budgets have had to finance family-based alternatives, a dissuasive reality for local authorities that might want to develop such options. It will be interesting, moreover, to study in due course the effects of the proposed “the money follows the child” policy in this regard, whereby it is intended that central government fund all family support efforts and child care placements.

It was not within our mandate to evaluate the quality of care in residential facilities or in other care arrangements, but simply to determine why children were there and what subsequently happened to them. We emphasise first of all that **the great majority of children in care have living parents**. Against that background, we note that children placed in care, for whatever reason and at whatever age, will invariably remain in the care system throughout their childhood and adolescence, i.e. until they “age out” of the system, unless they are adopted. In other words, **little or no effort is made to secure a child’s return to his or her family** under appropriate conditions. Consequently, children who are not declared “adoptable” or who, despite being so, are not adopted have to all intents and purposes no potential “exit”, and once they reach the *skola-internat* stage, the perspective for all but a minute proportion of children in care is clear: residential care until becoming an adult, despite the well-known dangers of long-term institutionalisation.

Chapter 3: How Children Become Adoptable

The pressure on, and importance of, “adoptability” and “adoption” as an option to long-term care is therefore unwarrantedly immense. This Chapter gives an overview of the grounds and conditions on which a child may be declared **legally adoptable**, but also points to the need for attention to the medico-social and psychological features of a child’s “adoptabil-

ity.” We broach the sensitive question of the opportuneness of declaring a child adoptable even though the likelihood of that child being adopted is in fact very small (because of age, special needs, etc.).

We express special concern over certain aspects of the regulation of **consent** for a child to be adopted, and are critical of the current practice whereby the director of the facility where the child is living notifies consent if it is unobtainable from the birth parents. We then review the **registration** of adoptable children in the databases at the *raion*, *oblast* and national levels.

It is against this overall background that the report goes on to consider the adoption system as a whole in Ukraine.

Chapter 4: Domestic Adoption

Although the adoption system is ostensibly founded on the application of the “subsidiarity rule”, whereby domestic adoption takes precedence over adoption abroad, we find in practice that this is far from being the case in Ukraine. During the unusually lengthy time (14 months) that a child who is declared adoptable can be considered for adoption only by Ukrainians, we have concluded that active attempts at both local/regional and central levels to secure such adoptions are almost totally lacking. In reality, therefore, for the great majority of adoptable children and a sizeable majority of those finally adopted (domestically or abroad) **the 14-month “delay” is more akin to an arbitrary waiting period than to a genuine opportunity for in-country adoption.**

This holds true both in general terms – lack of any serious promotion of the idea of adoption among the general public **(4.1)**, which is all the more necessary given the traditionally negative attitude towards the practice – and as regards individual children, for whom no specific efforts are made either to identify and match potential adoptive parents, or to facilitate their attempt to adopt **(4.2, 4.3, 4.4)**. Our report is, moreover, particularly critical of the way in which **prospective adopters “select” a child** themselves, and thus of the absence of any professional matching of a child with potential adoptive parents. This reflects a system in which the local child welfare authorities have no real responsibility to find suitable adoptive placements for children. The constantly declining number of annual domestic adoptions in recent years bears eloquent testimony to these problems and, in addition, seriously puts into doubt any future child protection policy that might be founded even partly on increased removal of children from their parents so they can be made available for adoption.

We then consider current serious lacunae in ensuring that the child is **appropriately prepared** for an envisaged adoption **(4.5)** and that **prospective adopters benefit from comprehensive professional services** (information, selection, preparation and support) **(4.6)**. Finally in this Chapter, we link this lack of professional involvement throughout the adoption process, including in matching, to the incidence (3 %) of **domestic adoptions eventually revoked (4.7)**.

Chapter 5: Intercountry Adoption

Examination of the intercountry adoption of Ukrainian children took place against a somewhat paradoxical backdrop. On the one hand, the need for substantial and on-going recourse to the adoption of Ukrainian children abroad was only rarely questioned during our discussions in the country. On the other hand, there have been increasingly forceful and frequent allegations made in a wide range of quarters in Ukraine over trafficking and exploitative outcomes in relation to children adopted internationally.

This chapter of our report therefore first examines in depth the validity of concerns expressed about **the possible use of intercountry adoption for trafficking and ex-**

exploitation of children abroad (5.1). It concludes not only that allegations of this nature are groundless but also that they deliberately or unwittingly distract attention from the very real and serious problems and malpractice related to the intercountry process in Ukraine itself.

After commenting on some potentially disturbing aspects of the evolution in intercountry adoption **statistics (5.2)** since the moratorium was lifted in 1996, as well as **attitudes** towards the adoption of Ukrainian children abroad **(5.3)**, the report goes on to examine the **main issues of concern** that we identified in the intercountry adoption system as presently conceived **(5.4)**.

In this context, we first review the functions and operation of the **National Adoption Centre (NAC) (5.4.1)**, and then pay special attention to the **“selection” of children** by foreign prospective adopters which the NAC oversees **(5.4.2)**. We emphasise that this process not only fails to meet international standards – which require the matching of children with potential adopters to be carried out by professionals – but also constitutes a major opportunity for illicit activity and undue financial gain.

The report then examines the ramifications of, and questions the justification for, the current **ban on agencies** working in the adoption sphere **(5.4.3)**. Citing international standards, it challenges the logic of outlawing the services of agencies on the grounds that they receive remuneration – i.e. secure “financial gain” – for these services, contrasting this with the permitted activities of others in Ukraine who also earn their living from adoption-related work. The report notes that the operation of agencies selected and duly authorised by the Ukrainian Authorities on the basis of criteria set by the Authorities would be easier to monitor than, as is currently the case, the actions of individual adopters and other private protagonists. In this respect, the report examines the part played by **“interpreters”** in the adoption process **(5.4.4)**. We find that, since they interface with both the prospective adopters and all relevant parts of the Ukrainian “system” throughout the entire process, and given that some actually or potentially wield considerable financial power, their impact on the adoption of children by foreigners can prove to be at least very considerable but is essentially uncontrolled. This is clearly a totally unacceptable situation.

The report then goes on to look at the **legal pronouncement of adoption (5.4.5)** and examines in particular the implications and justification of the period – 30 days when we undertook our field work for this assessment – following the court hearing during which an adoption order can be appealed. We pay special attention to the issue of the possible “waiver” of this period, concluding that its application has been arbitrary and that it is another aspect of the intercountry adoption process that has provided opportunities for illicit payments. We note with satisfaction, therefore, that in the meantime the period for appeal has reportedly been reduced to 10 days and that no exceptions are allowed.

The next section **(5.4.6)** deals with the delicate issue of the **financial aspects of intercountry adoptions**. Noting that the NAC procedure is cost-free to adopters, our report takes stock of the considerable sums of money that nonetheless may be charged to adopters for in-country services. It considers the reported earnings of “interpreters” in this regard, and lists a series of “sensitive points”, from start to finish of the adoption process, where payments or gifts are reportedly often made to individuals in order to influence the direction or speed (“expediting fees”) of that process. While fully recognising that our mandate was neither intended to be, nor could be, a form of criminal investigation, we can only conclude that, given the substantial disparities in financial power and lack of oversight in Ukraine, the current system wherein “interpreters” play such a key role is inevitably wide open to “undue financial gain” on the part of many actors involved.

We then look at considerable length at the question of **post-adoption reports (5.4.7)**, given the importance that Ukraine places on these as a means of preventing abuse and exploitation of children adopted by foreigners. We note that most “countries of origin” indeed require such reports, and the principle of providing them for a given period after the child’s adoption is now generally not contested. However, we find that the conditions imposed by Ukrainian law in this regard – until the child reaches adulthood – are unusually and unrealistically demanding. In this context we broach the problem of Ukraine’s non-recognition, in law, of an adopted child’s new nationality, which can create difficulties for, *inter alia*, post-adoption issues. We also question the efficacy of the current reporting procedure as a means of avoiding negative outcomes for children adopted abroad, noting in passing that it has never so far enabled any exploitative situations to be uncovered. Our report therefore strongly contends that, while Ukraine is fully justified in wanting to receive follow-up information on children adopted abroad during the years immediately following their adoption, the vast majority of adoption-related problems and rights violations concern activities in Ukraine prior to adoption being pronounced, and need to be tackled at that stage.

Finally in this Chapter, after considering briefly – because of lack of information – the question of **revoked intercountry adoptions (5.4.8)**, we examine the phenomenon of **“respite care” abroad (5.4.9)**. This involves several thousand Ukrainian children every year and in some cases leads to arrangements being made for their adoption by persons in the host country. We point to potential dangers in this regard, as well as to the under-regulated nature of “respite care” in general.

Chapter 6: Summary of Main Conclusions and Recommendations

For easy reference, the last chapter provides a summary of **main** conclusions reached and recommendations made throughout the report. It does not attempt, however, to make a comprehensive list of each and every specific finding or proposal contained in the report.

Annexes

The Ukrainian Authorities have declared their wish to proceed with **accession to the 1993 Hague Convention on Intercountry Adoption**. At their request, we prepared a detailed **rebuttal of objections opposing such a move** that have been put forward in certain quarters in Ukraine, and we submitted that document already in August 2005. Given our findings that applying the principles of this treaty would enable Ukraine to resolve many of the problems we have highlighted in relation to its current intercountry adoption system, and that the international co-operation provided for under this treaty could be a fundamental factor in tackling abuses, we feel it is very pertinent to the present assessment and therefore include it as an annex.

The following annex explains the **interaction between Central Authorities in the adoption system** under the Hague Convention.

A third annex details what should be the contents of a **study of the child and his/her birth family**.

The final annex includes the **list of persons interviewed** by the ISS Delegation during their missions in Ukraine.

1. INTRODUCTION

1.1. BACKGROUND TO THIS REPORT

This report by International Social Service (ISS) was commissioned by the Organisation for Security and Cooperation in Europe (OSCE). It responds to a request from the Minister for Youth and Sports of Ukraine in early 2005, who sought an assessment of the current legislation, mechanisms and practice regarding the adoption of Ukrainian children, against the background in particular of international standards and internationally-recognised principles in this sphere.

To prepare this assessment, ISS experts made two visits to Ukraine, 21-24 June and 18-29 July 2005, meeting with a wide range of entities and individuals in Kyiv, Lugansk and Odesa (see full list in Annex 4) including: government officials, *oblast* and *raion* authorities, the judiciary, directors of residential facilities, UNICEF, consular representatives, and NGOs.

Two Ukrainian consultants also compiled and analysed information on the basis of questionnaires prepared by ISS.

All relevant legislative texts, decrees and government orders were collected and analysed in the light of international law.

This assessment report aims to identify the issues that need to be tackled in order for the adoption system in Ukraine to comply with international child protection standards, and to propose legislative and other initiatives to that end.

1.2. APPROACH

Adoption – whether domestic or intercountry – is one of a series of individualised welfare and protection measures that may be considered for children who, for whatever reason, are determined as being unable to live with their biological parents. According to the international conventions (notably the 1989 United Nations Convention on the Rights of the Child, CRC)¹, it is the State's responsibility to protect such vulnerable children.

This means that all aspects of adoption decisions and processes need to be handled by qualified and suitable professionals, at all stages.

Because adoption involves the total and definitive rupture of the child's relationship and links with the biological family, and invariably a change of identity, it is one of the most significant decisions that can be made in relation to a child with a view to securing his or her rights. This significance is heightened even further in the case of intercountry adoption, in that it implies in addition a change of nationality and cross-border displacement.

In examining adoption mechanisms, therefore, it is necessary to place them in the context of the child welfare and protection system as a whole. In particular we first need to look at:

- why children are, or are deemed to be, unable to live with their biological parents
- what alternative care services are provided to those children
- how a child's adoptability is determined
- how a child's need for intercountry adoption is determined

¹ Signed by Ukraine on the 21 February 1990 and ratified on the 28 August 1991, www.ohchr.org/english/law/crc.htm.

Relevant international law is founded **on the priority of a State's support to the birth family** in order for the parents – **or the extended family** if it is in the best interest of the child – to be able to care for him/her and potentially to reintegrate a child who is already separated from the family.

Furthermore, **residential care** is now internationally recognised as – in principle – the potentially least favourable long-term protection measure for responding to the needs and the rights of children deprived of parental care. Except, on a case-by-case basis, for some children or young people for whom, because of their characteristics (age, disability, traumas, ...), it can be the most adequate long term measure, residential care should thus be mostly considered as a temporary measure, should not be systematically developed, and should preferably take the form of **family-type units or small group homes**.

When the birth family is proven as unfit or unwilling to care for the child, the child's needs have to be carefully assessed in order to select the protection solution most adequate for him/her individually. According to international principles, family, permanent and domestic solutions should normally be preferred, taking into consideration how the major characteristics of the protection solutions fit the concrete needs of the children.

- **Adoption** offers the child full, new and permanent family integration on the emotional and legal levels, and cuts the previous family ties, inter-country adoption being subsidiary to domestic adoption.
- **Foster care** enables the legal and emotional ties between the child and the birth family to be maintained while also offering the child emotional (but not legal) integration with another family. Foster care is ordered and can be terminated on the decision of a competent authority, based on the situation and needs of the child concerned. It should respond to a wide variety of situations. These can range from
 - urgent,
 - short-term care placements while problems in, or experienced by, the birth family are resolved or a permanent solution is considered,
 - to longer-term solutions for children who are not adoptable, do not wish to be adopted, or for whom, whatever the reason, no adoptive parents can be identified. In developing a comprehensive child welfare system, therefore, it is necessary to foresee short-term, medium-term and long-term fostering services if institutionalisation of children temporarily or permanently deprived of parental care is to be avoided in most types of case.

Naturally, the solution chosen and the manner in which it is effected must in addition always fully respect the rights and best interests of the child. In this regard, it should be borne in mind that adoption is the only sphere covered by the CRC where the best interests of the child are to be **the paramount** (as opposed to “a primary”) consideration. These best interests are of course to be viewed with reference to respect for all other rights in the CRC. It is noteworthy that such rights explicitly include those of the child's birth family inasmuch as they impinge on the child's enjoyment of his or her rights.

The above clearly requires us to take a “child-driven” approach to adoption issues.

In addition, it is now well-recognised world-wide that while adoption may present considerable advantages for many children, it has also increasingly been plagued – especially in its intercountry form – by irregularities and the violation of children's rights. This is principally due to the considerable excess of effective demand for adoptable children over the number of young healthy children who are declared adoptable (the contrary being true

for older, sick, disabled or sibling children). This imbalance has created a situation where illicit practices and opportunities for financial profit have burgeoned.

Against the background of this reality, it is therefore vital to review the safeguards in place for ensuring that the adoption of a child is not determined or influenced by acts and motives of this nature but on the contrary is based on professional good practices.

At the same time, much emphasis has been placed by those interviewed in the framework of this assessment on allegations that many Ukrainian children are adopted abroad for exploitative purposes. In particular, it is claimed in many quarters that the acknowledged problem of trafficking in humans from Ukraine comprises the trafficking of children, through adoption, for the purpose of sexual exploitation or the removal of organs.

As a result, and in order to define clearly the scope of this report, the foundation of our approach to examining the intercountry adoption system in Ukraine will necessarily be to demonstrate that allegations of exploitation do not constitute a valid concern.

1.3. UKRAINE'S INTERCOUNTRY ADOPTION SITUATION IN CONTEXT

In common with many other countries in Central and Eastern Europe and the CIS, Ukraine's encounter with intercountry adoption following the demise of the Soviet system has constituted a considerable challenge.

Very few countries in the region – the notable exceptions were Poland and, to a lesser extent, Hungary – had any significant experience of intercountry adoption prior to the events of 1989-1991. Only a very small number of countries in the region already had a mechanism for authorising the rare intercountry adoptions that had previously taken place – Romania, for example, where each adoption order had to be personally signed by the President. Most, however, at first simply extended the systems in place for dealing with domestic adoptions – decision of a local authority or of the court with jurisdiction in the child's locality, for example – to cover intercountry adoptions. They were therefore not well-prepared to cope with the specificities of intercountry adoption work and the sudden influx of requests by foreigners to adopt their children that then took place. In both cases, the system was quickly overwhelmed, with often disastrous results for the protection of children's rights.

In addition, developments in intercountry adoption throughout the Eighties in particular had led to the decision that it needed to be far better regulated in order to promote professional good practices and to counter burgeoning illicit practices ranging from falsification of documents through to sale and trafficking of children for adoption. So it was that, at the very moment that countries in the region were beginning to open up to intercountry adoption, work began – in 1990 – to draft what was to become the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (hereafter "the 1993 Hague Convention or HC").²

As each country, at different moments, opened up to intercountry adoption, it quickly found itself obliged to put in place ostensibly more appropriate systems. The new legislative and administrative measures, often conceived in some haste, had mixed results. At various points in the past fifteen years, most countries in the region that have allowed the adoption of their children abroad have had to resort to moratoria at one point or another, being unable to confront the pressures and needing time to revise their systems: Albania,

² www.hcch.net/index_en.php?act=conventions.text&cid=69.

Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, Romania, Russia and, of course, Ukraine from 1994 to 1996.

The system chosen by Ukraine is distinctive on two major counts: first, it out-laws agencies intervening in the adoption process; second, it excludes a professional parent-child matching process, preferring an initial “self-matching” or “choice” exercise by prospective parents. In addition it has opted for one of the longest periods during which children are available for domestic adoption only, and one of the most demanding schedules for post-adoption reporting.

Today, Ukraine is second only to Russia in the region as regards the number of children that it sends for adoption by families abroad each year (2,000), though with just a quarter of Russia’s figure (8,000). In turn, it is far ahead of the third country, Kazakhstan, where numbers are under half those of Ukraine (800). Looked at from another angle, the situation is somewhat different. Thus, in terms of intercountry adoptions per million population, Ukraine is far closer to both countries: Russia (total population 150m/8,000 intercountry adoptions p.a.) and Kazakhstan (15m/800) thus have the same rates, whereas Ukraine’s rate (50m/2,000) is just 25 % lower. Interestingly, none of these three major “countries of origin” has yet acceded or ratified the 1993 Hague Convention (though Russia signed it as far back as 2000), in contrast to most other countries in the region, excluding the Central Asian Republics.³

But just as concern over the proper regulation of intercountry adoption is increasingly being expressed in Russia and Kazakhstan, so it is now in Ukraine. An assessment of the country’s situation in this regard therefore seems particularly timely at this point.

³ Albania, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovak Republic and Slovenia are all Contracting States to the 1993 Hague Convention (status as at 9 September 2005).

2. CHILDREN IN THE CARE SYSTEM

2.1. ACTORS IN CHILD AND FAMILY PROTECTION IN UKRAINE

“It’s a pity that so many Ministries are involved with children’s issues”

Official in Odesa oblast

There are those in Ukraine who, as per the quote above, believe that the complex division of responsibilities for child welfare questions, at both central and other levels, makes it all but impossible to develop a co-ordinated policy and to ensure efficient and effective implementation. Some – though a minority among our interlocutors – feel in contrast that it would be dangerous to concentrate decision-making powers and resources, and consider that the present fragmentation of authority in this sphere brings with it a series of checks and balances that are healthy for the system.

The organigram⁴ below sets out the main actors of the different Ministries, as we understand them, at the three levels: national, regional (*oblast*) and local (*raion*). It is not always easy to ascertain with exactitude the responsibilities of each Authority, and it seems, for example, that the decision to place a child in an institution may be taken by several of them. All Ministries have their representatives at the local level. At the *oblast* level they work within the structure of the *Oblast* State Administration; on the *raion* level, within the *Raion* State Administration; and at the village level, within the Village Council (*Rada*).

Besides the actors represented in the organigram, at the *Oblast* State Administration level or lower, there are the Childcare Authorities or Guardianship and Custody Authorities (all titles seem to represent the same authority). The Head of this Administration is the main Child Guardian and he/she is responsible for the protection of children’s property and other rights. Apart from representatives of the Service on Children’s Affairs, the Department of Labour and Social Policy and the Department of Education, representatives of local departments of all other Ministries are included in the Council of Guardianship (Economy, Finance, etc.).

Also to be mentioned are the Courts, which decide on the separation of a child from his/her parents and the deprivation of parental rights, and also pronounce adoption orders.

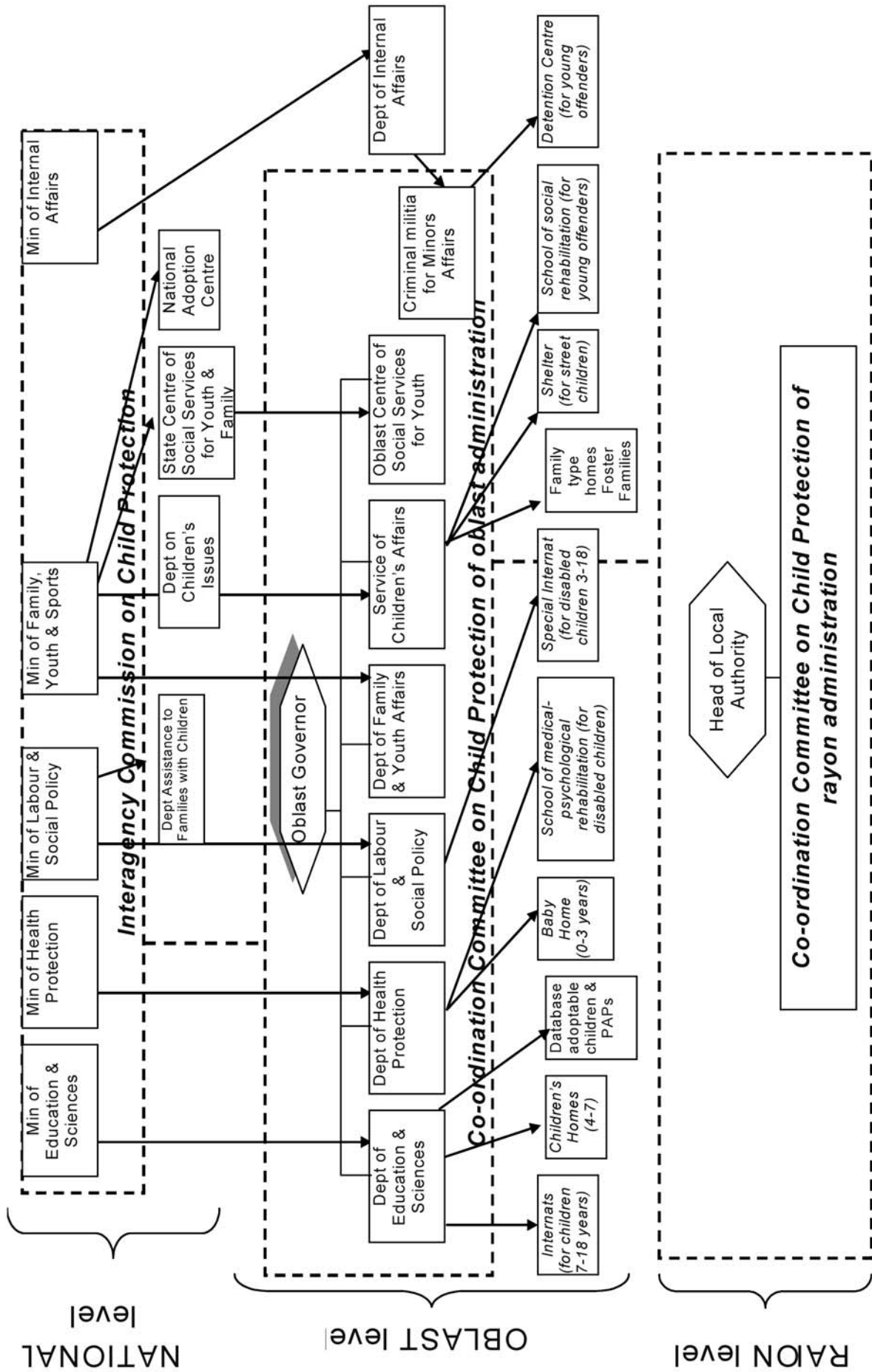
Presidential Decree 1086/2005 of 11 July 2005 on “Top Priority Measures to Improve the Child Protection System” (hereinafter Presidential Decree 1086/2005, see also 2.5) provides for some institutional changes, mainly the transfer of the Adoption Centre to the Ministry of Family, Youth and Sports, and has given this Ministry more competencies in child protection.

In all events, the system – and particularly how it has been working until now – seems very complicated. The Law on “Provision of Organisational and Legal Conditions of Social Security for Orphans and Children Without Parental Care” (hereinafter, Feldman’s Law),⁵

⁴ This organigram has been adapted from a document kindly provided to us by the NGO “Everychild”, to take into account some of the changes introduced by Presidential Decree ne 1086/2005 of 11 July 2005 on “Top Priority Measures to Improve the Child Protection System”:

- the Adoption Centre was to be moved from the Ministry of Education and Sciences to the Ministry of Youth and Sports on 1st September 2005, but by end October 2005, we understand that the move had not taken place.
- the Service on Minor’s Issues was renamed as the Services for Children’s Issues.
- Family type homes and foster families are under the responsibility of the Department of Family Policy but according to point 2.5 of the President Decree 1086/2005 all responsibilities concerning children will be moved to the Services on Children’s Affairs. At the time of writing, the situation is unchanged but we have been informed that it will change by the end of 2005.

⁵ Law about Organisational - Legal Conditions of the Orphans and Children Deprived of Parental Care’ Social Protection (2342-IV of 13 January 2005). This Law is also known as “Feldman’s Law”, from the name of its author.



assigns this same Ministry the role of coordination and methodological support for local and regional authorities in child care.

Nevertheless, it appears that until now there was not a designated “lead ministry on children’s affairs.” During our missions, we were not in fact apprised of the existence of coordinating structures, and therefore could not assess their exact roles and effectiveness. Such an assessment should clearly be undertaken, however, in order to ensure that the different competencies are distributed proportionately, and that the decisional powers and responsibilities are clear for every actor.

Throughout the report, we refer to regional and local authorities. In each instance, it will be necessary to determine the level that is best suited to carry out a specific task. In making that choice, a balance has to be struck between, on the one hand, the feasibility of having the necessary multidisciplinary and trained teams at the level in question and, on the other, the need to be as close as possible to the communities and children concerned.

In any case, there is a need for a strong child protection structure at the *oblast* level offering solutions for children deprived, or at risk of being deprived, of parental care: support for the birth family, reintegration, family and institutional placements and domestic and intercountry adoption. The *oblast* authorities may also delegate certain tasks to the *raion* authorities.

Recommendation:

- ↳ It would be very worthwhile giving serious consideration to conducting an in-depth review of the functioning of the current system in terms of both policy-making and service delivery, including special attention to co-ordination and coherence of responses.

2.2. PROBLEMS AND PRINCIPLES

Despite various initiatives in recent years to ensure an improved level of financial support to families, rates of child abandonment and relinquishment continue to cause major concern. In addition, the incidence of maltreatment and neglect deemed to warrant the child’s removal from parental care and, in many cases, withdrawal of parental rights and responsibilities, gives rise to similar preoccupation. Moreover, the scope of care solutions currently available seems to be questionable in terms of both their number and quality.

The children affected make up the group known as “social orphans”⁶ who reportedly constitute up to 90 per cent of those in State care. We have been told that between 25 % and 50 % of these “social orphans” are declared adoptable, so it seems likely that they also make up the majority of the children ultimately adopted.

International Principles and Ethical Guidelines:

The best interest of the child is the primary consideration in the cases of separation of a child from his/her family (CRC art. 9.1) and of adoption (CRC art.21 and HC art. 4.b).

The family is the most favourable environment for a child’s development (CRC preamble, HC Preamble, ISS/IRC⁷ principle VI, HK⁸ guideline principle 3.2).

⁶ Law about Organisational - Legal Conditions of the Orphans and Children Deprived of Parental Care’ Social Protection (2342-IV of 13 January 2005). This Law is also known as “Feldman’s Law”, from the name of its author.

⁷ We are uncomfortable with the term “social orphan” used in Ukraine and elsewhere, as these children have parents and social services should work with them. We would prefer referring to these children as “children without parental care.” However, in order to facilitate the reader’s understanding, we continue to use the term “social orphan” in this report.

⁸ ISS/IRC: International Social Service / International Reference Centre for the Rights of the Child Deprived of their Family, *Ethics and Principles on the Rights of the Child in Domestic and Intercountry Adoption*, 1999 revised 2004; www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/EthicalGuide04ENG.pdf.

The priority for a child is to be cared for by his/her biological parent/s (CRC arts. 7.1, 8.1, 9.1 & 18.1, UNDSL⁹ art.3, HK guideline principle 3.3, ECourtHR Cases:¹⁰ Andersson, Eriksson, Keegan, Olsson, Rieme, B. v. UK, B. v. UK, R. v. UK, W v. UK).

Governments and societies shall commit themselves to providing families the necessary protection and assistance to enable them to care for their own children (CRC preamble, arts. 18.2, 26 & 27, HC preamble, HK guideline principle 3.4, CoE Res 33 (1977)¹¹ principle. 1.1).

No child shall be subjected to arbitrary or unlawful interference with his or her family. The child has the right to the protection of the law against such interference or attacks (CRC art. 16, ECHR¹² art. 8, ECourtHR Case: Olsson).

2.3. SUPPORT TO BIRTH FAMILIES: HOW TO PREVENT CHILDREN ENTERING THE CARE SYSTEM

Ukrainian law and practice

The According to Ukrainian Law, the family is the primary and basic unit of the society and is the natural environment for the full development of a child (Family Code¹³ (FC) art. 3.1 and Law on Childhood Protection¹⁴ (LCP) art. 11). Everyone has the right to live in his/her family and to parental care (FC art. 4.3 and LCP art. 11). The State recognizes the priority of family care for children (FC arts. 5.3).

The State should protect the family, childhood, motherhood and fatherhood and create conditions for the strengthening of the family, motherhood and fatherhood (FC art. 5). It should also grant social assistance to families with children (LCP arts. 12-13).

The Law on Childhood Protection defines this protection as a strategic all-national priority and sets out the main foundations of State policy in this field to protect the child's rights to life, health protection, education, social protection and all-round development.

The Law about State Help to Families with Children of 2001 sets the level of financial support for families with children that is guaranteed by the State, taking account of the size of the family, its income, and the age of children.

However, these clear legal provisions seem to be difficult to implement. As we can observe from the following table, the number of families in crisis and of parents deprived of their parental rights is quite high and it has been increasing during recent years:

	Number of families under the Local Departments of Youth and Sports	Number of children in such families	Number of families under supervision of the social services	Number of persons deprived of parental rights
January 04	46 763	88 607	11 739	7 613
January 05	52 637	104 099	21 122	8 704

* Source: Statistical Bulletin *State Boarding Schools in 2004*, Ministry of Youth and Sports.

⁹ UNDSL⁹: 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 41/85, of 3 December 1986); www.unhcr.ch/html/menu3/b/27.htm.

¹⁰ ECourtHR: European Court of Human Rights Case Law. For searching a specific case, please refer to www.echr.coe.int/ echr.

¹¹ CoE Res 33 (1977): Council of Europe Resolution on Placement of Children (Adopted by the Committee of Ministers of the Council of Europe on 3 November 1977 at the 227th meeting of the Ministers' Deputies); <https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=659762&SecMode=1&Admin=0&Usage=4&InstranetImage=48358>.

¹² ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe of 1950; www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf.

¹³ FC: Ukrainian Family Code, as amended by Law № 407-IV (407-15) of 26 December 2002.

¹⁴ LCP: Ukrainian Law № 2402-III on Childhood Protection of 26 April 2001.

Enabling children to remain with their parents is clearly, and by far, the first priority of a child protection system. We understand that improved financial support for low-income families is gradually being set in place. Special allowances are also available for particularly vulnerable families, including single-parent households, large families and those where the child, the mother or father is disabled. The amounts concerned are relatively small but they are proportionally in tune with other economic benchmarks such as minimum wage. In addition, it seems that mothers will now receive a child allowance for each child under age 3, instead of the previous system where a single allowance was paid whether one, two or three children in the family were below that age.

The new birth allowance

Beginning 1 April 2005, a new birth allowance system has been implemented in Ukraine, designed to provide more substantial material assistance to families and thereby to prevent poverty-induced abandonment and relinquishment.

It involves a total amount of UAH (hryvnias) 8,000 (approx. •1,330) paid out over the first year following birth of the child: about 40 per cent as an initial lump-sum (UAH 3,384) and the remainder on a monthly basis during that year.

The money involved is very considerable, equivalent to twice the **annual** minimum wage. For this reason, the Decree of the Cabinet of Ministers ne 315 of 21 April 2005 instituting this allowance foresees strict monitoring of beneficiaries at the *oblast* level and provides for a mechanism to deal with those who abuse the system. Nonetheless, there is widespread scepticism about its likely effects: many indeed express the belief that, rather than preventing abandonment, it will in fact encourage couples to have children and then to abandon them once they have cashed the allowance.

Benefit systems of many kinds and in all countries are subject to a certain level of abuse which sometimes has secondary effects running directly counter to the aim of the benefit. In this case, however, the feared ramifications of abuses would directly impact on children's long-term welfare. It is clearly far too early to gauge yet whether or not these fears are well-founded. All concerned are fully aware of the need to follow closely abandonment rates and other indicators in a bid to avoid such consequences. We will surely have to wait until late 2006 at the earliest before being able to determine any initial trends in this regard.

It should also be underlined, in a comparative and long-term perspective, that in some European countries wishing to support families with children, child allowances are paid to the parents until the age of majority or the end of studies of every child. The costs for the State can be at least partially compensated by savings due to the reduction in the number of "social orphans."

Over and above financial assistance, however, is the need of some families – they are often termed "dysfunctional" or even "unfavourable" families – for psycho-social support. However, there is a lack of qualified and experienced social workers in Ukraine; moreover salary levels in this sphere are currently very low and social workers have many different responsibilities (besides family and child care they also work in the field of prevention of HIV/AIDS, trafficking, prostitution, drug use, etc.). This at present means, we gather, that provision of social support is very rare, limiting considerably the possibility of keeping such families together and thus enhancing the likelihood that their children will become "social orphans" and enter the care system.

Nevertheless, some initiatives have been taken in this regard, exemplified by projects run by the three main non-governmental organizations (NGOs) directed to assistance to crisis families:

<p style="text-align: center;">HOPE AND HOME FOR CHILDREN¹⁵</p> <p style="text-align: center;">Day Centre *</p> <p><u>Aim:</u> Preventing children going to State care institutions.</p> <p><u>Activities:</u> This centre will provide support to children of poor or unstable families. Children may come to the centre after school, to get a meal and stay there, playing or doing homework; at night they will go back home. At the same time, social workers work with parents in order to prevent children abandonment.</p> <p>* <i>This is a future project.</i></p>	<p style="text-align: center;">CHRISTIAN CHILDREN'S FUND¹⁶</p> <p style="text-align: center;">Child's right to a family</p> <p><u>Aim:</u> Preventing the removal of the child from a crisis family.</p> <p><u>Activities:</u></p> <ul style="list-style-type: none"> • Community based training on children's rights. • Creation of an ombudsman to monitor the protection of child's development in a family. • Training social services specialists to work with families in crisis. <p>This is a pilot project and takes place in two <i>oblasts</i>: Rivne and Cherkasy.</p> <p>It is financed by the European Commission.</p>	<p style="text-align: center;">EVERYCHILD¹⁷</p> <p>Capacity building of local NGOs in providing focused social support to vulnerable families with children</p> <p>Aim: promoting the right of vulnerable families with children to have access to high-quality social services. Prevention of abandonment of children to State care as well as increasing capacity of existing system of social services provision to families.</p> <p>Activities:</p> <ul style="list-style-type: none"> • Development of Family Support Services in 16 <i>raions</i>. • Set up of 3 regional training centres. • Analysis of existing foreign and Ukrainian experience children's services and publication of the worked out methodology. <p>By April 2005, 1700 children at risk of being placed in an institution have stayed with their families.</p> <p>This project is financed by the European Commission.</p>
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Recommendations

- ↳ Activities to be developed include: monitoring the number of "social orphans" and the revenues and financial needs of all families in Ukraine; developing a coherent policy of financial, educational (training for parenthood in schools; specific services such as "schools for parents") and psycho-social support to all families requiring such assistance; awareness raising in schools and the media about the needs of children and the content of responsible parenthood.
- ↳ Given the trend consistently reported to us that the number of "social orphans" is on the rise, intensified efforts to train and employ social workers specialised in family support and prevention of abandonment/relinquishment seems vital, as does the development of day or residential care for the whole family (children and parents) and educational support services. Special attention should also be paid to the necessary sharing of responsibility in such projects, set up initially mainly by NGOs and international organizations, between the Ukrainian Authorities and the private non profit sector.
- ↳ There should also be more emphasis in every project and service to empowerment of the families of origin, to the promotion of the rights of the children and the parents and to the real implementation of the provisions set in the Family Code and other legislation. Specific training for professionals should be developed on these issues.

¹⁵ www.hopeandhomes.org.ua.

¹⁶ www.fostercare.org.ua, www.ccf.org.ua.

¹⁷ www.everychild.org.ua; www.everychild.org.uk.

2.4. HOW CHILDREN ENTER THE CARE SYSTEM

In cases where prevention has failed or is impossible to envisage, children enter the care system, be it soon after birth or later in life. They may be abandoned or relinquished on a “voluntary” basis by their parents, or removed from parental care by the competent authorities.

2.4.1. ABANDONMENT AND RELINQUISHMENT¹⁸

Ukrainian law and practice:

The abandonment of a child by his/her parents is stipulated as being unlawful (although it is not a criminal offence) and contrary to the morals of society in the Family Code (FC art. 155.3).

In contrast, parents may abandon their child in the maternity hospital or any other health institution if he/she is born with a serious disability and “in other essential circumstances” (FC art. 143.3). One of the main problems is that these “essential circumstances” are not defined in any legal document, and thus they can be any subjective reason ranging from risk of stigma to lack of finance for maintaining the child.

The United Nations Committee on the Rights of the Child has urged Ukraine to “[t]ake effective measures, including the development of strategies and awareness-raising activities, to prevent or reduce the abandonment of children”¹⁹.

Among the priorities of Presidential Decree 1086/2005 is the prevention of abandonment of children by creating “new effective ways” for this prevention, establishing social centres for mother and children and providing better access to social services (arts. 2.11 & 2.12). In particular the Ministry of Health has to focus on the abandonment of newborn children in order to try to resolve this problem (art. 4).

2.4.1.1. Abandonment/relinquishment at birth

It appears that rates of abandonment of babies, including healthy ones, at the maternity hospital continue to give cause for concern. According to the NGO EveryChild “among the total number of child-orphans and children deprived of parental care (103,000 according to official statistical data in Ukraine), 12,000-15,000 are children whose parents left them at birth”²⁰.

In cases where parents do not take the child with them from the maternity home or any other health institution, the child’s grandmother, grandfather, or other relatives may take him/her into their care once permission to do so has been granted by the Custody and Care Authority (FC art. 143.4).

If no relative takes the child, he/she should be placed in a child care facility based on the statement drawn up by the administration of the institution, law enforcement authorities, (police) district authorities or the Education Department.

As far as we are aware, there is no systematic social work with the mother at the Maternity Hospital in order to prevent abandonment or relinquishment at birth.

¹⁸ The term “abandonment” concerns the act of physically deserting a child in such a way that the identity of the parent(s) – and therefore invariably of the child – cannot be known, often simply by leaving the child in a public place. “Relinquishment” refers to the act of surrendering a child to a specific third party – a person or institution – with a view to ensuring that child’s future care.

¹⁹ Concluding Observations of the CRC Committee to Ukraine of 9 October 2002, CRC/C/15/Add.191, p. 48(b) <http://193.194.138.190/tbs/docs/nsf/7cec89369c43a6dfc1256a2a0027ba2a/8106b2a15b8081ffc1256d5e002c5e97?OpenDocument>.

²⁰ www.everychild.org.ua/en/projects/parents_and_children_together/.

Some examples of projects in this field developed by NGOs are the following:

EVERYCHILD	<p>Parent and Baby Unit in the City of Chernigiv</p>	<p>Aim: To provide short-term accommodation and support to young parents who would otherwise be forced to place their babies in institutions.</p> <p>Project activities:</p> <ul style="list-style-type: none"> To establish a Parent and Baby Unit with the capacity for 8 temporary accommodation placements for young parents and their babies. To provide social support and other advice to parents living in the Unit so that they can return to a home environment. To raise public awareness of social problems faced by young parents. To carry out a PR campaign providing the community with the information about Unit as a successful prevention mechanism of child abandonment and institutionalization.
	<p>Mother and Baby Project in Lviv oblast</p>	<p>Aim: To prevent the abandonment of babies and young children to institutional care by providing support for vulnerable mothers and alternatives to institutional placement.</p> <p>Activities:</p> <ul style="list-style-type: none"> Introduce system for identifying vulnerable pregnant women at risk of being unable to care for their babies; Set up a range of social work services through maternity homes and women's consultation points which support vulnerable mothers and prevent abandonment; Assess all situations of babies and young children currently residing in 2 baby homes in Lviv oblast and where possible and safely restore children to their biological families. <p>During 2 years, the service prevented the placement of 25 babies and supported the successful reintegration of 9 babies to their biological or extended family. Key elements of this demonstration project have been adopted in the State Social Services national programme.</p>

HOPE AND HOME FOR CHILDREN	<p>Early orphanhood prevention project</p>	<p>Aim: To prevent abandonment of newborn babies. During two years of this project implementation, 85 mothers changed their mind about leaving children in state care.</p> <p>Development of the project:</p> <ul style="list-style-type: none"> Medical staff at maternity hospitals consider if it is in the best interest of the child that the relinquishing mother leave him/her and if there are any chances of persuading her to take the child with her. They invite psychologists for professional consultations with mothers who intend to abandon their children. Mothers who are going to abandon their child only because of their socially-unsettled situation are visited by psychologists. Usually, after psychological consultations mothers decide to stay with children. Mothers who have unstable and unreliable living conditions (like mothers raised in institutions), are offered to live in the Mother and Baby Unit. In the Unit, women with babies are provided with a separate room, food, and living allowance. Trainings for medical staff and social workers who work with mothers who tend/are at risk of abandoning to abandon their children. 	
	<p>Mother and Baby Units</p>	<ul style="list-style-type: none"> As a rule, mothers are underage girls having difficulties in their families, with housing and work. 	<ul style="list-style-type: none"> Term for living in the Centre: up to 1 year. Some of women stay one-three months, depending on (the) individual case. After that, the mother leaves with a job and temporary accommodation; in order to maintain herself and the child.
		<ul style="list-style-type: none"> This pilot project has been implemented since 2003 in Kherson (city level). 	<ul style="list-style-type: none"> In November 2005, a similar center will be opened in Fastov, Kyiv <i>oblast</i> (at the <i>oblast</i> level).

2.4.1.2. Abandonment and relinquishment of older children

Any person (including all State functionaries specifically working on child protection) who became aware of the fact of a child being left without custody or care, shall inform immediately the Custody and Childcare Authority at the place where the child is found.

Children found in the street can be temporarily placed in shelters (see 2.5.2.4 below). According to the Law on Childhood Protection, the child should be prepared to return to his family and if this is not possible, he/she will be placed as determined by the custody and care authorities. The Custody and Care Authority shall decide where the child should be placed.

Orphaned children and children deprived of parental care shall also be transferred to the responsibility of the custody and care authorities who will decide on the appropriate care solution: adoption, foster family, family type home or residential institution (LCP art. 24).

According to respondents, there are no projects specifically directed to the prevention of abandonment of older children because it is not such an urgent problem as relinquishment of newborn babies. At the same time, there are several projects that will in principle have the effect of helping to prevent recourse to abandonment or relinquishment, such as day centres for the children of poor families.

Some examples of good practices in this field in other countries²¹

- Social work with the family.
- Collecting information on the family's psycho-social situation and determining the causes of the placement.
- Verifying if the placement can be avoided by providing the family with emergency support (see 2.5).
- Determining how, if the placement is made, the child's contact with the family is to be maintained wherever possible: visits, phone-calls, letters,...
- Determining how work with the birth family should be continued during the placement, possibly by trying to remedy the reasons why the placement was necessary, and how a permanency plan for the child is to be developed.
- Recognising the importance of workers' initial attitudes towards the family for the future.

Recommendations

- ↳ Development of awareness in schools and the media about the problems of abandonment and relinquishment of children, with a presentation of alternative solutions and help.
- ↳ Concurrently, amend the article in the Family Code regarding abandonment, requiring positive measures to support the family and prevent abandonment/relinquishment.

²¹ Operational Manual: Manual Práctico, "El interés superior del niño y la adopción. Implementación de las Convenciones Internacionales en materia de protección a la infancia" (Operational manual "The best interests of the child and adoption. Implementation of the international conventions on matters of child protection"), International Cooperation Project between Italy (Commissione per le Adozioni Internazionali) and the Governments of Albania, Bulgaria and Peru. With the collaboration of International Social Service – Italian Section and International Social Service – International Reference Centre for the Rights of Children Deprived of their Family, November 2004.

- ↪ Relinquishment should be considered as a symptom and a social problem, and not as an offence or an action to be penalised, which may lead to more children being abandoned under inappropriate or dangerous conditions rather than being relinquished into care with the possibility of counselling and assistance to the mother. Parents should have access to a service where they can ask for help without fearing that they will be judged negatively (see prevention 2.3)
- ↪ In line with Presidential Decree 1086/2005, develop more projects to prevent abandonment through support to children and parents (see 2.3).
- ↪ Prevention of unwanted pregnancies through education in schools and the media, and the access to contraceptives.
- ↪ Special training for maternity professionals in order to identify parents with difficulties, support them psychologically and refer those contemplating relinquishment to a specialised social service.
- ↪ We would also recommend taking into account good practices in regard to older abandoned or relinquished children (see supra 2.4.1.2).

2.4.2. REMOVAL FROM PARENTAL CARE²²

Ukrainian law and practice:

According to the law, a child can only be separated from his/her parents if it is necessary in his/her interests and is ordered by decision of a Court (LCP art. 14). We found no specification of the grounds on which the Court might base such a decision on separation (as opposed to a decision on deprivation of parental rights, a different issue which is indeed regulated in art. 164 of the Family Code, see also chapter 3 of this report).

Childcare Authorities can initiate the process of a child's separation from the family or deprivation of parental rights if they determine that this is in the best interests of the child. They may take child into temporary accommodation in a shelter and start the process of removal from parental care. The main problem appears to be that, once the child has been placed, no attempt is made to monitor the family situation or to provide support for the parents in order to secure conditions that could enable the child to return home.

We noted a worrying general tendency among interlocutors to advocate for increasing substantially the number of the children removed from parental care, on the grounds of parental drug and alcohol abuse, maltreatment, inability to care, etc. According to the Department of Minors at the Ministry of the Interior, about 2,000 applications were made to remove children from parental care in 2004, and another source affirmed that "social workers increasingly resort to deprivation of parental rights, so the number of social orphans has doubled in the past 10 years."

Removal of children from parental care cannot be seen as a goal for a child and family welfare policy based on the rights of the child. This mechanism is only an instrument to be applied, as a last resort and on an exceptional basis, when support to the family and prevention of placement have proved impossible or are contrary to the best interests of the child.

The proposal to have more frequent recourse to removal is all the less desirable in that the care system is already straining to cater to those deemed to require out-of-home care.

²² Regarding the withdrawal of parental rights and responsibilities, see *infra* 3: adoptability.

Recommendation

- ↳ We strongly urge instead that priority be given to putting resources into working with families to try to prevent placement (see 2.3) and to ensure the child's return within the family under appropriate circumstances (see 2.5), should he or she need to be removed temporarily for safety and protection reasons.

Children with disabilities

Current protection and welfare responses to children with disabilities pose a major problem in Ukraine. Many such children face institutionalisation, even more so if they come from single-parent families with problems and have no other relatives willing and able to help them. Even if they are then declared legally adoptable, under current conditions their chances of being adopted are very low, although some are adopted more especially by foreigners (see chapter 5).

We understand that some attempts are being made to enable families to continue to care for children with disabilities. As of 2002, a Law on State Assistance in this regard instituted modest benefits to be paid in these circumstances, and as of the current year, provision has been made for paying an additional benefit (equivalent to 50 per cent of the subsistence level) to families in especially difficult situations, such as single-parent households and large low-income families. Furthermore, we were informed that some 400 "social rehabilitation centres" have been set up country-wide over the past ten years, by and under the auspices of Government Ministries²³ or NGOs, offering either day-care support or short-term residential facilities (up to one month), to which families caring for children with disabilities have access.

Nonetheless, it appears that very significant numbers of children are placed in institutions essentially because of their disability, even though it may be minor (such as a hare lip). In general, when children with disabilities come into the care system, they will first be allocated to a Ministry of Health baby home, and will subsequently be transferred to a specialised boarding school for children with special needs under the Ministry of Labour and Social Policy until the age of 18 (LCP art. 27).

We were told that, over the past five years, a movement in favour of de-institutionalising responses to these children has been launched by some parents of children with disabilities and persons who had already been institutionalised. This movement is promoting awareness of the fact that it is in principle much better for the child's development, as well as being cheaper, to maintain a child with a disability in his/her family with specific financial and social support than it is to institutionalise them. However, this objective now needs to be fully espoused, in a high-profile manner, in State policy and programming, with the commitment of appropriate resources; it is therefore disappointing to note that Presidential Decree 1086/2005 does not specifically address children with disabilities.

We would like also to highlight the situation of the growing number of children with HIV/AIDS in Ukraine. For the moment they are following the same institutional path as children with disabilities. According to current legislation,²⁴ children with HIV/AIDS can live together with other children in boarding schools, but in practice they are isolated. Because of stereotypes and misinformation about HIV/AIDS, teachers and authorities are often afraid to work and have contact with these children.

²³ Ministry of Labour and Social Policy (161), Ministry of Health (65), Ministry of Education (63) and Ministry for Youth and Sports (36).

²⁴ See the Order of Ministry of Health Care no 448 from 29 November 2002 about approval of methodical recommendation "Organisation of medical assistance and care for HIV-positive children in pre-school and secondary educational institutions" and Law no 155/98 of 3 March 1998 "about prevention of AIDS and the population's social protection."

Recommendations

- ↪ Specific policies to provide assistance to families with children suffering from grave illnesses, disabilities or HIV/AIDS should be introduced to prevent the abandonment of children, to enable them to benefit fully from being cared for by their parents, and to avoid institutionalisation wherever possible (CoE Rec. 1601 (2003)²⁵ principle 4.iv).
- ↪ The diagnosis of children's disabilities or HIV/AIDS infection and the decision to place them in institutions should always be accompanied by full safeguards for the fundamental rights of children and involve regular revision; an appeal procedure should be established for possibly questioning such decisions (CoE Rec. 1601 (2003) principle 5.i).
- ↪ Specific information, training and education are indispensable in this context, as well as targeted scientific research.

2.5. HOW THE SYSTEM CARES

Ukrainian law and practice

For various reasons, a number of children will require – and in some cases may even request – long-term care. In certain instances of severe disability, for example, this will also need to extend well beyond entry into adulthood and, in the most extreme cases, even be life-long. However, they constitute only a small minority. *This means that the current focus of the care system, which is essentially grounded in long-term provision, needs to be turned on its head.* For the great majority of children whose maintenance in the birth family has proved impossible, efforts in fact need to be directed more especially towards initial short-term placements in the care system that can lead to stable outcomes.

The most immediately obvious characteristic of the way “alternative care” for children is conceived in Ukraine is that, once they enter into the care system, they are highly unlikely to leave it unless they are either adopted or “age out”, i.e. they reach the age of 18 and are no longer eligible for care. As far as we are aware, no individualised permanency plans are drawn up and no official service is currently responsible for doing so. Furthermore, although Co-ordination Committees on Child Protection exist at the *oblast* and *raion* administrations, these were not mentioned to us during our interviews and we therefore have no indication as to their work and effectiveness. As several local authorities have different responsibilities relating to different types of care, they need to be very well co-ordinated (see as well 2.1).

Notably, there seems to be no structure or specially-trained social workers for efforts to return children to their families. One example, if it is to be believed, comes from a *detsky dom* (children's home) where we were told that, since 1979, i.e. a quarter of a century ago, just two attempts had been made to return a child to the birth family, and only one had been successful.

Moreover, harshly put, “permanency planning” in practice translates essentially into “permanent residence in an institution” (though gradually more and more in foster-care) or “adoption.” And this is reflected largely, though not uniformly, in the limited attention given to the “subsidiarity” principle governing placements.

The pressure on the “adoption solution” as a way out is therefore immense. However, reportedly only between 25 % and 50 % of children in care are legally “adoptable”, and these

²⁵ CoE Rec. 1601 (2003): Council of Europe Recommendation on Improving the lot of abandoned children in institutions (Adopted by the Parliamentary Assembly of the Council of Europe on 2 April 2003, 13th sitting); <https://wcd.coe.int/ViewDoc.jsp?id=62783&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

include children who are “hard-to-place”, notably because of their age or the apparent severity of a disability or illness. Consequently, the vast majority of looked-after children aged above 7 years – surely over 85 % – have no potential option other than to spend their childhood in residential care and subsequently “graduate” to forced and ill-prepared adult autonomy.

This situation in fact led several of our interlocutors to complain that insufficient use was made of court orders depriving parents of their rights and responsibilities, and thereby rendering a child adoptable. However, even supposing that more frequent recourse to what should be an exceptional step was warranted in itself, it would clearly not be the answer. Already some 25,000 adoptable children are registered nationally, whereas total adoptions (domestic and intercountry) have been running at about 4,000 or less annually in recent years. Adding to the numbers of children declared adoptable will at best do little, if anything, to improve the situation. At worst, it could have negative repercussions, notably giving false expectations to already very vulnerable children.

Presidential Decree № 1086 of July 11, 2005

“Top-priority measures to improve the children’s protection system”

This Decree attributes the highest priority to *State policy for improvement of the child protection system*. Different tasks are assigned to different Ministries and other State Authorities.

Among the INSTITUTIONAL CHANGES more especially relevant to the present assessment report, we can highlight the creation of a State Authority for Children’s Issues and Child Protection under the Ministry of Family, Youth and Sports.

This same Ministry is also henceforth to be in charge of the Adoption Authority and must develop a central databank of orphaned children and children deprived of parental care.

The Presidential Decree focuses on the CREATION OF MEASURES to *prevent abandonment* and to *provide help to families*. It also urges the analysis and promotion of the system of *family-type homes and foster families*.

Regarding FINANCING for the promotion of these measures and others for children deprived of parental care, it bases its approach on the principle that “the money follows the child.” This means that wherever the child is, the finance will go to the person (his/her birth family, foster care family or family type home) or institution caring for that child. Funding for all forms of alternative care are henceforth to be ensured from the State budget alone.

Special measures have to be taken by the MASS MEDIA in order to popularise the historical traditions of the Ukrainian family and new forms of family-based care for children deprived of parental care.

Explicit TIME FRAMES for implementation have been foreseen by the Decree: the target dates for completing certain initiatives were set for as early as September and October 2005.

International Principles and Ethical Guidelines

Need for a comprehensive family and child welfare system

A comprehensive system for protection of children deprived of their family should include the availability and adequacy of a whole array of care solutions in every region of the country (CRC art. 20.2 & 20.3, CoE Res. 33 (1977), principle 2.10 & appendix) comprising:

- prevention of child abandonment through a policy of family, community and State support to the family of origin;

- Nonce the child is in care, re-establishment of family ties and return of the child to the family if this is in the best interests of the child;
- foster care (urgent, short-term and, exceptionally, long term);
- residential facilities (in principle a temporary solution, including urgent shelter) for short-term and, exceptionally, long-term care, with specialised facilities catering to physical and mental disabilities;
- domestic adoption;
- intercountry adoption.

PERMANENCY PLANNING FOR EACH CHILD IN CARE: PREPARING TO PLAN

Once a child is in care, an individualised plan should be prepared foreseeing steps to ensure either that he or she returns to the biological family under appropriate conditions or will benefit from a stable care situation, preferably family-based (CoE Res. 33 (1977) principle 1.5).

This requires the regular and frequent review by the competent authorities of the suitability and necessity of the care option provided to the child and all other circumstances relevant to his or her placement (CRC art. 25), taking into account his/her needs and opinions. The plan should be prepared only after a preliminary psycho-medico-social and legal assessment of the child and his/her birth family (CoE Res. 33 (1977) principle 1.4)

The plan should preferably be drawn up by a multidisciplinary team of professionals (psychologist, social worker, lawyer, medical doctor), with, whenever possible, the involvement of the child and the family of origin. Furthermore, parents or, wherever appropriate, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child are to be the basic concern (CRC arts. 3, 12 & 18, CoE Res. 33 (1977) principle 1.4).

PERMANENCY PLANNING: DECIDING AMONG THE OPTIONS

The identification of the plan should respect a number of priorities, based on principles recognised by the CRC and HC, and should always evaluate, case by case, the best interests of the child concerned:

- reinforcing family ties and preparation for the reintegration of the child into the (nuclear or extended) family, if this is in his/her best interests;
- if this reintegration is not in the best interests of the child, or is not possible, domestic adoption;
- if efforts to secure domestic adoption in the best interests of the child fail, then intercountry adoption may be considered.

Adoption is thus **subsidiary** to maintaining or reintegrating the child to the family of origin. And intercountry adoption is subsidiary both to that and to domestic adoption (CRC arts. 18 & 21b, HC preamble para. 2 & 3, art. 4.b).

Foster care and, if necessary and appropriate, residential care should in principle be *temporary solutions* pending decision-making in the context of permanency planning for the child, but may exceptionally be conceived as *permanent solutions* if and when there is no other alternative in the best interests of the child and/or the child concerned so requests.

Thus, a global policy for children and the family should be founded on the following priorities:

- Priority for the family of origin (CRC art.20.3 and HC preamble para.1)
- Priority for family solutions (CRC art.20.3 and HC preamble para.1)
- Priority for permanent solutions (HC preamble para. 3)
- Priority for community and national solutions (CRC art. 21b and HC preamble para 3, art. 4b)
- Priority for consensual solutions
- Priority for personalized solutions (ISS/IRC principle III).

Recommendations

- ↳ Upgrade efforts to prevent abandonment, relinquishment and situations that might require the child's removal from parental care (see 2.4).
- ↳ Ensure regular review of the necessity and appropriateness of every placement, and work with the children and their birth families to determine the most suitable permanency plan for the child.
- ↳ Each child should benefit from an individualised permanency plan (for guidelines on drafting this, please refer to the international principles and ethical guidelines on this point).
- ↳ More efforts should be put into the reintegration of the child in care into the birth (nuclear or extended) family unless this would be counter to his or her best interests. Both the child and the family should be prepared for this development.
- ↳ Ensure that all care and protection options (2.5.1) are available in sufficient quantity and are of sufficient quality in each *oblast*.
- ↳ In order to implement this policy, a child and family welfare structure should be set up in each *oblast*, bringing together or coordinating all the authorities and professional actors concerned. This structure should be responsible for designing overall policy as well as for handling individual cases, and especially for the formulation of individualised permanency plans.
- ↳ Stimulate attitude-change regarding the thrusts of a new overall child and family protection policy, notably through the media and schools.

2.5.1. Family-based care options: foster care and family-type homes

Ukrainian law and practice

Presidential Decree 1086/2005 sets out measures for supporting the establishment of more family-type homes and foster families, studying their financing and taking "any necessary measures to improve this system" (arts. 2.8, 2.9 & 2.10).

One of the reasons for making this decision is that the development of foster care and family-type homes (FTH) is still at its early stages. The first FTH in Ukraine was established in Soviet times, in 1988. After *perestroika*, this activity was taken up again only in 1998. While it figures in national policy, it seems to be implemented very unevenly throughout the country, depending considerably on the initiative of the head of each *oblast* administration.

An orphaned child or a child deprived of parental care may be placed in a foster family until he/she reaches 18 years (FC art. 252 and Chapter 20).

According to the Family Code, children have the right to family care²⁶ and State care institutions should take measures for placing the institutionalised children into family type care. A child should only be placed in a State care institution²⁷ when there is no possibility of family-based care (Feldman's Law art. 6).

According to Ukrainian legislation,²⁸ there are two alternative family-based forms of child care: foster family and family type home.

— A foster family is a family who takes, on the voluntary basis, a maximum of 4 institutionalised children (orphaned or deprived of parental care) for care and common living.²⁹

— A family type home (FTH) is a family who takes into its care not less than 5 orphans and children deprived of parental care. The total number of children in such families, including biological children, may be up to 10.³⁰

As can be seen from the legal provisions, a striking feature of family-based alternative care in Ukraine is that it is conceived more especially as a long-term option rather than – at least as well – as a caring environment for children during urgent or difficult periods in a family's life (illness, imprisonment, temporary crisis, etc.). As a result, the potential demand for carers is immense, in that a child assigned to a foster home or FTH will likely remain there, so each two or three new children who come along will require an additional foster family. In many ways, in practice fostering seems little different from adoption. In general children do not keep in touch with their birth family.

This said, objectively, the number of foster parents in the country is small, even if it is reportedly growing weekly: at the time of our visit, we were told that they numbered about 150 and were caring for some 350 children nation-wide.

Foster care is decided by the Custody and Care Authority (FC art. 252). It is not fully clear to us how a child is oriented towards foster care rather than residential care or adoption (lack of an Authority in charge of permanency planning: see 2.5). We understand that it is the local Department of Family and Youth that is responsible for selecting foster families, but that no legal criteria seems to exist for the selection process. We were not aware of any foster care agency as such, i.e. a specialised social service in charge of supporting and accompanying the child, the foster family and the birth family throughout the foster placement.

Foster families are remunerated. The amount is determined on the basis of agreement between the foster parents and the Custody and Care Authority (FC art. 254). The foster families usually receive a small allowance – UAH 300 per month was quoted for Odesa *oblast* – and some basic training but virtually no psycho-social or educational support thereafter.

²⁶ We would point out that, under international law and notably the Convention on the Rights of the Child, children have no absolute "right" to family care, although it is of course recognised that the family environment provides the best guarantees for the child's full and harmonious development (CRC Preamble).

²⁷ The fact that Ukrainian law not unnaturally allows for placement in a non-family residential setting under certain circumstances illustrates the fact that a child has no "right" to family care (cf. preceding footnote).

²⁸ Specific regulation of family-based care option can be found in Decree of the Cabinet of Ministries of Ukraine about approval the Regulation about Family Type Home # 564 from 26.04.2002 and the Decree of the Cabinet of Ministries of Ukraine about approval the Regulation about Foster Family # 565 from 26.04.2002 (not available in English). As our mission focused mainly in adoption, it was not our intention to analyse in deep these Decrees and the whole FTH and foster families system, but rather to have them in mind in the context of a child protection system.

²⁹ Decree of the Cabinet of Ukraine "About Approval of the Provision on a Foster Family" # 565 of 26.04.2002 with changes according to Decrees of the CM # 1572 of 17.11.2004 and #33 of 15.01.2005 (not available in English).

³⁰ The Law about Organisational - Legal Conditions of the Orphans and Children deprived of parental Care's Social Protection (#2342-IV from 13.01.2005).

Somewhat surprisingly, Feldman's Law deems that only "if necessary" are potential fosterers bound to complete training on upbringing difficulties with regard to children deprived of parental care (art. 14).

There are varying opinions about the potential effect on recruitment of improving the financial conditions for foster care. Some interlocutors said that raising the allowance would have no effect at all; others believed that it was key to the necessary rapid expansion of this form of care. All agreed, however, that better preparation and support for foster families are vital.

The responsibilities of a foster parent are to provide housing, clothes, food, etc, to create the conditions for the integral development of the child and to protect the child and his/her rights and interests. Fosterers are legal representatives of the child and protect their rights as custodians or guardians without special empowerment (FC art. 255 and Feldman's Law art. 31).

There would seem to be even fewer Family Type Homes. We did not receive national figures for them but the two *oblast* examples we have, extrapolated to national level, would give a total of about 70 publicly-funded FTH, and we understand that almost as many have in addition been set up in 13 *oblasts* by the NGO Hope and Homes for Children. This would mean an overall total of 130-140 nation-wide. On average, they are looking after 7 to 8 children each. Currently paid for out of the local budget, financial conditions for publicly-funded FTH seem to be somewhat precarious in some cases at least, and the couples involved appear to receive poor remuneration. Costs per child were said to be just half of those for an institutional placement.

For the moment, by all accounts the most active entities contributing to and creating foster families and family type homes are NGOs. Some of their projects are described below:

International Principles and Ethical Guidelines

Foster care should be a provisional measure oriented, as a priority, towards the reintegration of the child in his/her family of origin (UNDSL P art. 11, CoE Res. 33 (1977) principle 2.13, HK guideline 9).

Foster care does not create any legal child-parent relationship. It should be reviewed regularly (CRC art. 25, CoE Rec. 6 (1987)³¹ principle 1 & 2, UNDSL P art. 12) and should be terminated by a competent authority (CoE Res. 33 (1977) principle 1.4). Time in foster care is to be used more especially to prepare a child's reintegration into the biological family or his/her adoption (permanency planning: see 2.5). Except when adoption is contemplated, contacts should be actively maintained between the child and the birth family.

In special cases, foster care is a long-term solution for a child who cannot be adopted. To some extent, it may then take the form of an "open adoption" of the child by the foster family, possibly involving on-going contacts with the birth family, but the child neither takes the foster family's name nor benefits from any inheritance rights. This long-term fostering option, which should be decided by a professional team and in accordance with the wishes of the child and the two families, aims to guarantee to the child and the foster family a legal measure that gives stability and permanence to their relationship, without breaking the links with the family of origin. This type of foster care, involving a sensitive balance between two families, can notably be useful for adolescents for whom full adoption is very unlikely, is not desired, or could be emotionally damaging.

³¹ CoE Rec. 6 (1987): Council of Europe Recommendation on foster families (Adopted by the Committee of Ministers of the Council of Europe on 20 March 1987 at the 919th meeting of the Ministers' Deputies); <https://wcd.coe.int/ViewDoc.jsp?id=703761&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

<p style="text-align: center;">HOPE AND HOME FOR CHILDREN</p> <p style="text-align: center;">Family Type Homes (FTH)</p> <p>Aim: creating, supporting and developing FTH. Usually, it is a family which takes care of five-ten children whose parents have been lost due to different reasons.</p> <p>The activity is directed towards</p> <ul style="list-style-type: none"> • Identifying appropriate families and helping them to create FTH. • Carrying out trainings and seminars for FTH parents. • Providing social and psychological support for potential parents. • Working in partnership with local authorities to establish FTH. • Creating methodologies for choosing and preparing children to live in FTH. • Purchasing and equipping homes. • Support of talented children in FTH • Providing monitoring of living and caring conditions of children at FTH. <p><i>The project has been implementing since 1998. As a result, 65 family type homes have been created (50% of all existing in Ukraine); more than 600 children found new parents and homes.</i></p>	<p style="text-align: center;">CHRISTIAN CHILDREN'S FUND</p> <p style="text-align: center;">Reform of the Child Care System through the development of a system of Family Foster Care</p> <p>Aim: Develop, test, and implement a model for recruit, develop, train and support of prospective and existing family foster carers to help facilitate the reform of the current social care system for out of home placed children and children without parental care toward a more family oriented system</p> <p>This activity is realised in cooperation with the local and regional administration.</p> <p>Main directions:</p> <ul style="list-style-type: none"> • Development of a system for recruitment, training and assessment of foster carers. • Design and implementation of the training courses for social workers. • Implementation of foster family local support mechanisms approved and supported by governmental agencies. • Development of a system for placement of prospective foster children to their life with foster families. • Raising public awareness by involving the mass media and supporting the recruitment of foster carers. • Facilitate the reform of boarding school operations towards family-oriented forms of child care. <p>The project is implemented in Cherkasska, Kirovogradska, Khmelnytska <i>oblasts</i> and the Crimean Autonomous Republic.</p> <p>By the end of 2004, 10 foster families had been created.</p>	<p style="text-align: center;">EVERYCHILD</p> <p style="text-align: center;">Development of fostering and family support services for care supervision</p> <p>Aim:</p> <p>To develop foster care for orphans and children deprived of parental care.</p> <p>Goals :</p> <ul style="list-style-type: none"> • To develop 6 Foster Care Services to recruit, assess, train, support and monitor foster families and children. • To establish 20 foster families in Lviv and Kyiv <i>oblasts</i> and safely place children who would otherwise be living in institutional care <p>By April 2005, 10 foster families for 11 children had been created.</p>
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A comprehensive child and family welfare policy must provide for urgent, short-term and long-term foster care possibilities, with specialised foster care agencies aiming, in cooperation with the competent authorities, to recruit, approve, prepare and monitor the foster families, prepare the child, match the child with a foster family and accompany the child, the foster family and the birth family throughout the placement.

Small family type homes can be available when fostering is not possible (CoE Res. 33 (1977) principle 2.16).

N.B: There are no doubt more standards on foster care, but as it was not the main focus of our mission, we have only mentioned selected documents at this stage.

Recommendations

- ↪ If family-based care is developing in Ukraine, as it surely will be, we urge careful consideration of the function that fostering and FTH can play as an emergency and short-term care option in response, for example, to situations such as those currently leading to children's placement in shelters (see 2.5.2.4). Emergency, short-term and long-term foster care possibilities should be available in every region.
- ↪ Foster families and FTH should be actively recruited, approved, trained and supported. Special media campaigns should be dedicated to making the need for such families known.
- ↪ Through systematic permanency planning for every child experiencing family difficulties (see 2.5), foster care and FTH should be used for children specifically needing temporary or longer-term family-based care without cutting their links with the family of origin. A mechanism should be created in order to refer the files of such children to the authorities responsible for foster care and FTH.
- ↪ An in-depth review of this kind of placement should take place regularly, in accordance with the principles of permanency planning.
- ↪ The creation of specialized private (accredited) and/or public foster agencies should be contemplated which would, in close cooperation with the competent authorities, promote foster care and FTH and provide the psycho-social support and monitoring needed throughout the process by the child, the foster family and the birth family.

2.5.2. Residential facilities

Ukrainian law and practice

In the Ukrainian system there are different types of residential facilities according to the age of the child. From 0 to 3 years old children are placed in a *dom rebenka* (baby home). From 3 to 7 they are placed in a *detsky dom* (children's home), and from 7 to 18 in *skola-internats* (boarding schools). There are also "shelters", where children aged 3 to 18 can be placed on an emergency basis for a maximum of three months.

According to Feldman's Law of 2005, placing a child in State institutions is a last resort measure. State institutions should not accommodate more than 50 children each (art. 18).

In keeping with our mandate, our visits to residential facilities focused on the reasons that the children were there, the extent to which they were adopted both by Ukrainians and foreigners, and what happened to those who were not adopted. It was not our intention, and therefore we made no attempt, to assess the quality of care or conditions in these institutions.

2.5.2.1. Dom rebenka (Baby home)

Our priority interest lay with the so-called "baby homes", under the Ministry of Health, since they take in children in the 0-3 age-group whose institutional placement is now widely recognised as particularly high-risk in terms of its serious negative long-term ramifications for the child's development, regardless of the standard of care.³²

We think it worthwhile here to review the situation in one such facility, to give a concrete example of some of the issues.

³² See, for example, "Mapping the number and characteristics of children under three in institutions across Europe at risk of harm", European Commission (Daphne Programme) in collaboration with the WHO Regional Office for Europe and the University of Birmingham, February 2005.

This facility has a capacity of 165 children aged 0-4, and was catering to 155 on the day of our visit. The director was not able to tell us how many were registered as “adoptable.” She informed us, however, that 26 were diagnosed with a “disability” (including, for example, a hare-lip) and that 24 were born of HIV+ mothers. She also noted that 53 children had been adopted from the facility during the first half of 2005, of whom a quarter by Ukrainians, and that 4 additional adoption applications were pending. These tallies fully with her estimate that between 100 and 120 “new arrivals” are placed with the facility each year.

There remain, therefore, some 50 children who are not adopted. Worryingly, the director stated her happiness to see children adopted from her institution but her “refusal” to allow those who cannot be adopted to be moved to foster care instead. We were unable to ascertain why, but it clearly means that all children will, on “ageing out” from this facility, simply be moved on to a *detsky dom*, unless they are reclaimed by their families.

At the same time, this director was virtually the only one to note that certain families indeed take their children back. **However, that happens not as a result of attempts to reunite the families but because it was planned from the start.**

Thus, for example, children may be confided to the facility due to imprisonment or hospitalisation of the mother or both parents. Clearly, when the parents are to be absent for reasons such as this – and therefore unable to care – during a presumably foreseeable period, **this is precisely the kind of situation where temporary foster care, rather than institutional placement, should be used if appropriate kinship care (care in the extended family) is not available.**

The other situation she cited concerned children placed in public care in order for them to receive necessary medical treatment that would then be paid for by the State rather than being charged to the family. While we recognise the possible current difficulties here, **we naturally regard it as most undesirable that children might have to be institutionalised simply in order to secure conditions where medical treatment is made available.**

2.5.2.2. Detsky dom (Children’s home)

Beyond our priority attention to the youngest age group, however, **we had a more general concern: that, once in the care system, children might remain there unless they are adopted.** The grounds for this concern were first corroborated during our visit to the “next stage up”: a *detsky dom* for the 4-7 age-group in another town. Here it was confirmed that most children in its care were received from “baby homes”, with others coming from, *inter alia*, the emergency shelter (see below). Again, most of the children – though this time maybe a bare majority (“to date 30-40 per year out of 63 currently in the facility”, we were told) – are adopted during their stay. This might seem a surprisingly high rate, given the age-group concerned, but a partial explanation lies in the fact that, in this case, reportedly only 10 per cent have been adopted by Ukrainians. Importantly, those who are not adopted, once they reach age 7, are invariably transferred to a *skola-internat*.

2.5.2.3. Skola-internats (Boarding schools)

Once children get to the skola-internat stage, we found, almost all will remain in residential care for the rest of their childhood, adolescence and, in a number of cases, early adulthood (some with no alternative accommodation are allowed to remain until age 20). Their age and the consequences of their institutionalised past inescapably work against their being adopted. In one such facility we visited, which has catered to up to 400 children at given times in the past twenty years, we were told that only 32 had been adopted during that period, though currently no less than 111 are on the national adoption database. In a similar facility elsewhere, with 280 children, reportedly no less than 180 are adoptable, but a total of only 6 were adopted in 2004 (including just one by Ukrainians). Adoptions by

foreigners from this facility began in 2000, since which time 20 children in all have been adopted abroad, by French (1), Italian (8), Spanish (5) and US citizens (6).

Another facility that we visited was specialised in training adolescents for their subsequent reintegration into non-institutional life and looking for a job. N.B. Programmes of psychological and practical preparation for children without parental care for securing employment are specifically regulated by Feldman's Law (arts. 21 & 23).

2.5.2.4. Shelters

Interestingly, it was pointed out that shelters are given the same government subsidy per child as an *internat* – even though, it was noted with some bitterness by one interlocutor, “they only wash the children and give them food.” These shelters, therefore, also cost twice the amount per child as an FTH. They care for children aged 3 to 18 on an emergency basis for a maximum of three months and, being a legacy of the Soviet system, are still common in countries throughout the region. It seems, moreover, that a significant number of children will in turn be transferred to a *detsky dom* or *internat* during or at the end of the three-month period. Thus they feed into the long-term child care system.

*Shelters for children in 2004*³³

	Number of shelters at the end of 2004	Number of places in shelters	Number of children placed in shelters during 2004
Service on Minors (Children) Affairs	88	3800	24,655
Bodies of Education	2	150	1,314
Religious organisations	3	96	225
Total	93	4,046	26,194

In fact we did not have the opportunity to visit any shelters in Ukraine itself, but have done so in other countries in the region and have had cause to express serious concerns in their regard, including over their ability to ensure child protection. Shelters, in Ukraine and elsewhere, tend to accommodate about 30 children at any one time, and are supposed to look after a very varied group of children. This is due not only to the wide age-range and the fact that they take in boys and girls, but also because the children may be variously runaways, homeless, victims of abuse or exploitation, petty offenders under the minimum age of criminal responsibility, separated children or illegal immigrants.

Leaving aside other negative aspects of the shelter environment, it is clearly a daunting challenge for staff to provide a protective setting for such an array of children. It is precisely here, for example, that **short-term foster care** or FTH placements could play an important role for many or most of the children concerned, beginning with the youngest and most vulnerable among them. It is evident that providing a more personalised, family-based and secure environment for them while enquiries are made as to their family or other status, and “permanency planning” is carried out, would constitute a major step forward. And it would also be considerably less strain on the budget.

Children belonging to minority groups

In its Concluding Observations on Ukraine's State Party Report in 2002 (CRC/C/15/Add.191, para 74),³⁴ the Committee on the Rights of the Child expressed its concern that Roma “still suffer from widespread discrimination, which has in some instances impeded their children's right to education, health and social welfare.” Given the refer-

³³ According to the Ministry of Family, Youth and Sport.

³⁴ <http://193.194.138.190/tbs/doc.nsf/7cec89369c43a6dfc1256a2a0027ba2a/8106b2a15b8081ffc1256d5e002c5e97?OpenDocument>.

ence to “social welfare”, we felt it necessary to consider the situation of Roma children in the context of this assessment. It can be noted that, during our field visits, we did not visit areas of Ukraine with the largest Roma populations. Even in those areas, however, these populations make up a markedly lower proportion of the total population than in several other countries of the region.

This may account in part for the fact that in no case was the issue of Roma children brought to the table by any of our interlocutors, again in contrast with our experience in other countries of the region. Whenever we broached the issue, we were systematically informed that no special problems existed. In addition, we were told that the “ethnicity” of children taken into care is not registered, and therefore it was impossible to determine whether, for example, Roma children were over-represented in the care system.

We felt it necessary to record this, in order to explain why we refrain from any comment on this question in the present assessment.

Obviously, this programmed transit of children through the system is of special concern in itself. More importantly in the context of this particular assessment, however, is the fact that the above examples clearly demonstrate once more how **reliance on intercountry adoptions** is almost total in Ukraine at present if long-term institutionalisation is to be avoided. This creates entirely the wrong kind of climate in which these adoptions take place. **Instead of being genuinely subject to the subsidiarity principle** (see 2.5), they are in practice overwhelmingly the number one response. This fact clearly contributes directly or indirectly to many of the problems that now have to be confronted in their regard.

International Principles and Ethical Guidelines

Residential care should always be, in principle, a last resort and temporary solution, once all possibilities of supporting the birth family in an effort to maintain the child therein have been exhausted. It should be used for no longer than necessary, while a decision based on permanency planning for the child is being made, if no temporary foster care or FTH is available or suitable taking account of the best interests of the child (CRC art. 20.3, CoE Rec. 5 (2005),³⁵ CoE Rec. 1601 (2003), CoE Res. 33 (1977), see also chapters 2.3 & 2.5 in this report).

The objective of the placement should thus be the expeditious and successful family and social integration or re-integration of the child (ECourHR Cases: Andersson, Olsson I, CoE Rec. 5 (2005)). Children living in care centres should consequently benefit from a regular review of their situation (CRC art. 25, CoE Rec. 5 (2005)) and from permanency planning (CoE Rec. 5 (2005)).

The child should be heard in regard to his/her placement as to its modalities and the permanency planning process, and due weight should be given to these views in accordance with the child’s age and his or her degree of maturity (CoE Rec. 5 (2005)). The family of the child should also be involved, as far as possible, and if in the best interests of the child, in these decisional processes.

Children living in residential institutions have the same rights as every child, and additional specific rights (regarding privacy, personal items, space, etc.): please refer to CoE Rec. 5 (2005) and CoE Rec.1601 (2003) principle 5. One such right is contact with their

³⁵ CoE Rec. 5 (2005): Council of Europe Recommendation on the rights of children living in residential institutions (Adopted by the Committee of Ministers of the Council of Europe on 16 March 2005 at the 919th meeting of the Ministers’ Deputies); <https://wcd.coe.int/ViewDoc.jsp?id=835953&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

family, if they so wish and if it is in their best interests (ECourtHR Cases Olsson, Andersson, Eriksson, Rieme, B. v. UK, R. v. UK, W v. UK).

A placement facility should be selected as close as possible to the child's environment, preferably in the form of a small "family-style" living unit. Contacts of the child with the broader community should be promoted (CoE Rec. 5 (2005)).

The training, the mixed composition (women and men and multidisciplinary background) and the sufficient number of staff must also be guaranteed (CoE Rec. 5 (2005), CoE Rec. 1601 (2003) principle 4.iii).

A system for the compulsory registration and accreditation of residential institutions should be established, as well as an efficient monitoring and external control of their activities (CoE Rec. 5 (2005)).

Recommendations

- ↳ A regional child and family welfare authority with general competence relating to social services and all care options should be set up to decide on the situation of every child in family difficulty, giving practical effect to a policy based on the principle that institutionalisation of children is normally a last resort alternative care measure if family-based solutions are unsuitable, and that preference be given to supporting the family of origin so that the child may remain or return to its care. This same authority should be competent for permanency planning (see 2.5).
- ↳ If placed in residential care, children should be preferably placed geographically close to their family and environment of origin, in family-type and/or small group facilities.
- ↳ Work with the family of origin should begin as soon as the child is referred to the authority, and at least when the child is placed (see 2.5). Contacts of the placed child with the family of origin should be maintained or reinstated if in his/her best interests. The views of the child and of the family should be sought and taken into account as regards the future of the child.
- ↳ Placements in residential care should be regularly reviewed in order to ensure that the child remains in such care, as opposed to family-based care, only if it corresponds to their needs and wishes. If no alternative permanent solution can be decided quickly, short-term foster care or FTH should be envisaged.
- ↳ As a basic principle of permanency planning, adoption should be contemplated as a permanent solution for children with particular needs who should thus be registered in the database of adoptable children only if there is realistic chance of their finding an adoptive family, through active efforts for recruiting prospective adoptive parents in Ukraine and, if not possible, in foreign countries (see 5.2: reversing the flow of the files). If this realistic chance of adoption does not seem to exist, long term foster care or FTH should be preferred, with maintained contacts to some birth relatives if in the best interest of the child. The situation of the children currently in the database should be reviewed on the basis of this principle.
- ↳ Every child should be prepared for the reality of life after he/she leaves the institution. Specific training programmes should be organised, as Feldman's Law of 2005 requires.
- ↳ A global assessment should be conducted in the short term, notably covering: the current situation of Ukrainian residential facilities and needs in view of the above-mentioned policy (priority to family solutions and to small family-type residential facilities); the needs in terms of registration, accreditation and control of residen-

tial facilities; living conditions and the rights of the children in residential facilities; and the needs in terms of number, composition, training³⁶ and supervision of staff.

- ↳ The promotion of foster care, FTH and adoption of older children should be actively developed in the media³⁷ through specific recruitment campaigns. Positive experiences from other countries could be used to this end.

2.5.3. De-institutionalisation

“The existing system of *internats* and boarding schools is not performing; the future belongs to foster families and family-type homes.”

Official in Odesa oblast

Ukrainian law and practice

In its Concluding Observations (CRC/C/15/Add.191, para 44-47), the Committee on the Rights of the Child expressed its concern “at the predominant use of institutional responses to provide assistance to children in difficulty” and that “alternative care, such as foster care, or other forms of family-based alternative care, are not sufficiently developed and available.” It therefore urged the Ukrainian Authorities to “[t]ake effective measures to increase and strengthen foster care, family-type foster homes and other family-based alternative care and correspondingly decrease institutional care as a form of alternative care” (CRC/C/15/Add.191, para 48.c).

According to Presidential Decree 1086/2005, by September 2005 the Cabinet of Ministers should develop and approve the conception for reform in the system of institutions for orphans and children deprived of parental care.

In practice, alternative care is not only still based squarely on institutional placements but also, it seems, facilities have actually been growing in number. Thus, despite official instigations and some initiatives to promote family-based care, major financial investment has continued to be put into the construction of new institutions, whose operation will in turn soak up an unnecessarily high proportion of the scarce resources available for child care.

Thus, in one *oblast* we learned that the orphanage we visited had recently been running slightly (7 per cent) under official capacity simply because an additional orphanage had been opened in 2000. Similarly, the fact that the number of children in a *skola-internat* had fallen from 400 (50 per cent above capacity) five years ago to today’s figure of 260 (capacity) had nothing to do with less recourse to residential care, but both to the opening of a new special *internat* in the *oblast* and to a *detsky dom* now catering to children at the lower end of the original age-range. One *oblast* official said that the care system was “saturated.” He immediately added that therefore two more *internats* needed to be built urgently in that *oblast*...

The situation is all the more disturbing in that not only are the “inherited” facilities still in use of an inordinately large size – *skola-internats* frequently in the range of 250-280 places, and even orphanages for the 0-3 age-group with a capacity of well over 100 – but they also continue to be replicated. For example, the older orphanage mentioned above has a capacity of 165 and even the one opened in 2000 to supplement it is designed for 100 children.

Thus, the now well-accepted idea that, to the extent that residential care facilities are required, they should be based on units (e.g. “group homes”) of no more – and preferably less – than 15-20 children does not seem to have gained much ground to date in Ukraine.

³⁶ Feldman’s Law in article 36 provides for training specialists working with orphans and children without parental care. This provision should be promoted.

³⁷ As article 38 of Feldman’s Law so requires.

Though some facilities are, geographically, quite well integrated into the urban structure, many are located in places that are difficult to access. Relative “isolation” is clearly, therefore, another major factor of concern, and again a “group home” or family-based solution is eminently easier to integrate than a vast residential ensemble.

While it has apparently been difficult so far to “avoid” building new additional residential facilities, experience elsewhere shows that undoubtedly the problems to be tackled when envisaging the closure of existing facilities will be at least as great, if not immeasurably greater.

The first problem here lies in the understandable and likely strong resistance of institution staff who rightly or wrongly fear they will lose their livelihoods – this in an employment context in Ukraine, moreover, that is hardly favourable to securing new jobs. Institutions employ very large staffs: each of the two *skola-internats* we visited, for example, had 130 employees, and there can be several of these facilities in one *oblast* alone. All directors and staff with whom we talked forcefully defended the necessity of the role, and the qualities, of their respective facilities: this is both a natural and essentially world-wide reaction. There is now considerable documented experience in approaching this positively within the framework of de-institutionalisation programmes, including sensitivity to past achievements and re-training for employment within the “new system” as foster- or FTH parents, managers or staff of social services supporting the families and family-type homes and foster system support networks (authorities or agencies).

De-institutionalisation – both finding alternative care for children already placed and diverting children newly in need of care away from institutional placement – can of course only progress at the rate at which family-based and other appropriate solutions are effectively developed or, even better, as effective and appropriate family support services are established. We are often faced with a vicious circle in this regard: until the resources required are freed up from institutional care, they cannot be invested in other forms. In addition, it is not just a question of recruiting more foster families. Training, support and monitoring networks and services have to be foreseen. Nonetheless, initial investment in alternative forms of care clearly reaps rewards quite rapidly, both in financial terms and, of course, as regards the development and psycho-social integration of the children concerned.

We noted that, to date, funding for residential facilities has come from central government whereas family-based care is financed from local budgets. This has clearly demotivated the authorities concerned to develop non-institutional solutions, all the more so in that, it appears, placement in institution is a relatively simple and very familiar administrative operation.

In that light, we would have been very tempted to propose that all child care resources be put at the disposal of *oblasts*. They have the direct responsibility for children and would thereby have been more encouraged to develop the less costly family-based solutions. However, we note that the decision has already been made henceforth to provide funding for all alternative care at central level on the principle that “the money follows the child.” We imagine that in due course evaluations will be made of, *inter alia*, the effectiveness of this system in encouraging and supporting moves away from institutional care, which will clearly be of major importance.

Finally, it needs to be emphasised that de-institutionalisation and the development of family-based alternatives do not constitute a panacea. Experience elsewhere demonstrates how easily, for example, a system founded on family-based options can in turn also become overwhelmed. Thus provision of more alternative care can never be an aim in itself. The fundamental answer clearly lies in preventing the perceived need for alternative care in the first place. An example of a project in this field is the following:

As a priority, staff working in current facilities should be re-deployed to the new jobs created by de-institutionalisation and the creation of a comprehensive child and family welfare system.

- ↳ When assigning the level(s) and source(s) of financing for family support services and alternative care options, it is vital to ensure that the assignment of such budgetary responsibility in no way influences decision-making by the competent authority on the measures or care options to be applied in relation to a given child.
- ↳ It should also be the aim of financing policy to promote and enable equally comprehensive and quality services and care provision to be ensured by regional/local systems throughout the country.

3. HOW CHILDREN BECOME ADOPTABLE

Ukrainian Law and Practice

According to one judge in Odessa, in the majority of cases children are legally adoptable because their parents have been deprived of their parental rights or the parents are dead. There are relatively few cases where the birth parents approach a Court to notify consent for the adoption of their child.

Legal adoptability:

a) Consent of the child:

The child should give his/her consent in order to be adopted. He/she gives it in a form consistent with his/her age. Previously the child has to be informed about the legal consequences of adoption (FC art. 218).

b) Consent of the birth parents:

The consent given by parents to the adoption of their child, who has to be at least 2 months old, is free. It has to be given in writing and it shall be certified by a notary (FC art. 217).

Notaries have established fees, which can vary from each region as they are regulated by the Local Authorities. This fee is, it seems, “usually” paid by the head doctor of the maternity hospital or the director of the orphanage.

Although the legal consequences of an adoption are regulated in the Family Code (art. 232), we found no specification in the law about the obligation to inform and counsel the birth parents on possible alternatives to adoption and the consequences of giving their consent to the adoption of their child (whereas the child at least should be informed on the legal consequences of the adoption, FC art. 218).

This seems to be reflected in practice. Birth parents may sometimes receive limited information from a Minors Affairs Office local inspector. Besides, the Notary should explain the legal consequences of an adoption to the birth parents as the latter have to sign a statement that these consequences have been explained to them by the Notary. Nevertheless, the birth family seems not to be informed by any professional on other potential care options.

Birth parents consent to the adoption of their child in general, and not to the adoption by particular prospective adoptive parents that they may already know.

Parents have the right to withdraw their consent at any moment before the court has granted adoption (FC art. 217).

The fact that birth parents have the right to withdraw their consent at any moment before the court has granted adoption (and not during a specified reflection period following notification of that consent) puts the child in a situation of instability as his/her legal adoptability is not clear until the adoption is pronounced. As one of our interlocutors explained, in some cases, birth parents who have been informed that their child has been matched with prospective adopters negotiate financially with them for not “withdrawing” their consent.

c) Without the consent of the birth parents:

A child is considered legally adoptable without the parents' consent when (FC art. 219):³⁹

- Parents are unknown.
- Parents are registered as missing.
- Parents are legally incapable.
- Parents are deprived of parental rights:

The procedure for withdrawing parental rights can be initiated by: one of the parents, the guardian, the habitual caretaker of the child, the person in whose family the child lives, the health institution or the school where the child stays, the Custody and Care Authority, the prosecutor or the child if he/she is 14 years old (FC art. 165). The decision to withdraw parental rights is made by a court.

The grounds for deprivation of parental rights are:

- Leaving the child at the maternity hospital after his/her birth without valid reasons and not taking care of the child within six months;
- Not fulfilling responsibilities to educate the child;
- Maltreatment of the child;
- Chronic addiction to alcohol or drugs;
- Exploitation of the child (including forced begging);
- Conviction for having committed an intentional crime against the child (FC art. 164.1).

- Parents have not been living with the child for more than six months without valid reasons, do not provide the child parental care, do not bring him/her up and do not maintain him/her.

This situation also has to be ascertained by a Court (FC art. 219.2), which is petitioned for that purpose jointly by the director of the residential facility where the child is living and by the competent inspector of the local administration. If the court finds that the parents have indeed neglected their duties during this six-month period (a form of *de facto* abandonment), the child may then be placed on the local adoption register.

In all these cases, children shall be placed in a child care facility and can be adopted as regulated in Resolution 1377.⁴⁰

d) Consent of the guardian or the caretaker (or the Custody and Care Authority) and of the Institution where the child lives:

Irrespective of the parent's consent to the adoption of their child, the written consent of the guardian or caretaker is required for the adoption of a child in their custody or care. If the guardian or the caretaker of the child has not given consent to the adoption of the child, such consent may be given by the Custody and Care Authority (FC art. 221).

³⁹ In the case that parents are dead or are unable for valid reasons to provide for the children, the Family Code establishes the duty of certain persons (grandparents, older brothers and sisters, step-parents, family where the child was brought up) to maintain the children, if they can provide material support (FC arts. 265-269).

⁴⁰ Resolution 1377: Resolution № 1377, of 28 August 2003, of the Cabinet of Ministers "On Approval of the Procedure for Registration of Children who may be adopted, of the Persons who wish to adopt a Child, as well as for Control of the Respect for Rights of the Adopted Children."

If a child does not have parents and stays in a health or educative institution, the written consent of the institution is required (FC art. 222).

A child may be adopted without the consent of the guardian, caretaker, Custody and Care Authority or institution if the court is satisfied that the adoption meets the interests of the child (FC arts. 221 & 222).

Medico-social-psychological adoptability:

We found no mention in the law of a requirement for a preliminary study of the child and the birth family containing medico-social-psychological elements in order to determine the adoptability of the child.

As several interlocutors emphasised, at the moment the great majority of the large number of adoptable children in the national database (around 24,000 at the time of our visit in June 2005) will not in fact be adopted, but no other appropriate solution is being sought for them. Although the adoption of so-called “special needs children” is growing in many “receiving countries”, the profile (age, handicap, emotional traumas) of too many legally adoptable children already far exceeds those for whom adoption seems a realistic proposition. This poses a fundamental and highly delicate problem, necessarily bringing into play another aspect of “adoptability”: is it likely that the “adoptable” child will be adopted? World-wide, it is clear that there are far fewer prospective adoptive parents who are both willing and suited to take care of a “special needs” child than there are such children ostensibly available for adoption. This is a challenge regarding alternative care for “special needs” children in virtually all countries, however economically privileged. While this fact should not in itself prevent a child from being declared “adoptable”, reality dictates that at the same time their “adoptability” status should certainly not impede efforts to identify other appropriate permanent solutions, including long-term foster care or FTH, nor under current conditions should adoption be perceived by the child or anyone else concerned as a probable outcome.

Database of adoptable children:

Once the child is declared adoptable, he or she is to be registered by the Education Division at the local (*raion*) level as a “child without parental care” within seven days of receiving the information. This signifies that Ukrainians may henceforth be considered as potential adopters of the child.

After one month on this initial local (*raion*) Register, if no one has expressed the wish to adopt or otherwise care permanently for the child (see 2.5), his/her records are sent to the regional (*oblast*) Education Authorities for inclusion in the *oblast* Registry. If the child is not adopted within one month at that level, his/her dossier goes to the National Adoption Centre (NAC) in Kyiv for registration in the central database. The “adoptability” of the child then continues to be restricted to Ukrainians for a further year. If the child has not been adopted by the end of that period – i.e. a total of 14 months following initial registration – foreign parents as well as Ukrainians may be considered as adopters.

This lengthy procedure is regulated in Resolution 1377, chapter on “Registration of Children who may be adopted.”

Children who are medically certified as very sick can be adopted internationally before this period has expired. However, as there had been abuses in this respect, with the seriousness of illnesses or disabilities having been grossly exaggerated in medical reports with a view to securing clearance for a child’s rapid adoption abroad, a recent Order of the Ministry of Health⁴¹ restricted considerably the number of medical conditions justifying a child’s adoption by foreigners without having to wait one year in the central database.

⁴¹ Order of the Ministry of Health № 16, of 21 January 2005, “on carrying out changes and additions to the List of diseases, which provide the right of adoption of sick children without having to remain during the prescribed periods in the adoption list of the National Adoption Centre.”

The many thousands of children on the national adoption register clearly makes it unmanageable as a database of children for whom Ukrainian and/or foreign adoptive parents are being actively sought. In reality, most of these children consequently remain on the register for many years, during which they are in “permanently temporary” residential care, with no alternative stable solution being sought, yet with little or no hope of being adopted.

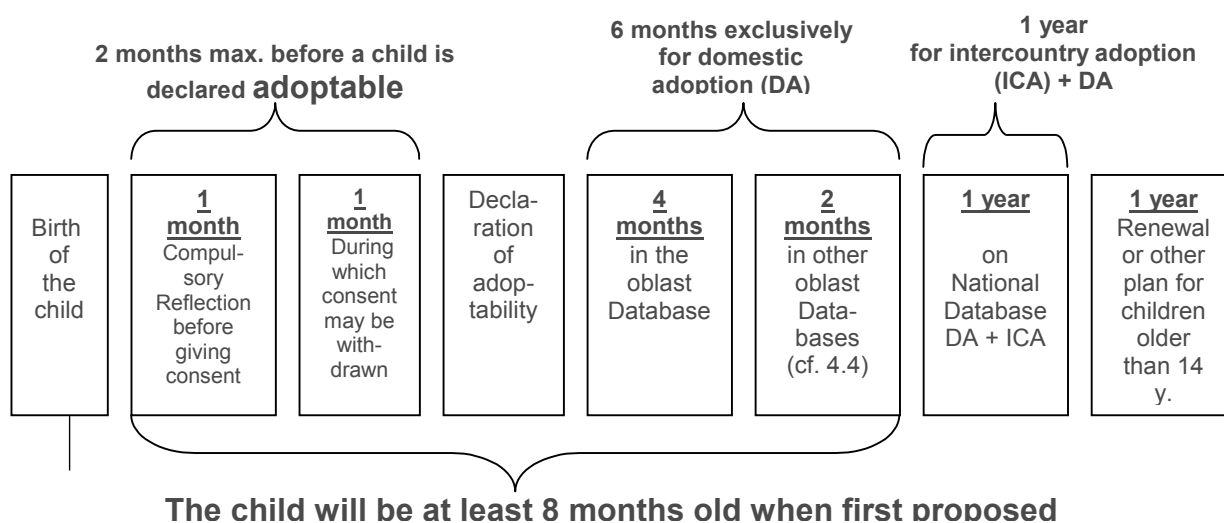
To be a truly useful tool for enabling children to be adopted, the register has to be of a size that reflects realistically both the human capacity of the staff to deal with each file on an individual basis and the foreseen level of adoptions (as we have seen, currently running at about 4,000 per year in total). It should also contain only the files of children for whom the likelihood of adoption is sufficient for this potential solution to figure in their permanency plan.

To achieve this, it is necessary both to limit the number of children registered as adoptable and to review regularly the situation of children who, although registered, have not been adopted after a certain period or before a certain age. Not to do so means deliberately keeping children in a limbo for many years and, in particular, declining to prepare an alternative plan to secure them a stable and appropriate care option. A number of considerations and initiatives could be taken to this end:

- The withdrawal of parental rights and responsibilities should not be viewed as an automatic prelude to having the child concerned declared legally adoptable. It should initially be seen as a potentially temporary measure enabling decision-making as to the child’s future to be made by the competent authorities or a legal guardian, while nonetheless continuing to work with the parents as long as there is realistic hope of securing conditions under which they could resume their care-taking role.
- If such efforts are unsuccessful, and the withdrawal has to be confirmed as a definitive decision, the individual permanency planning process then set in motion should consider all possible options, of which adoption may be one that is deemed both appropriate (on the basis of a psycho-social assessment) and potentially feasible for the child. Only in that case should the child’s legal adoptability be established, at which point the child would be registered on the *oblast* database and, if he or she is not adopted within the prescribed time limit (e.g. four months), wider attempts to identify Ukrainian adoptive parents should be made in other *oblasts* during a further prescribed period (e.g. two months).
- If after these six months of searching for an adoptive family in Ukraine (domestic adoption), attempts have not been successful, the child’s file would be placed on the national register. From then on, intercountry adoption could be considered, but the obligation to continue to search for Ukrainian adopters would still apply. Assuming, as is strongly recommended, that active efforts continue to be made to match a child on the national register with prospective adoptive parents, his or her situation should be reviewed if successful matching has not been effected within one year. Within the context of the permanency plan for that child, the decision may be made at that point to maintain the child on the register or to withdraw him or her, offering an alternative stable solution. Only in very exceptional circumstances should a child remain on the register after the second year. No child should be placed on the register after age 12, and no child should remain on the register after age 14, unless they request this with full understanding of the implications and of the fact that very few children of that age are adopted.

Such a policy would bring about a substantial reduction in the number of children registered as adoptable. This would enable, on the one hand, genuine efforts to be made to secure appropriate adoption for registered children and, on the other, stable outcomes to be identified for other children needing permanent care, based on realistic assessment of adoptability in the context of permanency planning.

Suggested stages and timeframe for consent and adoptability



International Principles and Ethical Guidelines

A child must be declared adoptable before beginning any adoption process (HC art. 4, CRC art. 21.a). Adoptability is just one of the solutions available in the context of permanency planning. It is subsidiary to support for the birth family in order to maintain or reintegrate the child with the family (see 2.5).

Adoptability entails separate **social, psychological, medical and juridical elements** and is to be determined on the basis of an analysis of the personal and family situation of the child (HC arts. 4 and 16.1, UNDSLPA art. 22). For the content of a report assessing adoptability, see Annex 3.

The conclusion that it is impossible or contrary to the best interest of the child that the birth family care for the child, and the assessment of the child's capacity to benefit from a new family environment, together determine his/her **psychosocial adoptability**. This is supplemented by his/her **legal adoptability** (ISS/IRC principle IX).

Legal adoptability supposes the consent of the child if he/she is capable of understanding (HC art. 4.d) and furthermore derives either from parental consent or from a decision by an authority which bypasses the lack of parental consent in view of the parents' grave breach of their responsibilities (HC art. 4.c).

When the parents consent, it must be verified that consent is/was freely given, without pressure, without material compensation, or otherwise and that their consent is fully informed. To this end, social services must:

- counsel and assist the parents of the child to consider other alternatives than adoption;
- inform the parents and ensure they have a proper understanding of the consequences of adoption, which might be intercountry in nature (CRC art. 21a, HC arts. 4, ISS/IRC guideline 6).

The adoptability of the child must be determined **before starting adoption proceedings** and before a particular matching is considered (HC art. 29, ISS/IRC principle IX and guideline 2).

Recommendations

- ↳ A regional/local child and family protection authority (see 2.5) should investigate the situation of the family whose child is in care or at risk of entering care, and prepare a preliminary psycho-medico-social study of the child and the family. The

study should foresee family support or care plan for the child, founded on his or her best interests, preferably drawn up by a multi-disciplinary team of child welfare professionals. Adoption can be one of these possible plans if the child is in need of a substitute family and there are realistic possibilities of finding an adoptive family for the concerned child.

- ↳ If adoption is contemplated, the family of origin should always be informed and counselled (this should be compulsory by law) and their consent should be sought in preference to securing a child's adoptability by withdrawal of their parental rights or other means.
- ⌈ The consent of the birth family should preferably be given to a local child and family protection authority (which would be a specialised social service), after information and counselling and without costs.
- ↳ Parental consent must, by law, be given without any pressure or financial or other compensation.
- ↳ Consent of the birth parents to the adoption of their child should be definitive at the moment of matching:
 - o For a child who is given for adoption immediately after the birth, the fact of having to wait for two months before his/her parents give their consent is a long period (FC art. 217.3). At the same time it is very important that birth parents have a reflection period before they give their consent to adoption. In order to find a balance between the two, we recommend that consent should not be given before one month after the birth has elapsed.
 - o Furthermore, any consent (independently of the age of the child) can be withdraw after a period of one month. Thereafter, the birth parents' decision should be considered final and irrevocable, and no further possibility of withdrawal of their consent should exist, barring indisputable evidence of coercion or manipulation.
- ↳ Adoption without the consent of the parents should be contemplated only after all efforts have been made to reintegrate the child into the family and, if this is not possible or not in the best interest of the child, to obtain parental consent for adoption. A child should not be declared adoptable if there is no realistic chance of finding an adoptive family for him or her. In this case, opportunities for alternative foster care or FTH should be given preference, if possible incorporating on-going contacts with certain birth relatives.
- ↳ Because of possible conflicts of interest, the consent of the director of the institution, and possibly of the guardian or caretaker, should be replaced by the consent of the local child and family welfare authority. The opinion of the director, guardian or caretaker should nevertheless be taken into consideration by the court.
- ↳ Public campaigns focusing on the positive developments of domestic adoption in other countries should be carried out.
- ↳ In the case of children with special needs, the best and realistic solution should be found for them. If it is adoption, all steps should be taken in order to find adoptive parents. If this realistic chance of adoption does not seem to exist, long term foster care or FTH should be preferred, with maintained contacts to some birth relatives if in the best interest of the child (see also 2.4.2 and 4.1).
- ↳ The overall period during which efforts are made to identify Ukrainian adoptive parents for a child should be set at no more than six months as of notification of the

child's adoptability. See domestic adoption (matching, section 4.4) for more detailed proposals as to how this could be foreseen in practice.

- ↳ Exceptions to the six-month "domestic" rule would be limited to children with life-threatening illnesses, or with illness or disabilities that will patently and significantly worsen if not treated immediately. Certification of such illnesses or disabilities should be signed by at least two medical doctors as well as the institution director and a delegate of the competent regional authority. In such cases alone, intercountry adoption could be envisaged prior to expiration of the six-month period.
- ↳ We recommend that, progressively but beginning now, a systematic review be made of the files of all children currently on the national adoption register, and that, as they are identified, alternative permanency plans be established, by the *oblast* authorities concerned, for all those who have been on the register for more than two years or who have reached the age of 14.
- ↳ We further recommend that, henceforth, the situation of children placed on the national register for adoption be reviewed if they have not been adopted after one year, to determine whether or not their subsequent adoption can still be realistically contemplated. Unless there are compelling and exceptional circumstances, no child should remain on the national register for more than two years, but should then benefit from an alternative stable care situation identified in the context of permanency planning (e.g. long-term foster care or FTH, maintaining contact with members of the birth family where possible and in the child's best interests).
- ↳ Save in exceptional circumstances, no child should be placed on the national register if aged over 12 years, and no child over 14 years should remain on the national register.

4. DOMESTIC ADOPTION

In Ukraine, adoption is a judicial decision (FC art. 207). Once the child is adopted, legal personal and property rights cease to exist between him/her and the birth family (FC art. 232): it is thus a full adoption.⁴²

The main actors in domestic adoption are the Education Departments of the *raions* and *oblasts*, which keep the databases of adoptable children and prospective adoptive parents (PAPs) at the local level and have some responsibilities in the matching; the National Adoption Centre (NAC), which holds the national database of adoptable children; and the judges who declare the adoption. Currently there are no Ukrainian adoption accredited bodies for domestic adoption, although the functions that they might perform could be useful in assisting PAPs in the adoption process: information, preparation, follow up, etc.. Such bodies could be either private or a local public entity.

International Principles and Ethical Guidelines

If maintaining or reintegrating the child in the family of origin (CRC arts. 18 & 21b, HC preamble para. 2 & 3, art. 4.b) is not possible or is contrary to his/her best interests, the child must be placed for adoption, as a priority, in his/her country or in a cultural, linguistic and religious environment akin to his/her community. If he/she is not adopted domestically, then he/she may be adopted by foreign adopters (*principle of subsidiarity of intercountry adoption*) if it is in the best interests of the child (CRC art. 21b, HC preamble para. 3, art. 4b, UNDSLPA art. 17).

PROCEEDING TO ADOPTION

Ukrainian Law and Practice

In recent years, the number of domestic adoptions in Ukraine, excluding “intra-family” adoptions (see box below), has been steadily declining. NAC data show that in 2000 they numbered 2,043, falling to 1,760 in 2002 and to just 1,492 last year (2004), i.e. a 25 % drop in the space of 5 years.

“Intra-family” adoptions

We understand “intra-family” adoptions to include stepchild adoptions and adoptions of a child related at least to one of the adopters (nephew, niece ...). In an “intra-family” domestic adoption specific safeguards should be taken:

- the legal and medico-psycho-social adoptability and the preparation of the child should be ensured;
- the eligibility and suitability and the preparation of the prospective adoptive parents should also be ensured;
- follow-up of the child’s placement with the prospective adoptive family should be undertaken.

In this type of adoption, there is clearly no matching in the general sense of the term as it applies to other adoptions. Nevertheless, the authorities must assess, on the basis of

⁴² As opposed to a simple adoption, whereby the adopted child acquires a filiation link with his/her adoptive parents but keeps a legal relationship with his/her birth family. Simple adoption can be a suitable solution for older children or in intra family adoptions.

a detailed psycho-social and legal evaluation, the compatibility with the best interest of the child of:

- the adoption option as opposed to other solutions, such as maintaining the child in the birth family, if necessary with some professional support; kinship care; guardianship; delegation of parental responsibility; *kafala*, ... either in the birth country or in another country.
- adoption by the proposed prospective adoptive parents rather than by other family members either in the country of origin or in another country.

According to one source, 10 per cent of Ukrainian families (i.e. 1.5 million) would adopt a child under the right financial conditions, and another stated that it is invariably only “permanently infertile couples” in Ukraine who consider adopting.⁴³ However, very few of these “potential adopters” actually take the initiative to adopt. The first part of this section sets out to examine why.

On the face of it, the current system in Ukraine is well-grounded in the idea that every effort should be made to find domestic solutions for children needing adoption before intercountry adoption is considered – the “**subsidiarity rule**” to be applied to intercountry adoptions.

In practice, care facilities have one week to notify the *raion* authorities of any child in their charge who is declared adoptable. The child’s dossier is then kept at *raion* level for one month with a view to determining whether there are suitable couples in that district willing to adopt the child. If no such “local” solution is found, a copy of the dossier is transmitted to the *oblast* level where, again, a month is given for potential adopters to come forward from that region. We note with concern that no one was able to tell us, or even give an indication of, how many children were adopted while their dossiers were at the *raion* or *oblast* levels. This statistic would be vital if we are to determine the current effectiveness in practice of retaining the children’s dossiers at these levels for a total of two months in order to recruit PAP’s and match them with the adoptable children.

If children fail to be adopted at those stages, a further copy of their dossiers is sent up to the “national register” at the NAC where it remains for a year, during which period the child concerned remains available solely for adoption within Ukraine. Only after that time – a total, therefore, of 14 months – is the child placed on the “open register”, as of which point he or she can be adopted either nationally or internationally.

This process and time delay, it is claimed, means that children are not adopted abroad before all domestic avenues have been explored and, consequently, ensures that the “subsidiarity principle” is respected.

This is reflected in the law. A Ukrainian national who already has a relationship with a child has priority for adopting him/her (FC art. 213). A child may be adopted by an alien only if, after one year of being on the national register of adoptable children, no Ukrainian national has adopted him/her (FC art. 283). The Law on Protection on Childhood also regulates this point (FC art. 24.7).

Resolution 1377 goes into more detail and establishes a subsidiarity rule between *raion* and *oblast* (para. 3-7), and then from national to intercountry (para. 7 & 15).

⁴³ Although we do not have figures on sterility and infertility specifically for Ukraine, it is recognised that there is a core group of about 5 per cent of couples in all populations who suffer from permanent infertility, with additional proportions varying according to country and region, usually ranging from a further 3 to 7 per cent in industrialised countries (www.rho.org/files/RHO_infert_12-19-04.pdf). This means that the total figure for Ukraine in this respect might well also correspond to at least 10 per cent.

Fulfilling the “subsidiarity principle”, however, is not just a question of postponing a child’s adoptability by foreigners for a given period. Of at least equal importance, of course, is the degree of effort made during that time to place that child with suitable adoptive parents in-country. According to all the information we have received, **the level of active attempts to secure adoption placements in Ukraine is minimal**. This must be a cause of major concern.

Furthermore, the question of **the geographical level where these efforts are to be undertaken by priority** also needs to be addressed. Logically, the bodies closest to the population are in the best position to recruit, select and prepare suitable prospective adoptive parents and to match them with identified adoptable children. The far longer term during which the files of the children currently remain in the NAC register (as opposed to the *raion* and *oblast* levels) can thus be questioned.

The main issues raised by all or most of our interlocutors in relation to “domestic adoption” were:

- The need to promote domestic adoption
- The need to facilitate domestic adoption

In addition, we also propose to examine a number of others brought to light during this assessment:

- The need to select suitable families for adoptable children
- The need for professional matching
- Preparation of the child
- Comprehensive services for PAPs
- Revocation of domestic adoptions

The remainder of this chapter is devoted to an analysis of these seven issues.

4.1 THE NEED TO PROMOTE DOMESTIC ADOPTION

Ukrainian Law and Practice

The Family Code grants adoptive parents the same right and duties as birth parents (art. 232.4), but it does not regulate any active measure in order to encourage domestic adoption other than stipulating the above-mentioned time frame during which only domestic adoption can be envisaged.

Promotion of the practice of adoption among the Ukrainian population would seem to be insignificant. Active efforts on this general “public opinion” front are all the more necessary in that social stigma surrounding adoption is invariably described as considerable and widespread, serving as a major disincentive to adopt. The stigma results, moreover, not only in a disinclination to having to admit adopting a child, but also to the parents’ felt-need to hide the child’s adoption from him/her.

The Family Code regulates the confidentiality and the secrecy of adoption in rather contradictory provisions (FC arts. 226 to 231).

Although an adopted child of 14 years old has the right to obtain information about his/her adoption (FC art. 226.3), adopters have the *right not to disclose the fact of adoption* to an adopted child both before and after the child has attained full age – presumably meaning that the child is thus prevented from exercising his or her “right to know.” The parents can also require that persons who know about the adoption keep it confidential.

Moreover the adopted child has the “right” that the fact of his/her adoption not be disclosed, including to himself/herself (FC art. 226.2) – the latter situation constituting a questionable “right of the child” in itself, as well as by virtue of its being exercised without the consent or knowledge of the beneficiary! In addition, in ascertaining the consent of a child above the age of 7 for his/her adoption, officials shall necessarily take measures not to disclose the fact of adoption to the child himself/herself (FC art. 227.3) – in such circumstances, one may wonder how this assessment of consent can be trustworthy.

It is vital to distinguish between, on the one hand, the desirable **confidentiality** of the procedure and of the records of the adoption as far as third parties are concerned and, on the other, the issue of “**secrecy**” which leads to the fact of adoption being hidden *from the child and other concerned parties*, with the negative longer-term ramifications that this can have for the child, the adoptive relationship and, in some circumstances, possibly the birth parents or other family members (e.g. siblings).

Besides being recognised legally, the secrecy of an adoption is clearly reflected in the day life of Ukrainians. This attitude and the fact that the Family Code partially validates it as well, hampers the promotion of domestic adoption.

In this regard, it seems pertinent to comment on the assertion constantly made that Ukrainians are only willing to adopt very young (and healthy) children. This affirmation is frequently made to explain the fact that older children (and those with medical problems and disabilities) will always have to be adopted abroad if they are to be cared for by new families.

To take the “age” question first, this is in no way a specifically Ukrainian phenomenon and therefore should not be seen as an explanation for the relatively low level of national adoptions in the country. Most – though by no means all – prospective adopters in **all** countries express at least an initial preference for adopting babies or very young children. This is indeed one of the main reasons why prospective adopters in Western Europe and North America seek to adopt abroad: the number of adoptable babies and infants in those countries is extremely low, whereas in some cases tens of thousands of older children remain unadopted there. It explains why so many prospective adopters turn to countries such as China and Guatemala, from where babies only a few months old can be adopted by foreigners.⁴⁴ In France, for example, 53 % of children adopted from abroad in 2004 were aged 2 years or under. At the same time, the need to promote the adoption of older children is being increasingly addressed in the industrialized countries, and very positive experiences of such type of adoption are documented.

The specific problem in the Ukrainian case lies more especially in the stigma: it is easier to integrate a young baby into the family circle discreetly than an older child and, above all perhaps, it is of course immeasurably easier to hide adoption from a baby than from a 4- or 5-year-old.

In order to facilitate this discreet integration of the child, the Family Code establishes the adopter’s right to change information on the place and date of birth of the child until six months (art. 230). The previous birth certificate is annulled (art. 233 FC).

On-going and high-profile public awareness campaigns demonstrating the benefits of adoption and tackling the reasons behind the felt-need for “secrecy” are clearly necessary if attitudes are to be changed, although this will naturally be a gradual process

⁴⁴ In 2004, for example, official data show that 3,834 Guatemalan children were adopted by foreigners. This is by far the highest per capita intercountry adoption rate in the world – Guatemala has a total population of just 9 million – and UNICEF notes that unofficial statistics show the average age of a Guatemalan child placed in intercountry adoption as ranging from 5 to 6 months.

no doubt requiring several years before having significant impact. One possibility might be TV spots where couples hesitating to adopt are interviewed, followed by a (genuine) couple that has successfully adopted.

The additional stigma surrounding disability of course compounds the problem as far as adoption of children with special needs are concerned. Some families are both motivated and eminently suited to care for these children on a permanent basis; their willingness to do so in practice may depend far less on coping with the disability itself than on the societal attitudes they will – or think they will – encounter in so doing. It is often stated that foreign couples are willing to adopt children with disabilities because of easier access to appropriate services and treatment abroad, but the defining factor is that neither they nor the children will be stigmatised in their communities. **Improved opportunities for children with disabilities to be adopted in Ukraine cannot, therefore, be realistically conceived in a vacuum**, but in the context of evolving attitudes towards disability.

Pursuant to article 26 of the Law on Protection of Childhood, the State has to promote the necessary conditions for children with disabilities for full life and development. This is a general statement and we found no specific legal provisions regarding the adoption of a child with disabilities besides the fact that he or she may be adopted abroad before the normal compulsory time limit of one year has expired if he/she is suffering from one of the “diseases” included in a special list approved by the Ministry of Health (FC art. 283.2).

Some good practices⁴⁵ regarding the adoption of children with special needs⁴⁶

Together with raising of awareness, professional practices, often still insufficiently adapted to the special needs of children, should evolve towards:

- Priority advancement, in *all* countries, of the *domestic* adoption of children with special needs, who must be incorporated in a global policy of child protection and benefit from permanency planning like other children (in this regard, it is not in the best interests of a children to declare them legally adoptable and then to leave them with this status, if no adoptive family can be found for them; after a period of active search for such a family, it is advisable to draw up an alternative life plan for and with them);
- Information for prospective adoptive parents, before their suitability is assessed, about the reality of children in need of adoption;
- The active search, by professionals, for prospective adopters likely to respond to the special needs of children;
- The evaluation of the suitability of prospective adopters in terms of the needs of children who are genuinely adoptable;
- Matching based, case by case, on a precise assessment of the strengths and weaknesses of the child and the potential adoptive families;
- Specific counseling of prospective adopters and of the child before they first meet;
- The professional follow-up to the meeting and the period before the legal decision in favour of adoption;
- The offer of specific professional post-adoption services;

⁴⁵ Editorial of ISS/IRC Monthly Review n°67, May 2004; www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.67.eng_000.pdf.

⁴⁶ Older children, those with a serious illness or a disability, those who have been in placement a long time, are scarred by their past or are living in a sibling group that cannot be broken up.

- The possibility of granting benefits in certain circumstances for the adoption of children with special needs;
- *The possibility of open adoption*, a practice that allows certain older adoptable children to maintain at least emotional links and contacts with some reference members of their family of origin.

International Principles and Ethical Guidelines

Adopted children should have access to information concerning their origin (personal and family history and, as far as possible, identity of the birth parents), under appropriate guidance (HC⁴⁷ art. 30.2, CRC art. 7.1). We recall that this is not the case now in Ukraine.

Some international instruments still have the traditional restriction stating “as permitted by the law of the State”, but international practice and thinking are clearly evolving towards a broader recognition of the right of the child to know his/her origins (see for example the discussion at the Hague Special Commission 2005 on the Practical Operation of the 1993 Hague Convention, on the *Draft Guide to Good Practices under the 1993 Hague Convention*).⁴⁸

In contrast, the child, the biological parent/s and the adoptive family have a right to confidentiality of the procedure *towards third parties*. The competent authorities and accredited bodies shall notably treat all case records as classified documents (HK guideline principle 3.12).

Putting a value on adoption – the development of an adoption culture⁴⁹

In some countries the fact of being adopted has had negative connotations and is thus kept secret. Adoption can be well regarded (an act of charity or compensation for sterility) but adoptive parents often keep the adoption secret for fear, among other things, of “losing their child” (that the child will leave the adoptive home and return to the parents of origin, a situation that is undocumented in practice) or of social discrimination. Both attitudes can be problematical. An adoption culture respectful of the child encourages:

- a change of the mentality that surrounds neglected children and their family of origin, struggling against the contempt in which they are often held;
- adoption that is primarily a solution for children who need it and not the solution to the problems of the adopters;
- adoption based on the “wish for a child” on the part of the adopters, not as charity or benevolence, feelings that many times lead to expecting gratitude from the adoptee;
- adoption as a socially valuable act, a commitment and a positive statement for the one who adopts, the one who is adopted and the whole society.

Secrecy of adoption is contrary to the international conventions, and even, as experience in the long term increasingly shows, to the interests of the child, of the adoptive family and of the birth family. Human beings have a right to know the truth about the basic elements of their lives. Experience makes it plain that a moment comes when the adoptee discovers the lies, and then confidence in the adoptive family is destroyed. Furthermore a relationship based on a lie and pretence is charged with tension and creates problems both for the adoptive parents and for the child. Many birth parents

⁴⁷ In this chapter we also refer to the 1993 Hague Convention on Intercountry Adoption in the international principles. Indeed, a parallel can be drawn between domestic and intercountry adoption, and furthermore, according to the non-discrimination principle, domestic adoption should have the same guarantees as the intercountry form.

⁴⁸ http://www.hcch.net/index_en.php?act=conventions.publications&dtid=2&cid=69.

⁴⁹ Adapted from Operational Manual, op. cit., note 21.

some day wish to know what happened to their child, moreover. Professional mediation is of course needed in all cases relating to access to information by all concerned parties.

Recommendations

- ↳ More effort should be devoted to the promotion of domestic adoption and the development of an “adoption culture” through mass media and other specific projects.
- ↳ Specific legal, administrative, social and financial measures should be taken in order to promote the adoption of children, and specifically children with special needs (see frame above).
- ↳ The Family Code should be modified in order to abolish the secret of adoption and the possibility of changing the place and date of birth of the child in his/her birth certificate. The right of the child to know about his/her history and the identity of the birth parents should be guaranteed by the law and promoted in public. Professional services should be developed in order to facilitate appropriate and guided access to information for adopted persons.

4.2. THE NEED TO FACILITATE ADOPTION

Ukrainian Law and Practice

We understand that many couples willing to confront the problem of stigma are in the end discouraged from adopting for one or more of the following reasons:

- a) On a practical level, we have many times been informed of **the difficulty experienced by potential adopters in accessing and negotiating the adoption mechanism and process**, especially once a child’s dossier has reached the nation-wide database. In part, this appears due to insufficient dissemination or availability of relevant information. In part too, it can reportedly result from an unhelpful attitude on the part of responsible staff. On this problem and the necessary local level of such responsibilities, see also below 4.3.
- b) The NAC is financed by the Ministry of Education, and thus costs at the NAC are covered. However, there are also other fees to be paid by Ukrainians seeking to adopt: simply acquiring a required notarised certificate, for example, may cost UAH 50, equivalent to over 15 per cent of the official minimum monthly wage. They will be required to travel – to the administrative office, to see the child, to obtain the court order... Such financial burdens on prospective adopters surely have to be eliminated. Once a couple has been declared fit to adopt, **all costs related to potential or actual adoption must be either waived or reimbursed** if in-country adoption is to be effectively facilitated. In some countries, domestic adopters are subsidised by the government. Again, on a budgetary level, this can only have significant long-term overall advantages, given the cost to the State of residential care. In addition, there is little if any incentive in principle to abuse such a system.
- c) Another financial reason is that only adopters who have adopted a child *within two months following his/her birth*, have the right to assistance from the day of the adoption until the end of the maternity leave (LG AFC⁵⁰ art. 8), a condition that only a very small proportion of adoptions will meet.

⁵⁰ LG AFC: Ukrainian Law ne 2811-XII, of 21 November 1992, on Government Assistance to Families and Children.

Just as the family's economic situation should not result in abandonment or removal of a child, neither should it be an insurmountable obstacle to adopting a child. In the current context of Ukraine, clearly many potential adopters find themselves in a weak or insecure financial situation. Where it is established that they could and would provide a caring adoptive home for a child, **they should be encouraged to do so by being offered, on adoption, the same benefits as those granted to birth parents, whatever the age of the child at adoption:** an allowance similar to a birth allowance, leave similar to "maternity leave", etc. Not only would this likely promote adoption itself, it would also contribute to promoting the idea in society that adoption is fully equivalent in status to procreation, thereby reducing further the stigma.

For the State, **this would clearly be a very cost-effective measure** in terms of child care. As noted previously (see 2.5), we are well aware that, in Ukraine, there is a widely-held preoccupation that the provision of financial assistance to families with children will result in abuses and in an increase in abandonment and relinquishment once the assistance has been received. In this regard, we reiterate that the outcomes of such support need to be evaluated in practice and over time but that, meanwhile, such fears cannot be allowed to stop such initiatives being taken. Nevertheless these fears are one more reason to organize very professionally the selection, preparation and follow-up of prospective adoptive parents.

Similarly, **supplementary assistance** measures need to be foreseen for couples who would be ready to adopt **a child with disabilities**, as is the case in biological families, or any other child with special needs (older child, siblings...) (see Box in chapter 2.4.2).

Recommendations

- ↳ All stages of the domestic adoption process, including the issuance of all documents required in that respect, should be free of charge to the PAPs. Where necessary, travel vouchers should be provided to PAPs in order to enable them to conclude the adoption of a child living outside their own *oblast/raion*.
- ↳ All adopters should have the right to the equivalent of statutory maternity leave and allowance as soon as the adoption order is pronounced, regardless of the age of the adopted child. Furthermore in the case of the adoption of a child with special needs, they should have at least the same or even more rights. The law (principally art. 8 of LG AFC) should be modified in order to reflect this.

4.3. THE NEED TO SELECT SUITABLE FAMILIES FOR ADOPTABLE CHILDREN

Ukrainian Law and Practice

The Department of Education where PAPs reside is in charge of drawing up the home study of Ukrainian candidates which includes socio-medical and legal information (Resolution 1377 para. 9 and 11).

The Department of Education where the PAPs file their application has to examine their documents, assess their living and household conditions (involving a home visit and interview) and draw the appropriate conclusion as to their fitness to adopt. The Department of Education has ten days after making this assessment to draw its conclusion. If it is positive, then PAPs are registered in the *raion* data base (Resolution 1377 para. 9 and 11).

As far as we could determine, our interlocutors on this question felt that the current selection system was working correctly: in particular it is seen as both rapid and compre-

hensive, and includes a visit to ascertain the appropriateness of the potential adopters' physical surroundings.

While the expeditious nature of the selection exercise can be a positive factor in attracting applicants, we were concerned that it might not allow full and in-depth gathering of necessary data and their proper analysis, as well as the provision of full information and counseling for the potential adopters and due time for reflection on their part. We note in particular that, as far as we can ascertain, there is no mention of any requirement for a psychological evaluation of the PAPs.

It may be worth pointing out that, in certain other countries where efforts have been made to promote domestic adoption in a difficult context, we have found that assessment and selection of prospective adopters has not always met the desirable standards, in order not to discourage or eliminate a significant proportion of applicants. We therefore emphasise the need to ensure that processes for selecting domestic adopters are equivalent to those justifiably demanded for that of foreign prospective adopters.

International Principles and Ethical Guidelines

A psycho-medico-social and legal family study should be undertaken before adoption proceedings are started. It will help to confirm or disqualify the family's adoptive capacity which must be officially certified by the competent authorities (ISS/IRC guidelines 12 to 16, HK guideline 3.4, HC arts. 5, 15.1 & 29). This study shall be prepared by professional workers (or experienced personnel who are supervised by such qualified workers) (For the content of the home-study see ISS/IRC guidelines 15 & 16 and HK chapter 6: Adoptive family home-study).

The adoptive family must be recognized ahead of time and before any matching, as being apt and able to ensure, in a lasting and satisfactory manner, the protection and respect of a child with specific background and characteristics (ISS/IRC guidelines 12 to 16, HC arts. 5, 15 & 29).

Recommendations:

- ↳ An in-depth psycho-medico-social and legal assessment of persons seeking to adopt should be made by a specially-trained multi-disciplinary team, on the basis of standard criteria for accepting or refusing their application. Account should also be taken of the extent to which the characteristics and aptitudes of the applicants correspond to the needs of adoptable children in their area.
- ↳ A review of experience in other countries with regard to selection of PAPs for domestic adoption, covering both successful and unsuccessful initiatives and procedures, could be usefully carried out prior to establishing the new assessment process in Ukraine.

4.4. THE NEED FOR PROFESSIONAL MATCHING

“Matching” is key to a successful and appropriate adoption procedure. It is a process that involves a number of steps, beginning with knowledge of adoptable children and PAPs and a proposal to establish an adoptive relationship between a particular child and a particular family, based on the compatibility of the specific characteristics of both. The content and requirements of this process are detailed under the “International guidelines and ethical principles” sub-section below.

Ukrainian Law and Practice

Interestingly, PAPs may approach any Education Department (local or regional) – not just their own – or the NAC in Kyiv in order to obtain information about children who have been registered in the *raion*, *oblast* or national databases. At their appointment with the

Department of Education or the NAC they are presented with a file containing basic health and other details, including what is usually just a passport-size photo, of children.

The Departments of Education (for local and regional adoptions) or the National Adoption Centre (for domestic adoptions) shall give PAPs information about the children who have undergone initial, regional and centralised registration, and issue a permit for them to meet the child in the institution (Resolution 1377 para. 14).

Once the prospective adopters have found a child's dossier of potential interest, they confirm their interest in principle, and the Education Department or the NAC will issue them with a letter of referral allowing them to meet the child – and only that child.

If PAPs agree they can file an application for adoption of that particular child to the Education Division of the residence of the child (Resolution 1377 para. 18). If they have been unable to meet the child, they may apply for obtaining a new permit to meet another child (Resolution 1377 para. 17).

Although the procedure aims at offering a wider list of children to domestic PAPs, in reality the latter encounter several problems:

In practice, PAPs do not have easy access to the information on children kept in other regions than their own. While we understand that copies of children's files are kept at *raion* and *oblast* levels even once the child has been registered at the NAC, this still means that PAPs have to travel either to other *oblast* capitals or to Kyiv itself to obtain information on adoptable children from outside their *oblast*. This implies financial costs that few PAPs can easily bear.

The dossier of the child includes specialised medical terminology from which PAPs may find difficult it to gauge the seriousness of an illness or disability. Furthermore, according to Valentyna Striko of the Yaroslav the Wise International Educational Fund: "people who work in orphanages find it helpful to keep long lists of diseases. This frightens Ukrainians away, but has little effect on the decision of foreigners, because they know better which diseases are easily curable."

One of our special concerns, based on information from our interviews, is the distinct impression that, in the absence of initiatives taken by PAPs themselves, little if anything is undertaken to identify potentially suitable placements of adoptable children with Ukrainian couples.

Resolution 1377 contains no obligation to notify prospective adoptive parents on the register when the competent authorities have determined that there is an adoptable child with whom they have been "matched". The Authorities have only to transmit the dossier of the children to the regional and national level respectively, when "no person has expressed his/her wish to adopt the child" (para. 4 & 5). The Law on Protection of Childhood has a more positive approach "if all opportunities for transfer for adoption by an Ukrainian citizen have been exhausted" (art. 24.7), but it does not give any guidance on a required process for identifying appropriate Ukrainian families.

As we understand the situation, couples that, despite all the odds, have expressed interest in adoption and have been approved as generally fit to adopt have their applications registered as such, but it is then entirely up to them to take initiatives to further the process. **No attempt is made, at raion, oblast or national levels,** to match an adoptable child with them. They come, when and if they can, to consult the database but there is no professional matching process whereby the child's needs might be met through the authority concerned contacting selected parents with a view to adoption. A child's registration, therefore, is more a formality than the start of a process to find him or her an adoptive home in Ukraine.

We are bound to conclude, on this basis, that giving priority to domestic adoption is seen in practice as little more than an administrative exercise. During the 14 months, little or no systematic advantage is taken of potential opportunities to place a child with Ukrainian adoptive parents. The latter are not identified as being potentially suitable to care for a given child or children. Imposition of the period means in essence that availability for inter-country adoption can be justified.

In addition, in internationally comparative terms, the 14-month period is unusually long, especially in view of the fact that, for the vast majority of the children concerned, it simply means in reality an unduly extended period in institutional care before “real” efforts are made to proceed with adoption. These long placements often concern children under the age of three, regarding whom, as noted under 2.5.2.1, research has overwhelmingly demonstrated the severe negative impact of institutional care – however good the quality – for their long-term development and adjustment.

As can be easily deduced from the above, the lack of professional matching involves considerable risks in terms of respect for the rights and interests of the child. The matching of a child with a family must be a professional decision, taken preferably by an interdisciplinary team and by determining the most appropriate family for a child, taking into account the latter’s needs and characteristics.

International Principles and Ethical Guidelines

- *What is matching?*

It is a **proposal to establish an adoptive relationship** between a particular child and a particular family. An adoption in the best interest of the child is one that creates both a situation which respects the biological family and new family relationships that satisfy the child and the adoptive family. Matching is therefore a key point in time. It is the convergence of two life plans: that of the child, and that of the family in whose care he/she is to be placed (ISS/IRC guideline 18).

- *Who should be in charge of matching?*

Matching should be **assigned to a team** and not be left to the responsibility of an individual; the team should be composed of child protection professionals trained in adoption policies and practices. They should preferably be specialists in psychosocial fields (ISS/IRC guidelines 22 to 26).

- *Who should never be in charge of matching?*

Matching must never be left to the initiative of PAPs choosing a child among others from catalogues or through visits to institutions (ISS/IRC guidelines 22 to 26). Some psychologists indeed stress the risks for the child’s emotional development and for successful bonding between the child and the prospective parents if the latter are placed in the position of “choosing” a child. The fact of “choosing” a child brings with it a high risk that the child simply become the “answer” to the prospective adopters’ desires rather than being seen as an individual with his or her own characteristics and needs.

- *What is the task of the professionals in the matching process?*

Matching is a question of professionals choosing the most suitable family for the child, based on medico-psycho-social professional criteria, and not proposing the child successively to several applicant families. If the verification of the legal and medico-psycho-social adoptability of the child and the selection and preparation of the PAPs are undertaken properly, experience shows that in the vast majority of the cases, PAPs accept the proposed child. This is the national and international adoption practice of most countries, notably those that are parties to the 1993 Hague Convention and those that are concerned about ethical practice.

- *What should be taken into account in order to choose the most adequate family for the child?*

In considering possible adoption placements, persons responsible should select the most appropriate environment for the child (UNDSLPA art. 14). Matching should be the proposal of an adoptive family for a child that fits the life experience, characteristics and needs of that child (ISS/IRC guideline 19).

- *What should be the procedure?*

A multidisciplinary team of the regional Authority concerned should study the psycho-medical-social reports on the child and on the prospective adopters, and propose the best suitable family for a child.

The matching is done after the agreement of the PAPs (*before* the first meeting between the child and the PAPs, the matching should be submitted for approval to the chosen adoptive family through the competent body, preferably in a face-to-face contact with a professional, ISS/IRC guideline 28).

- *When should matching take place?*

After child protection professionals have established the psycho-medico-social and legal adoptability of the child;

After child and family protection professionals have established the psycho-medico-social and legal adoptive eligibility and suitability of the possible PAPs;

Before a meeting in person between the child and the applicants has taken place (ISS/IRC guidelines 20, 21 & 29, HC art. 29);

- *Is any contact between PAPs and the child's parents or carer allowed before matching?*

Any contact between prospective adoptive parents (PAPs) and the child's parents or carer should be prohibited until the matching decision has been made. There shall be no contact between them before the principal verifications (adoptability of the child and respect of the principle of the best interest of the child; consents of the birth parents or competent authority; suitability of PAPs) have been carried out (HC art. 29).⁵¹

- *Implementation of the matching*

When bringing the child and the adoptive family together, it is very important that:

- The child and the future adoptive family first be prepared for the proposed meeting (photos, exchange of information, information about attitudes or points to be careful about, etc.) (ISS/IRC guideline 30).
- The meeting be held in private and attended by persons who have been caring for the child (ISS/IRC guideline 30).

The proposed matching should be followed by a face-to-face meeting between the child and the prospective adoptive family, and wherever possible, by a brief period of getting to know each other through contacts and living together, supervised by a professional (ISS/IRC guideline 29). At this point PAPs can still change their mind, but if the matching has been done in a professional way and respecting all the guarantees explained above, there are usually no problems.

There should also be professional follow-up during a *probationary period for bonding*, before the adoption order is pronounced by a court.

⁵¹ For more detailed information on this issue, please refer to the Editorial of ISS/IRC Monthly Review nr 2005/6, www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.2005.6.eng.pdf.

Good practices in matching⁵²

Matching is initially conducted on the basis of the child's file and those of the different prospective adopters, from whom one family will be chosen. This entails the files being as complete as possible.

There is no magic formula for matching. However it is very important that a competent authority establishes the criteria for guiding the work of the professionals in that agency or in the agencies responsible for the matching in matters of domestic and inter-country adoption. The family chosen should possess the characteristics compatible with the temperament, personality, and the physical and psychological needs of the child. It should be able to cope with the problems that can arise, after the adoption or in adolescence, due to the traumas or deficiencies the child has lived through earlier. It should have demonstrably special skills for adopting a child with special needs, be these physical (medical status, disability) or personal (for example, age, sibling groups, sequelae of trauma). Hence the importance of the detailed description of the personalities of both parties in the files and an objective assessment (in the applicants' file) of the prospective adopters' resources and limitations, and of the home and external environment to which the child would have to adjust.

Recommendations:

- ↳ Terminology in relevant legislation should be amended to reflect the "matching" approach, and notably should exclude mention of prospective adopters "choosing" or "selecting" a child.
- ↳ In our view, all approved potential adopters should be registered at the *oblast* level, and responsibility for matching should therefore lie at that same level. The *oblast* administration should have within its ranks an interdisciplinary team of professionals tasked with actively matching adoptable children with prospective adoptive parents, on the basis of the PAP's and children's dossiers on file. A member of such a team should present and discuss the matching proposal face-to-face with the PAPs identified.
- ↳ If the matching proposal is accepted, both the child and the PAPs concerned should be prepared for their first meeting, which should take place in the presence of a professional. A professional should also supervise subsequent contacts and any pre-adoption period of living together (placement with a view to adoption).
- ↳ With the assistance, where necessary, of foreign experts, concrete matching criteria should be developed and the multi-disciplinary teams trained in consequence.
- ↳ If, despite these efforts, the child's adoption has not been secured at *oblast* level within a given period (e.g. four months), wider attempts to identify suitable Ukrainian adoptive parents should be made over a given period (e.g. two months). The child's dossier should in this case be updated with a report on efforts made and problems encountered in identifying suitable adoptive parents and any changes in the child's situation since the original dossier was prepared.
- ↳ According to the system chosen, these wider efforts might be initiated by the *oblast* concerned contacting all other *oblasts*, or by forwarding the child's file to the NAC which would undertake and co-ordinate the contacts with other *oblasts*.
- ↳ In either case, the *oblast* specialists would work directly together on matching, with a view to finalising adoption. If matching attempts are not successful by the end of the designated period (e.g. 6 months), the child's file would be placed in the national register for intercountry adoption, but this would not remove the obligation to continue to search for Ukrainian adopters.

⁵² Adapted from Operational Manual, op. cit., note 21.

4.5 PREPARATION OF THE CHILD

Ukrainian Law and Practice

We found no requirement regarding preparation of the child for adoption in current legislation.

In practice in Ukraine, preparation of the child for adoption may take place in some form on a case-by-case basis but, as far as we can determine, in general no systematic preparation is foreseen.

International Principles and Ethical Guidelines

When children, particularly older children, are matched for adoption, they shall be appropriately prepared for the adoption placement which shall include:

- Counselling and support to enable the child to comprehend the concept of adoption and to go through the mourning process as regards his/her birth family and current life situation;
- Adequate introduction to prospective adoptive parent/s and their way of life through photographs, video, letters, etc;
- Personal contact with the prospective adoptive parent/s if possible, and appropriate support to facilitate adjustment (HK Guidelines “Pre-placement preparation of the child”).

The relationship between the child to be adopted and the PAPs should be observed by child welfare agencies or services prior to the adoption (UNDSLPA art. 16).

Preparing the child for adoption⁵³

Preparing the child for adoption in general and for his or her own adoption in particular is essential for facilitating its successful outcome. The length of the preparation will depend upon the child's age, previous experiences and capacity to initiate an emotional attachment. The objectives are:

- To ensure continuity between life stages
- To avoid disruption or another shock for the child
- To guarantee a smooth transition between two places and two ways of life (institution or temporary foster family – adoptive family)
- To prepare the meeting with the adoptive family
- To register the child with a new filiation
- To prevent failures.

The aim is to help the child to:

- Think back over the past (To construct or reconstruct his/her personal life story and to begin a period of mourning for what is left behind - life in the family of origin, the hope of going back to live in his family of origin, life in the institution...).
- Think of the future (to imagine what will happen (life in the adoptive family), to start to forge links with the adoptive family, to prepare the child for separation from the institution).

⁵³ Adapted from Operational Manual, op. cit., note 21.

Recommendations

- ↳ Children should be appropriately prepared and counselled for the adoption placement. Professionals responsible for this task should be explicitly designated in the pertinent regulations. These professionals should be trained on the basis of current international knowledge in the field.

4.6. COMPREHENSIVE SERVICES FOR PAPS

Ukrainian Law and Practice

Only after having been registered in the data base as PAPS, and having applied to a Department of Education's office or the National Adoption Centre for a child, are PAPS informed about the conditions of adoption and rights and duties arising from adoption (Resolution 1377 para. 11).

We are not aware of special measures foreseen in practice to provide guidance, counseling and assistance to PAPS.

International Principles and Ethical Guidelines

PAPS have to be counselled throughout the whole process (ISS/IRC guideline 17, UNDSL art. 15, HC art. 5,) and prepared. Providing psycho-social services to prospective adoptive parent/s shall be the responsibility of the competent authority or an accredited body (HC art. 9.c). This shall include:

- a) Before any procedural step is made: relevant information and support to decide whether adoption is the best plan for them after being made to understand that adoptive parenthood can involve tasks beyond biological parenthood and being informed about the potential needs of adoptable children;
- b) Advice on required procedures and documentation, including information on relevant sanctions against any charges of criminal offence and child abuse;
- c) Evaluation of their ability and potential to satisfy the needs of a child/children requiring adoption including the acceptance of siblings, children with special needs etc., whenever relevant;
- d) Preparing adoptive parent/s for the adoption e.g. individual and group preparation working sessions and arranging contact with adoptive families and adult adoptees if possible, etc.;
- e) Follow-up of the pre-adoption period and support to finalise the adoption;
- f) Post-adoption placement services;
- g) Assisting the applicant/s with counselling and/or referral to other services if a decision has been taken that a child should not be placed with them or should be withdrawn from their family (Adapted from HK guideline 3.3).

Recommendations

- ↳ Information about adoption should be given to PAPS before the adoption procedure is started, and should continue throughout the whole procedure. Furthermore, PAPS should also be counselled, specifically trained and accompanied in accordance with the comprehensive accompaniment plan outlined above. Professionals should be explicitly designated for these tasks by the pertinent regulations and should be trained on the basis of international knowledge existing in the field. This would undoubtedly avoid many revocations (see next point).

4.7. REVOCATION OF DOMESTIC ADOPTIONS

We are concerned by the large number of adoptions by Ukrainians that have been revoked in recent years: reportedly 322 in the period 1999-2004, in other words 1 domestic adoption for every 34 pronounced during that time, or 3 per cent. We were told that revocations concern children of all ages and whose adoption may range from recent to long-standing. The trend may be improving: 46 such revocations were ordered last year, against the annual average of 54 for the period, but annual figures for domestic adoptions have themselves been declining significantly since 2000 so the figures are still high.

According to the Family Code (art. 238) an adoption may be revoked by a Court if:

- the adoption is contrary to the interests of the child and does not ensure his/her education in the family;
- the child suffers from half-wittedness or a mental or any other serious irreversible disease, about which the adopter did not know and could not know at the time of adoption;
- the relations between the adopter and the child, notwithstanding the adopter's will, make impossible their living together and the adopter's discharging his/her parental responsibilities.

The reasons cited to us as being the most commonly found in practice are the child's mental illness and his or her inability to adjust to the adoptive parents' way of life. We were also given the following more extensive list of causes invoked, but with no indication as to the incidence of each:

- parents unprepared to deal with the child's psychological problems
- insufficient information provided by the institution
- post-adoption stress and depression
- "language problems"
- problems related to the "secrecy" of adoptions in Ukraine
- reactive attachment disorder (RAD: child's inability to bond)
- sensory integration dysfunction (child's inappropriate responses to sensory stimulation)
- absence of post-adoption support groups
- child's anti-social or self-harming behaviour
- physical and sexual abuse by the adoptive parents.

It would appear that, both in law and in practice, there is undue recourse to condoning rejection of a child by the adopters when difficulties arise. In line with the thrust of our arguments relating to abandonment, relinquishment and withdrawal of parental responsibilities in relation to biological parents (see Chapter 2), we do not view this as an acceptable approach. Revocations should not be conceived as a kind of "emergency exit" for adoptive parents who finally decide that they do not want a particular child.

It is all the more disturbing in that, on the one hand, the breakdown of an adoptive relationship will constitute at least a second traumatic experience for the child concerned and, on the other, we understand that the child concerned will usually be returned to a residential facility once the revocation is pronounced by the court, although a renewed adoption process may then be launched.

Clearly, too, this high level of breakdown suggests that enquiries to establish the child's adoptability (including psycho-social aptitude to benefit from adoption and preparation) on

the one hand, and the selection and matching processes and preparation and support for adoptive parents on the other, are seriously flawed. This only underscores even more forcefully the emphasis we have placed on these questions earlier in this Chapter.

Recommendations

- ↳ The law should be formulated in such a way as to make recourse to revocation of adoption more exceptional. For example, adoptive parents should not be allowed to revoke the adoption of the child if they discover that the child has a very serious untreatable illness (FC art. 238.1.2). In order to avoid this kind of situation, a better medical and psychological study of the child should be made before he/she is declared adoptable.
- ↳ At the same time we recognise that non-revocation should clearly not lead to the child being placed at risk of psycho-emotional or physical harm in the context of an irredeemable adoptive relationship, and therefore strongly urge that special importance be placed on pre-adoption measures recommended earlier in this Chapter, notably regarding the handling of all phases of pre-adoption by a multi-disciplinary professional team, with emphasis on selecting and counseling the child and the PAPs and on matching.
- ↳ Furthermore, we recommend that a compulsory supervised probationary period be instituted before the adoption becomes *res judicata*.
- ↳ Moreover, specialised professionals within the competent authorities and domestic adoption accredited bodies should be available to provide, where necessary, post-adoption support services to adoptive families.

5. INTERCOUNTRY ADOPTION

In this section, we review developments in the sphere of intercountry adoption from Ukraine and examine the issues identified during the assessment that need to be addressed if the intercountry adoption process and system in Ukraine are to conform to international standards and respect the rights and best interests of the children concerned. Our approach and analysis assumes that Ukraine will pursue its efforts to accede to the 1993 Hague Convention⁵⁴ (see also Annex 1), and our aim is to assist in securing the conditions that will enable accession to take place.

Before doing so, however, we have to deal in some detail with a fundamental question: the widespread, frequent and uncompromising allegations being made that intercountry adoption of Ukrainian children is being used as a means of trafficking them abroad for exploitative purposes (5.1). We therefore begin this section by setting out our findings in this respect. We go on to analyse some statistical indicators (5.2) and attitudes towards intercountry adoption (5.3) before examining in detail the intercountry adoption process in Ukraine (5.4).

5.1. GROUNDLESS AND MISLEADING: ALLEGED LINKS BETWEEN INTERCOUNTRY ADOPTION AND TRAFFICKING FOR EXPLOITATION

Little more than two months before we began this assessment, in a statement to the 61st session of the United Nations Commission on Human Rights, on 7 April 2005, the head of the Ukrainian government delegation declared [official English translation]:

“Another disgusting aspect of the issue [crimes against children] is illegal adoption, trafficking and sexual exploitation of the children. Experience of the last decade suggests that these forms of abuse are on the rise. Facts relating to illegally moving children abroad cause a particular concern in Ukraine. The Ukrainian authorities initiated action to stop and prevent crimes relating to the illegal adoption of children. This phenomenon requires in-depth examination and regulation as illegal international adoption turns into a multimillion criminal business.”

This statement – unlike many others which we will highlight below – took care not to allege explicitly a direct link between the adoption of children abroad and their trafficking for exploitation, although by referring to the three phenomena together in the first sentence, its intended inference is clear.

Let us first be clear about terminology.

What is an **“illegal adoption”**? A decision on adoption is made in a Ukrainian court of law. The “illegality” of that decision could thus result from situations where, variously, the required procedures have not been followed, documents have been falsified, the child has been declared adoptable without due cause or as a result of manipulation, money has changed hands... **but if it is truly an adoption, rather than some other form of transfer or removal, it will necessarily and by definition have been approved by a judge. It follows that all events and acts that would make it “illegal” must therefore have taken place up to and including, but not after, the judgement.** “Illegal

⁵⁴ In this assessment we focus on the responsibilities that a country of origin assumes when being part of the HC, but we would like to recall that the intercountry adoption process, in line with the HC, concerns both the country of origin and the receiving country. For a summary of the interaction between Central Authorities in the adoption system under the HC, please refer to Annex 2.

international adoptions”, therefore, are not the same as “illegally moving children abroad”: in cases of the former, children are moved abroad legally following an adoption process that contains illegal elements.

What is “**trafficking**”? The definition in the Palermo Protocol⁵⁵ reads:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation. [...]

The key words here are “for the purpose of exploitation”: in other words, an exploitative aim to the act must be shown for it to be qualified as “trafficking.”

What is “**exploitation**”? The Palermo Protocol goes on to explain it as follows:

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

At the same time, according to the Convention on the Rights of the Child no exploitative aim is necessary for an act to be qualified as “trafficking”:

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (CRC art 35).

Under the terms of the CRC, then, trafficking can be deemed to take place for a legal purpose such as adoption. This approach is supported, moreover, by the definition in Article 2 of the 1994 Inter-American Convention on International Traffic in Minors (which entered into force on 15 August 1997):

“International traffic in minors” means the abduction, removal or retention, or attempted abduction, removal or retention, for unlawful purposes or by unlawful means.

Again, the key word here is the “or” in “unlawful purposes or by unlawful means”: for an act to be qualified as trafficking, its purpose does not have to be illegal if the means used are unlawful:

“Unlawful purpose” includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor’s habitual residence or the State Party where the minor is located.

“Unlawful means” includes, among others, kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child, or any other means unlawful in either the State of the minor’s habitual residence or the State Party where the minor is located.

In our considerations for this assessment, we shall take the wider CRC view rather than that of the Palermo Protocol. Our analysis will therefore focus on determining to what extent Ukrainian children are being trafficked abroad, through adoption, for unlawful purposes and/or to what extent they are trafficked abroad by unlawful means for the lawful purpose of adoption.

⁵⁵ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, supplementing the United Nations Convention against Transnational Organized Crime

5.1.1. Lack of evidence

Agreement is virtually unanimous that there is a great deal wrong with current practices in intercountry adoption – from Ukraine and from many other countries – in terms of the effective protection of children’s rights. As will be clear from this report, we are very conscious of the ways in which intercountry adoption is vulnerable to questionable, illegal, and sometimes criminal activities. Prior to beginning our assessment, however, we had expressed serious doubt that what is wrong in Ukraine might include the exploitation of children trafficked through adoption. Having completed the assessment, we are convinced that our doubts in that regard are fully substantiated.

From the outset, we questioned the veracity of statements such as “adoption of Ukrainian children by foreigners is among the most frequent ways in which minors are trafficked for sexual purposes.”⁵⁶ Similarly we had noted with concern that allegations that intercountry adoption was used to procure Ukrainian children for organ trafficking were being made, in some quarters, in the form of blunt but unsupported statements of supposed fact.

In carrying out the assessment, we therefore sought to verify the accuracy of our scepticism, bringing these issues systematically to the table if they were not spontaneously broached by our interlocutors (which in fact they often were). We can note that the great majority of governmental and NGO partners alike expressed some degree of certainty that forms of such exploitation are indeed taking place. **At the same time, in not one instance did our interlocutors evoke any specific case that would corroborate this apparent concern** regarding the exploitation of children adopted abroad for sexual purposes or the removal of their organs. Indeed, one particularly well-placed source actively corroborated the fact that, to date, there had been **no allegations requiring the investigation of specific cases of trafficking through intercountry adoption for the purposes of exploitation or the removal of organs.**

While the level of expressed concern greatly surprised us, the lack of concrete examples certainly did not. Allegations of this nature have been circulating in relation to a number of countries world-wide since the mid-1980s (see 5.1.2 below). If there were serious grounds to fear human rights violations of this nature in the context of intercountry adoption, we believe that over these two decades there would be at least one proven case that could justify concern. In illegal underground operations, bodies are found in the end, criminal rings are identified and victims are rescued. To our knowledge, this has not been the case in the sphere of exploitation of adopted children, from or to any country in the world. This total lack of evidence must considerably undermine the credibility of allegations and the legitimacy of concerns in this regard.

5.1.2. Why the allegations persist

Several factors are germane to the persistence of these rumours.

First and foremost, perhaps, is the **unwarranted credence lent to the existence of certain unproven “problems”** in the context of studies that will be seen as authoritative. As an illustration, we would simply quote here from the “International adoptions” section (3.6.2) of the recent UNICEF – OSCE – USAID – British Council report (2005) on “Trafficking in Ukraine” (N.B.: **our emphasis** in the following quotes). The very first sentence in this section reads:

- “One of the ways children can end up **trafficked** is **through illegal** adoptions.”

As per our remarks above, we would question the grounds for this statement, which gives an erroneous impression from the start. Children may be trafficked **for** adoption – effectively rendering the adoption illegal – but not **through** adoption for subsequent exploitation.

⁵⁶ All-Ukrainian Committee for Children’s Rights, 2003, quoted by OSCE, 2005.

Three sentences in the core of the text also merit scrutiny:

- “The inability to crosscheck documents effectively **could lead** to a situation where children are adopted with harmful intent.”
- “In this case, the child **could be given** to someone else for a bribe, although **no such instances** have been reported.”
- “... adoptive parents are **theoretically** free to pursue commercial gain at the expense of their adopted children.”

These sentences constitute in our view a form of scare-mongering and sensationalism in that they suggest the actual or potential existence of given problems with, in two cases, no indication at all of any grounds for supposing that they might indeed exist and, in the other case, an actual admission that there is in fact no evidence to date supporting the concern. Unfortunately, the mere fact of mentioning them lends strong support to the perception that they likely exist, despite a total lack of objective justification for such a viewpoint. Undoubtedly many “potential problems” of this nature could be set out. At various points in this report, we give other examples of how public pronouncements continue to shore up the idea that adopted Ukrainian children may be exploited. We look on this kind of approach as surely being counter-productive to elucidating and resolving the real problems surrounding intercountry adoption and child trafficking in Ukraine.

Second, and linked to the above, is the problem of deliberate “**amalgam**”. In various receiving countries and concerning various countries of origin, there are certainly a significant number of documented cases of parents abusing their adopted children physically, psychologically and sexually, sometimes with fatal consequences. In some instances, the adoptive parents have finally rejected the children for a variety of reasons, either placing them in State care in the host country or seeking to return them to their country of origin. Similar acts are regrettably facts of life too in biological families. But these acts are abuse, not “exploitation”. They were not an intended outcome of the adoption and, as far as we are aware, the children were never “trafficked” to this end. Yet several discourses project abusive acts as demonstrating the existence of organised trafficking for exploitation using the adoption process: we were repeatedly quoted the “example” of Russian children killed by US adopters. No one denies that these murders took place, and clearly similar instances need to be prevented as far as possible, notably by improved professionalism in selecting prospective adoptive parents and in matching them with children in need of adoption. To equate such acts with evidence of “trafficking” and “exploitation” is, however, both unfounded and grossly misleading.

Third is the deliberate interpretation that “**no news is bad news.**” In this respect, we cannot dissimulate our great concern, for example, at the statement by the then head of the SBU (Security Service of Ukraine), on 20 July 2005. Claiming that the whereabouts are known of only 476 out of some 2,000 children adopted abroad in 2004, he reportedly deduced that “many children might not have reached their destination.” As we have pointed out earlier in this Chapter, unsubstantiated conjecture of this nature is, to say the least, anything but helpful. There is indeed no objective reason for accepting that contravention of Ukrainian regulations that are patently unenforceable in another country – which, in addition, may have very different rules on the question – might justify such official “expressions of concern” without any concrete evidence whatsoever. The possible reasons behind lack of follow-up information about the circumstances of children adopted abroad are varied (see 5.4.7 below). Post-adoption reporting has many implications, moreover. It is an issue which, for very good reasons, figures in neither the Convention on the Rights of the Child nor the 1993 Hague Convention (see 5.4.7 and Annex 1 below). Children adopted abroad automatically come under the responsibility of the receiving State, and the very fact of allowing such adoptions to a given country must imply a minimum level of confidence in the welfare and other relevant services of the State in question as regards prevention of,

and reaction to, possible abuse and exploitation. Indeed, this consideration led to a recent meeting of the Special Commission of States Parties to the 1993 Hague Convention “[recommending] to States of origin to limit the period in which they require post-adoption reporting in recognition of the mutual confidence which provides the framework for co-operation under the Convention.”⁵⁷

Fourth, claims about intercountry adoption being used as a cover for **trafficking children for their organs** have no basis. Allegations and rumours of this nature have been circulating world-wide for some twenty years, initially relating in particular to children from Honduras in 1986 and Guatemala in 1987 – and ostensibly politically motivated, moreover.⁵⁸ Such stories have continuously re-surfaced ever since in relation to a wide range of countries. Thus, when countries of Central and Eastern Europe and the CIS opened up to intercountry adoption, similar rumours began to spread concerning children adopted from Albania, Belarus, the Russian Federation and others, now including Ukraine. To our knowledge, however, during these two decades there has never been clear and concrete evidence, in regard to any country, of a single case where children have been trafficked abroad for adoption by couples or individuals with the intention of exploiting them in this way. Indeed, it is hard to imagine why anyone would take on both the costs and risks involved in using a public judicial process like intercountry adoption to “traffic” children – rather than kidnapping or smuggling them, for example – in order to remove their organs.

Finally, **certain groups undoubtedly have special interests in keeping these rumours alive.** In our opinion, based on work carried out in the context of this assessment, these interests undeniably include the desire to divert attention from other issues that indeed constitute rights violations in the context of intercountry adoption. Such a “diversionary tactic” fits well with the arguments put forward by many who favour maintaining the *status quo* in the adoption system, and who therefore seek to place the onus for improvement more especially on actors outside rather than inside Ukraine, i.e. on the post-adoption rather than the pre-adoption phase.

5.1.3. The wrong focus

Experience in the field of protection of children’s rights has shown us that no forms of abuse and exploitation of children, however cruel, can be considered *prima facie* as beyond the bounds of possibility. Within the limits of the above considerations, we have therefore kept an “open mind” during this exercise: if any case of trafficking of children through intercountry adoption for exploitative purposes had been submitted to us, we would have examined it and, if appropriate, qualified our stance. Not a single such case was presented or even mentioned, however, by any interlocutor.

We can only conclude that, to the best of anyone’s knowledge, there is absolutely no evidence at present to suggest that trafficking of children through adoption with a view to their exploitation is a feature of intercountry adoptions from Ukraine.

We would emphasise once again that this conclusion is in no way intended to deny the existence of other disturbing phenomena, including:

- a) trafficking and other illicit acts to procure children for the purpose of adoption, and
- b) cases of abuse and rejection of children on the part of individual adopters once they have returned home with the child.

These two issues will be dealt with at length in subsequent parts of this Chapter, and preventing the risk of them occurring will constitute the foundation of many of our recommendations. In these regards, we nonetheless wish to make two remarks at this stage:

⁵⁷ Conclusions and recommendations of 2005 Special Commission on the HC 1993, op. cit., note 21.

⁵⁸ See *International Children’s Rights Monitor*, Vol. 4.1 *et seq.*, Defence for Children International, Geneva.

a) **On the question of illegal acts to procure children for subsequent adoption, we are aware of the investigatory mission undertaken by Ms Ruth-Gaby Vermot-Mangold in early September 2005** – and thus subsequent to our field visits – on behalf of the Parliamentary Assembly of the Council of Europe. While awaiting her official report and, hopefully, direct consultation with her, we note that her initial declarations following her mission correspond entirely to the approach we have outlined above. Thus, she is examining allegations that babies may be illegally removed from their parents' care – notably at specific maternity hospitals – and subsequently made available **for** local and intercountry adoption.

b) **With respect to abuse and rejection of children after adoption**, nothing we have so far learned conflicts in any way with our view that, with possibly very rare exceptions, the intention of adoptive parents is to provide the child they seek to adopt with a stable, caring and nurturing environment. Whatever the personal reasons for which applicants seek to adopt internationally, however fit they may be to do so, whatever procedures or actions they may be drawn into to achieve that aim, and whatever transpires in the post-adoption period, it is not their aim to harm the child. It is precisely this fact, moreover, that makes it all the more difficult to eliminate every potentially dangerous applicant before they reach the adoption stage. It is clearly during that pre-adoption phase, however, that problems of the suitability and preparation of prospective adoptive parents, as well as their matching with a child who corresponds to their potential parenting skills, need to be **professionally** broached and resolved as far as possible. Protective measures cannot be left to post-adoption monitoring, however crucial post-adoption support services may be for successful bonding within the adoptive family and, thus, prevention of problems at that stage.

Overall, we feel that the relentless focus that we found in Ukraine on what might happen to children after adoption detracts massively from required attention to how children come to be adopted abroad in the first place, and how their rights are protected in the process. It is this finding that informs our approach in the framework of this assessment, and it is to these aspects that we now turn our attention.

5.2. STATISTICAL INDICATORS

Like domestic adoption, intercountry adoption from Ukraine, which peaked in 2001, has seen a steady annual decline in overall numbers in recent years. Provisional data for the first half of 2005 also seem to confirm this trend.

In some ways this is surprising, given certain developments in the region – including the fact that Romania virtually closed its doors to foreign adopters as of 2001 – which could have been expected to have the opposite repercussions for Ukraine, and the fact that, as we understand it, some 24,000 children are on the central register of adoptable children, most of whom are available for intercountry adoption.

Other factors may help to explain this, however, in part at least. First, the National Adoption Centre (NAC) has set a rhythm for dealing with applications from foreigners that leaves little margin for upward flexibility (see 5.4.1 below). In addition, it has been very widely reported that children available for adoption from Ukraine – as opposed, for example, to those from Kazakhstan – tend to be older and/or have medical problems. Thus, at one point, it was even noted on the official French Central Authority (*Mission de l'adoption internationale, MAI*) website that healthy Ukrainian children under 7 years of age were no longer available for adoption abroad, and in early 2004, the NAC Director indeed stated that “only two percent (2 %) of all children available for international adoption in Ukraine are very young and completely healthy.”⁵⁹ This may have tempered the number of applications received, although they are

⁵⁹ “Readout” from a seminar for adoption facilitators/translators who work with American prospective adoptive parents, organised by, the American Citizens Services Unit of the Consular Section, U.S. Embassy in Kyiv, with participation of the NAC, 17 February 2004. Available at :http://kiev.usembassy.gov/amcit_adoptions_readout_eng.html.

still well above the number of cases processed: a total of some 2,850 applications by foreign PAPs were registered at the NAC in 2004, for example, whereas only 2,187 adoptions were finalised in that year. Furthermore, the flow of applications submitted to the NAC is in some cases artificially restricted. Spain, for example, requires its citizens to send their applications to its consulate in Kyiv, which then transmits them to the NAC at the strict maximum rate of 12 per week, however many more it may receive.

It is worth noting that this particular approach on the part of Spain goes some way towards the aim of trying to ensure that “effective demand” is kept in check, i.e. that a “country of origin” is not implicitly pushed to process whatever number of applications it may receive, but that this number is tailored to the needs of its children and the real possibilities of the country for handling the requests in a proper manner. Means to achieve this co-operatively need to be examined. They can help to avoid opportunities arising for exploiting excess demand.

These considerations inevitably give rise to looking at the real meaning and implications of the term “adoptable.” The basic and incontrovertible element is of course that the child’s legal status has been determined as allowing his or her adoption to be envisaged. But in pragmatic terms, at least two other factors are relevant:

- that, from a psycho-social standpoint, the child will potentially be able to benefit from adoption, i.e. will be able – with any necessary preparation – to adjust to family life;
- that the child’s characteristics – age, health status, etc. – are such that adoption is a real possibility, i.e. that potential adopters for that child are indeed deemed to exist, bearing in mind the number of “hard-to-place” children in relation to the number of PAPs who are suitable and willing to care for such children.

These – particularly the latter – can be delicate issues. However, they need to be broached if both the type and the number of dossiers submitted by foreign PAPs are to – as they should – correspond optimally to the needs of Ukraine’s legally adoptable children.

Doing so would constitute a key step towards ensuring that the “flow of files” takes place in the appropriate direction, i.e. that it is not PAPs “applying” for a child, but a child looking for the offer of an adoptive home (see box below).

“Flow of files”⁶⁰

To be really focused on the child, and not on the adopters, adoption should *result in the despatch of the files of children in need of inter-country adoption, by the States of Origin to the potential Receiving States* and not – as is more often the case at present – in the despatch by the receiving countries to the countries of origin of a large number of files of prospective adopters requesting the profiles of children who do not necessarily need a foreign family. In Porto Alegre (Brazil) for example, the reversal of the procedure (in other words the flow of files) has been implemented. The Authorities are no longer drowned in files of prospective adopters who do not take kindly to being kept waiting. They can, in collaboration with their partners in the Receiving States, devote themselves to their priority mission, namely the search for a family for each child who needs one, including children who are difficult to place. Other countries such as Lithuania, Philippines and Peru also apply a similar “reversal procedure” for adoptable children with special needs.

Starting with the child and not with the adult implies a change of mentality and structures. But, once the period of adaptation has been weathered, these changes are likely to simplify the task of the Authorities and the States, in reducing frustration and exasperation, and, thus, facilitating the search for the best interest of the children.

⁶⁰ Editorial ISS/IRC Monthly Review ne 65, www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.65.eng.pdf.

The major “receiving countries” for Ukrainian children are currently, in order of significance, the USA, Italy, Spain and France. They are followed quite closely by Israel and Germany. Others include Belgium, Canada, Netherlands, Sweden and Switzerland. The four main receiving countries record the following statistics since 1996 when Ukraine reopened for intercountry adoptions after the moratorium:

Table 1: Number of adoptions from Ukraine to the four major receiving countries, and total foreign adoptions from Ukraine, 1996-2004

	1996	1997	1998	1999	2000	2001	2002	2003	2004	Total 96-04
USA*	1	59	180	323	659	1,246	1,106	702	723	4,999
Italy**	0	[0]	[59]	116	[300]	451	635	523	654	[2,738]
Spain+	0	0	0	116	218	356	358	462	349	1,859
France++	0	3	31	53	64	136	182	141	126	736
Sub-total	1	[62]	[270]	608	[1,241]	2,189	2,281	1,828	1,852	[10,332]
Other	--	--	--	--	[964]	622	60	359	206	[2,249]
Total°	←-----1,115-----→				2,205	2,675	2,341	2,187	2,058	12,581

* US State Department, figures for Financial Years (October-September)

** CAI (Central Authority)

+ Ministerio de Trabajo y Asuntos Sociales

++ MAI (Central Authority)

° NAC, Ukraine. Total for 1996-1999 calculated by subtraction of the 2000-2004 figure from the NAC total for the entire period (12,581-11,466)

[] = approximate figure

— not available

“Other”: calculated by subtraction of sub-total from NAC total.

An analysis of the figures that we were able to access, all of which are from official sources, brings to light three particularly interesting trends which may be of considerable significance in the framework of this assessment.⁶¹

First, the figures illustrate the truly **vertiginous increase in adoptions from Ukraine** over the five years following the lifting of the moratorium in 1996. They not surprisingly sky-rocketed in 1997-1998 and then, for the USA and Italy at least, doubled annually from 1998 to 2001.

Second, since the turn of the century, **the four major receiving countries have, crudely put, gradually come to virtually monopolise adoptions from Ukraine.** In 2001, together they accounted for just 77 % of all such adoptions; by 2004, their share was slightly above 90 %. Not only have adoptions by citizens of other countries therefore fallen by 13 percentage points in the space of just three years, but over the same period their absolute numbers fell by an astonishing two-thirds while total intercountry adoptions fell only by about one-fifth. It would be interesting to understand why such a rapidly and disproportionately diminishing number of adoptions were effected by citizens of countries outside the “big four.”

Third, the figures in Table 1 show **a massive relative increase in adoptions by Italian citizens**, and this on two counts. In 2001, adoptions by Italian citizens accounted for 16.9 % of total adoptions from Ukraine; by 2004, their share was fully 31.6 %. Then, looking at adoptions by the “big four” alone, those by Italians have moved from 19 % in 1999 to no less than 35.2 % in 2004. Here too it would be interesting to understand what factors may have contributed to this major shift.

The first and last of these trends in particular, and to a large extent the second as well, were identified several years ago already – on a general level and thus in no way specifically

⁶¹ There are invariably discrepancies in annual figures for intercountry adoptions provided by countries of origin and receiving countries. These may be due to, for example, different periods considered (e.g. Financial Years in the USA) or varying date criteria used (e.g. the moment adoption is pronounced, the moment a visa is issued or the time of arrival in the receiving country). We believe, however, that this has little or no significant impact on our overall analysis.

to Ukraine or to the particular receiving countries cited above – as constituting **indicators of risk as regards the protection of children and their rights in intercountry adoption**:

- **Sudden sustained and major increases in intercountry adoptions** can overwhelm the structures, mechanisms and human resources in place in the country of origin, and in several cases have led countries to impose moratoria on adoptions abroad, such as the pressure on their systems. In these circumstances, it can quickly become impossible for countries to process thoroughly and professionally the unforeseen and ever-rising numbers of applications and programmed adoptions. Situations of this nature therefore become spawning-grounds for questionable and illegal practices connected to intercountry adoption. Such practices can become entrenched and difficult to eliminate even when the pressure subsides somewhat.
- **The concentration of adoptions from one country towards a given country or group of countries** may indicate the development of a privileged relationship, or the existence of special influence, between the States themselves or individuals and/or entities in those States. This relationship or influence, of whatever nature and on whatever foundation, may in some cases at least take precedence over the rights and best interests of the children who are or might be concerned by intercountry adoption. It may also spawn questionable and illegal practices in this regard.

These are well-documented indicators of *risk*, and in no way do we present them as proof of problems in Ukraine at this time. Clearly, however, when indicators demonstrate, for example, a risk regarding the health or nutrition status of children in their respective countries, governments will want to react, and we believe this to be equally necessary as regards the risks mentioned above.

Recommendations

- ↳ We strongly recommend that the Authorities of Ukraine and all other States concerned examine the reasons behind these phenomena, study their effects and, if appropriate, review and investigate the status and processes of intercountry adoptions between them as regards compliance with children's rights.
- ↳ We also recommend that a review be made of children in the national register in order to determine which children could indeed be considered (legally and psycho-socially) "adoptable" in terms of the likelihood that they would benefit from adoption and that they will be adopted and, equally importantly, to ensure that alternative permanency planning be effected for those unlikely to benefit from, or be offered, an adoptive home.
- ↳ Following this exercise, the Central Authorities of receiving states and foreign accredited bodies authorised by Ukraine could be informed of the characteristics of children requiring intercountry adoption, and dossiers submitted by PAPs would be accepted to the extent that they meet the identified needs.

5.3. ATTITUDES TOWARDS INTERCOUNTRY ADOPTION

During our discussions in the context of preparing this assessment, we were surprised at the widespread – albeit not unanimous – acceptance of the on-going need for Ukrainian children to be adopted abroad in relatively large numbers. True, this tallies with the perception that substantial numbers of children will continue to be abandoned or need to be removed from parental care, and that few Ukrainians will either wish or be in a position to adopt in the foreseeable future. In several other "countries of origin" where not dissimilar conditions pertain, we have nonetheless found far more frequent concern and criticism expressed in various quarters at the prospect of on-going substantial recourse to inter-

country adoption. Comments such as “Intercountry adoption is not good for Ukraine – we are losing our youth” (interviewee in Odesa) were remarkably rare during our discussions.

Reflecting this, directors of residential facilities tend to demonstrate a certain pride in the fact that “their” children were being adopted abroad – one director noted that 90 per cent of adoptions from her facility were to foreigners. Nonetheless, another director stated that, from her facility in the first six months of this year, 14 children had been adopted by Ukrainians as compared with 39 by foreigners, and took pains to point out that this constituted one of the highest rates of domestic adoptions.

As far as the major receiving countries are concerned, their governments take a positive approach to intercountry adoption in general, though they vary in the level of active efforts devoted to promoting it. The French, Italian and Spanish Authorities have espoused policies to facilitate and develop intercountry adoptions by their citizens, and indeed this year delegations from Italy and Spain at least have visited Ukraine ostensibly with this aim in mind. The USA also supports its citizens’ initiatives to adopt internationally; its State Department and ambassadors regularly urge countries to ensure the rapid resolution of any problems so that intercountry adoptions are not held up. Chancellor Schroeder of Germany recently exhorted his fellow-citizens to do as he did and adopt a “foreign orphan.” Israel has sought to ensure that countries allowing their children to be adopted there continue to do so, despite concerns over the country’s “security situation” expressed in some quarters.

In this context, therefore, Ukraine seems both to be clearly seen and to see itself as a significant “country of origin” for some considerable time to come. This may have the regrettable consequence of diminishing the motivation to work deliberately towards achieving a situation where it is in a position to ensure appropriate care for all its children. In this respect, it might be desirable, for example, to set a target date by which it would both need and seek recourse to adoption abroad in only exceptional cases, and then work to secure the conditions that would make that date a valid proposition (including through the development of a “culture of domestic adoption”), rather than just gradually developing services according to short-term targets for improved care provision. Although some – both Ukrainian and foreign – individuals concerned privately expressed to us support for such a vision, until this is translated into more official and public policy, it is unlikely to have much impact on how intercountry adoption is approached in the coming years.

Recommendation

- ↳ In harmony with long-term planning to develop appropriate measures to prevent child abandonment and relinquishment, to provide suitable solutions for children in need of out-of-home care, and to promote national adoption, consideration should be given to setting official targets for planning and steps designed to enable the phasing out of large-scale recourse to intercountry adoption in consequence.

5.4. THE INTERCOUNTRY ADOPTION PROCESS IN UKRAINE: MAJOR ISSUES OF CONCERN

We see the following spheres in particular as being vital to tackle, in policy and practice, as part of any attempt to secure improvement in the capacity of the intercountry adoption system to protect the human rights of children:

- The role of the NAC (5.4.1)
- An inappropriate matching process (5.4.2)
- The ban on agencies (5.4.3)
- The role of interpreters (5.4.4)

- The adoption decision and the period for appealing the decision (5.4.5)
- Financial issues (5.4.6)
- Post-adoption reporting (5.4.7)
- Revocation of intercountry adoptions (5.4.8)
- Respite care abroad (5.4.9)

5.4.1. The role of the National Adoption Centre (NAC)

Ukrainian Law and Practice

The NAC is not only the official focal point for adoptions in and from Ukraine – i.e. in essence, Ukraine’s “Central Authority” – but it is also the only entity, in Ukraine or elsewhere, that is permitted to manage the database and to disclose the identity of Ukrainian children needing intercountry adoption.

The role, tasks, functions and rights of the NAC are set out in detail in the Regulations of the Child Adoption Centre under the Ministry of Education and Science (Order n° 98 of 1996, with modifications in 1999 and 2000).

Among other tasks, the NAC centralises the dossiers of Ukraine’s adoptable children in a register or “database” (art. 3), ensures the acceptability of foreign adopters’ applications (arts. 3 & 4), and enables prospective adopters to select a child on the basis of the dossiers (art. 4). The NAC, which has been until September 2005 within the Ministry of Education, is funded from government sources and no charge for its services is levied on prospective adopters, before or after the event (art. 7).

The NAC provides PAPs with the necessary information about adoptable children (art. 4). The NAC has a list of foreign PAPs, and checks the “completeness and correctness” of their documents (art. 4).

Since authorised and accredited bodies (be they foreign or national) do not exist in Ukraine, the NAC staff – a total of some 25 persons, including support staff – are in charge of all adoption-related work and face an extremely heavy workload. Their qualifications as regards adoption are said to stem more from their work-experience at the NAC than from prior specialised study (we found no special requirement in the law for working at the NAC). The professional staff have direct contact with every prospective adopter without exception. This is a quite common feature of central authorities or focal points in “countries of origin”, but it is time consuming, can cause temptations to engage in bad practice, and is in no way necessary for a professional adoption process.

The applications of prospective parents are vetted by the NAC to ensure that documentation is complete and up-to-date. This seems to be an administrative exercise and we are not aware of dossiers being refused at this stage on grounds other than incomplete or out-dated documentation. If the application rules are met, the NAC informs the potential adopters of the date when they should travel to Ukraine and the exact time at which they should come to its offices for an appointment to “select” their adoptive child. This procedure, which is itself of major concern to us, is set out in detail in 5.4.2 below.

The NAC provides necessary documents (letter of referral, etc.) for completing the adoption process.

International Principles and Ethical Guidelines

States should designate a Central Authority (HC art. 1). In a State of origin, this Authority should *inter alia*:

- Ensure that all alternatives to keep the child in his/her own family, including the extended family, have been explored, and that adoption is in the best interest of the child (CRC and HC preambles, see also point 2.3);
- Ensure that intercountry adoption is subsidiary to domestic adoption (HC art. 4 b, see also point 2.5).
- Be responsible for establishing that the child is adoptable (HC art. 4, see chapter 3) and ensuring that the child be prepared for adoption.
- Monitor the entire adoption procedure (notably matching, the first contacts between the child and the prospective adoptive parents, costs, etc.) (HC arts. 5, 8, 9, 15, 29, see also 5.4.2).
- Ensure that all the documents are preserved in order to make it possible for the adopted child to search for his or her origins (HC art. 30).
- Authorise and monitor foreign accredited adoption bodies (HC art. 12).

Some of these tasks may be delegated to competent authorities (other public authorities) or accredited bodies (ABs). This delegation is particularly necessary where there are significant numbers of adoptable children.

The Central Authorities and ABs shall employ a competent team of personnel with multi-disciplinary professional qualifications (HC art. 11.b). They would include professional social workers, psychologists, lawyers and medical doctors with working experience in the field of child welfare and adoption (HK guideline 4.2, ISS/IRC Chapter “Protagonists”).

Good practices in the Adoption Central Authority⁶²

It is essential that States reflect upon the role of and, consequently, the qualifications and the profile that the Central Authority should possess. It plays a «central» role in ensuring that adoption takes place in the best interests of the child. This implies, particularly in States of origin where adoptability is decided upon and where matching takes place, that:

- the Central Authority should be a competent entity in respect of the rights and the protection of the child, either through its election or its creation in the heart of the welfare structures for children and the family, or by the make-up of its professional team and its multi-disciplinary profile;
- it should be conceived as a professional body where professional competence and ethics of the rights of the child prevail over partisan political considerations;
- its professional staff and its upper echelons should have security of tenure irrespective of the repetitive changes in the administrative or political hierarchy or periodic administrative rotations; experience is acquired little by little and it is of paramount importance, for reasons of efficiency and quality in the best interests of children, to maintain the stability of these experienced and able teams.

Recommendations

- ↳ The Adoption Central Authority should by law have a competent staff with multidisciplinary professional qualifications (law, psychology, social work, medicine), in a number that corresponds to the number of children adoptable abroad and to the specific tasks to be ensured by the Central Authority. They should benefit from special training based on international knowledge in the field.

⁶³ Adapted from Operational Manual, op. cit., note 21.

↪ The Ukrainian authorities should embark, as a priority, on an in-depth reflection exercise to ascertain at which level (*raion, oblast*, national) each step of the adoption process should preferably be undertaken, and by which entity. On the basis of an initial review, one might reasonably consider that :

- Bodies at the local/regional level may be best-placed to ensure effective efforts to reintegrate the child in the (extended) birth family, permanency planning, the management of foster and residential care, the assessment of the adoptability of the child, the preparation of the child, the entire domestic adoption process, the implementation of the subsidiarity principle of intercountry adoption, and monitoring the meeting and the first days (or probationary living period) of the child with the Ukrainian or foreign prospective adoptive parents before the legal finalisation of adoption;
- Bodies at the national level may be best-placed to ensure the assessment of the files of foreign prospective adoptive parents, matching for intercountry adoption, monitoring the entire intercountry adoption process (including costs) and the authorisation and monitoring of foreign accredited bodies.

The resulting division of tasks between the local/regional and national authorities should be reflected in the law and regulations, which should also detail their responsibilities for mutual co-operation and the communication and conservation of the files. The Adoption Central Authority should be given ultimate responsibility, in law, for good practice in the whole process and should therefore be entitled to issue guidelines for local/regional authorities and to train their staff.

See also our recommendations regarding matching (5.4.2), authorization of foreign accredited bodies (5.4.3), and the role of interpreters (5.4.4).

5.4.2. An inappropriate matching process

Ukrainian Law and Practice

The aim of adoption is to identify suitable parents to provide a permanent home for individual children, taking into account the formers' aptitudes and the latter's specific characteristics and needs. The current selection and matching process may be grounded in a laudable objective – preventing “adoption shopping” – but international experience shows that such a process is hardly conducive to ensuring optimal professional matching that can influence so much the future success of the adoptive relationship.

The NAC gives foreign PAPs information about the children who have been on the central register for more than one year (Resolution 1377 para. 15).

The fundamental problem lies in the fact that PAPs “select” a child rather than being matched with a child by professionals, in total contradiction with the principles set out in the 1993 Hague Convention and other internationally accepted international standards. However, we need to set out here the details of this “selection” process, partly to explain additional causes for concern and partly because it has many direct and indirect ramifications for other aspects of the intercountry adoption process that are of concern to us.

Prospective parents are subjected to tremendous pressure at the selection stage. Anecdotal evidence suggests that, because of the limited human and logistical resources available at the NAC, the prospective parents will normally have anything from 30 to 60 minutes to make their selection; under certain circumstances that were not made clear to us, they may be given 2 or even 3 hours in total to declare their potential interest in a specific child. Such prolongations are usually discouraged, however, since it upsets the

schedule for both staff and the other prospective adopters. Many PAPs complain that the atmosphere is anything but conducive to making reasoned decisions that can have life-long consequences for both themselves and the child. Because of the pressures, it is more than clear that prospective adopters often decide to select (and subsequently to adopt) a child whose characteristics – age, health status, etc. – do not correspond to their original desires or felt-competence. This does not mean that the adoption will consequently turn out to be a negative experience, of course; however, going into an adoption with an attitude under-hinged by a degree of disappointment or resignation certainly enhances the risk of subsequent problems.

PAPs are provided with a selection of children's dossiers (each consisting of one recto-verso page, in Ukrainian) that give basic health and other details, including what is usually just a passport-size photo. The details and photo will often be at least a year out of date, however, reflecting the time the child has been on the "national register." In principle, some at least of these dossiers have been pinpointed by NAC staff on the basis of *prima facie* compatibility with the PAPs' dossier. The PAPs study them in the company of their interpreter and one of the psychologists employed by the NAC. The psychologists have to be familiar with each dossier they present, though they will not have personal knowledge of the children. Their essential task seems to be that of explaining each child's situation and helping the prospective adopters to decide on their selected child. A medical doctor is also present all the time to clarify any medical diagnoses in the dossiers. If, for whatever reasons, they decide not to select any of these children, they will likely be shown one or more larger "generic" files containing similar dossiers of numerous children. Whatever, they are aware that, unless they select a child within this timeframe, they will have to request a further appointment which, if granted (as is usually the case), is likely to be at least a week later.

Once the prospective adopters have found a child's dossier of potential interest, their interpreter – or sometimes an NAC staffer – will phone the director of the facility where the child is located to obtain updated details of the child's situation and health. If, on the basis of this knowledge, they confirm their interest in principle, the NAC will issue them with a letter of referral (Resolution 1377 para. 15) allowing them to meet the child – and only that child – and they then travel to the facility with their interpreter to do this. Again they know that, if they do not accept to adopt the designated child as a result of the meeting, they will have to motivate their refusal in writing and request a new appointment with the NAC to begin the whole selection process again (Resolution 1377 para. 17), probably at least one week down the road.

In sum, as highlighted by the above, the prospective adopters carry out a rushed "self-matching" exercise and there is essentially a complete absence of "matching" by professionals. Again, while this does not doom an adoption to failure, it undoubtedly increases the risk considerably.

Clearly the results of the NAC appointment are **the** crucial element in the adoption process, and there is every opportunity to influence them. The NAC director distributes the files of newly-available children from the database to the psychologists each morning, so all are aware of the existence of the dossiers of any children who may be especially attractive to prospective foreign adopters. If an interpreter has been able to arrange, as they therefore try to do, an appointment at the first hour – or, we understand, even before the NAC's normal starting time – and a given psychologist is in possession of an "attractive" dossier, the prospective adopters in question will have first choice regarding that child, whose dossier will then be removed from the selection of those to be considered by others. For those with privileged relationships, it appears that this whole process can be pre-arranged. This tallies with the affirmations of many adoptive parents that certain interpreters are able to secure young healthy children for their clients and that it is best to have an "early slot" in the daily appointments schedule

We were also interested in how selection might be influenced by any privileged relationships existing between countries or interpreters on the one hand, and specific facilities on the other. For example, we were told that four out of five children adopted from one Odesa facility went to Italian parents, whereas in contrast US adoptions outnumber those to Italy for Ukraine as a whole. In other country situations, it has been found that “unusual” concentrations of adoptions from a facility or from an area – through a given agency or to a given country or region thereof, for instance – have resulted from questionable practices linked to special relations entertained. We were not able to secure information from a sufficient number of sources to enable us to look further into this issue as regards Ukraine, but we believe that this question should be studied.

International Principles and Ethical Guidelines

Obviously, the international principles and ethical guidelines that apply to the matching process in intercountry adoption are very similar to those we have set out for domestic adoption (Chapter 4), but given their importance we restate them here for ease of reference:

- *What is matching?*

It is a **proposal to establish an adoptive relationship** between a particular child and a particular family. An adoption in the best interest of the child is one that creates both a situation which respects the biological family and new family relationships that satisfy the child and the adoptive family. Matching is therefore a key point in time. It is the convergence of two life plans: that of the child, and that of the family in whose care he/she is to be placed (ISS/IRC guideline 18).

- *Who should be in charge of matching?*

Matching should be **assigned to a team** and not be left to the responsibility of an individual; the team should be composed of child protection professionals trained in adoption policies and practices. They should preferably be specialists in psychosocial fields (ISS/IRC guidelines 22 to 26).

- *Who should never be in charge of matching?*

Matching must never be left to the initiative of PAPs choosing a child among others from catalogues or through visits to institutions (ISS/IRC guidelines 22 to 26). Some psychologists indeed stress the risks for the child’s emotional development and for successful bonding between the child and the prospective parents if the latter are placed in the position of “choosing” a child. The fact of “choosing” a child brings with it a high risk that the child simply become the “answer” to the prospective adopters’ desires rather than being seen as an individual with his or her own characteristics and needs.

- *What is the task of the professionals in the matching process?*

Matching is a question of professionals choosing the most suitable family for the child, based on medico-psycho-social professional criteria, and not proposing the child successively to several applicant families. If the verification of the legal and medico-psycho-social adoptability of the child and the selection and preparation of the PAPs are undertaken properly, experience shows that in the vast majority of the cases, PAPs accept the proposed child. This is the national and international adoption practice of most countries, notably those that are parties to the 1993 Hague Convention and those that are concerned about ethical practice.

- *What should be taken into account in order to choose the most adequate family for the child?*

In considering possible adoption placements, persons responsible should select the most appropriate environment for the child (UNDSL art. 14). Matching should be the

proposal of an adoptive family for a child that fits the life experience, characteristics and needs of that child (ISS/IRC guideline 19).

- *What should be the procedure?*

Central Authorities of the States concerned should exchange the psycho-medical-social reports on the child and on the prospective adopters (HC arts. 15 &16).

The Central Authority of the State of origin should determine if the envisaged placement is in the best interest of the child (HC art. 16). The Central Authority of the State of origin should transmit to the Central Authority of the receiving country the dossier of the adoptable child(ren) with the reasons for its determination on the placement (HC art. 16.2) .

The matching is done after the agreement of the PAPs (*before* the first meeting between the child and the PAPs, the matching should be submitted for approval to the chosen adoptive family through the competent body, preferably in a face-to-face contact with a professional, ISS/IRC guideline 28), and the approval of Central Authority of the receiving State. It is a joint decision between the competent authorities of both States (HC art. 17).

The transfer of the child to the receiving State may only be carried out after all the verifications in the two States have been done (HC art. 19). The goal is to avoid practices that put the authorities before a *fait accompli*.

- *When should matching take place?*

After child protection professionals have established the psycho-medico-social and legal adoptability of the child;

After child and family protection professionals have established the psycho-medico-social and legal adoptive eligibility and suitability of the possible PAPs;

Before a meeting in person between the child and the applicants has taken place (ISS/IRC guidelines 20, 21 & 29, HC art. 29);

After the Central Authorities of both States have agreed that the adoption may proceed.

- *Is any contact between PAPs and the child's parents or carer allowed before matching?*

In the spirit of article 29 of THC-1993, any contact between prospective adoptive parents (PAPs) and the child's parents or carer should be prohibited until the matching decision has been made. There shall be no contact between them before the principal verifications (adoptability of the child and respect of the principle of the best interest of the child; subsidiarity of the adoption; consents of the birth parents or competent authority; suitability of PAPs) have been carried out in the State of origin and the receiving State.

There are two exceptions: when the adoption takes place within a family or if the contact is in compliance with the conditions established by the competent authority of the State of origin (HC art. 29), but these exceptions should be interpreted narrowly. In our view, the case by case basis for possible exceptions to article 29 is to be preferred. If the exception is implemented so broadly that it becomes a general rule, article 29 risks losing its meaning. If they are to be effectively implemented and monitored, the exceptions in individual cases should, moreover, be decided in the framework of close cooperation between Central Authorities of countries of origin and receiving countries. This special authorisation of contact should not allow for matching to be done by the PAPs and the child's parents or carer.⁶³ This principle of absence of contact before the official matching is essential for the prevention of trafficking.

⁶³ For more detailed information on this issue, please refer to the Editorial of ISS/IRC Monthly Review n° 2005/6, www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.2005.6.eng.pdf.

- *Implementation of the matching*

When bringing the child and the adoptive family together, it is very important that:

- The child and the future adoptive family first be prepared for the proposed meeting (photos, exchange of information, information about attitudes or points to be careful about, etc.) (ISS/IRC guideline 30).
- The meeting be held in private and attended by persons who have been caring for the child (ISS/IRC guideline 30).

The proposed matching should be followed by a face-to-face meeting between the child and the prospective adoptive family, and wherever possible, by a brief period of getting to know each other through contacts and living together, supervised by a professional (ISS/IRC guideline 29). At this point PAPs can still change their mind, but if the matching has been done in a professional way and respecting all the guarantees explained above, there are usually no problems.

There should also be professional follow-up during a *probationary period for bonding*, before the adoption order is pronounced by a court.

Good practices in matching⁶⁴

Matching is initially conducted on the basis of the child's file and those of the different prospective adopters, from whom one family will be chosen. This entails the files being as complete as possible.

There is no magic formula for matching. However it is very important that a competent authority establishes the criteria for guiding the work of the professionals in that agency or in the agencies responsible for the matching in matters of domestic and inter-country adoption. The family chosen should possess the characteristics compatible with the temperament, personality, and the physical and psychological needs of the child. It should be able to cope with the problems that can arise, after the adoption or in adolescence, due to the traumas or deficiencies the child has lived through earlier. It should have demonstrably special skills for adopting a child with special needs, be these physical (medical status, disability) or personal (for example, age, sibling groups, sequelae of trauma). Hence the importance of the detailed description of the personalities of both parties in the files and an objective assessment (in the applicants' file) of the prospective adopters' resources and limitations, and of the home and external environment to which the child would have to adjust.

Recommendations

- ↳ All mention, in the law and pertinent regulations, about the PAPs selecting the child or about the NAC or another authority communicating information about adoptable children to Ukrainian or foreign PAP's with a view to selection must be removed.
- ↳ Matching in intercountry adoption must be assigned to a multidisciplinary team of the NAC and never left to the responsibility of an individual or the PAPs themselves; the team should be composed of child protection professionals trained in adoption policies and practice.
- ↳ Training of professionals must be developed on good practices in matching, based on international experience. Professionals of other States of origin could participate in an exchange of views and experiences with their Ukrainian counterparts on this topic. Matching criteria should be subsequently defined and regularly reviewed by the professionals concerned.

⁶⁴ Adapted from Operational Manual, op. cit., note 21.

- ↳ If the outcome of the matching process is successful, there should be a mandatory period of “pre-adoption contact” under the supervision of a professional
- ↳ When forwarded by the local authorities to the NAC, the files of adoptable children must be complete (including not only medical but also psychological, family and social data) and up-to-date.
- ↳ Any significant local/regional variations from national statistics regarding rates, age, sex, origin and destination of adoptees should be investigated to determine the reasons behind them.

5.4.3. The ban on agencies

Ukrainian Law and Practice

Motivated essentially, it appears, by the concern that private agencies involved in inter-country adoption make financial gain from their activity, and that this runs counter to the CRC,⁶⁵ Ukraine has banned both domestic and foreign agencies from working in this sphere within its territory:

“Mediation and commercial activities with regard to the adoption of children, their placement in custody, care or education in Ukrainian national’s families, of aliens or stateless persons are not allowed” (FC art. 216). The Criminal Code includes also such prohibition (art. 115.2).

The question of “financial gain” as opposed to “undue” or “improper” financial gain, key to analysing the merits of this ban, is discussed fully in Annex 1 “Acceding to the 1993 Hague Convention.”

Ukraine could not of course ban the operation of such agencies in other countries, notably in those countries to which Ukrainian children leave for adoption. Hence, such agencies are employed, in their home countries, by many of those who successfully apply to adopt Ukrainian children. Many applicants, however, choose to pursue adoption “independently” or “privately” – i.e. without recourse to the services of an agency. Indeed, one ramification of the ban on agencies may well be to encourage independent adoptions.

Interestingly, many countries whose children are adopted abroad – such as Albania, Bolivia, China, Ethiopia, Honduras, India, Niger, Russia (draft project) and South Korea – have taken exactly the opposite course: they have banned the independent route.⁶⁶ They require potential adopters to be assisted by specialised agencies authorised by them and accredited to operate in the receiving country concerned on condition that they fulfil specific criteria set by both countries’ Authorities. Not surprisingly, these criteria always include, over and above professional competence, their not-for-profit purpose and the absence of undue or improper financial gain from services provided.

The basic reasoning behind this approach is simple: it is far easier – though by no means problem-free – for the State to monitor the activities of a limited number of selected authorised agencies than to monitor those of potentially several hundred individuals pursuing adoption in the country at any one time. Moreover, professional services including psychosocial support to the whole adoptive family and post-adoption reporting are more likely to be fulfilled if an accredited body commits itself to performing them, and they are part of the requirements for the adoption body to be authorised to work in the country of origin.

⁶⁵ CRC Art. 21.d: “[States Parties shall] take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.”

⁶⁶ See IRC, « Obligation to go through an inter-country adoption accredited authority? », www.iss-ssi.org/Resource_Centre/Interdiction_adoptions_internationales_priveesANG.pdf

A similar divide exists in the policies of “receiving countries.” The Authorities of a number of these States – such as France, Spain and the USA⁶⁷ – indeed allow their citizens to carry out totally independent adoptions. The so-called “right” to pursue independent adoptions is fiercely defended by many actual or prospective adopters in these countries, sometimes on “principle”, sometimes because an independent process usually costs adopters less, may be faster and is often less subject to controls – but to the potential detriment of the long-term interest of the child and of the adoptive family as a whole. In contrast, other receiving countries – such as Canada (Ontario and Quebec provinces), Denmark, Finland, Italy, Norway and Sweden – require their citizens to adopt through an accredited agency, while the authorities of others – such as Australia, Belgium, Germany, Netherlands, New Zealand – have closely monitored “independent” adoptions with the result that they are rare and/or supervised no less than those effected through accredited bodies.

While adoptions conducted through agencies still have to be monitored, of course, evidence collected to date tends to show that the risks inherent in independent adoptions as regards ensuring compliance with safeguards for children’s rights and the success of the adoption substantially outweigh those to be confronted as far as accredited agencies are concerned.⁶⁸

International Principles and Ethical Guidelines

Adoption arrangements should be made through government adoption authorities (HC art. 6), who may delegate some of their tasks to accredited bodies (AB) (HC arts. 9-13 & 22, UNDSL P art. 20, HK guideline 4.1).

Making it compulsory for PAPs to go through ABs constitutes a guarantee for inter-country adoptions (UNDSL P art. 20, HK guideline 4.1). Independent adoptions should not be allowed (Rec. 1443 (2000) p. 2, HK guideline 4.1). These ABs must not only be accredited by the receiving countries (HC art. 9-11, HK guideline 4.12), but also authorised by the country of origin (HC art. 12, HK guideline 4.12).

An accredited body shall:

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation (HC art. 11).⁶⁹

All ABs should be submitted to periodic control and surveillance by the competent authorities of the respective States, both receiving and of origin (HC arts. 10 & 11.c, HK guideline 4.12).

The Central Authorities and the ABs shall employ competent staff with multidisciplinary professional qualifications (HC art. 11.b). They would include professional social workers, psychologists, medical doctors and lawyers with working experience in the field of child welfare and adoption. Any non-professional staff shall be supervised by such qualified workers (HK guideline 4.2, ISS/IRC Chapter “Protagonists”).

⁶⁷ Under a draft Regulation with a view to the ratification and implementation of the 1993 Hague Convention by the USA, however, US residents would be obliged to have recourse to an accredited agency in order to adopt in a Hague country.

⁶⁸ See, for example, «Preliminary Findings of a Joint Investigation on Independent Intercountry Adoptions», Defence for Children International / International Federation Terre des Hommes / International Social Service, March 1991.

⁶⁹ See also Editorials of ISS/IRC Monthly Reviews n° 70, www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.70.eng.pdf and 71, www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.71.eng_000.pdf.

A country of origin is not obliged to authorise all ABs that request permission to operate (HC art. 12). According to the number and profile of its children adoptable abroad (see 5.4.2), it can co-operate with a restricted number of receiving States, and preferably also of accredited bodies, which can propose files from PAPs who precisely match the needs of the children (See also Annex I below “Acceding to the 1993 Hague Convention”).⁷⁰

Good practices for adoption accredited bodies⁷¹

The mediation of these specialised adoption bodies accredited by the receiving States is a safeguard. They play the role of a “close third party», making it possible for those concerned - the birth parents, the child and the prospective adoptive parents - not to be reduced to a paper file. They foster the link between the two countries involved, because they know them both and help communication with various protagonists so as to maintain direct contacts with them.

The areas in which such a body’s presence can make an important difference are the following:

- Information, awareness raising, preparation of prospective adoptive parents
- Outline of the skills of prospective adoptive parents in order to better define the child’s profile that they might receive in adoption; motivation to encourage greater maturity among prospective parents to make themselves available for a child with special needs.
- Matching: to involve the adoption body at a given moment with the choice of an appropriate family for a specific child can be a positive contribution to the child, because the body can participate in assessing the suitability of the skills of the families that could provide care for the needs of the child for whom a family is being sought; it is certainly an advantage when it entails submitting the proposed choice for the approval of the prospective adoptive parents, because it makes personalised support possible.
- In cooperation and under the monitoring of the authorities of the country of origin: accompaniment of the adoptive parents in the country of origin; preparing the adoptive parents for the first meeting with the child; support during the meeting and for the “probationary” period of living together - the presence of the body at these stages reduces tensions and anxieties, as well as playing a positive role in facilitating the initiation of the child-parents relationship.
- In cooperation with the authorities of the country of origin: preparing the child for adoption or training staff or the foster family who look after him in order to brush up their skills to be able to assume the role.
- Proposing post-adoption support services and reporting.

For the State of origin, the following is entailed:

- To evaluate periodically the need for inter-country adoption in their country: a) to note the diverse profiles of children in need of an adoptive family and who will have difficulty in finding one within the country (age, sex, state of physical, mental, emotional health; special needs, for example sibling groups) and b) to estimate the number of children involved.
- On the basis of these data, to define the profile and estimate, in the interests of the child, the desirable number of families, foreign accredited bodies and receiving States with which to develop co-operation.
- To inform the receiving States about these needs and to establish norms of co-operation (including monitoring) with them that are relevant for achieving this objective in the framework of HC.

⁷⁰ See also Editorial of ISS/IRC Monthly Review n° 2005/5, www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.2005.5.eng_000.pdf.

⁷¹ Adapted from Operational Manual, op. cit., note 21.

For the receiving State, the following is entailed:

- To gather information about the needs of the country of origin with respect to inter-country adoption.
- On this basis, it is the responsibility of the receiving State: to limit the number of bodies accredited to work in the State of origin according to the needs of the said country and to elaborate criteria for accreditation that ensure that the bodies authorized to co-operate with this country of origin will have the knowledge and skills required to meet the needs of the children and of the country of origin.

It is appropriate to underline the key role that is also played by **the representative** (a person or an agency) of the foreign accredited body in the State of origin: the professional and ethical qualifications (including the financial aspects) are of paramount importance. The definition of the responsibilities that are to be delegated will have to be established jointly between the two States and take into account the present needs of the State of origin (for example, preparing the child for adoption, accompaniment of the adoptive parents in the country of origin, support during the period of getting to know each other, post adoption reporting, etc). In many countries the professional competence of the representative in the psycho-social area would be a major contribution to the child's interests and those of the adopting family. It is the responsibility both of the authorities in the receiving State and in the State of origin to ensure the adequate qualifications of the representative before granting accreditation or authorisation to the adoption body, and then to monitor the work of the representative.

Recommendations

- ↳ We suggest that recourse to not-for-profit (non commercial) professional and specialised adoption bodies could contribute to providing, in cooperation with and monitored by the Ukrainian Authorities, several guarantees relating to respect for the rights of children, including: necessary information for, and selection and preparation of, the prospective adoptive parents; post-adoption services and follow up of the adoption in the receiving country. These bodies may also provide, if requested by the Authorities, support in spheres such as the preparation of the child to be adopted, accompanying the PAPs in the country of origin, participation in monitoring the first meeting between the child and the PAPs and the probationary pre-adoption contact period, and post-adoption reporting.
- ↳ Consequently, we urge that Ukraine's position on agencies and independent adoptions be reversed (including the legal provisions in the Family Code, art. 216), making it compulsory by law for PAPs to go through a foreign accredited body and banning independent adoptions.
- ↳ The Ukrainian Authorities should proceed to draw up detailed criteria and conditions for their initial, time-limited authorisation and periodic re-authorisation, in numbers and of a nature appropriate to meeting the needs of children adoptable abroad in the period in question. The legal conditions for authorisation of foreign accredited bodies should include the definition of tasks permitted and required, their non-profit status, admissible fees, reasons of withdrawal of the authorisation and the conditions of designation and monitoring of their representative in Ukraine.
- ↳ Knowledge of the number and profiles of children needing intercountry adoption (cf. review of database, above) would make it possible to determine the number of receiving States and the number and profile of accredited agencies required to meet their needs and be an additional requirement for authorising foreign OAA.

5.4.4. The role of interpreters

Ukrainian Law and Practice

In the absence of agencies in particular, interpreters currently play **the** key role in guiding prospective foreign adopters through the adoption process. Undoubtedly, they generally work hard. Essentially interpreters organise every aspect of adopters' stay in Ukraine from arrival to departure and accompany them throughout – and indeed they are more commonly referred to as “facilitators” or “*accompagneurs*.” Under current Ukrainian procedures, their assistance is vital since they alone are familiar with both the system and the language. The list of activities that they carry out is impressive, e.g.:

Interpreters act in adoption procedures without being accredited and legally or officially recognised to do so. Under the terms of the 1993 Hague Convention,

- ✓ Translation of the Dossier (if he/she is not a translator, find a translator person/agency)
- ✓ Making all types of arrangements with the Court and attending the court hearing.
- ✓ Visit the NAC with the family to follow up the paper work and check on different NAC letters and approvals.
- ✓ Accompanying the family to the child's place of birth to obtain the new birth certificate.
- ✓ Meeting families at the airport, transporting to the hotel/apartment and around Kiev.
- ✓ Accompanying the family to obtain new passport.
- ✓ Accompanying family by train, in the region, finding suitable accommodations.
- ✓ Preparing the necessary documents for the Embassy in Kyiv.
- ✓ Attending meetings with the family at the orphanage. Translating all information.
- ✓ Attending required doctor's visit.

however, only professional, multidisciplinary and non profit **organisations** may be accredited and authorized to mediate in intercountry adoption.

Although interpreters clearly make financial gain from their adoption-related activities, unlike agencies their involvement is neither prohibited nor even specified or explicitly regulated under Ukrainian law. They are subject to nothing more than generally-applicable legal provisions and, strangely, they seem not to be considered in Ukrainian practice as “mediators and persons who develop commercial activities with regard to the adoption of children” banned by the Family Code (art. 216).

It is our understanding that there are between 300 and 350 interpreters working, full-time or on a more occasional basis, in relation to intercountry adoption. While they are subject neither to authorisation nor to supervision, the NAC says it has an “informal register” of their details, but nothing more. Some work closely with specific agencies abroad, others seem to be more especially hired by “independent adopters” on word-of-mouth recommendation. Some, indeed, are listed by foreign consulates. Their status may be perceived or projected as ambiguous – indeed, one interviewee at a residential facility stated firmly, and repeated on being challenged, that they are “NAC employees” ...

By necessity or design, under the current system, interpreters are the “representatives” of prospective adopters: they interface with “the system” on behalf of the adopters, and thus they “facilitate” the adoption process in ways that go far beyond pure interpretation. In many cases, it appears that they physically submit adopters' applications to the NAC and seek the interview date, so they are the first contact between the NAC and the applicants. Some have developed privileged relationships that will, it was constantly affirmed to us, secure priority for their clients in various spheres. Many also advise, for example, on when it would be desirable for the adopters to disburse “expediting fees” or make “gifts” to advance the process.

Thus, interpreters can exert major influence on both the system and the adopters, and to some extent control how the adoption process is carried out. One interviewee stated clearly that “getting contacts and influence” is key to an interpreter’s success in carrying out the “facilitator” side of his or her role. Another well-placed interlocutor went considerably further, claiming that many are “out-and-out crooks.”

By Ukrainian public service standards (i.e. those applying to virtually everyone with whom they interact professionally), interpreters also tend to earn a considerable amount of money. Being paid by foreign adopters or their agencies, they can command fees equivalent to several times the salaries of those with whom they are dealing. The latter are well aware, moreover, that interpreters can pay, or can easily secure additional monies from their clients, to achieve certain outcomes.

The disequilibrium of financial power – and thus the opportunities and motivation for any of the actors involved to take advantage – is an inherent and generic problem in intercountry adoption, and one that almost all countries of origin therefore have to confront. Under section 5.4.6 below, we consider some of the financial issues involved as regards Ukraine.

Our concern at this point, however, is that Ukraine’s legislation has, presumably inadvertently, placed interpreters at the hub of the adoption process. Whether they like it or not, they can be central to getting things done because of the financial power and influence that they wield or to which they have access. And yet, as one interlocutor put it, they are “loose canons” with no accountability and no rules to follow. Some have gone too far and, as we understand it, are currently under criminal investigation by the General Prosecutor’s Office. But regardless of the incidence of criminal or illicit acts that may be attributed to some interpreters, it must be clear that their actual role in the intercountry adoption process does not correspond to what is required of a professional and child-driven process in line with international standards and safeguards.

International Principles and Ethical Guidelines

Adoption arrangements should be made only through government adoption authorities (HC art. 6) and accredited bodies (AB) (HC arts. 9-13 & 22, UNDSLPA art. 20, HK guideline 4.1).

Bodies and persons, not accredited but who are officially recognised under the terms of the 1993 Hague Convention, can also take part in adoption procedures, but they should:

- meet the requirements of integrity, professional competence, experience and accountability of that State; and
- be qualified by their ethical standards and by training or experience to work in the field of intercountry adoption (HC art. 22.2).

Notwithstanding the above, we would like to emphasise that a State Party to the HC may refuse the participation of such protagonists in adoption procedures when the procedures concern persons who reside in its State. To do so, it must make a declaration in accordance with the terms of art. 22.4 of the HC.

Bodies and persons referred to under article 22.2 of the HC pose two main problems in the adoption process. First, they are not mandatorily composed of a multidisciplinary team (see 5.4.3 and 5.4.4) and furthermore, they reintroduce the power of money into the process of adoption (see 5.4.6). Thus, it is highly recommended to make the declaration stated in article 22.4 of the HC in order to avoid their participation in the adoption process.

Recommendations

- ↳ According to the Hague Convention, Ukraine should legally forbid any individual to mediate in inter-country (and by analogy domestic) adoption, in the same way as any non- authorised organisation.

- ↳ Ukraine should introduce a system of authorisation of foreign adoption accredited bodies, as explained in section 5.4.3. The current role of interpreters should then logically be taken on by the representatives of the foreign accredited bodies, on a non-profit basis (only reimbursement of professional costs), under professional requirements (psycho-social training and experience...), with a clear description of their tasks, under the responsibility of the foreign accredited body and the control of the Ukrainian authorities. Any additional interpretation and logistical task relating to intercountry adoption should be performed on the request and under the responsibility of the foreign accredited bodies and their Ukrainian representatives. This system would conform to the 1993 Hague Convention, would offer professional guarantees to the child and the adoptive family and would contribute to eliminating undue gain from the adoption process.
- ↳ Ukraine, when acceding to the HC, should make a declaration under article 22.4 whereby it refuses the participation of bodies and persons that are not accredited but are officially recognised under the terms of the HC.

5.4.5. THE ADOPTION DECISION AND THE PERIOD FOR APPEALING THE DECISION

Ukrainian Law and Practice

At the time of our assessment missions, the following provisions applied:

The adoption decision is declared by a Court (FC arts. 223-225, Resolution 1377, para. 24), but one month has to elapse before the decision becomes into force – *res judicata* – (FC art. 225.1 and Code of Civil Procedure⁷² arts. 231.1 and 292.1).

During this period of one month following the day of announcement of the ruling on adoption, the decision can be appealed (Code of Civil Procedure art. 231.1).

In practice this has meant that the court appearance to secure the adoption order in principle leads to a one-month period during which the proposed adoption can be opposed – for example, by the birth mother or by potential Ukrainian adopters – before the adoption order becomes definitive.

However, the Court has the right to allow for immediate execution of the adoption decision (Code of Civil Procedure art. 218).

The period of one month can be waived in exceptional cases, such as where a delay in securing treatment for the child could seriously jeopardise his or her health or development (Order n°16 of 2002 of the Ministry of Health on carrying out changes and additions to the list of diseases, which provide the right of adoption of sick children without delay).

Interestingly, practice in this regard varies considerably from one *oblast* to another. Thus, it seems that the period is **never** waived in Dnipropetrovsk *oblast*, whereas elsewhere, at the other extreme, waiving is said to be more the rule than the exception. In practice, waiving can be motivated, according to one interlocutor, simply by the judge declaring his or her conviction that the child has clearly bonded with the prospective adopters.

Uneven application of this rule is well-known, and because of this there is much discussion on the most “favourable” *oblasts* from which to adopt. Indeed, the 30-day period means both added uncertainty and considerable additional expense for foreign adoptive parents – they either have to stay in-country or return home and make a second trip. On both counts they are highly motivated to secure the waiver through “influence.”

⁷² We refer here to the version of the Code of Civil Procedure in force until September 2005, at which point a number of modifications were approved. At the time of finalising this report, however, we were unaware of the exact nature of these amendments and it was therefore not possible to take them into account.

Furthermore, it has to be pointed that it is very harmful for the child to meet the prospective adoptive parents and subsequently once again feel “abandoned” when they go back to their country during the 30-day period; such an outcome should never be authorized by the Ukrainian authorities.

A delay for appealing a decision is necessary to respect the basic rules of administration of good justice, and can among others contribute to guaranteeing the lawfulness of the procedure, the rights of the birth parents and the subsidiarity principle of intercountry adoption. Nevertheless, this delay has to be balanced, in its goal and modalities, with the protection of the best interests of the child being the priority.

We have been informed unofficially that, as of September 2005, the period for appealing the adoption decision has been reduced from 30 to 10 days, and that it is no longer subject to a waiver on any grounds. If this is indeed the case, it takes account of our main concerns about the former system, i.e. the unduly long timeframe and the inconsistencies in applying the waiver, which could both motivate and provide opportunities for circumventing the rule.

Recommendation

- ↳ We consider that the 10-day delay for appeal could well constitute a balanced solution. It is important that the adoptive parents not be authorised to leave the country during all the procedure without the child once they have met him/her.

5.4.6. Financial issues

Ukrainian Law and Practice

While this is obviously a delicate subject to broach in this report, we see it as unavoidable in the context of an assessment on the topic of intercountry adoption. That said, in no way was it our mandate to carry out a quasi-criminal investigation, and we had neither the intention nor the means of doing so. Consequently, we are simply seeking here to set out issues that have been brought to our attention, or that we have identified, in the course of our discussions and research.

The first thing to recall at this point, and which constitutes the background to our consideration of the question, is that the NAC procedure is cost-free to prospective foreign adopters (see 5.4.1) and that, under Ukrainian law, “mediation and commercial activities with regard to the adoption of children [...] are not allowed” (FC art. 216).

There are of course various in-country requirements and services connected with the adoption process that are the legitimate subject of charges. These include translations, issuance of official documents, interpretation and trip co-ordination.

We also need to note current salary levels in Ukraine’s public sector. We understand that the official minimum wage was to stand at UAH 332 (approx. • 55) per month as of September 2005, and that the salaries of many civil servants are reportedly in the range of UAH 500-600 – thus up to • 100. One residential facility director informed us (spontaneously) that her monthly earnings were now UAH 900 (• 150).

Ukraine is at present a two-speed economy, where earnings in the private sector – especially when the activity in question in some way has international connections – can go way beyond these figures. Interpreters for foreign adopters freely “admit” to earning between UAH 1,000 and UAH 3,000 per adoptive couple –and we are told that each adoption is roughly equivalent, on average, to a month’s work for an interpreter, and thus to earnings of up to • 500. We were given to understand, however, that there was normally a considerable difference between “avowed” earnings and real income from this activity, and were also informed that a select few have been able to command fees from • 4,000 up to • 7,000. One interviewee claimed that on some occasions sums up to •20,000 had been

paid to interpreters by independent adopters, an amount that would include all necessary monies required for ensuring the successful and rapid conclusion of the desired adoption. That same interviewee commented, unsurprisingly, that “no one wants to say this.”

Many “real costs” of adopting from Ukraine, despite the free NAC service, indeed seem to be reflected in the “in-country” fees charged by many adoption agencies. The following figures from seven US agencies (all information in the public domain) documented in our files give an idea of the sums involved. It is commendable that figures such as these are now beginning to be made public. The information provided does not always make it possible, however, to determine exactly what is included or excluded from the “in-country” item in published fee schedules. That said, **the fees cited below are *always* listed as being additional to basic agency fees in the US (application, processing, “placement”, and other variously-described US-based services), home study, travel to and within Ukraine, accommodation and meals in Ukraine, and post-placement services:**

- **\$ 8,000** “foreign fee due prior to travel” plus “in-country fees” (unspecified amount)
- **\$ 3,600** “Ukraine Program Fee Part I, paid on completion of dossier” **plus \$6,200** (for child under 5) “Ukraine Program Fee Part II, paid on arrival in Ukraine”
- **\$ 10,000** “legal and facilitator fee” **plus \$ 500** as a “humanitarian fee”
- **\$ 11,000** “Foreign Adoption Fees”, paid in US and held in escrow until referral is accepted
- **\$ 12,500** “Country program fee” including “monies for humanitarian aid to orphanages or child welfare systems in Ukraine”
- **\$ 13,500** “in-country fee”
- **\$ 17,500** “in-country fees”

In principle, therefore, there is anything **between • 6,500 and • 14,000** ostensibly being disbursed in Ukraine for each US agency adoption, and possibly up to **• 20,000** for certain adoptions via other channels (this figure, we should emphasise, was ***not*** quoted in connection with US citizens). This, it can be noted, contrasts with the in-country costs of just **• 1,260** (out of a total adoption fee of **• 4,200**) publicised by the sole agency in France officially authorised to assist with adoptions from Ukraine.

We obviously have no precise idea where this money goes: for example how much is, in most cases, actually given to and retained by the facilitator; how much she or he has to disburse for legitimate reasons; and how much she or he “invests” to secure an optimal outcome for the prospective adopters and thus to secure all the more easily future clients.

Equally obviously, however, in the light of our wide-ranging discussions, we do have an idea of where at least some of the “sensitive points” lie, i.e. those where financial or material reward can and apparently does secure desired outcomes. Within the considerable limits of our mandate, we have cross-checked as far as possible the information gleaned in this regard. In our view, it would be both a disservice and unprofessional to prepare a report on the topic in question without making reference to these sensitive points which, we gather, are in many cases already informally acknowledged in many circles, if not usually documented explicitly.

- **At the NAC:** as mentioned above, there are ample opportunities for specific children’s dossiers to be “reserved” for the clients of specific interpreters. In addition, various aspects of the NAC process can be “expedited.”
- **The child’s dossier:** the medical diagnosis may be deliberately termed in such a way as to exaggerate the seriousness of a symptom or illness so that the child can be declared adoptable internationally without being on the national register for a

year, or so that Ukrainian adopters are discouraged from expressing interest to adopt on the basis of the dossier.

- **At the facility:** children may be “retained” for intercountry adoption by various means aimed at discouraging Ukrainians from considering their adoption; the director may be persuaded to issue a certificate of successful bonding on the prospective adopters’ first visit rather than after 1 or 2 days, and to “expedite” preparation of the other necessary documentation, which might normally take up to 5 days in all; the birth mother may “suddenly” appear when foreign PAPs are at the facility to meet their referred child and suggest that she might withdraw her consent unless she can be persuaded otherwise...
- **At the court:** the judge may be willing to schedule the hearing very quickly (in a day rather than in a month) and may be persuaded, *inter alia*, to waive the normal 30-day period during which the adoption can be contested by issuing an “immediate execution” order on the spot.
- **Speed of issuance of documents:** the local inspector has up to 10 working days to prepare the letter of approval required by the NAC; by law, the passport office also has 10 working days to issue the adopted child’s travel document; the issuance of these and other necessary documents can be significantly “expedited” by payments to the individual officials concerned (as opposed to the administration itself).

This is surely not an exhaustive listing, but it serves to show that not only questionable or illicit practices can be secured by financial or material reward, but also a far speedier procedure which can represent, *inter alia*, major financial savings to the prospective adopters.

Finally, let us re-emphasise that, in the context of this assessment, our purpose in recording the above is simply to demonstrate the virtual inevitability of financial irregularities in a context where the imbalance of economic power is so vast but where the oversight and accountability of those that hold that power – interpreters in particular – is so limited.

International Principles and Ethical Guidelines

Inter-country adoption, or an activity related to it, should not result in improper financial or other gain for those involved (CRC art. 21.d, HC art. 32.1, UNDSLPA art. 20, CoE Rec. 1443 (2000)⁷³ art. 2).

Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid (HC art. 32.2, HK guideline 4.15).

Accredited bodies are to be non-profit in nature (HC art. 11.a).

The directors, administrators and employees of bodies involved in an adoption (including the representatives of a foreign accredited body in the country of origin) shall not receive remuneration which is unreasonably high in relation to services rendered (HC art. 32.3).

Protection of the child in a vulnerable position must not become a source of inappropriate revenue or profit. It is essential that the following be proposed rapidly and periodically updated, at the national and international level, in both receiving States and States of origin:

- a list of the steps involved in adoption procedures, or related to adoption, that could justify a payment;
- ranges of emoluments, fees and the cost of services in adoption that could be considered reasonable (ISS/IRC Chapter “Protagonists”).

⁷³ CoE Rec. 1443 (2000): Council of Europe Recommendation on International adoption: respecting children’s rights (Adopted by the Parliamentary Assembly on 26 January 2000 at the 5th sitting); <http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/2FDocuments%2FAdoptedText%2Fta00%2FEREC1443.htm>.

Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made (Report and Conclusions of the Special Commission of 2000 on the Practical Operation of the HC1993⁷⁴, para. 42).

Recommendations

- ↳ In order to benefit from professional services, it is fully justifiable that PAPs pay for them, on the basis of the real costs of the service provided and not involving profit for the provider. This principle should apply with regard to public authorities and accredited bodies.
- ↳ A coherent policy approach should be drawn up regarding financial questions in the sphere of intercountry adoption. It should not be based on the principle that remuneration (“financial gain”) is to be banned as such, but should be founded on the dual principle that i) all costs and fees charged (including potentially by the NAC) must be transparent and must correspond to the value of services rendered and ii) the activities of accredited and authorised non-State entities must be of a not-for-profit nature.
- ↳ By law or regulation, every step of the intercountry adoption process should be described and the time-frames for each be defined, taking into account the general rule requiring the adoption procedure to be carried out expeditiously (HC 35). In this context – and although we do not recommend it – should Ukraine wish to single out and officialise specific “fast-track” services subject to expediting fees, these should be similarly identified and should in principle be strictly limited to the issuance of documents required by, but external to, the adoption process itself, e.g. the child’s passport.
- ↳ The NAC or its equivalent should publish a list of all steps (whatever authority is concerned) involved in adoption procedures, or related to adoption, that could justify a payment, as well as the ranges of emoluments, fees and the cost of services in adoption that could be considered reasonable. It should be sent systematically to all potential adopters and their agencies with the official response to their applications.
- ↳ It would be desirable to establish the manner in which such payments should be made, e.g. exclusively by the accredited agency or its representative in favour of a special account at the NAC, or another system precluding direct transactions. Penal sanctions should be prescribed in any case of violation of these rules.
- ↳ Offering, giving, requesting and receiving donations to those involved directly or indirectly in the adoption process should be explicitly outlawed and subject to penal sanctions.
- ↳ An in-depth investigation should be carried out, where appropriate with the cooperation of representatives of receiving countries, into the incidence, nature and ramifications of improper financial gain that has allegedly been taking place at various stages in the intercountry adoption process, with a view to determining effective measures to counter such activity.

5.4.7. Post-adoption reports

Ukrainian Law and Practice

The great majority of countries whose children are adopted abroad require that follow-up reports be submitted so that their welfare can be monitored. Officials and others in Ukraine are virtually unanimous in placing major emphasis on the importance of receiving such reports.

⁷⁴ <http://hcch.e-vision.nl/upload/scrpt33e2000.pdf>.

Post-adoption reports, and more specifically “monitoring respect for the rights of children after their adoption” is regulated in detail in Resolution 1377.

We understand that, reflecting this view of post-adoption reporting as a vital condition, the Ukrainian Authorities decided that new dossiers submitted by the citizens of Canada, France, Germany, Italy, Spain and the USA would not be accepted after 19 September 2005 and until further notice, due to non-compliance of a significant proportion of previous adopters from these countries with reporting requirements.

At present, the requirements set out by Ukraine in this respect are among the most demanding world-wide, especially as regards the duration of the reporting obligation which continues until the adoptee reaches the age of 18 years (annual reports for the first three years, and triennial reports thereafter). The majority of countries set a maximum compulsory period of 3 or 5 years following the adoption, and Ukraine may wish to review its demands in this respect.

The reports are to be sent in the first instance to the responsible Ukrainian consulate in the receiving country which, after checking them, sends them on to a special unit in the Ministry of Foreign Affairs that in turn examines them and transmits them to the NAC. Consular officials in the countries concerned are also mandated to visit adoptive homes to verify the child’s progress.

Post-adoption reporting is not mentioned in the CRC or, even more significantly, in the 1993 Hague Convention. At the Special Commission in 2000 examining the practical operation of the Hague Convention, it was nonetheless noted that this is a significant issue:

84 Article 9 of the Convention places a responsibility on Central Authorities to take all appropriate measures to provide each other with general evaluation reports about experience with intercountry adoption. **The Convention does not impose an explicit obligation to provide follow-up reports with respect to individual adoptions** [*Our emphasis*]. However, it is clear that such individual reports are often requested and supplied in practice, and that they are regarded in many countries of origin as an important safeguard.

85 In the discussion on individual reports, experts stated that **a balance had to be struck between protecting the privacy of the adoptive family and answering the legitimate enquiries of the authorities in the State of origin** [*Our emphasis*]. It was further noted that the transmission of information to the State of origin could also be of benefit to adopted children in their later lives and help ensure that adoptive parents remain aware of the children’s cultural and social backgrounds.

86 Experts indicated that in general their systems provided for such reports, but that there were differences from State to State in relation to the obligatory character of these reports. In certain States, post-adoption reports were only made with the consent and co-operation of the adoptive parents. Also different bodies were involved in assisting with the drawing up of reports, for example child welfare authorities or accredited bodies. **Concerns were expressed about the very long period of time during which some countries of origin expected the reports to be made** [*Our emphasis*]. A number of experts suggested that follow-up reports should only be required for a limited time period.⁷⁵

As recalled under 5.1.2. above, the recommendations of the September 2005 meeting of this same Special Commission go further, noting that it:

18. The Special Commission recommends to receiving States to encourage compliance with post-adoption reporting requirements of States of origin; [and] rec-

⁷⁵ Report and Conclusions of the Special Commission on the Practical Operation of The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (28 November – 1 December 2000), <http://hcch.e-vision.nl/upload/scrpt33e2000.pdf>.

ommends to States of origin to **limit the period in which they require post-adoption reporting** in recognition of the mutual confidence which provides the framework for co-operation under the Convention.⁷⁶

5.4.7.1. Considerations for determining reporting requirements

The problems and issues surrounding post-adoption reporting are indeed many and varied:

Incorporating reporting obligations into the legislation of the child's country of origin clearly has no direct effect, given that jurisdiction extends only to the national territory. It may have an indirect effect, however, to the extent that failure to provide required reports is perceived as a possible reason for the country of origin to restrict or ban adoptions to the receiving State(s) concerned. Agencies and governments therefore frequently urge adoptive parents to cooperate in submitting reports mainly to avoid jeopardising future adoptions to the country in question.

Reporting thus becomes in essence a moral obligation, but there are also moral and ethical arguments running counter to such an obligation, especially if it is demanded on a long-term basis. Generally adoptive parents would no doubt be prepared to provide information on the progress of the child after a certain time lapse that allows for adjustment and the potential appearance of concrete development factors. Some adoptive parents are happy and proud to demonstrate the beneficial effects of their care for the child. Others, however, see obligatory reporting as an unjustified imposition stemming from implicit mistrust – much in the same way as arbitrary and/or unwarranted identity checks by the police are resented. In addition, under the law of virtually all receiving countries, adopted children are totally assimilated into the family, with the same status as biological children once the adoption order is made or is confirmed following the child's arrival. Allegations of discrimination against families adopting internationally may be provoked by requiring them to report. The longer the reporting requirements, the more forceful such claims may become. As noted in para. 86 of the 2000 Hague Special Commission report quoted above, expectations that reports be furnished over a long period, such as that currently stipulated by Ukraine, may be unrealistic and, on balance, undesirable.

Reporting obligations may also be seen as reflecting mistrust of the efficacy of relevant services in the receiving country with responsibility for child protection. Under the CRC, States Parties are to ensure that these services act without discrimination in regard to "each child within their jurisdiction", which clearly includes children adopted from abroad. There are obviously failures, as in any human enterprise, but it seems unlikely that realistic reporting obligations on adoptive parents could mitigate these significantly. As far as we are aware, there is no evidence to suggest that children adopted internationally are at greater risk from abuse or neglect than any others, or that domestic services are less effective in their regard.

This said, it seems that receiving countries generally look on the wishes of countries of origin to keep some track of adopted children in the period immediately following adoption as being legitimate and as demonstrating responsible concern. In this respect, the Special Commission in 2005 indeed recommended that receiving States "encourage compliance with post-adoption reporting requirements of States of origin."⁷⁷ The USA, for example, "strongly encourages adoptive parents to register the children at the Ukrainian consulates in the U.S. The officer makes it part of the visa interview and they are reminded at the time they receive the visa. [...] In the rare case where the Ukrainians are concerned about the welfare of a child the State Department helps facilitate consular access to the child. The issue of Consular access is one we take very seriously and we will help the Ukrainians protect the interests of the child if it becomes necessary."⁷⁸

⁷⁶ Conclusions and recommendations of the 2005 Special Commission on the HC 1993, op. cit., note 21.

⁷⁷ *ibid.*

⁷⁸ Communication in the context of this assessment, US Embassy, Kyiv, 8 August 2005

Against this overall background, however, it may not be surprising that appropriate formulae could not be found to cover post-adoption reporting in the context of international treaties.

5.4.7.2. The current reporting process

There are also a number of practical issues to be broached as regards the reporting process as currently foreseen in Ukraine:

Almost 13,000 Ukrainian children are registered as having been adopted abroad since 1996 when the 2-year moratorium was lifted and the original NAC was set in place. **Resources available to consulates for accomplishing their assigned task** of monitoring these children's welfare in even a minimally meaningful way are, understandably, utterly inadequate in the great majority of cases. Under current conditions it would surely be unrealistic, even on the supposition that it was desirable, to envisage increasing those resources. In addition, consular staff clearly lack any formal powers to check on adoptive family situations; the ability to carry out "home visits" necessarily depends entirely on the cooperation of the individual families concerned. As far as systematic monitoring is concerned, we doubt that the role currently vested in consulates is or could be a truly effective means.

The subsequent stage of the **verification system**, where the follow-up reports forwarded by the consulates are screened by the Division on Adoption at the Consular Department of the Ministry of Foreign Affairs, also seems to be of doubtful cost-effectiveness. We were told, for example, that the total number of such reports received by this Division from January to mid-June 2005 was a staggering 2,429, i.e. an average of 100 per week. One staffer is responsible for reviewing all these reports; it is understood that the Division has raised questions in regard to less than 1 per cent of reports, and that in none of these instances were issues relating to exploitation invoked.

The final stage involves **transmission of the reports to the NAC "for analysis."** We understand that again these reports are reviewed by NAC staff, then placed on file. We have no indication of steps having been taken as a result of screening at this stage. While there is logic in the idea that post-adoption reports be reviewed and conserved at the NAC, as the official focal point on adoptions (equivalent to the Central Authority under the 1993 Hague Convention), we find that their prior passage through consulates and the Ministry of Foreign Affairs does not constitute a justifiable mechanism.

5.4.7.3. Nationality issues

Another factor pertinent to post-adoption reporting on Ukrainian children is the fact that **Ukrainian law does not allow for recognition of dual nationality**. This leads to an apparently untenable situation in that, on the one hand, all Ukrainian children adopted by foreigners retain their Ukrainian nationality until age 18 (at which time they may renounce it) but invariably are also granted the nationality of the PAPs as soon as the adoption order becomes effective or once they arrive within the territory of their State. As far as we understand, in strictly formal terms, this constitutes a *de facto* but somehow "accepted" violation of Ukrainian law.

It should be stressed, however, that according to the international conventions (CRC and Hague Conventions), the State responsible for the protection of a child, whatever his/her nationality, is **the State of his/her habitual residence** (in this case the receiving State). Under the 1993 Hague Convention, moreover, the Central Authorities of the country of origin and receiving country are to cooperate to resolve problems consequent to a child's adoption abroad.

Indeed, the question of **nationality** has been considered in the framework of efforts to improve the practical operation of the 1993 Hague Convention. As the following quote shows, the Special Commission debate in 2000 shed light on certain trends and issues in this sphere, and of some relevance to the problem posed above, although it did not tackle explicitly the specific question as it applies to Ukraine:

80 Discussion in the Special Commission revealed a clear trend in favour of **according automatically to the adopted child the nationality of the receiving State**. Several experts described the systems operating in their countries. In many countries the acquisition of the nationality of the receiving State depended on one of the adoptive parents also having that nationality. In one case (Norway) the consent of a child above the age of twelve was needed. The type of adoption involved may also be relevant.

81 It was also pointed out that the acquisition of the nationality of the receiving State was regarded by certain States of origin (for example, Paraguay and China) as a precondition to intercountry adoption. Indeed, this could cause a problem where the adoptive parents are habitually resident in, but do not have the nationality of, the receiving State. In a case of this kind the country of origin might allow the adoption to proceed if the child obtains the nationality of the prospective adopters. It was pointed out that some systems do allow, in the case of certain categories of parents living abroad, the assumption by the adopted child of the parent's nationality.

82 Discussion revealed differences as to the actual moment of the acquisition of the new nationality by the child. Either the child was deemed to have acquired the new nationality once the adoption was pronounced in the State of origin, or upon the child arriving in the receiving State.

83 The question was raised whether the acquisition of the nationality of the receiving State was regarded in the State of origin as ending the child's existing nationality. One expert pointed out that some States of origin would not be concerned with this matter and the child would be left with two nationalities. In such cases conflicts might be resolved by the application of the rule of the effective nationality.⁷⁹

The 2005 Special Commission meeting went further:

17 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.⁸⁰

It seems reasonable to suppose that this would be considered to be the child's "effective nationality."

5.4.7.4. Non-respect of reporting requirements

In this respect, we also need to consider in greater depth here the question of "**non-reporting**" and its ramifications. As mentioned previously, post-adoption reporting is tantamount to no more than a moral obligation: there are absolutely no measures that can be taken, or sanctions applied, in regard to adoptive parents who fail to submit such reports. Motivations and reasons for providing, or not providing, reports may vary widely. Over and above some adoptive parents' wish to demonstrate that the child is thriving in their care and/or, on a human level, to provide spontaneously news on the child to his or her former carers and the authorities of the country of origin, it is evident that a major factor in the provision of reports lies simply in the desire not to jeopardise future adoptions from the country in question. This motivation will be particularly strong among agencies in the receiving country that will want their programmes to continue, and on the part of the authorities of certain States seeking to facilitate intercountry adoptions. In our view, it will be less consistent among adopters who have chosen to adopt independently, i.e. without going through an accredited agency.

We noted in the introduction to this sub-section (5.4.7) the recent initiative of the Ukrainian Authorities to suspend acceptance of PAP dossiers from a number of countries because of

⁷⁹ Report and Conclusions of the 2000 Special Commission on the HC 1993, op. cit., note 21.

⁸⁰ Conclusions and recommendations of the 2005 Special Commission on the HC 1993, op. cit., note 21.

non-respect of reporting requirements. Foreseeably, the competent Authorities of certain of these countries have reacted by trying to reach an agreement on the issue with Ukraine. There has not surprisingly also been a flurry of activity on the part of the Authorities, agencies and prospective adopters in all the countries concerned to try to encourage “recalcitrant” adoptive parents to file overdue reports. However, even to the extent that the parents in question prove to be traceable and contactable, they can still only be “invited” to comply, and could never face any sanction for not doing so. It seems likely nonetheless that more reports will be secured. Whether or not these can genuinely constitute “reassurance” for Ukraine, and whether or not the “symbolic” country-wide suspensions are to be deemed appropriate measures to take in the circumstances, are issues open to no little conjecture.

We deal elsewhere in this report with the overall question of the possible role of agencies and of the dangers of allowing “independent adoptions.” As far as post-adoption reporting alone is concerned, in light of the foregoing paragraphs in the sub-section, we believe that **the onus should be placed on agencies rather than on individual adopters**. Thus, reporting would be part of the “post-adoption services” that authorised *bona fide* agencies would be expected to provide, an explicit aspect of the contract that these agencies draw up with prospective adopters and a requirement imposed by the country of origin when considering their authorisation to operate within its jurisdiction. In the receiving country, agencies are undoubtedly best-placed to secure the required information. Furthermore, Ukraine would then be in a position to withdraw authorisation of agencies that do not provide such reports.

Whatever the system, there will undoubtedly be cases where post-adoption reports are not submitted. In some countries, there is no requirement to register change of domicile; adoptive parents who move house may therefore become untraceable (well over ten per cent of US residents move each year, for example). Some agencies may indeed fail in their duties, or they may cease operation. Some parents may in the end prove to be uncooperative. It is important that “non-reporting” not lead to suppositions or rumours that the children concerned are likely to have been harmed or exploited (see 5.1 above).

International Principles and Ethical Guidelines

Post-adoption reporting is not mentioned in the CRC or, even more significantly, in the 1993 Hague Convention.

Good practices for post-adoption reports⁸¹

Generally States of origin require the sending of reports on the evolution of the child and his or her adjustment to the new family and social environment. The periodicity of these reports and the length of the follow-up period vary according to the State. It is normally social workers from the accredited bodies – be they private or under the Government of the receiving State – who interview the adoptive families and draft the reports with photographs that the authorised body (or the Central or competent Authority) sends to the State of origin. **It is not appropriate for these reports to be drafted directly by the adoptive parents or on the basis of telephone conversations without arranging at least one visit to the adoptive home by a professional in childhood matters.**

It is desirable that these reports contain information about the child’s state of health, the quality of the adoptive parents-child relationship, and the integration of the child in his or her new environment.

Post-adoption follow-up is one of the biggest concerns of the protagonists of the States of origin. However, the following elements must be taken into account.

⁸¹ Adapted from Operational Manual, op. cit., note 21.

- **Follow-up, arranged as supervision, should not take up too much time.**
- The adoption decision creates a new family relationship. In the legislation of most receiving States, the privacy of the family is recognised. It is not possible to force a family to open its doors to third parties to check up on them or supervise them if there are no serious suspicions of ill treatment or other serious problems.
- To make the follow-up possible, it is recommended :
 - o to work with accredited bodies of the receiving State, because they established a personal relationship of trust with the family before and during the adoption, and to consider in the co-operation agreement the obligation on the part of the body to ensure support services for assistance to the adoptive family (child-parents) and the drafting of post-adoption follow-up reports for a set period ;
 - o To have a contract with the chosen family signed (at the matching stage) in which they commit themselves to facilitate the follow-up work after the adoption.
- Once the adoption is recognised in the receiving State, the child becomes a beneficiary of the system of protection offered by that State for all children permanently resident on its territory. This greatly limits the risks of being unprotected or abused.
- **It is essential to be aware of the fact that the success of adoption is largely decided before the adoption**, at the level of prevention. Once the adoption has taken place, it is impossible to go back on it. **A well prepared and executed adoption ensures far fewer risks of failure.** Thus it is very important:
 - 1) to make a serious study of the child and his family of origin;
 - 2) to make a serious study of the adoptive capacity of the applicants and to be demanding in awarding recognition of their suitability;
 - 3) to do a good job of matching;
 - 4) to prepare the child and the potential adopters for the adoption.

Recommendations

- ↳ For Ukraine, as for other countries of origin, we feel that it is justifiable and feasible to request a maximum of three obligatory follow-up reports within the four or five years following the adoption: for example, the first within 3 or 6 months confirming the arrival of the child, a second assessing adjustment and development after one or two years and a final report after four or five years.
- ↳ As one condition of securing authorisation and its renewal, we propose that agencies be required to provide a limited number (e.g. three) of **post-adoption reports** within the first four or five years following an adoption in which they were involved. These reports should not be prepared by the parents themselves but by the agency or a recognised social service, necessarily on the basis of a home visit.
- ↳ We further suggest that adoptive parents may be encouraged to provide subsequent reports but that this not constitute an obligation and that, in any case, the absence of such reports not be construed or described as an indication of potential violation of children's rights.
- ↳ We recall that, should Ukraine have concerns about an individual adopted child, the Ukrainian Central Authority can send a request for information to the Central Authority of the receiving State (art. 9.e HC).
- ↳ Under the terms of that same provision, should the adoption break down for any reason – relinquishment, removal of the child for his/her safety, death or incapacity

of the adopters, etc. – a report should clearly be required of the Central Authority (or, for non-Hague adoptions, the competent authorities) in the receiving country.

- ↳ We believe that it is important that the nationality status of adopted children abroad be clarified, and not left to an informal understanding as now seems to be the case. In our view, and bearing in mind that receiving States of the adoptive parents are encouraged to, and increasingly do, grant their nationality automatically to foreign adoptees, Ukraine should consider incorporating into its law on citizenship a derogation clause which would enable Ukrainian children adopted abroad to benefit from dual nationality. Coupled with other measures – particularly those foreseen by the 1993 Hague Convention – such a move would set the scene for a more coherent approach to post-adoption reporting.

5.4.8. REVOCATION OF INTERCOUNTRY ADOPTIONS

In Ukraine, the permissible reasons for revoking an intercountry adoption are the same as those for a domestic adoption (see 4.7 above)

We are most concerned by the fact that 22 intercountry adoptions have had to be revoked in the period 1999-2004. Of special concern is the fact that no less than eight of these were revoked in 2004 alone, concerning children adopted by citizens of Italy and USA (3 cases each) and Germany and Spain (1 case each). We unfortunately do not have information on the specific grounds for each revocation, the stages at which they were pronounced (and therefore within which jurisdiction), or the alternative solution proposed for the children concerned.

It is true that, in both absolute terms and compared to the revocation rate for Ukrainian domestic adoptions, this figure is extremely small – just one for every 550 intercountry adoptions completed in the period. We have no reason to doubt that these revocations were ordered in accordance with the rights and best interests of the child, and we are well aware that no system can be failsafe.

Revocation is nonetheless an extreme measure. We presume, therefore, that both the Ukrainian and foreign Authorities concerned will have made concerted efforts to identify any failings in the system that may have allowed, or contributed to, these adoptions having been pronounced in the first place, and that efforts have been made to remedy them.

Recommendations

- ↳ If it has not been done, we strongly recommend that the Ukrainian and foreign Authorities concerned examine and remedy any failings in the system pertinent to the subsequent need to revoke these intercountry adoptions.
- ↳ We also strongly recommend that, in cooperation with the receiving countries, the Ukrainian authorities investigate the current situation of these children and the necessary permanency planning relating to their future, if it is not known.

5.4.9. RESPITE CARE ABROAD

Thousands of Ukrainian children in State care are invited for “holidays” abroad each year; they usually stay with host families for periods ranging from 10 days to 3 weeks. Canada, Germany, Ireland, Italy, Spain and the USA are among the main destination countries cited. These schemes, run by local NGOs, were sparked in particular by the immediate aftermath of the Chernobyl disaster, but now concern many regions of Ukraine and, indeed, have extended to other CIS countries including notably Belarus, Kazakhstan and Russia. Most children concerned are aged between 7 and 16 years.

In Europe, these holidays are now, for the most part, reportedly conceived as “respite care” enabling the children to experience an improved living environment during the break.

Very little research has been carried out on the practice and ramifications of this activity. A rare exception is the recent study⁸² financed by the European Commission's DAPHNE Programme which attempted above all to map the practice. It found, for example, that most EU countries have associations running such schemes: in 2002, Italian families hosted almost 31,000 children from the region, and the other major host country – Germany – has taken in an annual average of 20,000 children since 1989. We understand, moreover, that Italy alone hosted 6,000 Ukrainian children under such schemes in 2004.

According to the DAPHNE study, only Italy has a designated body for monitoring this activity, the "Committee for Foreign Minors" under the Ministry of Welfare. Three other countries – Spain, Sweden and the UK – now provide for certain supervisory functions to be carried out by public bodies. Efforts have begun in Denmark, Germany, Ireland and the Netherlands to establish an "umbrella organisation" to set standards for care, draw up host family selection criteria, and promote exchange of information on good practice. Otherwise, associations currently have considerable – and sometimes virtually complete – freedom of operation.

This lack of oversight is clearly a cause for concern. Another concern relates to the quality of follow-up and support for these children on return: the fact that they are suddenly placed into family life and then returned to their original residential setting has been shown in other contexts (e.g. Romania, Poland) to bring with it the risk of disturbing psycho-emotional sequelae.

We were told that selection of the children is done by or with the director of the facility concerned, with the approval of the competent authority. We were also informed of cases where border control officials prevented children from leaving Ukraine under these schemes because their papers were not in order. Ukraine itself therefore appears to take the issue quite seriously.

In some cases, notably those involving trips to North America, **a declared objective is to facilitate adoption** of these older children who, because their age makes them hard-to-place, are unlikely to find adoptive homes if their selection depends only on their dossier and there is no active search for a suitable adoptive family (see the "reversal of the flow of the files" advocated under 5.2. above). As far as we know, no research has been devoted to the results for children when "respite care" leads to adoption, and this constitutes a serious knowledge gap.

We have not learned of any allegations over untoward practices in adoptions of this kind. We understand that so far all the children have returned to Ukraine and that families wishing to adopt one or other of them have then gone through the normal process with the NAC, while specifying the child from the start. We are concerned, however, at the lack of professional matching for those adopted and the possible impact of "double rejection" for those whose host family chooses not to proceed with adoption.

Finally, it can be noted that there are no explicit international standards or principles governing the practice of "respite care" abroad.

Recommendations

- ↳ We recommend that the consequences of respite care for children – whether or not they are subsequently adopted – be the subject of serious study.
- ↳ All aspects of good practice (selection and preparation of the child; selection and preparation of the family; matching; follow-up) should apply in the framework of these programmes.

⁸² REMATCH Project (Risk Evaluation of Models of Assistance through Temporary Children's Holidays): *Indagine sulle forme di accoglienza temporanea di minori e in particolare sul c.d. soggiorno a scopo terapeutico. Documento di sintesi.* CENSIS, Camino, EPE, Altea Espaca. Rome, 10 November 2003

- ↳ We strongly recommend that, in line with the recognition of its importance for regulating international placements (including “respite care”) falling outside the scope of the 1993 Hague Convention⁸³, Ukraine also considers acceding the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children which, *inter alia*, would provide protection guarantees for Ukrainian children hosted in other Contracting States.
- ↳ We also recommend that the adoption of older children be promoted preferably by the “reversal of the flow of the files”, with the Ukrainian Adoption Central Authority sending files of such adoptable children to selected foreign adoption accredited bodies able to identify prospective parents willing and suited to adoption such children, and to submit their files. If necessary, the positive experience of other States of origin in this regard could be shared with the Ukrainian authorities.

General Recommendation on intercountry adoption

- ↳ **On the basis of our overall findings, we strongly recommend that Ukraine takes the necessary steps to bring its intercountry adoption system into conformity with the provisions and requirements of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, taking account of our specific recommendations in this regard, and that it then proceeds as quickly as possible to accede to that Convention.**

⁸³ Conclusions and Recommendations of the Second Meeting of the Special Commission on the Practical Operation of The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (17-23 September 2005), para. 21

6. SUMMARY OF MAIN CONCLUSIONS AND RECOMMENDATIONS

6.1. MAIN CONCLUSIONS

On the basis of this assessment, our main findings are that:

- The child welfare system in Ukraine is much less oriented towards family preservation than towards providing out-of-home care for children who are deemed as not being, or who cannot be, looked after appropriately by their biological parents.
- This means that an unnecessarily large number of children are deprived of parental care and find themselves in alternative care situations.
- These alternative care situations still overridingly take the form of institutional placements rather than being family- and community-based.
- Whatever the kind of care provided, it is looked upon more especially as a long-term response, adoption being virtually the only opportunity for leaving the care system since no attempt is made to reunite children with their parents or relatives once they are in care.
- At the same time, the primacy of domestic adoption is not ensured and, although it is not well-accepted in the population, efforts to promote and facilitate it are substantially inadequate.
- As a result, there is excessive reliance on adoption in its intercountry form, but this is not carried out according to internationally-accepted standards and, in its current state, it is open to widespread abuse spurred by opportunities for undue financial gain at various stages of the process.
- The absence of a professional matching process, and the consequent selection of children by the foreign prospective adoptive parents, is a major problem in itself as well as a cause of other key problems in this regard.
- The need to reform the intercountry adoption system is contested in many quarters that have an interest in maintaining the status quo, hence attempts to divert attention away from in-country problems and towards unfounded allegations of the post-adoption exploitation of Ukrainian children.

6.2 THE MAIN THRUSTS OF OUR RECOMMENDATIONS

In response to these findings, our recommendations are therefore directed towards:

- Promoting family support programmes that will help to prevent family breakdown, abandonment and relinquishment.
- Establishing a planned and effective de-institutionalisation programme that emphasises the role of family-based and family-type forms of out-of-home care.
- In that framework, ensuring the provision of short- and medium-term care solutions for children and families in difficulty, combined with concerted efforts to enable children to return to the care of the birth family wherever possible.
- Creating the conditions required for the development of domestic adoption.
- Re-thinking the intercountry adoption system to bring it into line with international standards and good practice, notably by ensuring its professionalisation, making it more responsive to the needs of children requiring adoption abroad, and precluding opportunities for undue financial gain and the abuses that this can engender.

- Supporting Ukraine's efforts to accede to the 1993 Hague Convention, in part by combating false information concerning the potential ramifications of this initiative and unjustified moves to focus attention on what might happen to children once they are adopted abroad rather than on how they come to be adopted abroad in the first place.

6.3 OUR MAIN RECOMMENDATIONS

A wide range of specific proposals have been made and explained at pertinent points throughout this report on our assessment. Here we set out only what we consider could be key elements from these proposals, and without going into the detail of each in the way that they are dealt with in the main body of this report.

At a general level, we recommend that a **full review of current child-oriented public authorities** be carried out in order both to streamline, concentrate and enable effective coordination among the services concerned and to distribute responsibilities and decisional competence appropriately at national, *oblast* and *raion* levels. This review should cover not only out-of-home care but also support to families in order to prevent separation.

When assigning the level(s) and source(s) of financing for family support services and alternative care options, it is vital to ensure that the assignation of such budgetary responsibility in no way influences decision-making by the competent authority on the measures or care options to be applied in relation to a given child. It should also be the aim of financing policy to promote and enable equally comprehensive and quality services and care provision to be ensured by local systems throughout the country.

Key recommendations for child protection law and policy

Regional child and family welfare authorities with general competence relating to social services and all care options should be set up to coordinate the support and care services and decide on and monitor the situation of every child in family difficulty.

We urge the development of an even stronger policy objective that places emphasis on the provision of **psycho-social support to families in difficulty**, in order to resolve problems of abuse and neglect, to prevent family breakdown and to avoid the potential abandonment and relinquishment of children.

In this context, specialised workers should be trained and appointed to counsel parents who contemplate leaving their baby at the **maternity hospital** or placing their child in **out-of-home care** regardless of his/her age.

At the same time we propose that justification for the **removal of a child from his/her family** be restricted and notably ordered, save in exceptional circumstances of immediate risk of harm, only after all efforts to work with the parents and child(ren) concerned, with a view to securing children's maintenance with the biological family under appropriate conditions, have proved ineffective.

Similarly, the definitive **withdrawal of parental rights and responsibilities**, and therefore recourse to this option, should be restricted and notably ordered only after all efforts to work with the parents and child(ren) concerned, with a view to securing children's reintegration with the biological family under appropriate conditions, have proved ineffective.

We recommend a review of safeguards and procedures relating to **consent** for a child to be adopted, and urge in particular that, if consent is not obtainable from the birth parents, it should be given by the local child welfare authorities, not the director of the facility where the child resides.

Specific policies to improve financial, practical and psychological assistance to families with **children with grave illnesses, disabilities or HIV/AIDS** should be introduced, to avoid wherever possible the need for envisaging their placement in alternative care.

Key recommendations for law and policy on alternative care

A global assessment should be conducted in the short term, notably covering the **current situation of Ukrainian residential facilities** and needs in order to implement a comprehensive and qualitative policy based on the international standards and founded on giving priority to family solutions and to small family-type residential facilities.

A specific programme based on a long-term vision of **de-institutionalisation** should then be drafted, taking account of these needs and setting realistic goals and timelines for implementation. The public **promotion of foster care** should be conducted in order to elicit the interest of more potential foster parents.

In developing non-institutional forms of alternative care, we recommend special attention to providing for family-based and family-type options suitable for meeting children's **emergency, short-term and medium-term care needs**, including in the case of temporary difficulty or absence of parents or those instances of removal of a child for safety and protection reasons that can be addressed through effective family support.

We urge that each child coming into care be the subject of **“permanency planning”** designed to foresee his or her eventual return to the care of the parents or other relatives under appropriate conditions or, if this is impossible or contrary to the best interest of the child, to secure a suitable and stable alternative family-based placement, including consideration of adoption where warranted. This planning should be carried out with the fullest possible participation of, in particular, the parents and the child concerned. The child and as far as possible and needed his/her birth family should also be prepared for any consequent change in his/her life.

All foster and residential placements should be the object of **regular review** as to their continued suitability and necessity, taking account of any developments in the child's needs and wider situation and the ability of the care option in question to respond effectively.

The norm for foster and residential care, of whatever kind, should be that active efforts are undertaken to ensure that children **maintain contact with their parents** unless this is patently not in their best interests.

Key recommendations for law and policy on domestic adoption

We propose that measures be taken to counter phenomena such as stigma and the “secrecy” of adoption that constitute an obstacle to **creating a “culture of adoption”** in Ukraine. These should include public awareness campaigns and would involve amendments to the law as regards “secrecy” (see below).

While we recommend that the **approval process** for Ukrainian prospective adoptive parents be more stringent and cover psycho-emotional aptitude, we also propose that, once approved, they then benefit from **cost-free services** through to completing adoption.

We recommend that prospective adoptive parents receive full information, advice and **counselling from professionals** throughout the adoption process and during the post-adoption period.

Matching Ukrainian prospective adoptive parents with an adoptable child must be carried out in a professional and pro-active manner by a specialist multidisciplinary team, probably at the *oblast* level. This will mean, *inter alia*, dispensing entirely with “selection” by prospective parents on the basis of children's files, and placing legal responsibility on the *oblast* administration to make every effort to identify suitable adoptive parents for children registered as adoptable.

In keeping with this attempt to ensure genuine application of preference for domestic over intercountry adoption, the **legal period** during which the *oblast* authorities are responsible for actively seeking to identify suitable Ukrainian prospective adopters for a given child should extend over several (e.g. four) months. For especially hard-to-place chil-

dren, Ukrainian prospective adoptive parents should then be sought during e.g. two more months in other *oblasts*, through the national database of adoptable children and a well organised coordination between the regional and national authorities. The maximum length of active search uniquely for Ukrainian prospective adopters should then be e.g. six months.

A substantial contribution to reducing the currently high proportion of domestic adoptions that are subsequently **revoked** would be made by professional involvement at all stages: assessment of adoptability of the child and suitability of the prospective adoptive parents, their preparation, matching and post-adoption support.

We propose that adoptive parents receive **benefits** equivalent to those allocated to birth parents, both as a concrete measure to encourage domestic adoption and as a symbolic means of demonstrating the equivalence of “birth” and “adoption”.

We recommend that adapted professional practices be additionally developed regarding foster care and adoption of **children with special needs** and possibly special benefits granted to Ukrainian prospective foster and adoptive parents as a concrete measure to encourage family-based care solutions for them.

Key recommendations for law and policy on intercountry adoptions

We strongly recommend that Ukraine takes the necessary legislative and administrative steps to bring its intercountry adoption system into conformity with the provisions and requirements of the **1993 Hague Convention** on Protection of Children and Co-operation in Respect of Intercountry Adoption, and that it then proceeds as quickly as possible to accede to that Convention.

We recommend that Ukraine’s intercountry adoption system be henceforth conceived and implemented as patently “**child-driven**”, so that intercountry adoption responds to the specific needs of children requiring it.

With this in view, we suggest that the Ukrainian Authorities carry out a **systematic review of the characteristics of children** who, now and in the future, are registered as being adoptable abroad, and hence requesting submission of the files of potentially suitable prospective foreign adoptive parents, rather than receiving the files of all potential adopters.

In order to achieve this, the current approach will need to be thoroughly overhauled and the adoption process professionalised; the following are the main new directions recommended:

- We recommend that a **designated Central Authority for adoptions** have, as its prime duties, the verification of the application of the subsidiarity principle, the regular review of the characteristics of the children in need of intercountry adoption and the request to foreign Central Authorities for files of prospective adoptive parents fitting the needs of these children, the assessment of the files of foreign prospective adoptive parents, matching for intercountry adoption, monitoring the entire intercountry adoption process (including costs) and the authorisation and monitoring of foreign accredited bodies.
- Tasks relating to intercountry adoption that should therefore be delegated to the **regional child and family welfare authorities** principally include: preparation of the child, professional accompaniment of the first contacts between the child and the foreign prospective adoptive parents and assessment of the bonding process during the probationary period before the judicial finalisation of adoption.
- The **staff** of the Central Authority and of the regional authorities must be sufficiently numerous, receive the necessary training, and have the necessary experience, to carry out the tasks assigned to them in a professional manner.
- **Matching** foreign prospective adoptive parents with a child requiring intercountry adoption must therefore be carried out by a specialised team of the Central Au-

thority comprising child protection professionals trained in adoption policies and practice.

- As a consequence, all aspects of the system and procedure by which a child is “**selected**” by prospective parents on the basis of the file must be abolished.
- We very strongly recommend that Ukraine substantially qualifies its blanket ban on the operation of agencies in the sphere of intercountry adoption, and introduces a system of **authorisation of foreign accredited bodies** in this domain. The Ukrainian Authorities should proceed to draw up detailed criteria and conditions for their initial, time-limited authorisation and periodic re-authorisation, in numbers and of a nature appropriate to meeting the needs of children adoptable abroad in the period in question. The legal conditions for authorisation of foreign accredited bodies should include the definition of tasks permitted and required, their non-profit status, admissible fees, reasons of withdrawal of the authorisation and the conditions of designation and monitoring of their representative in Ukraine.
- As one condition of securing authorisation and its renewal, we propose that agencies be required to provide a limited number (e.g. three) of **post-adoption reports** within the first four or five years following an adoption in which they were involved. These reports should not be prepared by the parents themselves but by the agency or a recognised social service, necessarily on the basis of a home visit.
- Concomitantly, “**independent**” **adoptions**, i.e. those undertaken directly by the prospective adopters without recourse to an accredited agency, must clearly be banned by law. As a direct consequence of this measure, activities undertaken by interpreters and other individuals or bodies involved in assisting foreign prospective parents in Ukraine will be limited exclusively to those requested by, and under the responsibility of, the authorised foreign accredited body concerned.
- All **permissible costs** related to an intercountry adoption process must be assessed and made public knowledge by the Authorities, and in particular spontaneously communicated to the diplomatic missions of countries to which Ukrainian children are adopted, to authorised foreign agencies, and to all concerned with intercountry adoption in Ukraine. Requesting, receiving, offering or giving monies or equivalent considerations over and above those costs should be punishable under penal law.

We also urge a review of safeguards as concerns programmes of **respite care abroad** for Ukrainian children, with special attention to the possible subsequent adoption of these children by persons in the host country, and we suggest that Ukraine consider acceding to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

We further urge all concerned – intergovernmental organisations, non-governmental organisations, State officials, and individuals in whatever capacity – to refrain from promulgating **unsubstantiated allegations** as to the welfare of Ukrainian children who have been adopted abroad, while encouraging them to report any warranted concerns. It may be desirable to launch a research project on the outcome of intercountry adoption for a specific sample of Ukrainian children, with international support if necessary.

Key recommendations for legislative measures relating to adoption

All the above-mentioned recommendations should be reflected in the appropriate legislation. A comprehensive review of Ukrainian legal texts relating to child and family welfare should be carried out, to ensure conformity with international instruments such as the CRC, the 1993 Hague Convention and with internationally accepted good practice.

With specific regard to the adoption system, the Family Code (FC) and Resolution 1377 in particular should be revised and developed.

At the moment some Ukrainian legal provisions regarding adoption are in explicit contradiction with the international instruments, notably:

- *The fact that Ukrainian and foreign prospective adoptive parents “select” a child rather than being matched with a child by professionals (Resolution 1377).* All mention, in the law and pertinent regulations, about the prospective adoptive parents selecting the child or about the National Adoption Centre or another authority communicating information about adoptable children Ukrainian and foreign prospective adoptive parents with a view to pre-selection must be removed. Matching should be done by a multidisciplinary team and with all the guarantees explained in chapters 4.4. and 5.4.2.
- *The ban on adoption agencies (FC art. 216).* The term “mediation” should be defined by the law. Adoption agencies should not be included; instead it should be compulsory for prospective adoptive parents to go through a foreign accredited body and the law should create a system of authorization of adoption agencies. On the other hand, the activity of any individual who mediates in adoption process, and any non-authorised organisation, should be proscribed by law; they could be considered as “mediators” under the terms of art. 216.

Some other provisions in Ukrainian laws and regulations do not respect international principles and guidelines, notably:

- *Birth parents have the right to withdrawal their consent until the Court grants the adoption (FC art. 217.6).* Consent of the birth parents to the adoption of their child should be definitive at the moment of the matching. For a child who is given for adoption after the birth, the fact of having to wait for two months before his/her parents give their consent is a long period (FC art. 217.3). At the same time it is very important that birth parents have a reflection period before they give their consent to adoption. In order to find a balance between the two, we recommend that the consent should not be given before one month after the birth has elapsed. Furthermore, any consent (independently of the age of the child) can be withdraw after a period of one month in the same manner it has been given.
- *Adoptable children have to be registered in the National Database for one year in order to be adopted internationally (Resolution 1377 para. 7).* The legal period during which children are registered in the Database should be as explained above: four months in their oblast Database, and a further two months in the other *oblasts* of the country. Then one year in the National Database (for domestic and intercountry adoption), renewable for one year, if necessary and there is still potential to find an adoptive family, but only until the child has attained 14 years old. In the other cases, another permanent solution, preferably of a family type, should be sought.
- *We found no specification of the grounds (only “if it is necessary in his/her interests”, LCP art. 14) on which the Court might base its decision of separating a child from his/her parents* (as opposed to a decision on deprivation of parental rights, a different issue which is indeed regulated in art. 164 of the Family Code, see also chapter 3 of this report). The law should establish concrete reasons in order to avoid an undue recourse to this possibility.
- *Only adopters who have adopted a child within two months following his/her birth, have the right to assistance from the day of the adoption until the end of the maternity leave (LGAFC art. 8).* All adopters should have the right to the equivalent of statutory maternity leave and allowance as soon as the adoption order is pronounced, regardless of the age of the adopted child.
- *The secret of adoption and the adopter’s right to change information on the place and date of birth of the child in his/her certificate (FC arts. 226 to 231).* As noted above, these provisions should be abolished and adopted children should have access to information on their adoption, under certain guarantees and with professional support.

- *The grounds for recourse to revoke an adoption are quite broad (FC art. 238.1).* The law should be formulated in such a way as to make recourse to revocation of adoption more exceptional. For example, adoptive parents should not be allowed to revoke the adoption of the child if they discover that the child has a very serious untreatable illness (FC art. 238.1.1). In order to avoid this kind of situation, a better medical and psychological study of the child should be made before he/she is declared adoptable.
- *Dual citizenship is forbidden in Ukraine (Law on Citizenship).* The law should incorporate a derogation clause which would enable Ukrainian children adopted abroad to benefit from dual nationality.
- *Post adoption reports are compulsory until adopted children have attained the age of 18 years (Resolution 1377).* As noted above, the law should stipulate the requirement of a limited number (e. g. three) of post-adoption reports within the first four or five years following the adoption.

Finally, there are a number of good practices, highlighted in the report, which are not regulated in Ukrainian legislation and which should be the subject of legislative provisions:

- Each child should benefit from an individualised plan, including steps to ensure either that he or she returns to the biological family under appropriate conditions or will benefit from a stable care situation, preferably family-based.
- A preliminary study of the child and the birth family containing medico-social-psychological elements in order to determine the adoptability of the child.
- *The current law regulates the legal consequences of an adoption but is silent on any obligation to provide birth parents intending to consent to their child's adoption with information and counselling about these consequences and about alternatives to adoption.* Even if in practice it seems that Notaries explain these legal consequences to the birth parents, such provision of information and counselling on these issues should be compulsory and regulated by law.
- Preparation of the child for the adoption as well as guidance, counselling, preparation and assistance in the adoption process to the prospective adoptive parents.
- Legal responsibility of regional and national authorities to actively recruit Ukrainian prospective adoptive parents.
- The Adoption Central Authority should by law have a competent staff with multidisciplinary professional qualifications.
- The division of tasks between the local/regional and national authorities should be reflected in the law.
- The list and the amounts or ranges of amounts of authorised payments in inter-country adoption should be detailed and published in a regulation.

Key recommendations for training

The implications of our recommendations for training and professional development are considerable, stemming from both quantitative and qualitative considerations, i.e.: the investment that needs to be made in human resources in the child welfare sphere, and the new specialisations and skills that would have to be developed. This concerns notably but in no way exclusively the need to ensure:

- Psycho-social support to parents at risk of abandoning their child at the maternity hospital;
- Psycho-social assessments of, and support to, families in difficulty;
- Professionalisation of all aspects of family-based and family-type care;

- Preparation of “permanency plans” for children in care;
- Psycho-social and legal assessment of the adoptability of children;
- Psycho-social assessment of Ukrainian couples seeking to adopt;
- Matching and preparation of prospective adoptive parents and adoptable children;
- Psycho-social accompaniment and monitoring of the first contacts between a child and prospective adoptive parents and of the bonding process during the probationary period before the legal finalisation of the adoption;
- Psycho-social support and advice at the post-adoption stage;
- Specificities of the support to the birth family, permanency planning, foster care, residential care and adoption relating to children with special needs;
- Staff specifically qualified in adoption issues at the Central Authority and in the regional child and family welfare authorities.

Key recommendations for international cooperation

We recommend that the Ukrainian Authorities seek, and that international organisations and the competent authorities of other countries provide wherever possible, technical and other assistance based on experience regarding, in particular:

- Countering abandonment and relinquishment
- Developing family support programmes
- Implementing de-institutionalisation policies
- Developing family-type alternative care systems
- Drawing up permanency plans
- Assessing the psycho-social adoptability of children
- Promoting domestic adoption
- Selecting prospective adoptive parents in-country,
- Professionally matching both them and foreign prospective adopters with adoptable children
- Preparing children and prospective adopters for adoption
- Accompanying and monitoring their bonding process
- Offering post adoption services
- Adapting the whole range of services to the children with special needs
- Drafting legal reforms
- Devising and undertaking training programmes.

In no case should assistance – technical, financial or other – offered by a foreign country be linked with the provision by Ukraine of children for intercountry adoption to that country.

In the specific sphere of intercountry adoption, we also recommend that the competent authorities of major receiving countries, together with the Ukrainian Authorities and international organisations, make **concerted efforts to clarify and respond effectively to the concerns identified**, with special attention to ways of eliminating undue financial gain, ensuring professional matching and securing the reversal of the “flow of files”, thereby enabling Ukraine to express the needs of its adoptable children rather than dealing with all files submitted by prospective adopters.

ANNEX 1

UKRAINE'S ACCESSION TO THE 1993 HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

Responses to critical questions raised

Ukraine's accession to the 1993 Hague Convention on Protection of Children And Co-operation in Respect of Intercountry Adoption is a stated goal of the present Government. We understand that a previous attempt to proceed to accession (in 2001) failed to secure sufficient support in the *Rada*, and we are well aware that accession is still actively contested in a number of quarters today, including by the Ombudsman Office, certain judges, many "facilitators" and reportedly a very substantial proportion of parliamentarians.

Like all cross-border phenomena, intercountry adoption requires the collaboration, on agreed bases, of all the countries concerned if it is to be regulated effectively. As its full title suggests, the 1993 Hague Convention aims to **protect** the rights of children who are, actually or potentially, involved in an intercountry adoption process, and to provide a regulatory and procedural framework for **cooperation** among countries concerned. It builds on the basic principles and rights set out in the UN Convention on the Rights of the Child (CRC), defining more precisely the **protective measures** to be taken and establishing the **cooperative mechanism** designed to strengthen the efficacy and impact of national initiatives and safeguards. Moreover, the existence of the 1993 Hague Convention is fully in line with the provision in the CRC (art. 21.e) encouraging the conclusion of multilateral agreements on this issue.

In our view, ratification or accession is a key element in every country's ability to combat questionable and illegal acts in the intercountry adoption process. In its Concluding Observations on periodic reports, the UN Committee on the Rights of the Child consistently urges States Parties to the CRC to ratify or accede to the 1993 Hague Convention, since the latter serves as a kind of implementing framework and mechanism for relevant obligations under the CRC. Thus, in its Concluding Observations concerning Ukraine, in 2002, it was noted that:

49. The Committee regrets that its previous recommendation [in October 1995] that the State party consider ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 has not yet been followed up [...] 50. The Committee reiterates its recommendation that the State party ratify the Hague Convention [...].

Expression of opposition to the 1993 Hague Convention is neither unique to Ukraine nor to so-called "countries of origin" as a whole (prime examples of this lie in the anti-Hague lobbies in both the USA and Guatemala...). Whatever the country, we have invariably found that opposition is articulated by those with, or representing, considerable vested interests in preserving the status quo. It is based on objections that, in our view, do not stand up to scrutiny but are so frequently repeated that they may come to be viewed as legitimate. In this paper, we consider the main arguments against accession that have been put forward during our discussions in Ukraine:

Objection 1: "The Hague Convention was drafted by 'receiving countries' to protect the interests of adopters"

Drafting of the Hague Convention was motivated in particular by violations of the rights of the child caused by unregulated “demand” exerted in countries where children were believed to be available for adoption abroad, and the inadequacy of treaties existing at that time to respond to this problem in practical ways.

Because of this, exceptional efforts were made to ensure that – by actively seeking the participation of States beyond the formal membership of the Hague Conference, where industrialised countries are indeed somewhat over-represented among the 65 States – countries of origin were able to play a full role in drafting. Their high level of involvement was reflected in the fact that eight of the first ten States to ratify were more especially “countries of origin” (the two “receiving countries” being Cyprus and Spain).

With the exception of Greece and Ireland (which has signed it), every country in the enlarged EU and all three current “candidate” countries (Bulgaria, Romania, Turkey) have now ratified the Hague Convention, be they essentially “countries of origin” or “receiving countries” in terms of adoptions.

Overall, almost two-thirds of the Convention’s present 66 Contracting States (the list can be found at www.hcch.net/index_en.php?act=conventions.status&cid=69) are more especially concerned with intercountry adoption as “countries of origin”, although it must always be remembered that no country is, presently or potentially, one that is purely “receiving” or “sending” children for intercountry adoption.

Objection 2: “Acceding to the Hague Convention would mean automatically agreeing to make children available for adoption to all other Contracting States”

First of all at this point we would like to recall **the double subsidiarity principle** recognised by the 1993 Hague Convention (preamble para. 2 & 3, art. 4. b) and the CRC (arts. 18 & 21.b):

1) Adoption is subsidiary to maintaining or reintegrating the child to the family of origin:

Priority must go to allowing children to be raised in their own family, i.e., staying with the birth parents or the extended family (avoiding relinquishment); being reunited with the immediate or extended family (children at the pre-abandonment stage).

2) And intercountry adoption is subsidiary both to maintaining or reintegrating the child to the family of origin and to domestic adoption:

As a priority, a child must be placed for adoption in his/her own country or in a cultural, linguistic and religious environment akin to his/her community of origin. A decision in favour of intercountry adoption should be taken only after an unsuccessful search has been conducted for a satisfactory solution in the child’s country of origin.

Furthermore, the CRC simply obligates any State Party that “recognises and/or permits the system of adoption... to equally recognise that intercountry adoption may be considered as an alternative means of child’s care if no suitable care solution can be found in the country of origin.” The term “**may** be considered” cannot be interpreted as “**shall** be considered”, and even less as “must be undertaken.” In consequence, no country of origin has to accept pressures from a receiving country in order to make children available for intercountry adoption.

In this matter, the Permanent Bureau of the Hague Conference on Private International Law has long since confirmed that there is no obligation on a Contracting State to the Hague Convention to have recourse to intercountry adoption. This Convention is simply to apply automatically and systematically should such adoptions be carried out, so Contracting States are obliged to have a Central Authority and relevant procedures in place that can function in such cases – both in-coming and out-going – whether or not they are used in practice.

In addition, a Contracting State may limit or ban adoptions to or from any given Contracting State or States, unless and until certain conditions are fulfilled according to its national law.

Thus, a number of Contracting States have imposed general moratoria on the inter-country adoption of their children, e.g.: Azerbaijan for over a year prior to and following accession (according to the US Department of State, this suspension has just ended and adoptions can resume), Belarus since accession, as of late 2004. Other Contracting States impose very strict and limitative criteria in this regard, e.g.: the Czech and Slovak Republics. Equally, several Contracting States have banned the adoption of Guatemalan children – although Guatemala is ostensibly a Contracting State – because they are not satisfied that the terms of the 1993 Hague Convention are being met for adoptions from that country. In other words, once again, **the 1993 Hague Convention applies when adoptions take place between two Contracting States, but it in no way obliges two Contracting States to carry out intercountry adoptions.**

On the other hand, it is also to be underlined that the 1993 Hague Convention is applicable to intra-family adoptions and can thus be very useful for Ukrainian families living abroad planning to adopt a related child living in Ukraine.

N.B.: Considerations under “Objection 3” below are also pertinent to issues at stake here.

Objection 3: “Acceding to the Hague Convention would imply authorising any private agency accredited by the receiving country to operate in Ukraine (reference to Hague articles 1.b and 12)”

Contrary to this affirmation, all Contracting States retain every right to determine what kind of bodies, and especially foreign bodies, may be involved, in arrangements and processes regarding the adoption of their children.

Some authorities (see also “Objection 2”) and accredited bodies (especially in receiving States) seem to use the concept of co-operation amongst Contracting States (established in art. 1 b of the 1993 Hague Convention), in an effort to convince States of origin that they have to entrust to them adoptable children for non-relative inter-country adoption: supposedly, if both States are bound by this Convention, States of origin would not be able to refuse offers of co-operation from receiving States. This allegation sometimes claims to be based on the traditional legal theory of treaties (the binding effect of treaties): should a State ratify or accede to a treaty, it commits itself to enter into relationships with the other States Parties. Some States of origin are thus reluctant to ratify or accede to the Convention, thinking that as States Parties, they would be obliged to co-operate with all other States parties and to authorise any accredited body of these State parties that so request to work within their territory.

However, this interpretation does not take into account the purpose of the Convention. **The best interests of children cannot be interpreted to mean that every State has an obligation to accept files from prospective adoptive parents and to authorise all accredited bodies from all the other States Parties.**

In particular, since the international situation makes it clear that the number of young and healthy adoptable children is dwindling in many countries and many inter-country adoptable children have special needs (older children, siblings, children with health problems ...), **it may be more in the interests of these children for a State of origin to co-operate with a restricted number of receiving States, and preferably accredited bodies,** which can propose files from prospective adoptive parents who precisely match the needs of the children.

Several reasons based on the best interests of children can justify such a choice. A limited number of partners contribute to enhancing the specialisation of foreign counterparts and to strengthening ties and thereby the expertise relating to particular children concerned. Furthermore, it prevents States of origin from being overwhelmed by a disproportionate number of sometimes unsuitable requests from foreign prospective adoptive parents, lessening their ability to focus on assessing the situation of children in care. In the best interests of children, a State of origin might also prefer to co-operate with States which have common linguistic, cultural or other specificities: this feeling of common characteristics can help the professionals to build closer co-operation, and the adopted children to integrate more harmoniously into their adoptive family and society and thereafter to revert to their roots. States of origin can also decide to work by choice with States which share values relating to child welfare: countries with compatible child welfare systems and similar professional and ethical standards for assessing the suitability and the preparation of prospective adoptive parents may indeed develop better and closer co-operation.

According to the Permanent Bureau of The Hague Conference, in a statement on 19 May 2005, «the fundamental point is that a State's obligations under the Convention should be viewed in the light of the principle of the child's best interests. **The Convention does not oblige a State to engage in any inter-country adoption arrangements where these are not seen to be in the best interests of the individual child. Considerations of children's best interests may lead to a preference by a country of origin for placements in particular receiving countries.** Moreover, limited capacity and scarce resources in the country of origin may also be a good reason for limiting the number of countries, or accredited bodies, with which a country of origin can realistically enter into effective, well-managed and properly supervised cooperative arrangements. **Indeed, attempting to deal with too many receiving countries, or too many accredited bodies, may constitute bad practice if its effect is to dilute to an unsatisfactory level the control which a country of origin must necessarily exercise over the inter-country adoption process.**

At the same time, the more general obligation of co-operation under the Convention does require that Contracting States generally should deal with each other in an open and responsive manner. This includes countries of origin being ready to explain when and why certain policies may have to be maintained. Equally, receiving countries should be sensitive to the difficulties that countries of origin may have in developing a well managed system of alternative child care.»

Of course a State Party to the 1993 Hague Convention should not refuse to co-operate with other States Parties or some of their accredited bodies for motives that do not proceed from the best interests of children, such as financial interests. But this Convention fully entitles States of origin – and even in its spirit invites them – to co-operate with those States and bodies, and a limited number of them which best fit the children's needs. This should not be viewed by receiving States as just a problem but rather as a challenge to work more and more closely with the States of origin and the prospective adoptive parents in order to adapt, as far as possible, the requests of the latter to the needs of the adoptable children.

Objection 4: "Acceding to the Hague Convention allows financial gain through adoptions, which is banned by law in Ukraine (reference to Hague article 32)"

There is a strange aspect to this objection. It is based on the notion that, because the 1993 Hague Convention outlaws "improper financial and other gain" in the adoption process, it therefore does not exclude "financial gain" *per se*. It is claimed, as a result, that accession to the 1993 Hague Convention would mean that "financial gain" would become permissible, whereas the outlawing of financial gain is the essential reasoning behind the current Ukrainian law banning the operation of adoption agencies in the country.

Much of the problem revolves around the meaning of “gain.” In the context of the 1993 Hague Convention, it has been made very clear by the Explanatory Report on the Convention drawn up by G. Parra-Aranguren (Rapporteur during the negotiations) that the term is to be interpreted in the sense of “remuneration”, not “profit”:

528 Paragraph 1 of article 32 only prohibits «improper» gain, financial or of any other nature. Therefore, all «proper gains» are permitted and, because of that, paragraph 2 not only permits the reimbursement of the direct and indirect costs and expenses incurred, but also the payment of reasonable professional fees to persons involved in the adoption, lawyers included.

Thus, when a person is “gainfully employed”, it signifies that he or she has paid employment, not that they are receiving sums of money over and above the “reasonable” remuneration for their labour – this would be, precisely, “*improper* financial gain.”

To the extent that it is recognised and/or allowed by a given country, intercountry adoption is – or should be – an integrated component of the child protection and welfare system. Like other parts of that system, it requires the involvement of qualified and suitable professionals. Obviously these professionals have to be paid for their work – i.e. “gainful employment.”

The assumption behind the Ukrainian ban has been that, because agencies charge fees for their services, they are “gaining” financially from adoption. Certainly adoption constitutes a huge industry in some countries, but so do, for example, child care, education and health. The issue is to determine whether, in this context, given agencies are taking advantage of adoption to accrue profits or wealth for some or all of their directors, employees or partners – improper financial gain – or whether they are simply demanding appropriate fees for services provided.

The hypocrisy behind the objection discussed here of course lies in the fact that virtually all direct and indirect actors – from interpreters to hoteliers – in intercountry adoptions make financial gain from their activity.

In some cases – such as the euphemistically styled “expediting fees” paid to individual civil servants to secure “fast-track” services, and various “gifts” to others involved in the adoption process – the improper nature of a financial gain is evident, even if customarily accepted and therefore hardly concealed.

However, what constitutes on the one hand “reasonable” and on the other “improper” financial gain is not always so easy to determine. This issue has been the subject of much debate in the context of improving the practical operation of the 1993 Hague Convention. The records of the Special Commission (of States Parties) meeting in 2000 to consider matters within this framework are eloquent in this regard:

35 Responses [to a Questionnaire sent to States by the Permanent Bureau of the Hague Conference on Private International Law] revealed serious concern surrounding some of the costs, charges, contributions and donations involved in the intercountry adoption process. It appears from the figures supplied by respondents to the Questionnaire that there are very wide variations in the costs and charges made to prospective adopters in respect of the adoption process itself. These mainly arise from services provided, usually by accredited agencies, in the receiving State and the State of origin. The variations in costs can sometimes be explained, for example by the need to meet differing procedural requirements in different countries, the different levels of service provided, differing legal or medical costs, or differing levels of State subsidy for the adoption process. Concerns were expressed that the level of costs and charges levied by some agencies, whether in receiving countries or countries of origin, appear sometimes to be excessive in relation to the actual level of service provided.

36 Discussion during the Special Commission confirmed the level of disquiet surrounding these issues. It was agreed that the subject-matter should be discussed under the two headings of costs and expenses, on the one hand, and donations and contributions to the child protection services, on the other.

37 The matter of the fees charged, especially lawyers fees, was raised by several experts. Concerns were expressed about the level of fees charged in some States of origin, and more specifically the discrepancies between legal fees charged in neighbouring countries in South America. It was noted that excessive legal fees often arise when the lawyer is the mediator procuring the child, a practice which in the view of some should be regarded as unethical. (In this respect, it should be noted that, if a Contracting State has not made a declaration under article 22, paragraph 2, the functions given to its Central Authority under Chapter IV may only be performed by the Central Authority itself or by public or accredited bodies.) It was noted that the costs associated with intercountry adoption did not always correspond to the quality of the service provided.

40 During the closing Session, an expert from the Netherlands introduced a proposal for the establishment of a Working Group to study further the question of comparative costs and fees associated with the intercountry adoption process, to draw up forms concerning costs and fees to be used by Central Authorities for the purpose of making costs and fees known and comparable, and to assist Central Authorities to be clear about which costs and fees can be considered reasonable in their countries. It was emphasised that all Central Authorities would be consulted with respect to the project and that it was intended to include in the Working Group persons from receiving States, sending States, international NGO's and the Permanent Bureau. While there was not time for a full discussion of the proposal and no formal recommendation was made, it was apparent that the suggestion had the support of several States Parties and an expert from the Netherlands indicated his intention to carry the project forward.

41 The following particular recommendations in relation to costs and expenses were approved unanimously:

a) Accreditation requirements for agencies providing intercountry adoption services should include evidence of a sound financial basis and an effective internal system of financial control, as well as external auditing. Accredited bodies should be required to maintain accounts, to be submitted to the supervising authority, including an itemised statement of the average costs and charges associated with different categories of adoptions.

b) Prospective adopters should be provided in advance with an itemised list of the costs and expenses likely to arise from the adoption process itself. Authorities and agencies in the receiving State and the State of origin should co-operate in ensuring that this information is made available.

c) Information concerning the costs and expenses and fees charged for the provision of intercountry adoption services by different agencies should be made available to the public.

In a related discussion on the question of "donations" which might sometimes be "requested" of prospective adopters by, for example, the orphanage from which the child comes, it was deemed clear that this practice contravened article 32 of the Convention. To reaffirm this principle, the Special Commission made the following unanimous recommendation:

Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made.

This constitutes an unambiguous rejection of this form of financial gain.

Finally, it can be recalled that, according to the Hague Convention, article 11, “an accredited body shall pursue only non-profit objectives”, this being a fundamental requirement of any accreditation by the receiving country and authorization by the country of origin. Furthermore, any country of origin, through a declaration to the depositary of the Convention, can explicitly exclude the intervention of bodies or persons eventually approved by a receiving country without this requirement of non-profit objectives (article 22.4 and 2 of the Convention).

Objection 5: “Ukraine would be better served by establishing bilateral agreements with selected countries rather than acceding to the Hague Convention”

The basis for this objection is that Ukraine could, by means of bilateral agreements, specify exactly the kind of procedures and conditions that it would like to see in place regarding the intercountry adoption of its children.

In general, there are concerns about bilateral agreements in that they may tend to institutionalise adoptions between the countries concerned to the detriment of the due consideration of real needs of the children. This may be the case in particular where the proposal emanates from a “receiving country.”

As far as bilateral agreements with Contracting States to the 1993 Hague Convention are concerned – on the hypothesis that Ukraine does *not* accede to that treaty – it is worth mentioning that, while Contracting States are formally bound only to each other regarding application of the Convention, they have been strongly encouraged to respect its provisions in their dealings with non-States Parties:

Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are “convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children”, the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps,

possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention.

In practice, three (Italy, Spain and France) of the four main countries adopting Ukrainian children – these three adopt more than a half each year – are already States parties to the 1993 Hague Convention. The fourth country, the USA (which currently adopts one third of the Ukrainian children per year) is a signatory to this Convention. According to the information we had from their respective Embassies in Ukraine, they all encourage Ukraine to become a State Party as well. Thus possible bilateral agreements with States that are not parties to the 1993 Hague Convention would cover a very limited number of children. Furthermore, the Parliamentary Assembly of the Council of Europe has called on the Committee of Ministers to give a clear indication of its political will to ensure that children’s rights are respected, by immediately inviting the member states “to ratify the Hague Convention on Adoption if they have not already done so, and undertake to observe its principles and rules even when dealing with countries that have not themselves ratified it” (Rec. 1443 (2000) of the Parliamentary Assembly of the Council of Europe, art. 5.i).

Should Ukraine indeed become a Contracting State, its entry into bilateral agreements would still be compatible with accession to the 1993 Convention, but under certain conditions, as underlined by the Hague Special Commission in 2000:

104 A number of experts reported that their countries had entered into bilateral conventions or agreements in relation to intercountry adoption which in all cases reflected the framework and principles contained within the Hague Convention. Spain for example had entered into bilateral agreements with Colombia, Ecuador, Bolivia and Peru. In some cases, these arrangements were made with Convention countries in an effort to improve the operation of the Convention. For example Greece had entered into an agreement with Romania. In other cases, bilateral arrangements had been made between Convention countries and non-Convention countries. For example France had recently concluded a bilateral agreement with Vietnam.

105 Some concern was expressed about agreements which seemed to supplant rather than to supplement the Convention. It was emphasised that under article 39, paragraph 2, Contracting States were entitled to enter into agreements with one or more other Contracting States “with a view to improving the application of the Convention in their mutual relations.” It was also stressed that these agreements may derogate only from the provisions of articles 14-16 and 18-21, and that States which have concluded such agreements should transmit copies to the Depository of the Convention.

Consequently, there would appear to be little justification for attempting to rely on bilateral agreements as a substitute for accession to the 1993 Hague Convention.

Objection 6: “The supervision and follow up of adopted children abroad is not regulated sufficiently in the 1993 Hague Convention”

The great majority of countries whose children are adopted abroad require that follow-up reports be submitted so that their welfare can be monitored. Officials and others in Ukraine are virtually unanimous in placing major emphasis on the importance of receiving such reports.

Post-adoption reporting is not mentioned in the 1993 Hague Convention. At the Special Commissions in 2000 examining the practical operation of the Hague Convention, it was nonetheless noted that this is a significant issue:

84 Article 9 of the Convention places a responsibility on Central Authorities to take all appropriate measures to provide each other with general evaluation reports about experience with intercountry adoption. **The Convention does not impose an explicit obligation to provide follow-up reports with respect to individual adoptions** [*Our emphasis*]. However, it is clear that such individual reports are often requested and supplied in practice, and that they are regarded in many countries of origin as an important safeguard.

85 In the discussion on individual reports, experts stated that **a balance had to be struck between protecting the privacy of the adoptive family and answering the legitimate enquiries of the authorities in the State of origin** [*Our emphasis*]. It was further noted that the transmission of information to the State of origin could also be of benefit to adopted children in their later lives and help ensure that adoptive parents remain aware of the children’s cultural and social backgrounds.

86 Experts indicated that in general their systems provided for such reports, but that there were differences from State to State in relation to the obligatory charac-

ter of these reports. In certain States, post-adoption reports were only made with the consent and co-operation of the adoptive parents. Also different bodies were involved in assisting with the drawing up of reports, for example child welfare authorities or accredited bodies. **Concerns were expressed about the very long period of time during which some countries of origin expected the reports to be made** [Our emphasis]. A number of experts suggested that follow-up reports should only be required for a limited time period.

The issue of post-adoption services is also addressed in the questionnaire on the practical operation of the 1993 Hague Convention that will be discussed in the Special Commission of September 2005.

Indeed, at present, the requirements set out by Ukraine in this respect are among the most demanding world-wide, especially as regards the duration of the reporting obligation which continues until the adoptee reaches the age of 18 years (annual reports for the first three years, and triennial reports thereafter). The majority of countries set a maximum compulsory period of 3 or 5 years following the adoption, and Ukraine may wish to review its demands in this respect.

That said, while the 1993 Hague Convention does not impose post-adoption reporting on individual children, neither does it in any way restrict or exclude them. It is clear from the above that Contracting States fully accept that, within limits, requirements in this regard may be set by individual States in accordance with their specific national policy and approach.

Objection 7: "No reservations are permitted under the 1993 Hague Convention, so no account could be taken of Ukraine's specificities if it were to accede to the treaty"

While, indeed, no reservations may be made to provisions of the 1993 Hague Convention, to the extent that the above responses to the other objections are accepted, it seems that Ukraine would in fact have no reason to envisage such reservations. The treaty's provisions are not in conflict with the approach and policy of Ukraine and guarantee a broad freedom to each State to organize its internal procedures. In addition, within the treaty itself and as noted previously, Ukraine – and all other Contracting States, of course – retains the opportunity to declare (article 22.4) that the adoption of its children abroad may only take place to countries where the functions of the Central Authority are performed by public authorities or bodies accredited under Chapter III.

ANNEX 2

INTERACTION BETWEEN CENTRAL AUTHORITIES IN THE ADOPTION SYSTEM UNDER THE HAGUE CONVENTION

The 1993 Hague Convention (HC) provides for international cooperation involving collaboration between States on the basis of their specific judicial systems. This cooperation is to be carried out in each State by a Central Authority designated by that State to protect children and achieve the objectives of the HC (HC art. 6). Over and above tasks related to adoption cases in particular, Central Authorities, in collaboration with the Central Authorities of other States, have to undertake a series of general measures:

- provide information on legislation, statistics and formulas in relation to adoption, and transmit general evaluation reports on the experiences of international adoption (HC arts. 7 & 9),
- combat improper financial gain (HC arts. 8 & 32),
- ensure respect for the HC (HC arts. 7, 8 & 33).

According to the HC, responsibilities on adoption are shared between the Central Authority of the State of origin and the Central Authority of the receiving country.

The State of origin is responsible for, *inter alia*:

- verifying the adoptability of the child,
- verifying the validity of the consent of the biological parents and of a child whose age and maturity require that his or her consent be given,
- verifying the subsidiarity of intercountry adoption,
- preparing a psycho-medico-social study of the child.

The receiving State is responsible for, *inter alia*:

- verifying the eligibility and suitability of the prospective adoptive parents, pursuant to a psycho-medico-social study
- verifying that the prospective adoptive parents have been counselled
- guaranteeing that the child will be authorised to enter and reside permanently in that State.

Matching is a shared responsibility of both States (for more detail see 5.4.2).

The recognition of certified adoptions is one of the fundamental objectives of the Convention: an adoption that is certified by the Competent Authority of the Contracting State as having been made in accordance with the Convention is fully and automatically recognised in all other Contracting States.

For information on the roles of adoption accredited bodies, please refer to Chapter 5.4.3.

What happens with States which are not parties to the HC?

The Special Commission of the States Parties to the HC held in September 2005⁸⁴ reaffirmed Recommendation No 11 of the Special Commission of November / December 2000:

“Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are “convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children”, the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention (para. 19).”

⁸⁴ Conclusions and recommendations of the second meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, 17-23 September 2005; www.hcch.net/upload/wop/concl33sc05_e.pdf.

ANNEX 3

ISS/IRC, Ethical Guide: The Rights of the Child in Internal and Inter-country Adoption. Ethics and Principles. Guidelines for Practice, Geneva, 1999, revised 2004: http://www.iss-ssi.org/Resource_Centre/ethical_guidelines.PDF.

Extract: Contents of a Study of the Child and his/her Birth Family

- 5. The child study must be as thorough as possible, since the child's future, that of his/her birth family, and of the prospective substitute family will depend upon it. As far as possible, the study, which is confidential, should cover:**
 - 5.1.** The identity of the child, his/her parents and extended family; if the child's parents are unknown, a search should be made to trace them and discuss the child's future with them
 - 5.2.** The situation of the child's birth family - immediate family (parents and siblings), and extended family (grandparents, etc.) -: socio-economic situation, nature of relationships between relatives, relationships with the social environment, main difficulties, positive factors, etc.
 - 5.3.** The child's past, in as much detail as possible, about the stages of his/her **personal and family history**, ethnic and religious upbringing
 - 5.4.** The reasons for the child's ties with the birth family to be weakened or severed, for the abandonment decree, or the adoption consent
 - 5.5.** The stages of the child's physical, motor, intellectual, and socio-emotional development
 - 5.6.** His/her state of health; medical history (including available information about the mother's pregnancy and delivery, vaccinations, etc.) and that of the birth family
 - 5.7.** His/her physical and general appearance, personality and behaviour
 - 5.8.** The child's present situation, with all available information about his/her present environment, way of life, habits, ability to be self-reliant according to his/her age, relations with other children and adults around him/her, his/her pace, etc.
- 6. It must be made certain that a child's relinquished status is not the result of abuse, trafficking, sale or kidnapping.**
 - 6.1. The child's origin must be carefully established.**
 - 6.2.** When the child seems legally adoptable because of **parental consent**, it must be checked that consent is/was freely given, without pressure, without material compensation, or otherwise. The social services must:
 - counsel and assist the parents of the child to consider other alternatives than adoption;
 - inform the parents and ensure they have a proper understanding of the consequences
 - of adoption, which might become intercountry adoption;

- make sure the parents have grasped clearly the implications for the child, themselves
- and the future of their legal bond, and their social and personal attachment to the child;
- ensure the parents are informed of the possibility of a future contact in the event of a search for origins by the then full-grown child;
- collect the parents' possible wishes in regard to the profile of the substitute family, that such wishes may be respected as far as possible if in the interests of the child.

6.3. Parental consent (and especially that of the mother) **must not be given before birth or during the first weeks of the child's life.** The mother and the father must be given the opportunity to form an attachment with the child and to avail themselves of a period of reflection after the birth of the child. Throughout pregnancy and during the reflection period, it is very important to provide psycho-social and economic support services to the parents to reduce the risk of abandonment or, - in that eventuality - to help them part with the child with dignity and respect.

ANNEX 4

LIST OF PERSONS INTERVIEWED BY THE ISS DELEGATION FIRST MISSION, 20-25 June 2005

Mrs. Tetyana Kondratyuk	Deputy Minister of Ukraine on Youth and Sports	Kyiv
Mrs. Iryna Kucherina	Deputy Head of the Department on Protection of Minors' Rights and Freedoms of the General Prosecutor's Office of Ukraine	Kyiv
Mrs. Evgeniya Chernyshova	Head of the State Adoption Centre of Ukraine	Kyiv
Mr. Mykhaylo Andrienko	Head of the Department on Fight against the Crimes related to Trafficking in Human Beings of the Ministry of Interior of Ukraine	Kyiv
Mr. Oleh Horbenko	Consular Department of the Ministry of Foreign Affairs of Ukraine	Kyiv
Mr. Mykhaylo Tsymbalyuk	Department on Minors of the Ministry of Interior of Ukraine	Kyiv
Mr. Vladyslav Gurtenko Mrs. Olesya Kolisnyk Mrs. Olga Verkhovska Mrs. Kseniya Volkova	Protocol Department, International relations Department, Department of Civil Law, Department of Housing Law Ministry of Justice of Ukraine	Kyiv
Mr. Jeremy Hartley	Representative, UNICEF Ukraine	Kyiv
Mrs. Marykay L. Carlson Dr. Nancy Godfrey	Consul General of the US Embassy Director, Office of Health and Social Transition, US Embassy	Kyiv
Mrs. Liliya Khlebnikova	Adoptions Assistant, Consular Section, US Embassy	
Mrs. Maryna Krysa	President of the Charitable Fund "Help Us Help The Children"	Kyiv
	Head of the Children's Home "Berizka"	Kyiv
Mrs. Nataliya Vlasenko	Head of the Kyiv Oblast Children's Home	Boyarka city
Mrs. Joanna Baskott Mr. Volodymyr Kuzminskyy Mrs. Elayn Sammon	Regional Manager of Everychild Country Director Everychild Ukraine Team Leader EU TACIS Project, Everychild	Kyiv

SECOND MISSION, 17-29 July 2005

Kyiv

Mrs. Tetyana Kondratyuk	Deputy Minister of Ukraine on Youth and Sports	Kyiv
Mrs. Olha Shved	ECPAT, Associate for CIS region	Kyiv
Mrs. Iryna Kucherina	Deputy Head of the Department on Protection of Minors' Rights and Freedoms of the General Prosecutor's Office of Ukraine	Kyiv
Mr. Louis-Marie Cadeau	Acting Consul, French Embassy	Kyiv
Mr. Piergabriele Papadia de Bottini	Second Secretary, Italian Embassy	Kyiv
Mrs. Julia Mijailuk	ISpanish Embassy	Kyiv
Colonel Volodymyr Kozienko Major Vasyl Barabash	Passport Control Unit of the State Border Service of Ukraine	Kyiv
Mrs. Valentyna Borsukova	Judge of the Civil Panel of the Supreme Court of Ukraine	Kyiv
Mr. Jeremy Hartley Dr. Riitta Poutiainen Mr. Andriy Haidamashko	Representative, UNICEF Ukraine Programme Coordinator, UNICEF Ukraine Assistant Programme Officer Child Protection, UNICEF Ukraine	Kyiv
Mrs. Iryna Targulova Mr. Oleksandr Pavlenko	Office of the Ombudsman of Ukraine	Kyiv

Mr. Stefano Marchi	NGO "Amici dei Bambini" Country Coordinator	Kyiv
Mrs. Nadiya Ryazanova Mrs. Oksana Polyakova	Department on Assistance to Families with Children of the Ministry of Social Policy and Labor of Ukraine	Kyiv
Mr. Andriy Shevtsov	Head of the Institute of Correctional Pedagogics and Social Psychology of Ukraine	Kyiv
Mr. William J. Bistransky Dr. Nancy Godfrey	Consul General of the US Embassy Director, Office of Health and Social Transition, US Embassy	Kyiv
Mrs. Liliya Khlebnikova	Adoptions Assistant, Consular Section, US Embassy	

Lugansk trip

Mrs. Lyudmyla Kharchenko	Head of the Lugansk oblast centre of gender education, Deputy Head of the Lugansk oblast council of women	Lugansk
Mrs. Svitlana Tuntueva	Head of the Lugansk oblast centre on work with women	Lugansk
Mrs. Anna Zaytseva	Expert of the Lugansk oblast centre on work with women	Lugansk
Mrs. Kateryna Gren	Expert of the Lugansk oblast centre on work with women	Lugansk
Mrs. Rayisa Rodina	Head of the Service on Minors of the Lugansk oblast state administration	Lugansk
Mr. Andriy Dymko	Deputy Head of the Unit on criminal police on minors of the Department of the Ministry of Interiors of Ukraine in Lugansk oblast	Lugansk
Mrs. Nataliys Perepelytsyna	Acting Head of the Unit on family, children and women of the Department on family and youth of the Lugansk oblast state administration	Lugansk
Mrs. Nina Tsygan	Deputy Head of the Lugansk oblast centre of social services for children, families and youth	Lugansk
Mrs. Tetyana Shmurakova	Deputy Head of the Unit on informational and methodic work of the Lugansk oblast centre of social services for children, families and youth	Lugansk
Mrs. Inna Shvets	Director of the Lugansk Children's Home	Lugansk
Mrs. Lyubov Shamenko	Director of the Lutugino orphanage	Lutugino
Mrs. Lyudmyla Fedorova	Mother-Teacher of the Children's Home of Family Type The Fedorov family	Lugansk oblast
Mrs. Lidiya Kalynska	Head of the Lugansk oblast council of women	Lugansk
Mrs. Nataliya Blednova	Head of the Education and Science Department of the Lugansk oblast state administration	Lugansk
Mrs. Olga Loseva	Senior Expert of the Education and Science Department of the Lugansk oblast state administration	Lugansk
Mrs. Olena Legostaeva	Director of the Severodonetsk orphanage	Severodonetsk

Odesa trip

Mrs. Lyubov Shyrnina	Head of the Commission on liquidation of the Education and Science Department of the Odesa oblast state administration	Odesa
Mr. Valeriy Shuparskyy	Deputy Head of the Commission on liquidation of the Education and Science Department of the Odesa oblast state administration	Odesa
Mrs. Tetyana Tulba	Expert on Protection of Childhood of the Odesa oblast state administration	Odesa
Mrs. Elysaveta Tsaryuk	Consultant on Protection of Childhood of the Odesa oblast state administration	Odesa
Mrs. Valentyna Kudimova	Head of the Service on Minors of the Odesa oblast state administration	Odesa
Mrs. Tetyana Semikop	Head of the Criminal Police on Minors of the Department of the Ministry of Interiors of Ukraine in Odesa oblast	Odesa
Mr. Leonid Lichman Mr. Oleksandr Dzhabyrdiev	Malinovskyy Court of the Odesa city Judges	Odesa
Mrs. Iryna Sergeeva	Kotovsk Children's Home Deputy Director	Kotovsk
Mrs. Lyudmyla Shvyryova Mrs. Dina Fesay	Director of the Odesa orphanage # 4 Social pedagogue of the Odesa orphanage # 4	Odesa
Mrs. Lyudmyla Akimova	Head of the Department on family and youth of the Odesa oblast state administration	Odesa
Mrs. Viktoriya Ischenko	Deputy Head of the Education Department of the Odesa City Council	Odesa

GENEVA, SWITZERLAND, 31 August 2005

Dr. Bohdan Rymarenko	Country Director: Ukraine, Belarus and Moldova Hope and Homes for Children [UK]	Geneva
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