Februar 2020

Evaluering af den politiske aftale fra 2014 om et nyt adoptionssystem

Del 2: Adoptivfamiliens forhold

- Høringssvar

Ankestyrelsen

ANKESTYRELSEN
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KAPITEL 1

Høringssvar fra adoptionsområdets aktører og interessenter

- Høringsbrev fra Ankestyrelsen af 2. oktober 2019
- Adoptionsnævnet
- DIA
- Familieretshuset
- ACT
- Adoption & Samfund
- Adoptionspolitisk Forum
- Adoptionstrekanten
- Bedsteforeningen
- Foreningen Klip
- Koreaklubben
- Åbenhed i Adoption

Ankestyrelsen

Adoption & Samfund
Adoption & Samfund Ungdom
Tænketanken Adoption
Adoptionspolitisk Forum
Adoptionstrekanten
Koreaklubben

Høring angående undersøgelsen af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016

I 2019 påbegyndte Ankestyrelsen en undersøgelse af mulighederne for et nyt adoptionssystem og tog samtidig hul på en evaluering af adoptionsreformen fra 2016. Vi forventer, at undersøgelsens resultater afleveres til social- og indenrigsministeren den 1. december 2019. Evalueringen af de tiltag der vedrører adoptivfamiliens forhold, forventes afleveret den 1. februar 2020.

Vi vil gerne inddrage så mange perspektiver som muligt. Derfor vil vi gerne modtage jeres eventuelle inputs til undersøgelsen og evalueringen. Jeres inputs vil blive vedlagt det materiale, der overdrages til social- og indenrigsministeren.

Vi skal bede om at modtage jeres eventuelle inputs senest **onsdag den 6. november 2019**.

Efter resultaterne af undersøgelsen er overdraget til social- og indenrigsministeren vil der foregå en politisk behandling af strukturen for et fremtidigt bæredygtigt formidlingssystem for international adoption. Vi forventer, at ministeren vil have opmærksomhed på at inddrage alle interessenter i denne proces.

1. Baggrund

I oktober 2014 indgik et flertal af de politiske partier i Folketinget en aftale om et nyt adoptionssystem. Store dele af aftalens indhold vedrørte alle adoptionsansøgere, adoptivfamilier og adopterede. Aftalen fastsatte også rammerne for den internationale adoptionsformidling til Danmark. Aftalepartierne var enige om, at der skulle gennemføres en evaluering af

2. oktober 2019

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Åbningstid:
man-fre kl. 9.00-15.00

aftalens konsekvenser efter en treårig periode fra initiativerne fik virkning den 1. januar 2016.

Siden 2014 er antallet af internationale adoptioner i Danmark faldet til et historisk lavt niveau fra 124 adoptioner i 2014 til 64 adoptioner i 2018. Antallet af godkendte ansøgere, der ønsker at adoptere, via den adoptionsformidlende organisation DIA, er også faldet markant fra 84 tilmeldinger i 2014 til 48 tilmeldinger i 2018.

Aftalepartierne bag satspuljeaftalen for 2019 besluttede derfor i november 2018 at afsætte midler til at undersøge, hvilke alternativer der findes til den nuværende formidlingsstruktur, hvor formidlingsopgaven varetages af en privat organisation, der primært er finansieret af gebyrindtægter fra adoptivfamilierne.

2. Undersøgelsen og evalueringen af rammerne for den internationale adoptionsformidling

Ankestyrelsen har fået til opgave at undersøge, hvordan der kan skabes en økonomisk bæredygtig struktur for den internationale adoptionsformidling i Danmark. Undersøgelsen skal også afdække behovet for understøttende tiltag i overgangen til et eventuelt nyt system for at skabe den tilstrækkelige tryghed og sikkerhed for kommende og nuværende ansøgere.

Formålet med undersøgelsen er at tilvejebringe et grundlag for en politisk drøftelse af, hvordan et bæredygtigt adoptionssystem bør udformes set i lyset af den aktelle udvikling.

Det betyder, at evalueringen af de dele i den politiske aftale om et nyt adoptionssystem, der vedrører de strukturelle rammerne for formidlingen, erstattes af en undersøgelse. Evalueringen af tilsynet med adoptionsformidlingen vil blive afleveret sammen med undersøgelsen og indeholder efter aftale med Social- og Indenrigsministeriet en gengivelse af Ankestyrelsens erfaringer og observationer fra tilsynet siden 2016 (evaluering del 1).

Kommissoriet for undersøgelsen kan findes her:
https://ast.dk/born-familie/hvad-handler-din-klage-om/adoption/undersogelse-af-adoptionssystemet

Ankestyrelsen forventer at aflevere undersøgelsens resultater til social- og indenrigsministeren den 1. december 2019.

3. Evalueringen af adoptionsreformen fra 2016 – adoptivfamiliens forhold

Evalueringen af de forhold, der vedrører adoptivfamilien, bliver evalueret i en særskilt publikation (evaluering del 2). Evalueringen vil belyse, hvilke elementer der er velfungerende, og hvilke elementer der kalder på en justering, herunder hvilken form for justering der nærmere er tale om.

Del 2 af evalueringen om den politiske aftale om et nyt adoptionssystem omhandler temaerne:

- Godkendelse af kommende adoptanter
- Støtte til adoptivfamilien
- Åbenhed og adoption
- Indsamling og formidling af viden

Ankestyrelsens evaluering af konsekvenserne af del 2 af den politiske aftale vil, i forhold til de enkelte temaer, blive struktureret på følgende måde:

1. Beskrivelse af de tiltag der blev igangsat på baggrund af aftalen
2. Vurdering af hvilke tiltag der med fordel kan fortsætte (*her inddrages bidrag fra høringen*)
3. Vurdering af hvilke tiltag der kan ændres eller justeres (*her inddrages bidrag fra høringen*)

Den politiske aftale fra 2014 om et nyt adoptionssystem i Danmark kan findes her:
https://ast.dk/filer/born-og-familie/undersogelse-af-den-fremtidige-struktur-for-adoptionsformidlingen/bilag-2-den-politiske-aftale-2014.pdf

Hvis I har inputs til de enkelte temaer, må I meget gerne skrive dem i nedenstående skema. Har I ikke inputs eller bemærkninger til enkelte temaer eller deltemaer er i velkommen til at springe felterne over.
Ankestyrelsen forventer, at aflevere evalueringen til social- og indenrigsministeriet den 1. februar 2020.

Godkendelse af kommende adoptanter

Når kommende adoptanter godkendes, sker det med den hensigt at udvælge de bedst egnede adoptanter af hensyn til barnet.	
Fremadrettet skal benyttes en ny godkendelsesramme i form af én godkendelse, der rummer ældre børn	Indtast bidrag ift. pkt. 2 og 3

og børn med flere behov.	
Der skal fortsat være krav om sammenhæng mellem ansøgernes alder og barnets alder.	Indtast bidrag ift. pkt. 2 og 3
Godkendelses- og undersøgelsesforløbet skal tilpasses, så det understøtter en ny godkendelsesramme.	Indtast bidrag ift. pkt. 2 og 3
Der skal være mulighed for at iværksætte en nærmere undersøgelse af de individuelle ressourcer allerede i godkendelsesforløbets første fase.	Indtast bidrag ift. pkt. 2 og 3

Støtte til adoptivfamilien

Den rådgivning og støtte adoptivfamilien tilbydes før og efter, at barnet kommer til Danmark skal afspejle formidlingsbilledet og de krav der stilles til adoptanterne, samt de behov adoptivfamilien har.	
Obligatorisk PAS-rådgivning lige før og efter, at barnet kommer til Danmark, i et øget omfang.	Indtast bidrag ift. pkt. 2 og 3
Temaaftener med PAS-konsulenter og adoptanter for kommende adoptanter.	Indtast bidrag ift. pkt. 2 og 3
Obligatoriske landemøder i organisationerne, som kommende adoptanter skal deltage i som en fortsat forberedelse på adoptionen, mens de venter på at blive matchet med et barn.	Indtast bidrag ift. pkt. 2 og 3
Omlægning af eksisterende PAS-rådgivning for at sikre adgang til rådgivning frem til den adopterede fylder 18 år, hvor der vil skulle være et stigende fokus på rådgivning til den adopterede selv i takt med dennes alder.	Indtast bidrag ift. pkt. 2 og 3
PAS-rådgivningen kan fremover rumme spørgsmål om åbenhed og kontakt med oprindelig slægt.	Indtast bidrag ift. pkt. 2 og 3
Forsøgsprojekt med PAS-rådgivning til voksne adopterede med en efterfølgende politisk drøftelse som	Indtast bidrag ift. pkt. 2 og 3

opfølgning på forsøget.	

Åbenhed og adoption

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Krav om at organisationer og myndigheder løbende har fokus på at sikre tilgængeligheden af oplysninger om den adopteredes baggrund, børnehjem m.v.	Indtast bidrag ift. pkt. 2 og 3
Krav om fokus på at sikre slægten viden om barnets opvækst gennem opfølgningsrapporter, i det omfang der er ønske om denne viden, og i det omfang den kan videregives i overensstemmelse med oprindelseslandets regler.	Indtast bidrag ift. pkt. 2 og 3
Indskærpelse af den moralske og aftaleretlige forpligtigelse til som adoptant at udarbejde opfølgningsrapporter.	Indtast bidrag ift. pkt. 2 og 3
Temaaftener med PAS-konsulenter om åbenhed og kontakt med oprindelig slægt.	Indtast bidrag ift. pkt. 2 og 3
Iværksættelse af forskning der belyser åbenheds betydning for den adopteredes trivsel og livskvalitet. https://ast.dk/publikationer/abenhed-i-adoption	Indtast bidrag ift. pkt. 2 og 3

Indsamling og formidling af viden

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Allerede eksisterende viden skal i spil og være tilgængelig på en måde, som kan bringe den i anvendelse hos de fagprofessionelle, som møder de adopterede og deres familie.	Indtast bidrag ift. pkt. 2 og 3
Fokus på muligheden for at iværksætte selvstændige initiativer med henblik på at understøtte den faglige vidensopsamling, der i forvejen sker.	Indtast bidrag ift. pkt. 2 og 3
SFI skal have fokus på adoptionsområdet	Indtast bidrag ift. pkt. 2 og

og i den forbindelse igangsætte relevante undersøgelser og vidensindsamling. https://www.vive.dk/da/udgivelser/at-vokse-op-som-adopteret-i-danmark-5678/	3
Skærpet fokus på inden for de eksisterende rammer at dokumentere den viden, som genereres gennem PAS-ordningen, og som på anden måde udvikles og indsamles i forbindelse med administrationen af området.	Indtast bidrag ift. pkt. 2 og 3
Oprettelse af en kontakt mellem Ankestyrelsen og VISO for så vidt angår international adoption.	Indtast bidrag ift. pkt. 2 og 3

4. Kontakt til Ankestyrelsen

Hvis vores henvendelse giver anledning til spørgsmål kan I kontakte Charlotte Karstenskov Mogensen eller Karin Rønnow Søndergaard på Ankestyrelsens e-mail ast@ast.dk eller hovedtelefonnummer 33 41 12 00 mandag til fredag klokken 9-15.

Hvis I har forslag til andre interesseorganisationer, der kan være relevant at inddrage i processen, er I også velkomne til at kontakte os. Vi gør opmærksom på, at Danish International Adoption, Adoptionsnævnet og Familieretshuset allerede er inddraget i vores arbejde med undersøgelsen, og vil også blive hørt i relation til evalueringen del 2.

Venlig hilsen

Karin Rønnow Søndergaard

Når kommende adoptanter godkendes, sker det med den hensigt at udvælge de bedst egnede adoptanter af hensyn til barnet.	
Fremadrettet skal benyttes en ny godkendelsesramme i form af én godkendelse, der rummer ældre børn og børn med flere behov.	Adoptionsnævnet bemærker, at den nye godkendelsesramme ikke endnu synes at være fuld integreret. Det må forventes at der fortsat vil være ansøgere med den almene godkendelse frem til 2021. Adoptionsnævnet har i efteråret 2019 indkaldt alle sager, hvor samrådet har taget stilling til udvidelse af ansøgeres godkendelse til et konkret barn i perioden 1. januar 2017-15. august 2019. Nævnet modtog i alt 55 sager. 38 af sagerne omhandlede den almene godkendelsesramme og 17 sager omhandlede den generelle godkendelsesramme. I den nævnte periode blev der ansøgt om udvidelse af ansøgeres godkendelse i 25 % af alle matchningssager. Den overordnede gennemgang viste, at der alene blev givet et afslag på udvidelse af godkendelse. Sagerne omhandler udvidelse på grund af alder, helbred eller søskende – i visse tilfælde flere af de nævnte forhold. Nævnet har ikke haft mulighed for at tage konkret stilling til samrådets afgørelser i de enkelte sager, men forventer at gøre dette på et nævnsmøde i foråret 2020. Den overordnede gennemgang viser dog, at der er flere udvidelser af den almene godkendelse, som ville være rummet i den generelle godkendelse, fx manglende HIV/hepatitis testning af børn.
Der skal fortsat være krav om sammenhæng mellem ansøgernes alder og barnets alder.	Adoptionsnævnets overordnede gennemgang viser, at der ikke er givet afslag på udvidelse af godkendelser på grund af alder. Det gælder både i sager, hvor barnet falder under aldersrammen og i sager hvor barnets alder ligger over godkendelsesrammen. Overordnet set ønsker man som udgangspunkt ikke at forældre er mere end

	42 år ældre end barnet. Nævnet er enig i hensynet til, at forældre til adopterede børn som udgangspunkt ikke skal være mere end 42 år ældre end barnet. Dog viser gennemgangen af sagerne, at ansøgere får udvidet godkendelsen til at omfatte det konkrete barn, selvom det ligger under aldersrammen.
Godkendelses- og undersøgelsesforløbet skal tilpasses, så det understøtter en ny godkendelsesramme.	Indtast bidrag ift. pkt. 2 og 3
Der skal være mulighed for at iværksætte en nærmere undersøgelse af de individuelle ressourcer allerede i godkendelsesforløbets første fase.	Nævnet har alene behandlet en klagesag herom. Nævnet fandt i den konkrete sag, at det var korrekt at samrådet havde givet afslag på godkendelse i fase 1 med henvisning til ansøgernes ressourcer.

Støtte til adoptivfamilien

Den rådgivning og støtte adoptivfamilien tilbydes før og efter, at barnet kommer til Danmark skal afspejle formidlingsbilledet og de krav der stilles til adoptanterne, samt de behov adoptivfamilien har.	
Obligatorisk PAS-rådgivning lige før og efter, at barnet kommer til Danmark, i et øget omfang.	I forhold til national adoption oplever nævnet, at det kan være svært for ansøgere, der skal hjemtage et barn at nå den obligatoriske PAS-rådgivning, fordi udslusningsforløbet ofte starter hurtigt efter matchet og accept heraf. Nævnet mener, at man med rette kan overveje om PAS-rådgivning før hjemtagelsen skal gøres mere specifik på barnet, sådan at PAS rådgiveren læser barnets sag og forbereder ansøgerne mere konkret på hjemtagelsen af det specifikke barn. Dette for at styrke og støtte ansøgerne i deres forberedelse på hjemtagelsen.
Temaaftener med PAS-konsulenter og adoptanter for kommende adoptanter.	
Obligatoriske landemøder i organisationerne, som kommende adoptanter skal deltage i som en fortsat forberedelse på adoptionen, mens de venter på at blive matchet med et barn.	Adoptionsnævnet har i 2019 oplevet at markant flere ansøgere på den nationale liste, har sagt nej til den matchning som voteringsgruppen har foretaget. For fleres vedkommende har deres afslag på at hjemtage et konkret barn ikke noget med barnets helbredsmæssige forhold, men skyldes ansøgernes manglende

	adoptionsmotiv. Matchninger på den nationale liste foretages ikke ud fra et anciennitetsprincip og ansøgerne ved derfor ikke hvornår de kan påregne at modtage et barn, hvis overhovedet. Denne matchning tilgodeser det konkrete barns behov. Det medfører dog en ulempe for adoptanter, som ikke kan følge med i deres adoptionsproces. For at imødekomme dette, kan det overvejes, om der burde oprettes landegruppe for de nationale adoptioner, sådan at der kan dannes netværk blandt ansøgerne, ligesom det kendes fra international adoption.
Omlægning af eksisterende PAS-rådgivning for at sikre adgang til rådgivning frem til den adopterede fylder 18 år, hvor der vil skulle være et stigende fokus på rådgivning til den adopterede selv i takt med dennes alder.	Indtast bidrag ift. pkt. 2 og 3
PAS-rådgivningen kan fremover rumme spørgsmål om åbenhed og kontakt med oprindelig slægt.	Åbenhed og kontakt med oprindelig slægt får tiltagende betydning i nationale sager, grundet bestemmelsen i FÆL § 20a, hvoraf det fremgår at der kan fastsættes samvær med biologisk slægt efter adoptionen.
Forsøgsprojekt med PAS-rådgivning til voksne adopterede med en efterfølgende politisk drøftelse som opfølgning på forsøget.	Indtast bidrag ift. pkt. 2 og 3

Åbenhed og adoption

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Krav om at organisationer og myndigheder løbende har fokus på at sikre tilgængeligheden af oplysninger om den adopteredes baggrund, børnehjem m.v.	Indtast bidrag ift. pkt. 2 og 3
Krav om fokus på at sikre slægten viden om barnets opvækst gennem opfølgningsrapporter, i det omfang der er ønske om denne viden, og i det omfang den kan videregives i overensstemmelse med oprindelseslandets regler.	Det er nævnets vurdering, at der fortsat er vanskeligheder med at få adoptanter til at lave opfølgningsrapporter.
Indskærpelse af den moralske og aftaleretlige forpligtigelse til som adoptant at udarbejde opfølgningsrapporter.	Se venligst ovenfor
Temaaftener med PAS-konsulenter om	Indtast bidrag ift. pkt. 2 og 3

åbenhed og kontakt med oprindelig slægt.	
Iværksættelse af forskning der belyser åbenheds betydning for den adopteredes trivsel og livskvalitet. https://ast.dk/publikationer/abenhed-i-adoption	Indtast bidrag ift. pkt. 2 og 3

Indsamling og formidling af viden

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Allerede eksisterende viden skal i spil og være tilgængelig på en måde, som kan bringe den i anvendelse hos de fagprofessionelle, som møder de adopterede og deres familie.	Indtast bidrag ift. pkt. 2 og 3
Fokus på muligheden for at iværksætte selvstændige initiativer med henblik på at understøtte den faglige vidensopsamling, der i forvejen sker.	Indtast bidrag ift. pkt. 2 og 3
SFI skal have fokus på adoptionsområdet og i den forbindelse igangsætte relevante undersøgelser og vidensindsamling. https://www.vive.dk/da/udgivelser/at-vokse-op-som-adopteret-i-danmark-5678/	Indtast bidrag ift. pkt. 2 og 3
Skærpet fokus på inden for de eksisterende rammer at dokumentere den viden, som genereres gennem PAS-ordningen, og som på anden måde udvikles og indsamles i forbindelse med administrationen af området.	Indtast bidrag ift. pkt. 2 og 3
Oprettelse af en kontakt mellem Ankestyrelsen og VISO for så vidt angår international adoption.	

DANISH INTERNATIONAL ADOPTION

Til Ankestyrelsen

Den 20. januar 2020

Vedr. Høring angående evaluering af adoptionsreformen fra 2016 - Evaluering del 2

Vi henviser til Ankestyrelsens høring af 2. oktober 2019, samt møde afholdt med Ankestyrelsen den 14. januar 2020, og referat fra mødet modtaget i DIA den 16. januar 2020.

DIA bemærker, at rammen for vores besvarelse af denne høring har været et 1-times møde med Ankestyrelsen. Grundet den korte tid, der var afsat til dette møde, har fokus fra vores side især været på de udfordringer, vi har oplevet siden reformen fra 2016, og i mindre grad de positive effekter der har været siden reformen.

Af forbedringer vi vil derfor særligt nævne, at oplysning af sagerne i de konkrete matchningssager er blevet væsentligt bedre efter indførelse af "forklæderne" og Fase 4 er ligeledes en stor forbedring, som skaber store værdi for den samlede adoptivfamilie.

DIA har forstået det således, at formålet med denne del 2 ikke er, at der på nuværende tidspunkt skal ske konkrete ændringer på de anførte områder (godkendelsesramme, støtte til adoptivfamilien etc.), men at formålet alene er at undersøge om, der i det kommende nye adoptionssystem bør ses nærmere på om der skal ske ændringer. Vores drøftelser på mødet med jer den 14. januar 2019 og vores bemærkninger skal derfor ses i lyset heraf.

DIA har enkelte bemærkninger til referatet, som vi har indsat i referatet. Vi vedhæfter referatet med bemærkninger.

Derudover har vi bemærkninger til referatets punkt 3 "Åbenhed og adoption"; vi skal anføre, at vi ikke finder det problematisk at PAS- konsulenterne afholder temaaftner om åbenhed uden vores deltagelse. Det vi forsøgte at udtrykke på mødet var, at vi finder det ønskværdigt med et samarbejde omkring temaftnerne, således at både PAS konsulenternes og DIAs viden og ekspertise på området kan komme i spil og komme adoptivfamilierne til gode. Det ville derfor være en

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forbedring, hvis de temaaftner, hvor det kunne give god mening, kunne koordineres i fælleskab mellem PAS-rådgivningen og DIA.

Øvrige og supplerende bemærkninger

I forhold til punktet "**Godkendelse af adoptanter"** og den nye godkendelsesramme bemærker DIA, at der inden for de sidste 1½ år har været fire breakdowns, dvs. adoptioner, hvor familier efter overdragelsen af barnet, har valgt at afbryde adoptionen og efterlade barnet. I to af sagerne var der som bekendt allerede truffet afgørelse om adoption i den udenlandske domstol, og adoptionen kunne derfor ikke bare afbrydes.

Det er DIAs opfattelse, at denne stigning i afbrydelse af adoptionerne – en situation vi aldrig tidligere har set i Danmark, eller ses i de øvrige skandinaviske lande, bør undersøges nærmere.

Det vil efter DIAs opfattelse både være relevant at inkludere selve de konkrete forløb, men også godkendelsesforløbet, og betydningen af den nye godkendelsesramme, jf. vores bemærkninger herom i forhold til familiernes mulighed for at forholde sig åbent til hvad de kan magte og har ressourcer til, samt selve forberedelsen af familierne (både i DIA og i PAS-regi).

Det er vores opfattelse, at godkendelsen af adoptanterne og sikringen af at de har de rette ressourcer og er tilstrækkeligt forberedt i forhold til det konkrete barns behov, er helt centralt i at sikre gode adoptionsforløb og i at sikre bæredygtige adoptioner til Danmark.

DIA anbefaler et langt større fokus på betydningen og indholdet af godkendelsesforløbet og sammenhængen i forberedelsen, da det er mange år siden, at de metoder der ligger grund for godkendelsen af adoptanter, har været evalueret. Eksempelvis om det kunne være relevant at inkludere psykologiske testninger som et værktøj i godkendelsesforløbet.

For så vidt angår punktet "**Støtte til adoptivfamilien**" skal vi ift. underpunktet om obligatoriske landemøder bemærke, at der i praksis ikke har været tale om en ændring, idet der altid har været afholdt landemøder. DIA afholder fortsat årlige landemøder, som led i forberedelse af de kommende adoptivforældre.

Under punktet "**Åbenhed og adoption**" skal vi ift. underpunktet om sikring af tilgængeligheden af oplysninger om den adopterede, bemærke at dette krav har medvirket til et skærpet fokus på barnets legale baggrund. Særligt "forklæderne" har medført en forbedring i forhold til at sikre sig mest mulig viden om barnets baggrundsoplysninger, hvilket er til gavn for den adopterede og adoptivfamilien.

Ift. underpunktet om krav om fokus på, at slægten sikres viden om barnets opvækst i form af opfølgningsrapporter, skal vi bemærke, at vores fokus herpå ikke har haft ændret sig sammenholdt med tidligere, og kravet har ikke medført

en ændring hos os – vi har som tidligere fokus på vigtigheden af barnets biologiske slægt i det omfang det er muligt sikres adgang til informationer om barnet.

Vi bemærker dog, at det kan været forbundet med store udfordringer at få opfølgningsrapporterne videreformidlet til biologiske familie, særligt når formidlingen er blevet lukket ned i et afgiverland, og vi ikke længere har kontaktpersoner til at bistå os med opgaven med videreformidling af opfølgningsrapporterne til biologisk familie. DIA anbefaler et større fokus på, hvordan man kunne sikre sig, at opfølgningsrapporterne reelt kom ud til de biologiske familier, og ikke blot til myndighederne, således at de danske myndigheder og DIA også tager et medansvar for at sikre tilgængeligheden af rapporter til biologisk familie gennem dialog og samarbejde med afgiverlande. Vedrørende underpunktet om indskærpelse af forpligtelse til at udarbejde opfølgningsrapporter, skal vi bemærke, at vi har fortsat har udfordringer med familier, som ikke ønsker at efterleve rapporteringsforpligtelsen. DIA anbefaler af hensyn til at sikre tilgængeligheden for biologisk familie, at de danske familiers forpligtelse for at udarbejde opfølgningsrapporter skærpes, således at der ikke kun er tale om en moralsk forpligtelse, men også en juridisk forpligtelse, således at manglende overholdelse af forpligtelsen reelt kunne sanktioneres. Dette primært for at sikre den biologiske slægt retten til at få adgang til viden om barnets opvækst samt efterlevelse af DIAs og de danske myndigheders forpligtelse til at sikre, at rapporterne udarbejdes og fremsendes til afgiverlandet.

Vedrørende punktet ”**indsamling og formidling af viden”**

Ift. underpunktet om at al eksisterende viden skal i spil, skal vi bemærke, at der desværre ikke er blevet skabt nogen form for forum, hvor fagprofessionelle på området har kunne mødes og dele viden til gavn for den samlede adoptivfamilie. Der er heller ikke et samlet sted, hvor der kan søges viden inden for området i form af fx fælles hjemmesiden, ”vidensbank” eller lignende.

Vedr. underpunktet Fokus på at iværksætte selvstændige initiativer, er det uklart for DIA, hvad dette punkt retter sig imod, hvorfor vi ikke forholder os nærmere til dette.

Vedr. underpunktet om, at SFI (VIVE) skal have fokus på adoptionsområdet, er DIA kun bekendt med, at der udfærdiget en undersøgelse på området. DIA har ikke været inddraget i denne undersøgelse, og er heller ikke blevet oplyst eller orienteret om undersøgelsens resultater. Jf. ovenfor er der ikke blevet skabt et fagfælleskab, hvor det ville have været oplagt at få formidlet og drøftet resultater af undersøgelser på området.

Vedrørende underpunktet om skærpet fokus på inden for de eksisterende rammer at dokumentere den viden, som genereres gennem PAS- ordingen, har DIA ikke kendskab til, at der skulle være iværksat initiativer i dette øjemed.

Vedrørende underpunktet om oprettelse af en kontakt mellem Ankestyrelsen og VISO, har DIA ikke kendskab til dette, og er ikke orienteret om en sådan kontakt, hvorfor vi ikke har nogen bemærkninger hertil.

DIA opfordrer til et større samarbejde og vidensdeling mellem de forskellige aktører på området, så der kan skabes et større fælles fundament for rådgivningen af familierne og det internationale adoptionsarbejde.

DIA har ikke yderligere bemærkninger til Ankestyrelsens høring.

Såfremt vores besvarelse giver anledning til spørgsmål er I velkomne til at kontakte os.

Med venlig hilsen

Andrea Jedrzejowska

Juridisk konsulent/
Adoptionskoordinator

Referat af møde med DIA den 14. januar 2020

På mødet deltog fra DIA Jeanette Larsen, Tina Brandt-Olsen, Andrea Haugsted Jedrzejowska, Debby Pedersen, Rikke Klestrup, Tina Schwendson og Marina Bonetti. Fra Ankestyrelsen deltog Charlotte Mogensen og Karin Søndergaard.

Mødet blev holdt som et led i høringen af DIA over evalueringen af de tiltag, der retter sig mod adoptivfamilien og er blevet iværksat efter den politiske aftale om et nyt adoptionssystem i 2014.

1. Godkendelse af kommende adoptanter

Bredden i den nuværende godkendelsesramme har ifølge DIA haft betydning i forhold til både ansøgerfeltet, ansøgerne og for DIAs samarbejde med afgiverlandene.

I nogle lande oplever DIA, at rammerne ikke giver mening for samarbejdsparterne, som forventer en konkretisering af hvilke ressourcer ansøgerne reelt har og hvilke udfordringer eller problematikker ansøgerne reelt har kompetencer til at imødekomme.

Forventningerne bliver nogle gange forsøgt imødekommet bl.a. i socialrapporten og ved landevalg. Men DIA oplever også, at ansøgerne af det konkrete land kan blive bedt om, at udfylde "afkrydsningsskemaer", hvor de konkretiserer hvilke problematikker de vil være åbne overfor.

DIA mener, at der er en risiko for, at den brede godkendelsesramme påvirker ansøgerne og ansøgernes mulighed for at forberede sig til en adoption negativt. Da ansøgerne forventes at være åbne overfor en bred vifte af problematikker og ikke får mulighed for at konkretisere deres ressourcer, forholder de sig måske ikke til disse problematikker før de får et barn i forslag. Derved kan man ende med et match, som ikke er det optimale. Samtidig kan det være svært for ansøgerne ikke at acceptere matchningen, da ansøgerne kan være bange for at miste deres godkendelse. DIA efterspørger i den forbindelse muligheden for at ansøgerne får bedre mulighed for kvalificeret at afvise et match.

DIA mener også, at der kan være risiko for, at de rummelige ansøgere, som der efterspørges med den generelle godkendelsesramme, får afslag på godkendelsesforløbet hvis de er ærlige omkring deres reelle åbenhed, i modsætning til de ansøgere, der holder deres bekymringer om rammens spændvidde tilbage.

DIA mener desuden, at godkendelsesrammerne kan give ansøgere et indtryk af at alle børn der frigives til international adoption er special needs børn. Det er ikke det indtryk DIA har. Generelt oplever DIA, at godkendelsesrammerne er for vidtgående og ikke afspejler børnene. DIA mener, at der fortsat bør være en generel godkendelsesramme, der er bredere end den foregående almene godkendelsesramme og i højere grad lægger vægt på barnets udviklingspotentiale. Den nuværende generelle ramme er dog efter DIAs opfattelse for bred, og der bør gives mulighed for positive tilvalg for ansøgerne ift. hvilke udfordringer de kan rumme.

En periode på fire år fra godkendelse til hjemtagelse eller en eventuel forlængelse af godkendelsen er lang tid og det kan påvirke adoptionsparatheden ved ansøgerne. Det er derfor ifølge DIA vigtigt at sikre nye oplysninger om ansøgernes ressourcer og adoptionsmotiv herunder deres helbred mm. Det ville være ønskeligt med en generel opfølgning på ansøgerne hvert år i perioden fra godkendelse til adoption fx i

Familieretshuset. I det hele taget vigtigt med et tættere samarbejde også på medarbejdersiden blandt områdets aktører.

DIA oplever ikke, at der er stor forskel på ansøgernes ressourcer i de tilfælde hvor ansøgerne får en udvidelse til et konkret barn og hvor ansøgerne matches med et barn inden for deres godkendelse. DIA oplever, at der ikke er ensartethed i de oplysninger, der er tilgængelige for ansøgerne om barnet, og som ansøgerne får i forhold til, om sagen behandles i Adoptionsnævnet (inden for ansøgernes godkendelse) eller i Adoptionssamrådet (uden for ansøgernes godkendelse). Ansøgerne oplever generelt tryghed i forhold til oplysningerne om barnet i sagerne behandlet i Adoptionsnævnet, hvor nævnets pædiater supplerer/underbygger den vurdering som DIAs pædiater har foretaget.

DIA foreslår, at PAS-konsulenterne eventuelt kan indgå i den række af eksperter, som ansøgerne kan søge råd hos i forbindelse med stillingtagen til matchningen. For størstedelen af ansøgerne kan det være relevant at modtage rådgivning ift. de psykosociale /psykologiske oplysninger der er om barnet.

DIA foreslår, at PAS-konsulenterne eventuelt kan indgå i den række af eksperter, som ansøgerne kan søge råd hos i forbindelse med stillingtagen til matchningen. For nogle ansøgere Ikke for nogle ansøgere men det kan i det hele taget være relevant i forbindelse med de psykosociale /psykologiske oplysninger der er om barnet at familierne kan få rådgivning om den del også. kan en psyko-social eller psykologisk vurdering af det konkrete match være meget gavnligt.

2. Støtte til adoptivfamilien

DIA oplever, at rådgivningen fra de involverede myndigheder kan virke fragmenteret og efterspørger en større grad af samarbejde mellem myndigheder og organisation og fokuserer på en helhedsorienteret tilgang.

Forberedelsen af ansøgerne i forbindelse med hjemtagelsen (fase 4) kan ifølge DIA mangle det internationale aspekt og en forberedelse af ansøgerne på, at "den perfekte overdragelse" måske ikke eksisterer eller måske opfattes anderledes i afgiverlandet. Ansøgerne bør, ifølge DIA, forberedes på, at fleksibilitet fra ansøgernes side kan forventes i udlandet og derfor ikke skal komme som en overraskelse for dem. DIA efterspørger derfor også et større samarbejde mellem PAS-rådgiverne i Ankestyrelsen og DIA i fase 4, da en koordinering af den psykologisk/mentale og den praktiske forberedelse kunne være med til at sikre en bedre oplevelse for ansøgerne, barnet og for samarbejdsparterne i afgiverlandene.

DIA oplever, at nogle samarbejdslande ikke mener, at ansøgere med biologiske børn er godt nok forberedte på overdragelsen og efterspørger derfor mere fokus på dette aspekt i fase 4. Det gælder både forberedelse af ansøgerne og af det biologiske barn.

DIA efterspørger også et beredskab i forbindelse med udfordrende situationer for ansøgerne i forbindelse med overdragelsen af barnet og ved breakdowns, som involverer alle relevante aktører, hvem der skal være tilgængelig, hvordan de skal være tilgængelige etc. I den forbindelse mener DIA i øvrigt, at åbenhed i dialogen mellem de danske myndigheder, PAS-rådgiverne og DIA om den vejledning og de samtaler, der er foregået med ansøgerne, er afgørende.

3. Åbenhed og adoption

DIA giver udtryk for, at åbenhed er et spændende emne, som på godt og ondt fylder meget. DIA efterspørger mere dialog om emnet, blandt andet om det altid er etisk og kulturelt forsvarligt at forlange eller forvente åbenhed. Det kræver ifølge DIA også en dialog med samarbejdslandene om opfattelsen og forståelsen af begrebet. DIA efterspørger mere viden om de etiske og kulturelle aspekter ved åbenhed med særlig fokus på biologisk slægt.

DIA mener generelt, at man måske underkender det kulturelle aspekt i de enkelte lande og i stedet problematiserer "ikke-åbenhed", fx i sager om hittebørn. DIA mener fx at det er problematisk at PAS-konsulenter holder temaaftner om åbenhed uden DIAs deltagelse, da temaaftnerne dermed ikke også får fokus på det kulturelle aspekt. Se DIAs bemærkninger i høringsvaret.

4. Indsamling og formidling af viden

DIA mener ikke at den store viden der findes på området er kommet i spil. DIA efterspørger desuden mere dialog omkring resultater af undersøgelser og forskning på området.

DANISH INTERNATIONAL ADOPTION

Ankestyrelsen
Teglholmsgade 3
2450 København

Birkerød den 22. april 2019

Vedr.: Jeres j.nr. 18-39833 – DIAs svar på Ankestyrelsens høring vedrørende undersøgelse af den fremtidige adoptionsstruktur

Ankestyrelsen har i brev af 22. marts 2019 bedt om DIAs bemærkninger til en række ændringsforslag vedrørende den fremtidige adoptionsstruktur samt eventuelle generelle bemærkninger. Det fremgår af høringen, at Ankestyrelsen alene ønsker DIAs eventuelle bemærkninger til de beskrevne delelementer, mens der ikke ønskes bemærkninger til et eller flere helstøbte alternativer til en samlet struktur.

Ankestyrelsens høring indeholder en række ændringsforslag til den eksisterende ansvars- og opgavefordeling samt den økonomiske ramme for international adoption, herunder:

1. Ændrede rammer for økonomi og opgavefordeling
2. Tilsynets fremadrettede udformning
3. Retningslinjerne for adoptionsrelateret støtte
4. Post Adoption Service (PAS)
5. Ændrede snitflader

DIAs generelle bemærkninger

Der har været international adoption til Danmark i mere end 50 år og de mange års erfaringer har medført løbende udvikling af adoptionssystemet og opgave-varetagelsen. Det betyder at adoption som alternativ familieform i dag er en af de sikreste alternative familieformer, bl.a. fordi adoptionssystemet i høj grad er bygget op omkring et stort fokus på særligt barnets rettigheder, men også de biologiske familiers rettigheder og adoptivfamiliers rettigheder.

Et bæredygtig system, bør derfor efter DIAs opfattelse understøtte international adoption til Danmark som mulighed, både for de mange udsatte børn, der ikke har andre muligheder, men også for de familier, der ønsker at skabe en familie gennem adoption.

DIA bemærker helt overordnet, at vi finder det beklageligt, at årsagerne til den aktuelle situation, hvor der mangler godkendte ansøgere til international adoption, ikke er inddraget i undersøgelsen. Hvis der skal findes løsninger, der i fremtiden understøtter international adoption til Danmark, er det efter DIAs opfattelse

afgørende, at årsagerne til udviklingen inddrages i undersøgelsen. I modsat fald er det vanskeligt at se, at der kan findes relevante svar på de aktuelle udfordringer.

Som vi tidligere har påpeget, jf. DIAs analyse af 3. september 2018, synes den nuværende regulering og de ændringer, der blev gennemført med adoptionsloven i januar 2016, at begrænse international adoption til Danmark, både i forhold til antallet af internationale adoptioner til Danmark, men også i forhold til antallet af ansøgere, der godkendes til adoption.

De nye godkendelsesrammer, der trådt i kraft i januar 2016, har således efter vores opfattelse stor betydning for antallet af nye ansøgere til international adoption. Efter DIAs opfattelse understøtter godkendelsesrammen desværre ikke princippet om, at enhver adoption bør tage sit udgangspunkt i hensynet til barnets bedste, men tværtimod afspejler rammen en nærmest mekanisk opfattelse af børns behov og familiers ressourcer, der ikke passer til virkelighedens forskelligheder.

Efter DIAs opfattelse, er det desuden helt centralt i en fremtidig struktur, at opgave- og ansvarsfordelingen mellem DIA som formidlende organisation og Ankestyrelsen som tilsynsmyndighed i langt højere grad adskilles og præciseres. Dette med henblik på at sikre, at DIA som privat organisation er efterladt et vist råderum og ansvar til, at varetage opgaven med at formidle internationale adoptioner, og dermed bevare fokus på organisationens kerneopgave – selve formidlingsopgaven, herunder det meget væsentlige arbejde med at sikre et godt og respektfuldt samarbejde med vores udenlandske samarbejdspartnere.

Hvis der også i fremtiden skal være en høj adoptionsfaglighed i formidlingsarbejdet, er det således afgørende, at rammerne giver mulighed for, at DIAs primære fokus på formidlingsarbejdet bibeholdes, fremfor at organisationens ressourcer primært anvendes på besvarelsen af tilsynet, der siden lovændringen har været støt stigende, og i tiltagende grad udgør en stadig større andel af organisationens opgave-varetagelse. I modsat fald er der en risiko for, at organisationen over tid mister den viden og de kompetencer, der er opbygget gennem mange år, og som udgør fundamentet for opgavevaretagelsen og samarbejdet med udlandet. Den viden og de kompetencer findes ikke andre steder i Danmark, og det vil tage mange år at genskabe hvis de udhules eller endnu værre, går helt tabt, således som ISS også anfører i sin rapport.

Slutteligt bemærkes det, at en bæredygtig struktur for international adoption til Danmark i fremtiden, efter DIAs opfattelse ikke alene er et økonomisk spørgsmål, men også et spørgsmål om rammerne for - og opgaverne forbundet med - international adoption til Danmark.

Det er derfor DIAs opfattelse, at en række yderligere elementer vil være særdeles relevante at inddrage i undersøgelsen af, hvordan der kan skabes en bæredygtig struktur for international adoption til Danmark, herunder en samling af visse af opgaverne omkring forberedelsen af adoptanterne samt i forhold til bistand og støtte til adopterede og familier efter adoptionen i DIA. Dette vil medvirke til en langt større

kvalificering og sammenhæng i opgavevaretagelsen – én indgang for familier og adopterede.

Om DIAs besvarelse

Det bemærkes indledningsvist, at DIA i vores høringsvar har fokuseret på de elementer, der er relevante for en fortsat opgavevaretagelse i DIA i fremtiden.

Da vi tidligere har beskrevet samt dokumenteret, at de nuværende rammer for formilingsarbejdet ikke er tilstrækkelige til, at DIA kan varetage opgaven i fremtiden, jf. vores analyse af 3. september 2018, har vi ikke yderligere bemærkninger til de elementer i høringen, der vedrører uændrede rammer for økonomien og opgavevaretagelsen.

Da Ankestyrelsen alene har ønsket bemærkninger til de beskrevne delementer i høringen og ikke en eller flere helstøbte alternativer til en samlet struktur, skal DIA for god ordens skyld gøre opmærksom på, at DIAs bestyrelse ikke på nuværende tidspunkt har taget stilling til, om organisationen også i fremtiden ønsker og har mulighed for at varetage opgaven med at formidle internationale adoptioner .Dette afhænger dels af den økonomiske struktur for en fremtidig opgavevaretagelse, dels de øvrige rammer.

Slutteligt tager DIA forbehold for eventuelle kontraktsretlige konsekvenser ved overgangen til et nyt system. Det bør således efter DIAs opfattelse indgå i undersøgelsen af overgangen til et evt. nyt system, om der vil være evt. aftaleretlige/kontraksretlige konsekvenser, hvis vilkårene for familierne ændrer sig væsentligt undervejs i processen, herunder i forhold til de indbetalte gebyrer og udgifterne fremadrettet.

1. **Ændrede rammer for økonomi og opgavefordeling**

Grundlæggende set handler adoption om at hjælpe de mest udsatte og sårbare børn i verden til at få en familie i Danmark, så de kan vokse op i trygge rammer, der kan skabe den nødvendige udvikling for dem – naturligvis alene i de situationer, hvor barnet ikke har en familie eller andre trygge omsorgspersoner i deres hjemland, der kan varetage omsorgen for dem.

Som DIA tidligere har peget på, er det DIAs holdning, at internationale adoptioner bør sidestilles med nationale adoptioner, sådan at det sikres, at det er de menneskelige ressourcer, der er afgørende for, at vi kan hjælpe børn gennem international adoption og ikke de økonomiske ressourcer.

Gennem en driftsaftale, der sikrer, at alle faste udgifter afholdes af staten, kan det dels sikres, at økonomi ikke bliver en barriere for international adoption til Danmark i fremtiden, dels sikres, at organisationen kan bevare et højt adoptionsfagligt niveau, uafhængigt af formidlingen samt antallet af godkendte ansøgere.

Dermed vil familierne alene skulle afholde de direkte sagsrelaterede udgifter forbundet med behandlingen af deres sag i Danmark og i udlandet samt udgifterne forbundet med at rejse ud og hente barnet.

For at sikre et bæredygtigt grundlag, er det således DIAs opfattelse at hensynene til stabilitet, robusthed og et højt fagligt niveau i organisationen bedst sikres gennem en driftsaftale, der er baseret på en dækning af alle faste udgifter i organisationen dvs. den model, som beskrives i afsnit tegnes 1, b), b) i Ankestyrelsens høring.
Med denne model vil det sikres, at organisationens opgavevaretagelse er fuldstændig uafhængig af formidlingen, både fsva. antallet af adoptioner og antallet af nye ansøgere.

Samme hensyn kan ikke i samme grad sikres ved en model, hvor tilskuddet er baseret på et beløb, som svarer til en andel af organisationens udgifter dvs. den model som beskrives under 1 b), a) i høringen. I denne model vil organisationen fortsat vil være følsom over for ændringer i formidlingen, hvilket ikke kan udelukkes at kunne påvirke opgavevaretagelsen.

DIAs bemærkninger til overgangsfasen

I forhold til overgangsfasen til en statslig model, bemærker DIA, at der er en meget høj risiko for, at den viden og de kompetencer der igennem mange år er opbygget i organisationen, vil forsvinde. Det kan således ikke forventes, at det vil være muligt, at bibeholde de nuværende kompetencer ved overgangen til en statslig model, bl.a. fordi det vil blive vanskeligt at holde på medarbejderne, der i givet fald må forventes at søge videre. Dette vil uundgåeligt påvirke såvel opgavevaretagelsen i den statslige model og selve overgangsfasen, men i høj grad også muligheden for at bevare de eksisterende samarbejder.

Dertil kommer, at det efter DIAs opfattelse højst sandsynligt ikke vil være muligt, at videreføre alle de igangværende samarbejder i en statslig model, idet det formentligt ikke vil være alle samarbejdspartnere, der ønsker at samarbejde med en centralmyndighed. DIAs samarbejder er opbygget gennem mange år og kan ikke nødvendigvis bare overdrages. Dette vil afhænge af afgiverlandene og de myndigheder og organisationer, som DIA samarbejder med i dag.

2. Tilsynets fremadrettede udformning

I forhold til Ankestyrelsens forslag om et større samarbejde i form af møder, årsplaner m.v., finder DIA forslagene gode. DIA finder, at der i samme ånd kan findes andre opgaver, der i højere grad kan løses i samarbejde, f.eks. akkrediteringer af samarbejdspartnere, der også med fordel kunne ske ved fælles rejser til udlandet. Det vil i højere grad kunne kvalificere grundlaget, ligesom spørgsmål kunne afklares i fællesskab undervejs, samt i dialog med myndigheder og samarbejdspartnere i udlandet.

DIA mener endvidere, at indberetningsforpligtelsen bør ændres til væsentlige ændringer, idet det må antages, at Ankestyrelsen i dag har oparbejdet en viden om og et kendskab til DIAs samarbejder, der gør, at alene væsentlige oplysninger og ændringer fremover er af relevans. Desuden bør der efter DIAs opfattelse indføres bagatelgrænser for de økonomiske anmeldelser.

I forhold til et særskilt tilsyn med PAS er det uklart for DIA, hvad et sådan tilsyn i givet fald skulle bestå af. DIA går således som udgangspunkt ud fra, at PAS-opgaven er omfattet af de almindelige krav til DIAs sagsbehandling, som fremgår af akkrediteringsvilkårene.

I forhold til det økonomiske tilsyn, hvis rammerne for strukturen ændres, sådan at DIAs administrative udgifter finansieres af staten via en driftsaftale, er det DIAs opfattelse, at tilsynet med det forhøjede tilskud kan ske på samme måde som det tilsyn, der i dag er forbundet med DIAs nuværende årlige driftsstøtte.

Som udgangspunkt kan driftstilskuddet udregnes på baggrund af det årlige budget, og sådan at der rapporteres kvartalsvist på udgifterne og tilskuddets anvendelse, ligesom i dag. Der kan ved årets udgang ske en efterregulering, sådan at for meget udbetalt tilskud overføres til næste år, mens for lidt udbetalt tilskud udbetales til organisationen i forbindelse med aflæggelse af årsregnskabet.

I forhold til en hjemmel til at tilbageholde tilskudsmidler, hvis DIA ikke har leveret de opgaver, som Ankestyrelsen fastsætter indholdet af og fristerne for, finder DIA det noget problematisk, idet et sådan indgreb er egnet til at påvirke opgavevaretagelsen i forhold til formidlingsopgaven og dermed påvirke familiernes sager.

Hvis Ankestyrelsen ønsker at sikre, at DIA i tilstrækkelig grad har mulighed for at besvare Ankestyrelsens henvendelser og tilsyn, bør dette istedet ske gennem øremærkede midler til besvarelse af tilsynet, og sådan at det sikres, at de ressourcer der tildeles organisationen til efterlevelse af kravene og tilsynet fra Ankestyrelsen matcher de ressourcer, der tildeles Ankestyrelsen til udførelse af tilsynet.

DIA opfodrer ligeledes til, at det generelle planlagte tilsyn så vidt muligt tilrettelægges i samarbejde, så tilsynet kan indpasses i organisationens øvrige opgaver og løses på en for alle parter tilfredsstillende måde. Dette gælder både for det generelle tisyn og for de særopgaver, der opstår undervejs, og som der har været mange af siden 2015.

3. Retningslinjerne for adoptionsrelateret støtte

Helt overordnet bemærker DIA, at samme hensyn som var gældende ved lovændringen i 2016, herunder bevarelse af muligheden for, at organisationen fortsat kan yde adoptionsrelateret støtte er uændret. Ydermere er det med de indførte restriktioner og tilsynet med den støtte, der ydes, konstateret at der ikke konkret har

været anledning til bekymring, og at der altså heller ikke konkret er set en forbindelse med antallet af adoptioner og ydelse af adoptionsrelateret hjælpearbejde.

Det er DIAs opfattelse, at der er stor gennemsigtighed i den støtte DIA yder til adoptionsrelateret hjælpearbejde, ligesom at der er tale om støtte der ydes til projekter, der understøtter forbedring af børns levevilkår samt subsidiaritetsprincippet.

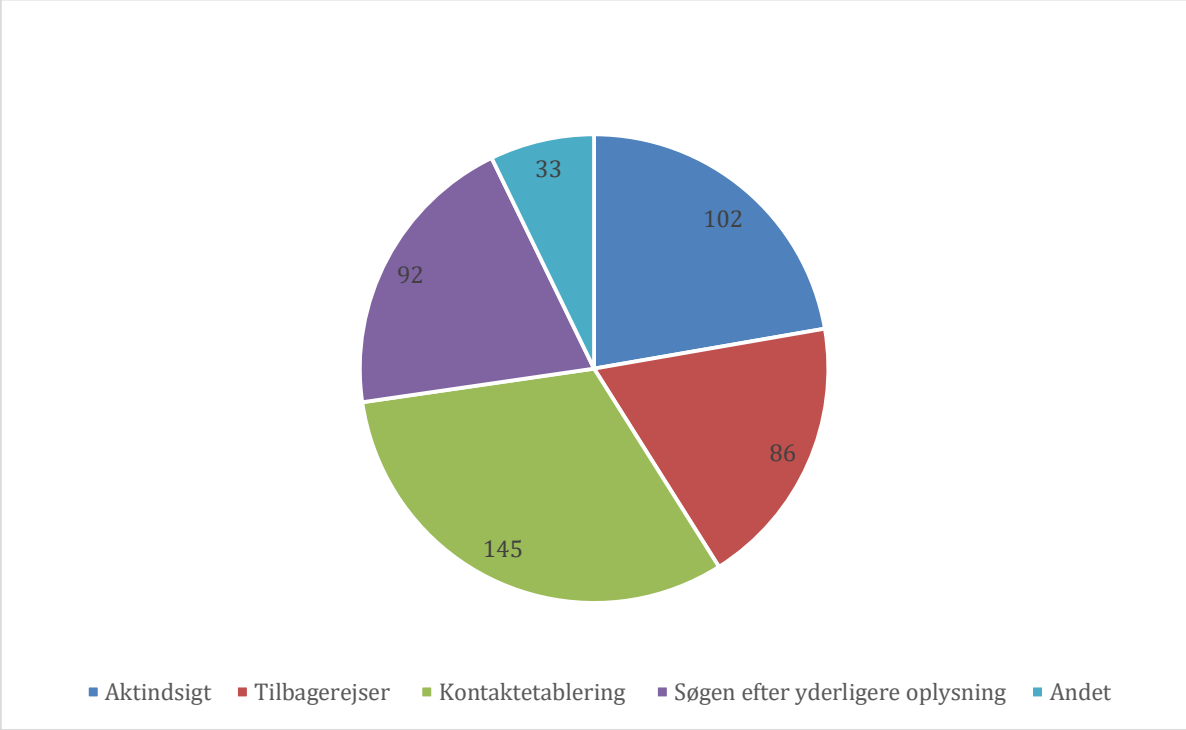
Det er efter DIAs opfattelse væsentligt at bevare muligheden for denne støtte, der er er bistand, der naturligt forudsættes at være en del af samarbejdet med flere af DIAs samarbejdspartnere. Det præciseres, at denne forudsætning ikke bare er DIA´s, men kommer fra samarbejdspartnerne, der stiller samme krav til deres øvrige samarbejdspartnere i andre lande. Dette sker med henblik på at yde hjælp til de børn, for hvem international adoption ikke er den rigtige eller mulige løsning. Denne støtte er således en nødvendig del af samarbejdet i flere af DIAs samarbejdslande.

Det er samtidig DIAs opfattelse, at begrænsningen om, at DIA ikke må yde andre former for ikke adoptionsrelateret støtte eller bistand (humanitært hjælpearbejde), der blev indført med lovændringen i 2016, er unødvendig og også uhensigtsmæssig. Hvis der ønskes en adskillelse mellem humanitært hjælpearbejde og adoptionsarbejdet, kan det imødegås gennem en væsentligt mindre indgribende begrænsning f.eks. om, at DIA kun må yde ikke adoptionsrelateret hjælpearbejde i de lande, hvor DIA ikke aktivt har et samarbejde om adoptionsformidling.

I forhold familiers mulighed for efter adoptionen at yde støtte, opfordrer DIA til at muligheden bevares. I modsat fald vil dette formodes at ske uden om organisationen med den konsekvens, at det ikke længere vil være gennemsigtigt, hvad der ydes af støtte og til hvem.

4. Post Adoption Service

DIA har i vores analyse til Ankestyrelsen af 3. september 2018 om konsekvenserne af det aktuelle formidlingsbillede beskrevet den bistand, DIA yder i dag, samt omfanget og indholdet af de henvendelser, som DIA behandler. DIA modtog i 2018 samlet set 458 anmodninger fra 367 familier/adopterede.



Som DIA har beskrevet, består DIA´s bistand bl.a. af rådgivning og vejledning om mulighederne i landene samt omkring kulturelle forhold. Hvor, hvordan og af hvem kan de adopterede få hjælp. Vi følger op på mulighederne for og udviklingen af PAS i udlandet i forbindelse med kontaktrejser, og når vi får besøg fra vores samarbejdspartnere. Vi fungerer som bindeled til myndigheder og børnehjem i udlandet samt til andre familier/landegrupper, Ankestyrelsens PAS samt øvrige tilbud, f.eks. kommunalt. DIA afholder også landetræf for familier og adopterede i forbindelse med besøg fra udlandet.

Mens den rådgivning, der ydes af de eksterne konsulenter, der i dag er tilknyttet Ankestyrelsen, i høj grad er finansieret af staten, er den bistand, der ydes af DIA til såvel adoptivfamilier, som adopterede og biologiske familier ikke særskilt finansieret.

Ofte oplever DIA i praksis, at de to forskellige tilbud rækker ind over hinanden, uden at der er nogen former for koordinering eller samtækning. Ydermere er det DIAs opfattelse, at PAS i de kommende år også skal kunne rumme en række specialtilbud, herunder bl.a. rådgivning og mediering i forbindelse med f.eks. åbne adoptioner i forbindelse med eller efter adoptionen.

Da DIA allerede besidder konkret viden om afgiverlandene og har løbende kontakt til netværk og relevante aktører i afgiverladene, samt rådgivningsmæssigt har relevant viden om denne del af PAS-arbejdet, opfordrer DIA til, at PAS opgaven samles i DIA, sådan at der sikres én indgang for familier og adopterede, der søger støtte og rådgivning, og at der sikres en samlet finansiering af støtte og bistand til familier og

adopterede. For familien og den adopterede er der ikke tale om to adskilte behov, men om et behov for støtte og bistand.

For at dette kan lykkedes i praksis, er det naturligvis et centralt element, at de eksterne konsulenter, der i dag er tilknyttet Ankestyrelsen, også indgår i det nye PAS-tilbud og dermed i stedet tilknyttes DIA.

Som DIA tidligere har påpeget, er det vore vurdering, at det vil være hensigtsmæssigt, hvis de afsluttede sager DIA i dag opbevarer på et fjernarkiv, overdrages til Ankestyrelsen. Alternativt, at der tildeles DIA midler til at digitalisere alle de nuværende sager. Dette vil bl.a. kunne være med til at sikre muligheden for en hurtigere sagsbehandling af henvendelser fra adopterede og familier, der ønsker en kopi af deres sag, samt at oplysningerne og akterne i sagerne består.

5. Ændrede snitflader

Ankestyrelsen beskriver en række forskellige muligheder for ændrede snitflader, herunder

a. Statslig bistand til uafhængig adoption
b. Centralmyndigheder overtager det direkte ansvar for at sikre, at samarbejdet med udlandet sker efter konventionens principper
c. Generel viden om modtagerlandets børnebeskyttelsessystem vedligeholdes af centralmyndigheden
d. Centralmyndigheden pålægges ansvar for at indsamle, bearbejde og formidle viden om adoption
e. Tilsynsmyndigheden indgår i den formidlende organisations bestyrelse

Det fremgår ikke nærmere af høringen, hvad baggrunden er for udvælgelsen af snitfladerne, samt evt. hvilke erfaringer fra andre lande, som forslagene muligvis kunne være inspireret af.

Det er derfor også vanskeligt på det foreliggende konkret at forholde sig til forslagene. DIA har dog følgende umiddelbare bemærkninger;

Ad a) statslig bistand til uafhængig adoption

Umiddelbart er det DIAs opfattelse, at denne konstruktion strider mod grundlæggende principper for adoptionsarbejdet, herunder at sikre, at det er barnets bedste, der er bærende for alle beslutninger vedrørende adoptionen. Forslaget indebærer efter DIAs opfattelse en række usikkerheder, bl.a. når ansvaret for formidlingsarbejdet lægges hos familien, der uundgåeligt har en personlig interesse i adoptionens gennemførelse.

Det er et grundlæggende princip efter dansk ret, at familien skal lade sig bistå af en formidlende organisation ved adoption af et barn fra udlandet. Hensynet bag er netop at sikre, at en professionel organisation er ansvarlig for processen, behandlingen af sagen samt samarbejdet med udlandet. Det er i den forbindelse DIAs opfattelse og erfaring, at et samarbejde omkring en adoption ikke alene kan ske på skriftligt

grundlag, men også kræver praktisk viden om forholdene i afgiverlandet, adoptionsprocessen samt adoptionens gennemførelse.

Derudover kan der opstå en række situationer i forbindelse med en adoptions gennemførelse, der kræver håndtering og evt. bistand i afgiverlandet. Ydermere rummer privat formidling risiko for, at der lægges pres på afgiverlandet, ligesom at der i højere grad vil være risiko for, at uetisk adfærd kan påvirke processen undervejs. Det anses ikke for at være i overensstemmelse med konventionernes mål.

Ad b) Centralmyndigheder overtager det direkte ansvar for at sikre, at samarbejdet med udlandet sker efter konventionens principper

Det er DIAs opfattelse, at samarbejdet med afgiverlandet varetages løbende og såvel generelt som konkret. Det er derfor også DIAs opfattelse, at selve samarbejdet ikke kan opdeles på den foreslåede måde.

DIAs samarbejder og relationer er opbygget gennem mange år, og det generelle samarbejde indbefatter ikke kun samarbejde med myndigheder, men også med andre NGO'er og børnehjem. Det er derfor DIAs erfaring, at varetagelsen af samarbejdsrelationerne forudsætter særlig viden og kompetencer – viden og kompetencer, der i dag kun eksisterer i organisationen, og ikke bare uden videre kan overføres til centralmyndigheden.

Det er således DIAs opfattelse, at det overordnede, det generelle og det konkrete i samarbejdet ikke kan adskilles. Der vil ligeledes være en risiko for, at det ikke vil være muligt at videreføre de samarbejder, organisationen har i dag, da det ligesom i en statslig model forudsætter, at DIAs eksisterende samarbejdspartnere ønsker at have et direkte samarbejde med en dansk centralmyndighed.

Slutteligt vil det kunne påvirke kvaliteten i adoptionsarbejdet, idet varetagelsen af opgaverne, herunder de konkrete sager netop kræver såvel generel viden om, som samarbejde med afgiverlandet.

Ad c) Generel viden om modtagerlandets børnebeskyttelsessystem vedligeholdes af centralmyndigheden

DIA er enig i, at opgaven med indhentelse af viden om generelle forhold i afgiverlandet, der ikke er direkte forbundet med adoptionsarbejdet, med fordel kan ligge hos centralmyndigheden.

Samme gælder efter DIAs opfattelse lovgivningen fra afgiverlandene. DIA foreslår derfor, at centralmyndigheden også overtager ansvaret for indhentelse, oversættelse og formidling til DIA om udenlandsk lovgivning i DIAs samarbejdslande.

Ad d) Centralmyndigheden pålægges ansvar for at indsamle, bearbejde og formidle viden om adoption

DIA støtter op om tanken om et videnscenter om adoption i Danmark. DIA forslår dog, at det overvejes i hvilket regi et sådan videnscenter placeres, sådan at det sikres, at den viden der indsamles og anvendes ikke alene tager sit udgangspunkt i et myndighedsperspektiv, men i et perspektiv der rummer de mange facetter og forskellige former for faglighed, der er forbundet med adoption.

Det kunne f.eks. være et selvstændigt og uafhængigt center oprettet ved lov med det formål bredt at indsamle viden om adoptionsspecifikke emner, forske i adoption samt være ansvarlig for at udbrede viden om adoption.

Ad e) Tilsynsmyndigheden indgår i den formidlende organisations bestyrelse

DIA er enig i, at det med fordel kan overvejes at udvide bestyrelsen i DIA med et antal medlemmer, f.eks. et medlem udpeget af ministeren.

I forhold til Ankestyrelsens forslag om, at tilsynet indgår i DIAs bestyrelse evt. med stemmeflertal, er det vanskeligt for DIA at se, hvordan Ankestyrelsen kan bevare habiliteten i forhold til tilsynet, hvis Ankestyrelsen samtidig er en del af DIAs øverste ledelse.

Helt grundlæggende bør hensynet til at sikre, at tilsynsmyndighederne har størst mulig indsigt i organisationens opgavevaretagelse afvejes mod hensynet til, at DIA som privat organisation har et vist råderum, hvis det skal give mening, at DIA som privat organisation varetager adoptionsformidlingsopgaven. Med en organisering, hvor tilsynet får stemmeflertal i DIAs bestyrelse, er der efter DIAs opfattelse ikke længere tale om en privat organisation, ledet af en professionelt udvalgt, men frivillig og ulønnet bestyrelse. Det må lige som på personalesiden anses for tvivlsomt, at medlemmerne i den nuværende bestyrelse vil kunne indgå i en sådan konstruktion.

DIAs forslag til ændrede snitflader, model 4

Som DIA tidligere har præsenteret for Ankestyrelsen, foreslår DIA en model 4, der ligeledes indebærer en række ændrede snitflader.

I denne model foreslår DIA, at en række opgaver, der i dag varetages af centralmyndigheden flyttes til DIA, sådan at der sikres en langt bedre sammenhæng i opgavevaretagelsen – én indgang for familier og adopterede.

I denne model flyttes varetagelsen af opgaverne med national adoption (administration af venteliste og matchning) til DIA. Dette vil dels sikre en større fleksibilitet for familier, der er godkendt til adoption ved valg af land og evt. skifte af venteliste undervejs, men også at de modtager samme tilbud og rådgivning undervejs i processen, som familierne på de internationale ventelister.

Derudover samles forberedelsen (pre adoption service) ved den formidlende organisation, der allerede har kontakt til de kommende adoptivforældre i forbindelse med deres deltagelse i informationsmøder samt ved den løbende generelle vejledning og rådgivning om adoption.

Dette kunne være en del af en naturlig forberedelsesproces, og samtidig give forældrene "en dør" at gå ind af inden adoptionen. Derved kan det samtidig hele tiden sikres, at den aktuelle viden om forholdene i afgiverlandet samt børnenes behov kan inkluderes i forberedelsen af de kommende familier.

Vi oplever, at mange forældre forholder sig til de mange instanser, de er i berøring med i adoptionsprocessen. DIA mener derfor, at en samling af forberedelsen af adoptanterne hos DIA kunne være mulighed for en forenkling, men også en kvalitativ styrkelse i forhold til rådgivningsindsatsen inden adoptionen.

PAS samles i DIA, dvs. både rådgivning og "teknisk" PAS, så der er et sammenhængende system for familier og adopterede, der søger støtte, rådgivning og vejledning om adoption og om bistand til tilbagerejser, kontakt med biologisk slægt m.v., jf. det ovenfor beskrevne om PAS-ordningen, både nu men også som vi ser behovet i fremtiden, jf. DIAs bemærkninger under ad 3) adoptionsrelateret støtte.

DIA medsender som aftalt DIAs power-point med en overordnede beskrivelse af modellen til Ankestyrelsen. DIA stiller sig naturligvis til rådighed for yderligere drøftelse og uddybning af de enkelte elementer i den foreslåede model.

Med venlig hilsen

DIAs bestyrelse
Lars Ellegaard, formand for bestyrelsen

DANISH
INTERNATIONAL
ADOPTION

Ankestyrelsen
Teglholmsgade 3
2450 København

Birkerød den 11. november 2019

Vedr.: Jeres j.nr. 19-16281 – DIAs svar på Ankestyrelsens 2. høring vedrørende undersøgelse af den fremtidige adoptionsstruktur

Ankestyrelsen har i brev af 11. oktober 2019 fremsendt udkast til rapport med de foreløbige resultater i Ankestyrelsens undersøgelse af en ny struktur for den internationale adoptionsformidling. Med henblik på en yderligere kvalificering og perspektivering af undersøgelsens resultater, beder Ankestyrelsen om DIAs bemærkninger til udkastet.

Ankestyrelsens rapportudkastet indeholder en række forskellige elementer, der kan sammensættes på forskellig vis, herunder:

1. Finansieringen
2. Organiseringen
3. Tilsynet
4. Adoptionsrelateret hjælpearbejde
5. Post Adoption Service
6. Afledte perspektiver på strukturen i det eksisterende adoptionssystem

DIAs generelle bemærkninger

DIA bemærker indledningsvist, at vi den 22. april 2019 sendte en vores bemærkninger og forslag til Ankestyrelsen i forbindelse med den 1. høring. Da en række af vores bemærkninger og forslag ikke synes at være medtaget i rapportudkastet, henviser vi for god ordens skyld til hertil.

Dernæst bemærker vi, at Ankestyrelsens udeladelse af beregningerne for den statslige model vanskeliggør DIAs mulighed for, at forholde sig til en række af beskrevne elementer i udkastet.

Efter anmodning har DIA fredag den 8. november 2019 modtaget udkast til den særskilte evaluering af rammerne for tilsynet med adoptionsformidlingen. Hvis DIA har bemærkninger, ud over det anførte i dette svar, vil vi eftersende dem, når vi har haft lejlighed til at gennemgå og forholde os til evalueringen.

Efter at have gennemgået rapportudkastet er det vores opfattelse, at der er en ubalance i undersøgelsen og beskrivelsen af muligheden for, at adoptionsarbejdet

fortsat varetages af en organisation (den såkaldte samarbejdsmodel) sammenholdt med den mulighed, at Ankestyrelsen overtager opgaven med at formidle internationale adoptioner.

Som vi læser rapporten er der lagt op til, at staten vil overtage opgaven med at formidle internationale adoptioner i 2021. Det læser vi bl.a. i beskrivelserne af organisationens opgavevaretagelse, der er kort og efter vores opfattelse mangelfuld.

Omvendt er det vores vurdering, at en række usikkerheder forbundet med en overdragelse af opgaverne til staten bør inddrages, f.eks. hvad det vil betyde for varetagelsen af formidlingsopgaven og samarbejdet med udlandet, når en opgave overdrages til en myndighed, hvor der er langt større udskiftning af medarbejdere end i en privat organisation, og med en helt anden medarbejdersammensætning og uddannelsesmæssig baggrund.

Et anden væsentligt element er betydningen af den asymmetri, der i forvejen eksisterer i samarbejdet med lande, der såvel kulturelt, politisk, socialt og juridisk kan være et helt andet sted.

Samme gælder overvejelser omkring de politiske aspekter af, at staten overtager opgaven, eksempelvis i de situationer, hvor et samarbejde skal begrænses, ophøre eller hvor et nyt samarbejde skal startes op.

Slutteligt kan der være en risiko for, at et statsligt adoptionssystem vil være nødt til at reducere antallet af lande, så man kun samarbejder med de mest regulerede lande – noget der sammen med en yderligere regulering af muligheden for at yde adoptionsrelateret støtte, kan få store konsekvenser for danske godkendte ansøgere.

Det er DIAs vurdering, at dette ikke alene vil have betydning for antallet af internationale adoptioner, men også for danske godkendte ansøgers muligheder for at adoptere. Eksempelvis vil en afbrydelse af samarbejdet med Sydafrika have den konsekvens, at de ansøgere, der i dag alene kan adoptere fra Sydafrika ikke længere kan adoptere internationalt.

Slutteligt skal DIA præcisere, at DIA fortsat ønsker at varetage opgaven med at formidle internationale adoptioner – også i et fremtidigt system. Eneste usikkerhed der eksisterer er således, om det vil være muligt for organisationen inden for de rammer og vilkår der besluttes.

DIA tror også fortsat på en samarbejdsmodel mellem organisation og myndighed, men en samarbejdsmodel, der i langt højere grad tager udgangspunkt i et ligeværdigt samarbejde, hvor organisationens viden og kompetencer inddrages og respekteres, og hvor Ankestyrelsens rolle ikke alene er at fungere som kontrolmyndighed, men hvor det er muligt både at agere med armslængde i de situationer, hvor det kræves og i et gensidigt og respektfuldt samarbejde i andre.

Uanset hvilken beslutning der politisk træffes vil DIA medvirke til, at skabe den bedst mulige overgang for de igangværende sager og vores samarbejder. Dette forudsætter naturligvis, at der skabes den nødvendige og tilstrækkelige sikkerhed i en overgangsperiode for både organisationen og familierne.

Om DIAs besvarelse

Vi har i vores høringsvar primært fokuseret på de elementer, der enten vedrører DIAs nuværende opgavevaretagelse, eller er relevante for en fortsat opgavevaretagelse i DIA.

Som tidligere anført, tager DIA forbehold for eventuelle kontraktsretlige konsekvenser ved overgangen til et nyt system. Det bør efter DIAs opfattelse belyses før der træffes en beslutning.

1. **Finansieringen**

DIA har tidligere sendt vores bemærkninger til Ernst & Young (EY) vedrørende forudsætningerne og de konkrete beregninger af de 3 modeller.

Som vi har påpeget er det overordnet set DIAs vurdering, at flere af forudsætningerne enten er for usikre eller utilstrækkelige til, at der kan drages de anførte konklusioner.

Helt overordnet set er det DIAs opfattelse, at en beregning der tager udgangspunkt i de realiserede resultater for 2018, hvor DIA selv har påpeget og dokumenteret utilstrækkeligheden af de eksisterende økonomiske rammer, ikke er egnet til at kortlægge omfanget af nødvendige ressourcer, hvis der skal skabes et bæredygtigt adoptionssystem i fremtiden, der er uafhængigt af antallet af ansøgere og adoptioner.

Det er også vores vurdering at dette udgangspunkt fører til, at de udgifter og ressourcer, der er indregnet i modellerne, for flere af opgavernes vedkommende ligger relativt langt fra behovet for ressourcer, herunder til løsning af PAS-opgaven og løsningen af opgaverne i forhold til Ankestyrelsens tilsyn.

DIA er opmærksom på, at det naturligvis er op til EY og Ankestyrelsen at vurdere DIAs betragtninger, men vi vil opfordre til, at vores forbehold og bemærkninger inddrages.

I forhold til udregningen vedr. DIAs PAS arbejde bemærker vi, at grundlaget er helt utilstrækkeligt og afspejler en situation, hvor DIA ikke er tildelt ressourcer til at varetage opgaven. Den kan derfor ikke bruges som grundlag for en beregning af, hvilke ressourcer der er nødvendige for at løse opgaven.

VI har tidligere redegjort for, hvilke typer af henvendelser vi modtager og behandler samt omfanget heraf (458). Det er efter vores opfattelse åbenbart, at det ikke er

muligt at behandle 458 henvendelser inden for et beregnet budget på. Kr. 450.000 dk.

Slutteligt bemærker vi, at det fremgår helt indledningsvist i rapporten, at den del af den økonomiske bæredygtighed der vedrører soliditet, alene er relevant ved en formidling i en privat organisation. Dette er DIA uforstående over for, idet der i sidste ende er tale om en opgave, der skal finansieres – uanset hvor opgaven løftes.

Bevaring af overvejende gebyrfinansieret adoptionsformidling

I forhold til denne del af undersøgelsen bemærker DIA, at det ikke er muligt at skabe en bæredygtig model, der primært hviler på gebyrer, der betales af familierne. Dette har DIA selv tidligere dokumenteret, ligesom at det fremgår af undersøgelsen, at EY har samme vurdering.

Denne model er efter DIAs opfattelse ikke egnet som alternativ, og vi har derfor ingen bemærkninger hertil.

Formidlingen finansieres overvejende af et statsligt tilskud til en privat organisation

Det fremgår af rapportudkastet, at EY i sin analyse fremhæver tre forskellige måder at opnå en økonomisk bæredygtig adoptionsformidling på, benævnt i rapporten som a), b) og c).

Model A

Det er DIAs vurdering, at model a, der indebærer en fastfrysning af de nuværende gebyrer, rummer nogen af de samme usikkerheder, som er forbundet med de nuværende gebyrer i dag. Den er derfor heller ikke er egnet til, at skabe en bæredygtig model, der er uafhængig af antallet af adoptioner og ansøgere, og hvor det ikke er en families økonomiske ressourcer, der er afgørende for deres mulighed for at adoptere.

Vi bemærker i den forbindelse også, at det udregnede gennemsnitsgebyr er beregnet ud fra et simpelt gennemsnit, dvs. hvor der ikke er taget højde for forskellene i formidlingen (antallet af adoptioner fra de forskellige lande).

Derudover er det uafklaret, hvordan det statslige tilskud skal fordeles på ansøgernes gebyrer, herunder ved ændringer i enten den solidariske andel af udgifterne eller i de enkelte lande, idet gebyrerne i dag er forskellige på landene, afhængig af omkostningerne i de forskellige lande.

Model B

Det fremgår, at EY i sin analyse er kommet frem til, at det beløb som relaterer sig direkte til formidlingsopgaven (formidlingsbaserede omkostninger) beløber sig til ca.

95.000 kr. pr. adoption, iberegnet lønudgifter og andre udgifter, der relaterer sig direkte til den enkelte formidling.

Det er uklart for DIA, hvad EY definerer som værende formidlingsbaserede omkostninger, og hvilke omkostninger, der indgår heri. Vi vil anbefale at disse kategorier specificeres detaljeret på områder.

DIA formidlende i 2018 64 adoptioner. Baseret på EYs beregninger om, at det beløb der relaterer sig direkte til formidlingsopgaven, udgør ca. 95.000 kr. pr. adoption, svarer det i 2018 til, at de formidlingsbaserede omkostninger udgjorde kr. 6.080.000.

Da DIAs samlede omkostninger i 2018 udgjorde knap 12.000.000 svarer udregningen baseret på EYs forudsætninger til, at alene ca. halvdelen af DIAs omkostninger betragtes som værende formidlingsbaseret omkostninger.

Konklusionen om at et statsligt tilskud på maksimalt 6,5 mio., vil være tilstrækkeligt til at dække DIAs ikke formidlingsbaserede omkostninger, uanset om der opleves en væsentlig nedgang i antallet af ansøgere og adoptioner, synes at hvile på en forudsætning om, at DIA kan ansætte og afskedige medarbejdere med ændringer i formidlingerne.

DIA er ikke en fabrik, der kan hyre og fyre på dagsbasis efter opgavernes udsving. Medarbejderne har normale funktionærlovsvilkår, hvilket betyder at medarbejdernes mangeårige erfaring medfører lange opsigelsesvarsler. Dertil kommer, at nyansættelser kræver langvarig oplæring og en stor del af arbejdet bygger på personlige kontakter til udlandet, opbygget gennem mange år.

DIA gør derfor opmærksom på, at udregningen efter vores opfattelse er behæftet med en række usikkerheder, bl.a. i forhold til indregningen af lønudgifter, idet vi bemærker, at en bæredygtig model netop bør sikre, at organisationens opgavevaretagelse og kvaliteten heri er uafhængig af antallet af adoptioner og antallet af nye ansøgere.

Model C

I alternativ C er der udregnet en fuld statslig finansiering af alle udgifter.

Fordelen ved denne model, er efter DIAs opfattelse, at nationale adoptioner og internationale adoptioner fuldt ud ligestilles.

DIAs forslag til en finansieringsgrad

Indledningsvist skal vi præcisere, at den model DIA foreslår, skelner mellem de direkte sagsrelaterede udgifter forbundet med behandlingen af ansøgernes sag og alle faste udgifter.

DIAs forslag er således en meget enkel model, hvor ansøgerne selv afholder alle de direkte og variable omkostninger forbundet med formidlingen i ind- og udland, dvs. oversættelser og legaliseringer, sagsspecifikke gebyrer mm., mens at alle faste omkostningerne dækkes af et statsligt tilskud i form af en driftsaftale, a la den der eksisterer på Island mellem myndighederne og organisationen.

Med denne skelnen sikres det, at DIAs arbejde er helt uafhængigt af formidlingen, ligesom økonomien er gennemsigtig for både ansøgerne og for staten, idet familierne selv afholder udgifterne til de variable omkostninger i ind- og udland. Dette kan f.eks. ske efter regning, sådan at ansøgerne har fuldt indblik i omkostningerne i sagerne.

Dette vil sikre den fornødne stabilitet i opgavevaretagelsen og dermed også bæredygtigheden. Organisationens arbejde vil naturligvis fortsat skulle tilpasses formidlingen og DIA foreslår derfor, at der ligesom på Island indgås en driftsaftale, der fornyes hvert andet eller tredje år således at der hele tiden er mulighed for, at tilpasse det statslige tilskud til den aktuelle formidlingssituation.

Med denne skelnen mellem omkostningerne, vil alle de generelle omkostninger, såsom rejseomkostninger, udgifter til kontaktperson m.m. indgå i de faste omkostninger, idet det er omkostninger, der også bør være uafhængige af formidlingen, da samarbejdet med og repræsentation i udlandet er en meget vigtig del af formidlingsarbejdet.

Baseret på DIAs forventninger til årets resultat for 2019 samt vores budget for 2020 har vi estimeret omkostningerne ved en statslig finansiering, hvor ansøgerne alene afholder de direkte variable udgifter efter regning.[1]

Faste omkostninger Danmark og udlandet					
År	2019	2020	2021	2022	2023
Faste omkostninger	8,3	9,6	9,8	10	10,3

Alternativt kan det overvejes om omkostningerne til udlandet, ligeledes skal indeholdes i de gebyrer, som familierne betaler. I givet fald vil de estimerede omkostninger ved en statslig finansiering være følgende:

Faste omkostninger Danmark					
År	2019	2020	2021	2022	2023
Faste omkostninger DK	7,6	8,8	9	9,3	9,5

[1] I beregningerne for 2021 – 2023 er det antaget, at de faste omkostninger vil følge den generelle prisudvikling på 1,5 %. I lønomkostningerne for samme periode er det antaget, at lønudgifterne vil følge en årlig udvikling på 2,65 %, dvs. samme forudsætninger som er lagt til grund for prisudviklingen i EYs beregninger. DIA gør opmærksom på, at der i beregningerne ikke er taget højde for en evt. yderligere udgift til arkiv, hvis DIA fortsat skal opbevare alle sager, ligesom at der alene er afsat et minimalt beløb til vedligeholdelse m.m.

I forhold til DIAs ressourcesituation henviser vi til vores henvendelse af 1. oktober 2019, hvori vi har redegjort for den aktuelle situation, herunder at bestyrelsen finder det påkrævet, at organisationen tilføres yderligere ressourcer med henblik på, at vi kan løfte de mange opgaver til Ankestyrelsen inden for fristerne samtidig med, at fokus på DIAs kerneopgave – adoptionsformidlingen – bevares.

Dette indebærer dels, at DIAs bestyrelse finder det nødvendigt både at genbesætte stillingen som vicedirektør og som økonomichef, men også at ansætte yderligere én juridisk medarbejder.

Der i budgettet for 2020 taget højde for ansættelse af en vicedirektør og en økonomichef, mens det ikke har været muligt inden for rammen af den yderligere driftsstøtte, som DIA er tildelt i 2020, også at ansætte en juridisk medarbejder.

Denne udgift estimeres til at udgøre ca. 500.000 årligt. Hvis det nuværende omfang af tilsyn fastholdes, bør denne udgift lægges til beregningerne.

DIA bemærker, at der i beregningerne ikke er taget højde for udviklingen i omkostningerne ved en stigning eller et fald i antallet af sager og adoptioner. Om ændringer i formidlingen fører til en stigning eller et fald i omkostninger afgøres primært af antallet af samarbejdspartnere. DVS hvis der er en stigning i antallet af ansøgere uden at det fører til behov for nye samarbejdspartnere, vil det som udgangspunkt være uden betydning for de faste udgifter.

Hvis antallet af ansøgere falder yderligere eller stabiliserer sig på det nuværende niveau kan det overvejes om det vil være muligt at skære yderligere i antallet af samarbejder, og dermed også antallet af medarbejdere. I forhold til overvejelser herom, henviser vi til vores høringsvar af 3. september 2018, hvor vi redegjort indgående for de overvejelser, der indgår i beslutninger om hvor mange og hvilke lande vi fortsat skal samarbejde med.

Slutteligt opfordrer vi til, at muligheden for at digitalisere de gamle sager overvejes, idet en digitalisering af de gamle sager vil føre til en væsentlig forbedring i sagsbehandlingen af anmodninger fra adopterede, der søger om indsigt i deres sag samt i forhold til søgemulighederne.

Dette vil dels forudsætte en opgradering af DIAs nuværende it-system, der er meget gammelt og ikke rummer mulighed for digital sagsbehandling, samt at der afsættes ressourcer til at digitalisere de mere end 20.000 sager, der aktuelt befinder sig i DIAs arkiver.

Et system, der understøtter muligheder for digital sagsbehandling vil samtidig forbedre tilsynsmyndighedernes adgang til sagerne, idet DIA hurtigere og nemmere vil kunne sende oplysninger og sager, der indkaldes til tilsyn.

DIA har desværre ikke adgang til beregninger vedrørende denne omkostning, men vil opfodre til, at det i givet fald undersøges fx ved sammenligning med offentlige myndigheder, der har digitaliseret ældresager.

Rapportens konklusioner

DIA mener ikke at der er grundlag for at konkludere, at det ikke påvirker den økonomiske bæredygtighed, hvilken form for statslig finansiering der vælges. For der er stor forskel på følsomheden i de forskellige forslag, også for ansøgerne.

Det er også anført, at graden af ansøgernes egenbetaling kan påvirke antallet af ansøgere ved en væsentlig nedsættelse af gebyret, og at det i sig selv kan medføre en risiko for, at der skabes et unødigt pres på afgiverlandene.

VI bemærker hertil, at DIA i dag mangler familier til flere af de lande vi samarbejder med, og dermed også sager vi kan udsende. En stigning i antallet af ansøgere vil således i højere grad end i dag kunne sikre, at vi rent faktisk kan hjælpe flere af de børn, der har et behov for international adoption.

Hvis omkostningerne forbundet med at gennemføre en adoption er meget høje, og mulighederne for at blive godkendt er dårlige, kan der omvendt være en risiko for, at familier forsøger andre og mindre regulerede alternativer til adoption.

Der er også en risiko for, at en families økonomiske ressourcer kan blive afgørende for om familien kan adoptere, fremfor at det alene er en families menneskelige ressourcer, der er afgørende for om de kan godkendes, og har mulighed for at blive en familie gennem adoption.

Vi bemærker desuden, at det er DIAs erfaring, at formidlingssituationen over tid alt andet lige regulerer sig selv i forhold til antallet af ansøgere. Det foregår således, at hvis der er væsentligt flere ansøgere, end der er børn, der har behov for international adoption, stiger ventetiden, hvilket igen fører til en nedgang i antallet af ansøgere.

DIA deler heller ikke vurderingen af, at der reelt set er en risiko for, at der skabes et unødigt pres på afgiverlandene, idet antallet af ansøgninger er reguleret af næsten alle DIAs samarbejdspartnere i form af kvoter for antallet af sager, der må udsendes.

Dertil kommer, at DIA selv har en forsigtig tilgang til antallet af udsendte ansøgninger – både af hensyn til vores samarbejdspartnere, men også af hensyn til familierne, idet det er vanskeligere og mere omkostningstungt, hvis det senere viser sig at blive nødvendigt at flytte ansøgernes sager til andre lande i tilfælde af ændringer i formidlingen.

Hvis Ankestyrelsen har en stor bekymring herom, er det i sidste ende noget, der relativt enkelt kan reguleres i organisationens akkrediteringsvilkår.

2. Organiseringen

Om DIAs muligheder for fortsat at varetage opgaven

Helt indledningsvist bemærker vi, at der efter vores opfattelse ikke er grundlag for konstateringen af, at et system hvor en privat organisation fortsat varetager formidlingsopgaven har en indbygget svaghed, der ikke understøtter bæredygtigheden, men gør systemet grundlæggende usikkert.

Som det fremgår af DIAs vedtægter er DIAs formål, at sikre den bedste opvækst for børn, der ikke har mulighed for at vokse op i en familie i deres eget land. Formålet realiseres gennem international adoption i de situationer, hvor det er den bedste løsning for barnet.

Som DIA har påpeget flere gange, er det de overordnede rammer og vilkår, der er afgørende for om der er et bæredygtigt system og dermed også for, om organisationen har mulighed for og, med Ankestyrelsens retorik, "evne til" fortsat at varetage formidlingsopgaven.

I lyset heraf og i lyset af, at DIA og de tidligere organisationer som DIA er sammenlagt af, har formidlet internationale adoptioner til Danmark siden 1964, er der efter vores opfattelse ikke grundlag for at anfægte organisationens ønske om, at hjælpe børn gennem international adoption, naturligvis betinget af, at rammerne gør det muligt.

Tværtimod har organisationen vedholdende udført opgaven og løbende tilpasset sig de ændrede omstændigheder og vilkår i mere end 50 år. DIA har derfor vanskeligt ved at se, at der skulle være en større grundlæggende usikkerhed ved en opgavevaretagelse i DIA, end ved en opgavevaretagelse i en statslig myndighed, der også kan underlægges nye rammer og vilkår, udflytninger, omstruktureringer osv.

Ankestyrelsen henviser også flere steder til, at organisationen har en monopolsituation, hvor det internationale adoptionssystem i Danmark afhænger af organisationens eksistens. Vi erindrer i den forbindelse om, at årsagen til at der i dag eksisterer én organisation er, at der fra politisk side var et ønske om og kraftig opfordring til, at de to organisationer sammenlagde sig.

På daværende tidspunkt vurderede Ankestyrelsen, jf. helhedsanalysen fra 2014, at det i fremtiden ikke ville være bæredygtigt, hvis der fortsat var to organisationer, men tværtimod, at der alene burde være én organisation.

Beskrivelse af DIAs opgavevaretagelse

Med henblik på at nuancere og udfolde beskrivelsen af en fortsat opgavevaretagelse i en samarbejdsmodel, har vi alene fokuseret på denne organisering – også da det efter vores opfattelse fortsat er den model, der er bedst egnet til at sikre et højt

adoptionsfagligt niveau, hvor de kompetencer og det mandat, der er tildelt henholdsvis organisationen og Ankestyrelsen, udnyttes bedst mulig.

Følgende elementer er efter vores opfattelse og erfaringer væsentlige elementer i adoptionsarbejdet, både i forhold til mulighederne for at bevare og udvikle samarbejdet, men også for at sikre gennemsigtigheden og kvaliteten i de adoptioner, der gennemføres til Danmark.

a) Kompleksitet og interkulturel forståelse

Arbejdet med international adoptionsformidling er mere end lovgivning, konventioner og sagsbehandling. Det er et komplekst område og et mangfoldigt landskab, hvor DIA med stor nænsomhed og respekt samarbejder med mange forskellige aktører på tværs af landegrænser.

Arbejdet kræver stor sensitivitet og en særlig interkulturel forståelse, som er grundlæggende for, at vi kan sikre barnets ret til at vokse op i en adoptivfamilie, når der ikke er andre alternative muligheder for barnet.

Opgaven med at formidle internationale adoptioner til Danmark er siden 1964 blevet varetaget af private NGO organisationer. Det er der gode grunde til, da samarbejdet med de lande, hvor børn har et behov for international adoption, kræver særlige kompetencer, kulturel indsigt og forståelse, og gode evner til at samarbejde.

Udover, at en NGO besidder særlige kompetencer, erfaringer og viden, så har DIA som NGO også et særligt mandat i forhold at kunne arbejde i lande, hvor kulturen, ressourcer, uddannelse og systemet som oftest er væsentligt forskellige fra Danmark.

DIA er som formidlende privat organisation den eneste aktør med interkulturel viden og erfaring, der på forskellige tidspunkter har adgang til og arbejder med, alle tre parter i adoptionstrianglen; den adopterede, adoptivfamilien og biologisk familie.

Arbejdet med at sikre adoptivbarnets ret til at kende sin identitet og til baggrunden for adoptionen kræver adoptionsfaglig viden, interkulturel forståelse og en særlig sensitivitet, hvor vi samtidigt kan respektere adoptivfamiliens, men også den biologiske families livsvilkår og rettigheder.

b) Samarbejdsrelationer

DIA kan som privat organisation indgå i særlige samarbejdsrelationer, hvor de kulturelle forskelle giver anledning til nysgerrighed, dialog og udviklingsmuligheder, da vi ikke repræsenterer stat, magt eller myndighed.

Vi møder både centrale og lokale myndigheder og aktører, men også børnehjems-lederen og den lokale social worker. Medarbejderne i DIA har mange års praksis-erfaringer, og er uddannet til og trænet i, at udvikle og vedligeholde kontakter – med

ydmyghed og respekt for landenes forskellige kulturer, normer og vilkår, og på forskellige niveauer i arbejdet. Mangfoldigheden af samarbejdsrelationer og kontakter i det daglige arbejde styrker og udvikler vores viden i et interkulturelt perspektiv.

Vi er i DIA stolte af det danske adoptionssystem. Vi er dog samtidigt opmærksomme på, at vores samarbejdspartnere ikke altid har de samme ressourcer, som dem vi tager for givet, da vi netop arbejder i de lande, hvor der stadigvæk er børn med behov for international adoption.

I DIA respekterer vi naturligvis de krav det danske system og den internationale lovgivning stiller til arbejdet. Vi deler endvidere til fulde ambitionen om at have et adoptionssystem, der sikrer barnets grundlæggende rettigheder til enhver tid, hvorfor DIA aldrig vil gå på kompromis i forhold til oplysninger, der understøtter barnets rettigheder i forbindelse med adoption.

Men vi er samtidigt optaget af de etiske dilemmaer de mange krav til vores samarbejdspartnere kan medføre, da det betyder, at der er lande, vi ikke kan samarbejde med – også selvom det oftest er her, at børnene har det største behov for en adoptivfamilie i Danmark.

DIA kan som privat organisation arbejde med anerkendelse og udvikling i landene i stedet for kontrol og afvikling - og derved være med til at udvikle systemerne, så vi kan arbejde for barnets ret til at vokse op i en tryg, kærlig og permanent familie.

c) Nærhedsprincippet

Nærhedsprincippet er bærende i vores daglige arbejde. Vi ved, at adoption indebærer mange følelser og spørgsmål - både for de involverede/adoptionstrianglen - men også for de professionelle, der arbejder med området. Vi er derfor opsøgende, tilgængelige og nærværende - på tværs af forskellige tidszoner og uanset om henvendelsen kommer fra adoptivfamilien, den adopterede, biologisk familie, samarbejdspartner eller myndighed.

DIA har endvidere faste lokale repræsentanter ansat i flere af de lande, vi samarbejder med. Det giver os nogle helt særlige muligheder for at bevare den interkulturelle sensitivitet, men også viden om, hvad der foregår både på adoptionsområdet, men også mere generelt i det enkelte land.

I DIA arbejder alle med stor fleksibilitet – også uden for almindelig arbejdstid, og vi kommunikerer med vores samarbejdspartnere, internationale kollegaer og adoptivfamilierne på forskellige platforme og medier.

Vi tilpasser løbende vores adoptionsarbejde og vores rådgivnings- og vejledningstilbud efter de behov, vi møder. Vi tilbyder udover telefonisk og skriftlig kontakt både individuelle samtaler og lande- og adoptionsspecifikke tema-arrangementer både før, under og efter en adoption. Vores dør står altid åben for familierne – også uden en aftale.

Når man som adoptivfamilie skal beslutte sig for, hvilket land man vil adoptere fra, handler det både om de specifikke krav og forhold, der gør sig gældende i landet, men også om de tanker, følelser og forventninger landet vækker i adoptivfamilien.

I DIA tror vi på, at adoptivfamilien bærer et særligt ansvar for at hjælpe og støtte deres adoptivbarn med at udvikle en særlig dobbeltkulturel identitet. Barnets kulturelle rødder og identitetsmarkører vil sammen med livet i adoptivfamilien i Danmark, blive en del af barnets samlet identitet.

Landevalgssamtaler kræver derfor viden om de faktiske forhold, men også viden om kultur, værdier, traditioner og om de bånd der kan binde os sammen på tværs af landegrænser, når vi skal hjælpe adoptivfamilien med at træffe den rigtige beslutning.

I DIA vender vi også blikket ud mod verden og deltager i kontaktrejser, børnehjemsbesøg, konferencer, udviklingsopgaver mm. Her har vi som privat organisation en særlig mulighed for ligeværdig og anerkendende dialog, da vi mødes i øjenhøjde og derfor får en anden adgang til information og vidensdeling.

Da vi som privat organisation samtidig er uafhængig af den politiske diskurs, kan vores samarbejdspartnere tale mere direkte med os om alle aspekter i adoptions-arbejdet, da de ikke er afhængige af os i andre internationale og politiske anliggender.

Om sikkerheden for nuværende og kommende ansøgere

Det fremgår, at DIA ikke har tilvejebragt konkrete forslag, hvilket ikke er korrekt. Vi henviser til vores tidligere høringssvar, hvor vi netop har redegjort for de elementer, der efter vores vurdering vil være væsentlige i en overgangsperiode til et nyt system.

De væsentligste elementer er som påpeget, de igangværende og kommende ansøgeres økonomiske situation, fastholdelse af samarbejdspartnerne i udlandet og også DIAs medarbejdere, hvis en statslig løsning besluttes.

Det er DIAs opfattelse, at alle familier med igangværende sager bør ligestilles økonomisk med de nye sager i et nyt system, sådan at det sikres, at adoptionsformidlingssystemet i Danmark ikke går i stå med store skader til følge for de igangværende samarbejder og dermed fremtidige muligheder.

Det kan f.eks. ske gennem en midlertidig tildeling af ressourcer til DIA af samme omfang som den finansiering, der besluttes i et nyt system. Dette vil både være egnet til at sikre opgavevaretagelsen i DIA og hensynet til familier med igangværende sager og nye familier.

DIA gør også opmærksom på, at der i forbindelse med større ændringer i det danske adoptionssystem er en stor kommunikationsopgave til både den brede omverdenen, familierne og de igangværende samarbejder. Der bør derfor ekstraordinært afsættes

yderligere ressourcer af til denne kommunikation, samt til yderligere rejser til vores samarbejdslande, evt. i samarbejde mellem myndighed og organisation, når der er truffet beslutning om de fremtidige rammer og vilkår for adoptionsformidlingsarbejdet.

I forhold til fordele gør vi slutteligt opmærksom på, at fordelen som nævnes i den statslige løsning om, at de internationale adoptioner forankres i en struktur, der er uafhængig af antallet af adoptioner og ansøgere, på samme vis gælder for en fortsat opgavevaretagelse i DIA.

Det er rammerne og vilkårene – frem for placeringen af opgaven - der er afgørende for om der er tale om en bæredygtig struktur, der er uafhængig af antallet af adoptioner og ansøgere og ikke selve organiseringen.

Individuelle adoptioner

Som vi tidligere har anført, undrer det os i DIA, at Ankestyrelsen rapport indeholder en anbefaling om, at tillade individuelle adoptioner med statslig bistand, idet forslaget efter DIAs opfattelse alene tager udgangspunkt i et hensyn til, at familier skal have flere valgmuligheder og ikke i et hensyn til barnets bedste.

Gennem det mere end halve århundrede vi har beskæftiget os med adoption, har vi kunnet konstatere, at de individuelle adoptioner – også med organisationens bistand efter tilladelse fra Ankestyrelsen er yderst ressourcekrævende og ofte problemfyldte.

Med Ankestyrelsens forslag, skal adoptivforældrene i disse situationer selv undersøge og finde ud af adoptionslovgivning i det pågældende "ukendte" land, hvor det kan vise sig, at praksis ikke nødvendigvis følger teori og at væsentlige kulturelle mellemregninger udelades, ligesom der ikke lokalt er medarbejdere eller samarbejdspartnere, der kan bistå familien.

For det andet er det særdeles vanskeligt at sikre sig, at alt foregår ifølge Haager-konventionens regler, når adoptivforældrene selv kan rejse til afgiverlandet og have direkte kontakt med børnehjem og andre aktører. Der er altså en alvorlig mangel på kontrol og transparens.

For det tredje kan vi i DIA være bekymret for, at adoptivforældrene vil savne den landespecifikke rådgivning og vidensdeling, som vi i dag yder vores ansøgere gennem landevalgsamtaler, landemøder og landeorienteringer. Dette kan medføre en manglende indblik i og kulturforståelse for det land, barnet kommer fra – som kan føre til kulturelle misforståelser og negative konsekvenser for barnets identitet.

Ændret ansvarsfordeling mellem organisation og myndighed

DIA henviser til vores bemærkninger i vores høringssvar af 22. april 2019, herunder om at samarbejdet med afgiverlandene varetages løbene og såvel generelt som konkret, og derfor ikke kan opdeles mellem organisation og myndighed.

Desuden forudsætter vedligeholdelse og udviklingen af det internationale samarbejde en interkulturel forståelse og evne til at samarbejde på mange niveauer og med mange forskellige aktører, noget som DIAs medarbejdere har mange års praksiserfaringer med og er udannet og trænet i.

DIA er dog enig i, at opgaven med indhentelse af viden om generelle forhold i afgiverlandet, der ikke er direkte forbundet med adoptionsarbejdet samt lovgivningen med fordel kan ligge hos centralmyndigheden.

Af hensyn til mulighederne for at skabe et bæredygtigt system, henviser DIA også til de forslag vi har indsendt i vores høringssvar af 22. april, hvor der ikke alene overføres opgaver fra organisation til myndighed, men hvor der med fordel også kan samles en række opgaver i organisationen omkring information og forberedelsen af kommende adoptanter, samt post-adoption service, og dermed sikres en langt bedre sammenhæng i opgavevaretagelsen – én indgang for familier og adopterede.

3. Tilsynet

Helt generelt er det vores opfattelse, at evalueringen af tilsynet hviler på et særdeles ensidigt grundlag. Vi stiller os i den forbindelse undrende over for flere af de dragne konklusioner og beskrivelser, der efter vores opfattelse helt udelader væsentlige aspekter og nuancer, men også efterlader et forkert indtryk af organisationens vilje og evne til at besvare tilsynet.

Det er DIAs oplevelse, at Ankestyrelsen ikke har været indstillet på at inddrage eller samarbejde med hverken organisationen eller vores udenlandske samarbejder, hvilket har haft en række negative konsekvenser for samarbejdet imellem organisationen og Ankestyrelsen, men også i forhold til vores samarbejde med udlandet, der for nogle landes vedkommende i dag er udfordret.

DIA har siden lovændringen oplevet en række eksempler, hvor vores udenlandske samarbejdspartnere – både myndigheder og organisationer – er blevet stødt af Ankestyrelsens meget direkte spørgsmål, men også manglende tilstedeværelse, interesse og engagement, når vi har besøg af udenlandske gæster.

DIA har også flere gange i konkrete situationer, hvor Ankestyrelsen har bedt DIA om at afdække meget følsomme spørgsmål inden for korte frister, forsøgt at gøre opmærksom på, hvordan en sådan afdækning bedst kan ske, f.eks. på fælles rejser til vores landet.

I de situationer oplever vi manglende lydhørhed og inddragelse fra Ankestyrelsen af DIAs medarbejdere og viden, herunder om væsentlige aspekter i det internationale samarbejde og den kulturelle kontekst, herunder om hvordan man på respektfuld vis kan søge oplysninger og viden om forholdene i udlandet – også med henblik på f.eks. at forbedre dokumentationen i sagerne.

Det er generelt vores opfattelse, at organisationen i meget høj grad har indrettet sig efter de nye krav og vilkår, og at DIA har brugt meget store ressourcer på at besvare Ankestyrelsens tilsyn, der har været støt stigende – og ikke kun har omfattet DIAs organisation og opgavevaretagelse, men også vores samarbejdspartnere i udlandet.

Ankestyrelsen konstaterer i udkastet til rapporten, at det overordnet set er vanskeligt at skabe forståelse i organisationen for nye tilgange til formidlingsarbejdet, der ikke er direkte formuleret eller reguleret i regler og love, men beror på Ankestyrelsens fortolkning af konventionen og nye retningslinjer.

DIA bemærker hertil, at DIAs manglende forståelse ikke relaterer sig til manglende anerkendelse af, at det er Ankestyrelsen der udstikker retningslinjerne og fortolker lovgivningen på området, men til Ankestyrelsens afvisning at give DIA begrundelser for nye fortolkninger, der afviger væsentligt for tidligere praksis. Det eksemplificeres konkret hvor to børns retsstilling i 2019 er blevet væsentligt forringet som følge af Ankestyrelsens nye fortolkninger.

Ankestyrelsens manglende begrundelser udfordrer både implementeringen og forståelsen i DIA af eventuelle nye retningslinjer eller udvikling af praksis, men også vores samarbejde med udlandet, hvor fortolkningen af samme forhold kan være en helt anden og hvor der derfor er brug for, at DIA har mulighed for på respektfuld vis, at kunne redegøre for de danske myndigheders tilgang og opfattelse.

I forhold til Ankestyrelsens tilsyn med udlandet, finder DIA anledning til at præcisere, at DIA deler opfattelsen af, at vi som modtagerland har et medansvar for de adoptioner der gennemføres til Danmark, men vi deler ikke opfattelsen af, at dette medansvar kun skal udøves gennem kontrol og ensidigt stillede krav.

Qua vores erfaring, er det DIAs tilgang til det internationale samarbejde, at det er nødvendigt, at der kan være en grundlæggende tillid, respekt og forståelse for andres landes kontekst, synspunkter og tilgange til adoptionsarbejdet, herunder den del af arbejdet, der hører under afgiverlandets ansvar vedrørende frigivelsen af barnet samt belysningen af barnets bedste

DIA mener, at vores medansvar bedst varetages i et samarbejde og gennem dialog, udveksling af erfaring samt understøttende tiltag, der er egnet til at f.eks. at forbedre oplysningsgrundlaget i sagerne på en positiv og samarbejdende måde.

I forhold til Ankestyrelsens beskrivelse og konklusion vedrørende de nuværende reaktionsmuligheder, er vi forundret over, at Ankestyrelsen tilsyneladende skulle have fundet anledning til, at indføre sanktioner i situationer hvor det er undladt, da det i givet fald betyder, at Ankestyrelsen heller ikke har fundet anledning til en dialog eller drøftelse med organisationen herom.

Som vi tidligere har påpeget, er det efter vores opfattelse helt centralt i en fremtidig struktur, at opgave- og ansvarsfordelingen mellem DIA som formidlende organisation og Ankestyrelsen som tilsynsmyndighed i langt højere grad adskilles og præciseres,

og således, at de fremtidige rammer afspejler ønsket om en samarbejdsmodel og ikke en kontrolmodel.

4. Retningslinjerne for adoptionsrelateret støtte

Helt overordnet bemærker DIA, at Ankestyrelsens beskrivelser er meget entydige og fører til slutninger, der efter DIAs opfattelse ikke er grundlag for.

DIA finder det således stærkt bekymrende, at Ankestyrelsen, uden at der konkret er fundet anledning til bekymring i forhold til den støtte DIA har ydet, der både er transparent og hvis formål er at understøtte subsidiaritetsprincippet og yde hjælp til de børn, for hvem international adoption ikke er den rigtige eller mulige løsning, laver slutninger, hvor det antydes, at DIA indgår samarbejder og yder støtte i situationer, hvor der er risiko for, at støtten kan påvirke frigivelsen af børnene.

Denne opfattelse tager vi skarpt afstand fra og opfatter som både unuanceret og også udokumenteret. Det er i den forbindelse vores opfattelse, at Ankestyrelsens udeladelse af væsentlige elementer i beskrivelserne af det adoptionsrelaterede hjælpearbejde, skaber et meget unuanceret billede og en forbindelse mellem hjælpearbejde og adoptioner, som der ikke er grundlag for.

Eksempelvis er det efter vores opfattelse et væsentligt element i forhold til den støtte DIA yder til vores samarbejdspart i Sydafrika, at vores samarbejdspart er uden indflydelse på frigivelsen af børn til adoption. Denne opgave varetages af de sydafrikanske domstole, ligesom at den sydafrikanske centralmyndighed, på samme vis som den danske, godkender alle matchninger.

Ankestyrelsens beskrivelser udelader også en nuancering af forskellighederne i hvordan børnebeskyttelsessystemer og myndighedssystemer i det hele taget er indrettet i de forskellige lande og et indtryk af, at der kun findes en måde at organisere sig på uden hensyn til de enkelte landes kontekst, såvel politisk, kulturelt og i forhold til ressourcer og udvikling.

I forhold til Ankestyrelsens beskrivelse af, at samme tendens og sammenhæng ses i forhold til DIAs samarbejde med et andet afgiverland (Sydkorea), bemærker vi, at antallet af adoptioner fra Sydkorea steg med 1-2 adoptioner om året i den periode, hvor støtten til Unmarried Mothers Project blev halveret.

Det fremgår desuden af rapporten, at Ankestyrelsen konkret har fundet anledning til at udtale kritik af DIA i forbindelse med aftaler om støtte til en samarbejdspart, dels i forhold til DIAs dispositioner vedrørende støtte i 2016, dels for ikke at have imødekommet styrelsens krav om en drøftelse med Ankestyrelsen, inden DIA indgik en ny støtteaftale med vores samarbejdspart.

DIA bemærker, at vi mener at dele af kritikken uberettiget. Da der er tale om konkrete situationer og sager har vi valgt, at sende vores bemærkninger hertil sammen med

vores øvrige bemærkninger til Ankestyrelsens særskilte rapport vedrørende evaluering af tilsynet.

Ankestyrelsen henviser i beskrivelsen også til at det internationale arbejde på området omkring adoptionsrelateret hjælpearbejde og donationer har flyttet sig siden den politiske aftale hen imod en kollektiv anerkendelse af, at de enkelte lande bør anerkende, at de ansvarlige myndigheder både enkeltvis og i samarbejde på tværs af landegrænserne i højere grad bør bidrage til at forebygge ulovlig adfærd ved at regulere og monitorere de økonomiske aspekter i adoptionsarbejdet.

Med henvisning hertil anbefaler Ankestyrelsen, at DIAs adgang til at yde adoptionsrelateret hjælpearbejde bør begrænses yderligere.

DIA bemærker for det første, at Ankestyrelsens manglende samarbejde med organisationen efterlader DIA i en situation, hvor vi på ingen måde er inddraget i denne udvikling, da Ankestyrelsen hverken deler sin viden eller drøfter udviklingen med DIA.

Dernæst efterlader beskrivelserne igen et meget entydigt indtryk af de internationale retningslinjer, og udelader relevante sammenligninger med lovgivning og praksis i andre lande i Skandinavien, som vi normalt sammenligner os med, f.eks. at det er tilladt i både Norge og Sverige - også efter den seneste revidering af den norske adoptionslov - at yde adoptionsrelateret hjælpearbejde, men også humanitært hjælpearbejde under bestemte forudsætninger.

Det er DIAs opfattelse, at der er stor gennemsigtighed i den støtte DIA yder til adoptionsrelateret hjælpearbejde ligesom at der er tale om støtte der ydes til projekter, der understøtter forbedring af børns levevilkår, men også til at understøtte Haagerkonventionens implementering og grundlæggende principper i praksis.

Som vi har anført, er det efter DIAs opfattelse væsentligt, at bevare muligheden for denne støtte, der naturligt forudsættes at være en del af samarbejdet med flere af DIAs samarbejdspartnere, og som er med til at bidrage til udviklingen af børnebeskyttelsessystemet i vores samarbejdslande.

Men det har intet at gøre med antallet af adoptioner – tværtimod handler det om, at DIA med respekt, anerkendelse og forståelse og indsigt i af andres landes systemer, ressourcer m.v. også bidrager til, at det er muligt for vores samarbejdspartnere at udvikle børnerettighedssystemet.

Som vi har anført i vores høringssvar af 22. april 2019 er det DIAs opfattelse, at begrænsningen om, at DIA ikke må yde andre former for ikke adoptionsrelateret støtte eller bistand (humanitært hjælpearbejde), der blev indført med lovændringen i 2016, er unødvendig og også uhensigtsmæssig.

Med henblik på, at DIA kan bruge vores helt særlige indsigt og kompetencer i forhold til forbedring af børns vilkår og udvikling af børnerettighedssystemer i lande, hvor der

fortsat er et stort behov for bistand, foreslår DIA, at der igen åbnes op for muligheden for, at DIA må yde humanitært hjælpearbejde i de lande, hvor vi ikke har et aktivt samarbejde om adoption.

DIAs anbefaling indebærer en sondring mellem hvilke typer af hjælpearbejde vi har tilladelse til at yde, afhængigt af om vi har et aktivt formidlingssamarbejde eller ej og således, at der fortsat alene må ydes adoptionsrelateret hjælpearbejde med samme krav til transparens og godkendelse af Ankestyrelsen som i dag, men at DIA fremover får muligheden for at yde humanitært hjælpearbejde i de lande, hvor vi ikke har et aktivt samarbejde om adoption.

Dette vil give mulighed for, at vi kan benytte den viden og de kompetencer vi råder over til opbygning af børnebeskyttelsessystemerne og forbedring af børns vilkår i de lande, hvor der oftest er de allerstørste behov, og hvor eneste sammenhæng mellem adoptionsarbejdet og hjælpearbejdet er, at DIA benytter den viden vi opnår til udviklingen og forbedring af børns vilkår og rettigheder.

I forhold familiers mulighed for efter adoptionen at yde støtte, opfordrer DIA til at muligheden bevares. I modsat fald er der en risiko for, at det i stedet vil ske uden om organisationen med den konsekvens, at det ikke længere vil være gennemsigtigt, hvad der ydes af støtte og til hvem. Igen er det DIAs opfattelse, at fordelene ved at bevare muligheden også bør inddrages i rapporten samt at det meget lille omfang af denne form for donationer indgår i beskrivelsen.

5. Post Adoption Service

DIA henviser først og fremmest til vores bemærkninger vedrørende beregningerne af omkostningerne til den PAS-bistand, DIA yder i dag samt behovet for, at organisationen tilføres ressourcer til varetagelse af det store omfang af henvendelser fra adopterede og deres familier.

DIA skal for god ordens skyld præcisere, at organisationen allerede i dag også bistår adopterede, der er adopteret gennem Terre des Hommes, selvom akterne ligger i Ankestyrelsen, hvis vi modtager henvendelser fra adopterede eller deres familier.

DIA henviser også til at vores tidligere forslag om at samle PAS-tilbuddet i DIA, således at der opnås en langt bedre synergi og sammenhæng i de PAS-tilbud, der retter sig mod de adopterede samt i udviklingen af tilbuddet.

Som DIA tidligere har påpeget er det fortsat vores vurdering, at det vil være hensigtsmæssigt, hvis de afsluttede sager DIA i dag opbevarer på et fjernarkiv, overdrages til Ankestyrelsen. Dette gælder også selvom DIA fortsat skal varetage opgaven med PAS. DIA henviser til erfaringerne fra Norge, hvor sagerne opbevares hos centralmyndigheden, mens PAS opgaven varetages af de formidlende organisationer.

Ved en overdragelse af arkiverne til Ankestyrelsen, vil det være Ankestyrelsen, der varetager opgaven vedrørende aktindsigt, ligesom at opbevaringen af sagerne vil gøre alle sager tilgængelige for Ankestyrelsen, hvilket vil forbedre tilsynsmyndighedernes adgang til sagerne, f.eks. i de situationer, hvor "gamle" sager eller udfordringer med tidligere formidlingskontakter tages op af medier eller andre.

Alternativt foreslår DIA, at der tildeles DIA tilstrækkelige midler til at et nyt digitalt sagsbehandlingssystem samt til at digitalisere alle de nuværende sager

6. Afledte perspektiver på strukturen i det eksisterende adoptionssystem

Overførsel af national adoptioner til DIA

DIA bemærker indledningsvist, at der ikke synes, at være foretaget en egentligt undersøgelse af mulighederne, men tværtimod ønskes en fastholdelse, primært med henvisning til at nævnet har varetaget opgaven siden 1976.

Det ses eksempelvis i beskrivelsen af matchningskompetencen, hvor det er DIAs opfattelse, at de udfordringer som Ankestyrelsen peger på, kan løses på forskellig vis, enten ved sammensætning af et "board" i DIA på samme vis som i samrådet og med klagemulighed til nævnet eller ved, at DIA overtager sekretariatets opgaver i de nationale adoptionssager med administration af ventelister samt kontakten til familier, men at det fortsat er nævnet, der træffer den endelige afgørelse efter en indstilling fra DIA.

Vi bemærker i den forbindelse, at DIA allerede råder over nogen af de samme kompetencer som Adoptionsnævnet, herunder socialrådgivere, børnelæger og jurister. Det kan overvejes, at disse kompetencer skal suppleres af en psykologfaglig eller psykiatrisk konsulent, hvilket i forvejen er en kompetence, som DIA har overvejet at inddrage i forbindelse med vurderingen af børnenes forhold og helbred i fremtiden.

Som vi tidligere har påpeget over for Ankestyrelsen er det desuden vores opfattelse, at den nuværende regulering, hvor DIA altid skal matche til den første ansøger med den relevante godkendelse – ikke tager sit udgangspunkt i et hensyn til barnets bedste, jf. vores tidligere beskrivelser af denne problemstilling.

Indsamling af, bearbejdning og formidling af viden om adoption

Som vi har anført i vores høringssvar af 22. april 2019, støtter DIA op om tanken om et videnscenter om adoption i Danmark.

For at sikre inddragelse af alle væsentlige aktører på området, foreslår DIA at det sikres, at viden indsamles bredt, og ikke alene repræsenterer et myndighedsperspektiv, idet den meget vigtige helhedsforståelse og de mange forskellige nuancer i givet fald vil gå tabt.

Som vi har forsøgt at påpege tidligere mener vi, at et videnscenter alene bestående af fagpersoner fra myndighederne indebærer en risiko for, at man reducerer og fragmenterer kompleksiteten i adoptionsarbejdet på bekostning af helhedssynet, men også på bekostning af det enkelte barns rettigheder.

DIA forslår derfor, at det overvejes i hvilket regi et sådan videnscenter placeres, alternativt at der nedsættes et rådgivende udvalg i et sådan videnscenter, bestående af forskellige aktører og repræsentanter, der kan sikre en alsidigt og helhedsorienteret vidensindsamling.

Med venlig hilsen

DIAs bestyrelse
Lars Ellegaard, formand for bestyrelsen

Familieretshuset

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EAN-Nr. 5798000362222

Til Ankestyrelsen

Dato:
10-01-2020

Direktion

Sagsbehandler:
Sandra Rieder Snitgaard

Svar på Ankestyrelsens høring angående undersøgelsen af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016, fremsendt den 2. oktober 2019

Familieretshuset har følgende bemærkninger til evalueringen af adoptionsreformen fra 2016:

Godkendelse af kommende adoptanter

* Den aktuelle godkendelsesramme er meget bred. Vi foreslår, at de kommende adoptanter får mulighed for at konsultere en PAS-rådgiver for at få en vurdering af barnets psyko-sociale forhold, inden de kommende adoptanter beslutter sig for at give samtykke til modtagelse af barnet. I dag har de kun mulighed for at kontakte DIA´s pædiater.

* Det bør i Adoptionsvejledningen præciseres i hvilke tilfælde – hvis nogen – de kommende adoptanter kan afvise at modtage et barn inden for rammen uden at miste deres godkendelse.

* Generelt foreslås det, at pjecen vedrørende den nye godkendelsesramme uddybes for så vidt angår barnets helbreds- og aldersmæssige forhold. Endvidere bør kommunikationen af dette optimeres.

* I Adoptionsvejledningens pkt. 7.4.1.2 bør det oplyses, at der som udgangspunkt gennemføres 3 samtaler med ansøgerne, hvoraf én samtale gennemføres i hjemmet.

* Individuelle ressourcer hos kommende adoptanter. Familieretshuset har kun en enkelt gang allerede i godkendelsesforløbets første fase iværksat en nærmere undersøgelse af adoptanternes individuelle ressourcer. Det er imidlertid vores opfattelse, at det er vigtigt, at muligheden herfor er til stede. Det er i den forbindelse ønskeligt, at det bliver præciseret efter hvilke kriterier, at vi allerede i fase 1 kan iværksætte undersøgelse af individuelle ressourcer.

* Særligt om børn frigivet ved tvang. De kommende adoptanter udtrykker bekymring for, om barnet får tildelt samvær med de biologiske forældre, hvilket de frygter kan komme til at virke forstyrrende for barnet med det til følge, at adoptanterne skal bruge ekstra ressourcer på at samle barnet op.

En anden bekymring er konstruktionen med ”midlertidig placering”, hvor ansøgerne kan være tilbageholdende med at turde knytte sig fuldt ud til barnet af frygt for, at barnet ikke bliver endeligt frigivet.

Det kan overvejes om adoptanternes bekymring i relation til samvær kan imødekommes ved at beskrive samværet som et "kendesamvær" og ikke et "kontaktsamvær" efter forældreansvarslovens § 20a.

Endvidere kan det overvejes om adoptanternes bekymring kan imødekommes med to spor i Adoptionsnævnet? Ét spor for ansøgere, der ønsker et barn, der er frigivet med samtykke. Og et andet spor, hvor barnet er frigivet uden samtykke.

* Generelt gælder det for adoptanter af børn født i Danmark, at de ikke har et naturligt sammenhold. Adoptanter af børn fra udlandet finder typisk sammen i landegrupper.

Disse adoptanter efterspørger en "Danmarksgruppe".

Støtte til adoptivfamilien

* Vi foreslår et opfølgende kursus inden godkendelsen forlænges (brush-up).

* Vi foreslår et kursus målrettet barn-2-ansøgere (søskende relationer).

* Vi foreslår et kursus målrettet ansøgere til biologiske søskende og ældre børn. (Vi oplever, at par, der har adopteret søskende, opdager, at de to søskende ikke har nogen relation til hinanden, da de har boet adskilt på børnehjemmet).

* Børnegrupper. Nogle børn må vente længe på at komme i et kursusforløb. Måske skal der udbydes flere kurser.

* PAS-rådgivning bør i et eller andet omfang være obligatorisk ud over 3 måneder, herunder i forbindelse med barnets start i institution. Vi kan endvidere tilslutte os en omlægning og udvidelse af adgangen til frivillig PAS-rådgivning. Vi oplever bedre adoptionsforløb i de sager, hvor adoptanterne løbende gør brug af den frivillige PAS-rådgivningen.

Indsamling og formidling af viden

* Familieretshuset kan tilslutte sig, at allerede eksisterende viden skal være tilgængelig, således den kan anvendes hos de fagprofessionelle, ligesom der bør være fokus på initiativer med henblik på at understøtte den faglige vidensopsamling, der allerede sker. En sådan formidling og indsamling af viden kan eksempelvis varetages af et nationalt videnscenter for adoption.

Med venlig hilsen

Rie Thoustrup Sørensen

Comments regarding the Appeals Board-Consultation on the study of the possibilities for a new adoption system and the evaluation of the adoption reform of 2016;

Copenhagen 15.11.2019

ACT has in the last 20 years intensively worked in the field of child trafficking for the purpose of adoption and child rights.

Our founder Roelie Post was an EU Official in DG Enlargement responsible for the Reforms of the Child Protection System in Romania.

More information about this can be found at:

www.againstchildtrafficking.org and on the personal page of Ms. Post,

www.romaniaforexportonly.com

ACT has exposed many criminal practices of European adoption agencies.

Respectively for Denmark we exposed the scandals in Andhra Pradesh (John Abraham Memorial Bethany Home), Preet Mandir, Priya Darshani, (A Baby Business, DR 2007),

Ethiopia (DR 2012)

Sheyar Chayya (2019)

Amys Vilje (2019)

We also assisted the parents whose children were adopted by criminal means to Denmark, Sinkenesh and Hussein, (Masho) , Genet (Amy) and Ramesh Kulkarni.

Due to our assistance the adoptions of Masho and Amy were revoked by the Federal First instance court in Ethiopia in 2016.

The book of Dorrit Saietz “Adoptionens Slagmarker” is in part based on information supplied by us and it shows a bleak picture of the affairs of the Adoption System in Denmark.

The Kenya scandal from 2015:

“Kenya, another adoption scandal. The cost of Impunity” available at:

http://www.againstchildtrafficking.org/de/2015/08/kenya-another-adoption-scandal-the-cost-of-impunity/), is the best example that the new adoption system is a total failure.

We have to conclude that neither did the Danish government ever look into what happened with regards to adoptions from Romania, nor was any of the above mentioned scandals ever thoroughly investigated, nor have the victims found any relief. It has been just cover- up.

In other EU states, adult adoptees demand now, parliamentary enquiries and compensation for the damage done to them as well as practical and financial independent assistance for re-establishing their original identity

In 2016 the Dutch council for criminal justice and youthwelfe, has advised the government to stop intercountry adoptions. (summary attached)

The Danish government has in the past connived and subsidised a private organisation, DIA, which was involved in child trafficking.

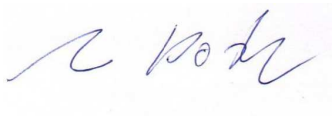
The Danish government has failed to address the gross human rights violations and criminal practices of DIA's predecessor AC and Danadopt.

Further, the practices of Terre des Hommes in Bangladesh and Romania have not really been addressed.

In the light of the fact that in 2018 there were only 64 intercountry adoptions (source DIA), the state financing DIA is a misuse of taxpayer's money. It is predictable that the number of intercountry adoptions continue to decrease which would make any government funding a predictably failed rescue operation.

We request the Danish government to address the above mentioned scandals in a serious and thorough manner and support financially, independent organisations who assist adult adoptees in re-establishing their original identity in line with the obligations under international human rights treaties.

Further, as the RSJ concluded, the problems are systemic, and cannot be improved, Denmark should simply stop with intercountry adoptions and respect children's rights as enshrined in the UNCRC.



Arun Dohle
Executive Director

David Kildendal Nielsen
Contact Person, ACT

Raad voor Strafrechtstoepassing en Jeugdbescherming

Summary advisory report 'Reflection on Intercountry Adoption' of the Council for the Administration of Criminal Justice and Protection of Juveniles

(2 November 2016)

The Minister of Security and Justice requested the Council for the Administration of Criminal Justice and Youth Protection (the Council) to render advice on a number of proposed future scenarios for the system of intercountry adoption. Andersson Elffers Felix (AEF) was commissioned to develop these scenarios. These scenarios all proceed from the current system of intercountry adoption and relate to its management and control.

The Minister submitted the following question to the Council:
Which of the future intercountry adoption scenarios outlined by AEF is preferable?

To provide the Minister with proper advice on the management of the adoption system (the various scenarios), the Council believes it first needs to answer a more fundamental question:

How can we provide the highest level of protection to children of the intercountry adoption target group (children unable to grow up with their own families)?

Asking this fundamental question is in line with the Council's advisory function. The Council is charged with rendering independent advice on the subject of youth protection to the government.

The Council's advice is comprised of two parts and consists of an advice on the fundamental question on intercountry adoption and an advice on the choice of the future scenarios provided.

Advice on the fundamental question on intercountry adoption

Developments with respect to intercountry adoption
There has been a sharp decline in the number of children adopted into the Netherlands from abroad in the past ten years. The profile of these children, too, has changed: they tend to be older when first arriving in the Netherland and to belong to the subset of *'special need'* children, children requiring special care in addition to what is provided to other adopted children.

Positive aspects and bottlenecks
Scientific studies, publications and interviews with experts show that the current adoption system has its positive aspects and also its negative aspects.

Positive aspects
It has become evident that children who grow up in institutions will lag behind in their physical, cognitive and social emotional development. Adoption offers a child the opportunity to grow up within a family instead of in an institution, keeping the child from suffering more and permanent developmental delays. Research has shown that adoption usually is an effective intervention, as it may result in a recovery of the developmental process of the child (especially in the case of children adopted at an early age). Intercountry adoption into the Netherlands also allows the adopted child to grow up in a prosperous country and allows adoptive parents with a desire to have children to have their wish granted.

Bottlenecks
- The Convention on the Rights of the Child (CRC) and the Hague Adoption Convention recognise that the rights and interests of a child are best protected by a family in their own country. The country of origin often lack a youth protection system to provide alternatives to intercountry adoption.
- Research has also shown that intercountry adoption negatively affects the advancement of the youth protection system in the country of origin. Intercountry adoption inadvertently results in local youth protection services being of a lesser quality than would be the case if no intercountry adoption existed.
- Furthermore, intercountry adoption involves financial interests. These carry the risk of illegal and undesired practices.
- These risks increase the need for supervision. However, supervision on the adoption process and on whether the provisions of the Hague Adoption Convention are observed is very limited.
- Specific obstacles exist in a number of countries (China, the US and the EU countries).
- The quality of the adoption process is subject to a lot of criticism.
- The well-being of the children may suffer from unsafe attachment.

Arguments and assessment
Positive aspects and bottlenecks do not, in themselves, provide arguments for or against adoption. While the existence of the problem areas might result in the conclusion that the very phenomenon of intercountry adoption as such should be questioned, it might also result in a drive to change the system, instead. Some of the positive aspects and problem areas come to serve as arguments for and against intercountry adoption. These arguments can be divided into arguments at the micro level (related to the individual child) and arguments at the macro level (related to the system of intercountry adoption). The Council subsequently weighed these arguments against each other.

The 'interest of the child' can be divided into various components that each provide an individual argument for or against adoption. In assessing these arguments, the Council prefers 'placement of children in a family in the country

of origin able to provide *adequate* care' over 'placement of children in a family of adoptive parents in a foreign country able to provide *optimum* care'. This means that the *Family in own country*-argument counts heavily and the *Prosperous Netherlands-argument* and *Optimum care-argument* are given relatively less weight in our assessment.[1]

The intercountry adoption dilemma is complex. While there are very strong arguments in favour of intercountry adoption at the micro level, the Council believes these are countered by strong arguments against it at the macro level. The Council, in weighing the above arguments against each other, finds as follows. Despite the benefits it provides to the individual child (micro level), the Council believes that the adoption system is not the ideal solution to protect the target group of children at large (macro level). This conclusion is highly reliant on the fact that, in view of the obligations of the government, arguments at the macro level (system) must be given more weight than arguments at the micro level.

A couple of macro-level arguments against intercountry adoption are decisive in the Council's view. Multiple scientific studies have demonstrated the 'pull' effect of adoption. The system of intercountry adoption creates a supply of children in children's homes. In addition, intercountry adoption undermines focusing on the solution preferred under the CRC (a family of the child's own culture, in the child's own country). Intercountry adoption impairs the implementation and advancement of a youth protection system in the country of origin. The Council believes that these arguments count more heavily than arguments related to individual children benefitting from intercountry adoption. The fact that most of the children adopted into the Netherlands do well does not change the fact that the CRC (Article 20) considers it better for these – and other – children to do well in their own countries. Finally, the Council attaches great value to the principle of subsidiarity: adoption of the child should only be considered if no other solution can be found. The Council believes that the principle of subsidiarity cannot, in practice, be properly observed, meaning that this *Principle of subsidiarity- argument* is, to the Council, a convincing argument against intercountry adoption.

In the opinion of the Council, intercountry adoption and the provision of aid with advancing the youth protection system cannot convincingly stand side by side. The option of having children adopted impairs in itself the further advancement of the youth protection system. A shift of focus to advancing such youth protection systems is essential. The Council refers to this scenario as the 'Family in country of origin' scenario.

[1] Read the full report for a definition of these arguments.

Advice on scenarios with management models

Having given its advice on the fundamental question on intercountry adoption, the Council gives its advice on the future scenarios presented by AEF.

Scenarios
The AEF report presents four scenarios.

- Scenario 1: 'Optimise the current model'

In this scenario, the current situation is kept the same as much as possible. All current parties remain in existence and all roles remain intact. This scenario revolves around the various actors changing their conduct at their own initiative.

- Scenario 2: 'Government manages the system'

No fundamental reform of the system takes place. All current parties remain existant and will continue to fulfil their current duties. However, in this scenario, the discharge of responsibilities does change. While the government will put more frameworks in place, it will distance itself from the actual performance.

- Scenario 3: 'Fewer actors'

In this scenario, the number of licensees will decrease (possible by way of a minimum number of matches) and the government will combine all supervision duties.

- Scenario 4: 'A public service'

In this scenario, intercountry adoption becomes a public service: the entire chain will be managed by the government.

Conclusion on the scenarios
The Council states that these scenarios are insufficiently able to provide an improvement to the identified problem areas. Various obstacles cannot be removed, as their nature makes it impossible for them to be solved by means of a different organisation of the intercountry adoption system. This has resulted in the Council recommending another scenario for the future ('Family in country of origin').

In answering the Minister's question, the Council asked itself which of the four scenarios are best able to provide an improvement of the established bottlenecks. The Council therefore assessed the future scenarios in relation to the identified bottlenecks. Regarding some of these bottlenecks the AEF scenarios can result in improvements. The principle of subsidiarity served as the standard criterion for the Council to assess which scenario is preferable. Weighing the opportunities and risks, the Council concludes that the 'A public service' scenario is best able to remove the concerns with respect to the principle of subsidiarity (to the extent possible).

Conclusion

This advisory report centres around two core questions. The Council has the following answer to the fundamental question, *'How can we provide the highest level of protection to children belonging to the intercountry adoption target group (children unable to grow up with their own families)?'*

The Council is of the opinion that intercountry adoption is not the best way of protecting children and calls upon the government to shift its focus and to protect these children by supporting the implementation and advancement of the youth protection system in the country of origin. This ideal scenario is referred to as the 'Family in country of origin' scenario by the Council.

With respect to the question *'Which of the future intercountry adoption scenarios outlined by AEF is preferable?'*, the Council advises that the government selects none of the four scenarios presented by AEF, but adopts the aforementioned 'Family in country of origin' scenario. Considering these four future scenarios presented, the Council advises that the Minister adopts scenario 4 ('A public service'). This scenario is best able to remove the concerns with respect to the principle of subsidiarity (to the extent possible).

In addition to providing an advice on the fundamental question on intercountry adoption and an advice on the future scenarios presented by AEF, the Council makes the following recommendations.

Besides the five scenarios discussed, the Council recommends to terminate immediately the collaboration with countries with specific problems. This concerns China (supervision by Central Authority and accredited bodies not possible), the US (violates the intention of the Convention's provisions with respect to the principle of subsidiarity and freely given consent) and countries of origin that are EU Member States (principle of subsidiarity).

The Council calls upon the Minister to have a fundamental debate on adoption with the House of Representatives and not just to debate management models and their performance. The Council emphasises that, in view of the sensitivities involved in the debate on intercountry adoption, this debate must be based on arguments. The Council aims to contribute to this debate by way of this advisory report.

Intercountry adoption is a complex subject involving interests in addition to the interest of the child, including the interest of the parents wishing to adopt a child. The various interests involved render the subject politically complex. The Council calls upon the Minister to put the interests of the foreign children in need of protection first (also, or even in particular, because they cannot make themselves heard). The Council hopes that the Minister is willing, in the near future, to make a policy decision that will serve to better protect the rights of these children (as provided in the CRC) and, thus, the children themselves.

Ankestyrelsen

Adoption & Samfund
Adoption & Samfund Ungdom
Tænketanken Adoption
Adoptionspolitisk Forum
Adoptionstrekanten
Koreaklubben

Høring angående undersøgelsen af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016

I 2019 påbegyndte Ankestyrelsen en undersøgelse af mulighederne for et nyt adoptionssystem og tog samtidig hul på en evaluering af adoptionsreformen fra 2016. Vi forventer, at undersøgelsens resultater afleveres til social- og indenrigsministeren den 1. december 2019. Evalueringen af de tiltag der vedrører adoptivfamiliens forhold, forventes afleveret den 1. februar 2020.

Vi vil gerne inddrage så mange perspektiver som muligt. Derfor vil vi gerne modtage jeres eventuelle inputs til undersøgelsen og evalueringen. Jeres inputs vil blive vedlagt det materiale, der overdrages til social- og indenrigsministeren.

Vi skal bede om at modtage jeres eventuelle inputs senest **onsdag den 6. november 2019**.

Efter resultaterne af undersøgelsen er overdraget til social- og indenrigsministeren vil der foregå en politisk behandling af strukturen for et fremtidigt bæredygtigt formidlingssystem for international adoption. Vi forventer, at ministeren vil have opmærksomhed på at inddrage alle interessenter i denne proces.

1. Baggrund

I oktober 2014 indgik et flertal af de politiske partier i Folketinget en aftale om et nyt adoptionssystem. Store dele af aftalens indhold vedrørte alle adoptionsansøgere, adoptivfamilier og adopterede. Aftalen fastsatte også rammerne for den internationale adoptionsformidling til Danmark. Aftalepartierne var enige om, at der skulle gennemføres en evaluering af aftalens konsekvenser efter en treårig periode fra initiativerne fik virkning den 1. januar 2016.

Siden 2014 er antallet af internationale adoptioner i Danmark faldet til et historisk lavt niveau fra 124 adoptioner i 2014 til 64 adoptioner i 2018. Antallet af godkendte ansøgere, der ønsker at adoptere, via den adoptionsformidlende organisation DIA, er også faldet markant fra 84 tilmeldinger i 2014 til 48 tilmeldinger i 2018.

Aftalepartierne bag satspuljeaftalen for 2019 besluttede derfor i november 2018 at afsætte midler til at undersøge, hvilke alternativer der findes til den nuværende formidlingsstruktur, hvor formidlingsopgaven varetages af en privat organisation, der primært er finansieret af gebyrindtægter fra adoptivfamilierne.

2. Undersøgelsen og evalueringen af rammerne for den internationale adoptionsformidling

Ankestyrelsen har fået til opgave at undersøge, hvordan der kan skabes en økonomisk bæredygtig struktur for den internationale adoptionsformidling i Danmark. Undersøgelsen skal også afdække behovet for understøttende tiltag i overgangen til et eventuelt nyt system for at skabe den tilstrækkelige tryghed og sikkerhed for kommende og nuværende ansøgere.

Formålet med undersøgelsen er at tilvejebringe et grundlag for en politisk drøftelse af, hvordan et bæredygtigt adoptionssystem bør udformes set i lyset af den aktelle udvikling.

Det betyder, at evalueringen af de dele i den politiske aftale om et nyt adoptionssystem, der vedrører de strukturelle rammerne for formidlingen, erstattes af en undersøgelse. Evalueringen af tilsynet med adoptionsformidlingen vil blive afleveret sammen med undersøgelsen og indeholder efter aftale med Social- og Indenrigsministeriet en gengivelse af Ankestyrelsens erfaringer og observationer fra tilsynet siden 2016 (evaluering del 1).

Kommissoriet for undersøgelsen kan findes her:
https://ast.dk/born-familie/hvad-handler-din-klage-om/adoption/undersogelse-af-adoptionssystemet

Ankestyrelsen forventer at aflevere undersøgelsens resultater til social- og indenrigsministeren den 1. december 2019.

3. Evalueringen af adoptionsreformen fra 2016 – adoptivfamiliens forhold

Evalueringen af de forhold, der vedrører adoptivfamilien, bliver evalueret i en særskilt publikation (evaluering del 2). Evalueringen vil belyse, hvilke elementer der er velfungerende, og hvilke elementer der kalder på en justering, herunder hvilken form for justering der nærmere er tale om.

Del 2 af evalueringen om den politiske aftale om et nyt adoptionssystem omhandler temaerne:

- Godkendelse af kommende adoptanter
- Støtte til adoptivfamilien
- Åbenhed og adoption
- Indsamling og formidling af viden

Ankestyrelsens evaluering af konsekvenserne af del 2 af den politiske aftale vil, i forhold til de enkelte temaer, blive struktureret på følgende måde:

1. Beskrivelse af de tiltag der blev igangsat på baggrund af aftalen
2. Vurdering af hvilke tiltag der med fordel kan fortsætte (*her inddrages bidrag fra høringen*)
3. Vurdering af hvilke tiltag der kan ændres eller justeres (*her inddrages bidrag fra høringen*)

Den politiske aftale fra 2014 om et nyt adoptionssystem i Danmark kan findes her:
https://ast.dk/filer/born-og-familie/undersogelse-af-den-fremtidige-struktur-for-adoptionsformidlingen/bilag-2-den-politiske-aftale-2014.pdf

Hvis I har inputs til de enkelte temaer, må I meget gerne skrive dem i nedenstående skema. Har I ikke inputs eller bemærkninger til enkelte temaer eller deltemaer er i velkommen til at springe felterne over.
Ankestyrelsen forventer, at aflevere evalueringen til social- og indenrigsministeriet den 1. februar 2020.

Godkendelse af kommende adoptanter

Når kommende adoptanter godkendes, sker det med den hensigt at udvælge de bedst egnede adoptanter af hensyn til barnet.	
Fremadrettet skal benyttes en ny godkendelsesramme i form af én godkendelse, der rummer ældre børn og børn med flere behov.	**Der er problemer med de nuværende godkendelsesrammer for børnene:** Det må indledningsvist slås fast, at godkendelsesrammen er meget, meget bred, til trods for at de børn, der kommer i forslag, er som før, såvel alders- som helbredsmæssigt: - Der er en uoverskuelig bredde i hvilke helbredsmæssige forhold, man skal kunne acceptere, og det kan skræmme de ellers velkvalificerede og –motiverede ansøgere væk - Der kan konstateres stærkt stigende afslagsprocenter de sidste år, nu afvises halvdelen

	af alle ansøgere, og ofte med begrundelsen i ansøgernes ressourcer. Der er ingen, der siger nej til barn i forslag. Er det i barnets tarv? Kan man risikere at barnet havner i en familie, der har "gabt" over for stor en opgave? Vi mener, at de nuværende meget brede godkendelsesrammer har konsekvenser for ansøgere, barnet, DIA, de lokale kommunale tiltag og støtteforanstaltninger: - Der er en for ansøgerne helt uoverskuelig bredde i, hvilke helbredsmæssige forhold man skal kunne/ville acceptere som ansøgere, og det kan helt klart skræmme mange ellers særdeles velkvalificerede og -motiverede ansøgere helt væk. - Ansøgerne vælger erfaringsmæssigt derfor så i stedet surrogat-/rugemødre eller andre muligheder, lovlige eller ej, og uanset de personlige og økonomiske omkostninger for alle parter! - Hvorfor må det ikke være OK at sige, at man er klar til et barn med HIV smitte, på grund af ansøgernes faglige baggrund, det kunne være som f.eks. læge eller lignende- uden at man skal sige ja til samtlige andre mulige sygdomme? - Hvorfor må man ikke vælge, at barnet har f.eks. klumpfod eller læbe-/ganespalte, fordi man har erfaring og dermed ressourcerne til netop det? Det handler ikke om "<u>ikke</u> at være rummelig", men om at være helt realistisk om egne og familiens ressourcer. Afslagsprocenten har som nævnt senest nærmet sig halvdelen af alle ansøgere, og ofte med begrundelsen ressourcer. Adoption & Samfund ønsker, at der gennemføres en undersøgelse af, hvad der bevirker de høje afslagsprocenter, så det kan afklares, om de typiske ansøgere har en helt anden profil i dag end tidligere, eller om det er forhold i godkendelsessystemet eller hos de godkendende instanser, der bevirker den markante forskel.

	Hvad er baggrunden for, at man ikke i højere grad lytter til ansøgernes ressourcer og ønsker på særlige områder, frem for at alle skal kunne klare alt? Hvor er beviserne for, at disse godkendelsesrammer er til barnets bedste, baseret på erfaringerne siden ændringerne i 2016?
Der skal fortsat være krav om sammenhæng mellem ansøgernes alder og barnets alder.	Overveje at øge grænsen til 50 års aldersforskel.
Godkendelses- og undersøgelsesforløbet skal tilpasses, så det understøtter en ny godkendelsesramme.	Se ovenfor.
Der skal være mulighed for at iværksætte en nærmere undersøgelse af de individuelle ressourcer allerede i godkendelsesforløbets første fase.	Vi fraråder en obligatorisk psykologisk undersøgelse af alle ansøgere, da det vil være spild af tid og ressourcer. Almindelige mennesker med almindelige ressourcer, ikke super-mennesker, skal kunne adoptere, men naturligvis forberedes godt til at særlige forhold, der gør sig gældende i adoption..

Støtte til adoptivfamilien

Den rådgivning og støtte adoptivfamilien tilbydes før og efter, at barnet kommer til Danmark skal afspejle formidlingsbilledet og de krav der stilles til adoptanterne, samt de behov adoptivfamilien har.	
Obligatorisk PAS-rådgivning lige før og efter, at barnet kommer til Danmark, i et øget omfang.	Nuværende: Før udrejse: 3 timers PAS rådgivning Efter udrejse: 3 timers PAS rådgivning Vores forslag: Før udrejse: 5 times PAS-rådgivning Efter udrejse: 5 timers PAS-rådgivning, herunder mulighed for PAS-rådgivning under opholdet i oprindelseslandet. Vi vurderer, at der er manglende videndeling mellem f.eks. DIA og de adoptionsforberedende kurser. Man kunne med fordel lade DIA's erfaringer med de konkrete hjemtagne børn indgå i de adoptionsforberedende kurser i fase 4, hvor den helt specifikke forberedelse til at modtage et helt konkret barn kan forbedres betragteligt ved at anvende kendt viden fra virkelige sager.

Temaaftener med PAS-konsulenter og adoptanter for kommende adoptanter.	Nuværende: Der holdes mange relevante og gode tema- aftener/-eftermiddage. Forslag: Vi ønsker at tilføje "Ventekuller" arrangementer, hvor forhold som - ventetid - uklarhed - det ikke at kunne påvirke processen - forskel mellem oplevelsen hos parterne i parforholdet - etc. behandles.
Obligatoriske landemøder i organisationerne, som kommende adoptanter skal deltage i som en fortsat forberedelse på adoptionen, mens de venter på at blive matchet med et barn.	
Omlægning af eksisterende PAS-rådgivning for at sikre adgang til rådgivning frem til den adopterede fylder 18 år, hvor der vil skulle være et stigende fokus på rådgivning til den adopterede selv i takt med dennes alder.	Forslag: Vi støtter, at den adopterede selv kan få rådgivning uafhængigt af forældrene, før den adopterede er fyldt 18 år. Der skal desuden oprettes en instans, der alene skal fokusere på barnets/den unge adopteredes rettigheder = Den adopteredes ambassadør, som taler barnets/den unge adopteredes rettigheder i vigtige og fundamentale livskriser og usikkerhed om identitet, ønske om rejse for at søge biologisk ophav osv.
PAS-rådgivningen kan fremover rumme spørgsmål om åbenhed og kontakt med oprindelig slægt.	Vi mener, at den nuværende PAS-rådgivning giver mulighed for spørgsmål om åbenhed og kontakt med oprindelig slægt. Den bør derfor fortsættes uændret, jf. dog vores bemærkninger nedenfor under emnet åbenhed.

Forsøgsprojekt med PAS-rådgivning til voksne adopterede med en efterfølgende politisk drøftelse som opfølgning på forsøget.	Vi minder lige om, at PAS til voksne er blevet gjort permanent! PAS-rådgivningen skal være livslang og permanent finansieret via Finansloven. I denne rådgivning skal man kunne inddrage en partner eller andet familiemedlem tilsvarende som i rådgivning til adoptivforældre. Årsagen til vores forslag er, at voksne adopterede kan have gavn at deres partner deltager i rådgivningen og således bedre forstår den adopteredes reaktionsmønstre.

Åbenhed og adoption

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Krav om at organisationer og myndigheder løbende har fokus på at sikre tilgængeligheden af oplysninger om den adopteredes baggrund, børnehjem m.v.	Kravet bør indebære både sikring af, at disse oplysninger i videst muligt omfang tilvejebringes allerede i forbindelse med adoptionen, og at de derefter opbevares på en måde, som giver mulighed for, at den adopterede og adoptivforældrene kan få adgang til oplysningerne. Adoption & Samfund ser det som en nødvendighed for at sikre tilgængeligheden fremover, ved at der foretages en fuld digitalisering af alle oplysninger om barn og oprindelig familie. Dette vil selvfølgelig være en bekostelig opgave i både tid og penge, men vil spare tid og personaleressourcer på længere sigt, når det ikke længere bliver nødvendigt at gå i gamle arkiver og lede i gamle kasser efter oplysninger. I forbindelse med aktindsigt er det dog stadig yderst vigtigt, at der er en sagsbehandler involveret med kendskab til adoption, som kan læse sagen igennem, inden den videregives og dermed sikre, at eventuelle svære oplysninger følges op af rådgivning og vejledning. Den pågældende medarbejder skal ikke sortere eller censurere de oplysninger, der videregives, men sikre at den adopterede og/eller adoptivfamilien får den fornødne psykologiske og juridiske rådgivning og bibringes indsigt i, hvordan sociale og kulturelle forhold i oprindelseslandet bør tages i betragtning, hvis en kontaktetablering ønskes. (Se mere under punktet Temaaftener.)

	Det vides ikke med sikkerhed, hvad omfanget af fremtidige søgninger bliver, men alt tyder på, at interessen blandt de 20.000 personer, der de sidste fem årtier er adopteret i Danmark (ved national eller international adoption), vil være stigende i takt med en øget forståelse for, hvad åbenhed og eventuel kontakt kan betyde for adopteredes identitetsudvikling. Adoption & Samfund mener derfor, at der specifikt skal sikres midler til såkaldt teknisk PAS (dvs. administrativ, juridisk bistand til de adopterede og deres forældre forbindelse med aktindsigt, kontaktetablering og tilbagerejser). DIA kender de kulturelle normer i de oprindelseslande, hvor de har et samarbejde, og kan rådgive om og formidle viden og erfaringer, som de har gjort sig gennem mange års tæt arbejde med disse lande. Dette er ikke en opgave, vi mener uden videre kan gives videre til andre. En naturlig mulighed er, at denne opgave varetages af en særlig task-force i DIA, eftersom DIA dels pt. opbevarer sagsakterne, og dels har en historik med samarbejde med de adopteredes oprindelseslande. Uanset om denne task-force til søgning, kontaktetablering og genforening med biologisk familie placeres i DIA eller et andet sted, er det nødvendigt, at der afsættes midler til at udføre arbejdsopgaverne med digitalisering, behandling af sagsakter og rådgivning på kompetent vis, og det er ikke acceptabelt, hvis denne opgave (fortsat) skal betales af kommende adoptanters brugerbetaling.
Krav om fokus på at sikre slægten viden om barnets opvækst gennem opfølgningsrapporter, i det omfang der er ønske om denne viden, og i det omfang den kan videregives i overensstemmelse med oprindelseslandets regler.	De danske myndigheders fokus på at sikre den adopteredes biologiske slægt viden om den adopteredes opvækst og tilværelse bør række videre end blot at sørge for, at rapporter udarbejdes og sendes til oprindelseslandet. Danmark bør som modtagerland af adoptivbørn bidrage til aktivt at sikre, at rapporterne om de adopteredes opvækst og tilværelse i Danmark videreformidles til den biologiske familie, hvis de ønsker det, uden at de selv skal sætte sig i udgifter eller besvær for at modtage rapporterne (f.eks. ved selv at skulle hente dem på en institution eller et kontor i en by langt fra deres bopæl.)

Indskærpelse af den moralske og aftaleretlige forpligtigelse til som adoptant at udarbejde opfølgningsrapporter.	Forpligtelsen til at udarbejde opfølgningsrapporter har eksisteret i mange år, og der bør udarbejdes et overblik over, hvorvidt denne forpligtelse generelt opfyldes af adoptanterne – eller om hvor udbredt det evt. er ikke at udarbejde rapporterne. Der bør etableres en instans, hvor forældre – f.eks. hvis de er ordblinde eller ikke føler sig stærke i skriftlig formulering – kan få bistand til udarbejdelse af rapporten.
Temaaftener med PAS-konsulenter om åbenhed og kontakt med oprindelig slægt.	Der bør etableres en rådgivningsenhed, hvor adopterede, adoptivforældre og biologiske forældre til adopterede kan få rådgivning i alle aspekter af en søgning, kontaktetablering og genforening mellem adopterede og den oprindelige slægt, f.eks. - Juridisk: Hvilke rettigheder har parterne i adoptionstrekanten i de involverede lande (oprindelsesland og modtagerland, dvs. Danmark)? Hvis der er modsatrettede interesser, hvilke rettigheder og hvilke parters rettigheder vejer da tungere? Hvilke regler er der m.h.t. søgning og kontaktetablering i den adopteredes oprindelsesland? Krav om alder? Krav om samtykke? - Socialt og kulturelt: Er der særlige forhold, man skal tage i betragtning i forbindelse med søgning af og kontaktetablering medoprindelig slægt i det berørte land? - Politisk: Er der bestemte politiske forhold, man skal tage hensyn til, når man søger eller etablerer kontakt til oprindelig slægt, f.eks. oprindelseslandets tidligere eller nuværende familiepolitik eller generelle politiske forhold, som kan have betydning for at finde og genforenes med biologisk slægt, så som konflikter og krig. - Psykologisk: Rådgivning af adoptivforældre i betydningen af kommunikativ åbenhed i familien om den adopteredes behov for viden om og ønske om

	kontakt med den oprindelige familie. Mental forberedelse af den adopterede og evt. adoptivforældrene til en søgning og kontaktetablering. Motivafdækning, forventningsafstemning, mental forberedelse på forskellige scenarier og udfald af søgningen, indføring i, hvordan man tager hensyn til de andre parter i adoptionstrekanten, ikke mindst den oprindelige familie, især hvis de lever i et kulturelt anderledes samfund. Hvordan bearbejder man (sammen) skuffelsen, hvis det ikke lykkes at finde den familie, man søger? - Praktisk: Hvordan kan man foretage en søgning, hvis de nødvendige oplysninger ikke umiddelbart foreligger? Hvilke typer af spor kan man følge? Hvor kan man få hjælp? Hvordan undgår man at blive snydt af forskellige aktører? - Brug af informationsteknologi og bioteknologi: Der skal kunne rådgives i, hvordan man kan bruge sociale medier til søgning og kommunikation efter kontaktetablering, og ikke mindst i de faldgruber, det rummer. Tilsvarende muligheder og risici ved brug af gen-databaser. - Der skal endvidere kunne rådgives vedrørende spørgsmålet om at gå et skridt videre end åbenhed, kontaktetablering og genforening: midlertidig eller permanent repatriering i oprindelseslandet.
Iværksættelse af forskning der belyser åbenheds betydning for den adopteredes trivsel og livskvalitet. https://ast.dk/publikationer/abenhed-i-adoption	Forskning på området er helt generelt ikke tilstrækkelig. Vi har i mange år hos Adoption & Samfund gjort opmærksom på behovet, og det er da også blevet til lidt, men slet ikke så dybdegående, som man kunne have ønsket sig. Vi kunne især godt tænke os at følgende områder blev bedre belyst: Åbenhed i adoption er en relativt ny tendens, efter at man i mange år har hyldet og værnet om anonymiteten inden for adoptioner, og derfor er erfaringer med og forskning i åbenhed også sparsom.

	Da alt tyder på, at åbenhed – både på grund af holdningsændring og forbedrede søgemuligheder – vil komme til at præge adoptionslandskabet mere i fremtiden, og lukkede adoptioner måske endda meget snart vil tilhøre fortiden, er forskning i feltet både vigtigere og lettere end tidligere. Der findes efterhånden trods alt en del adopterede og adoptivfamilier, der har erfaring med søgning, kontakt og genforening med oprindelig familie i mange forskellige lande. Dette muliggør f.eks. en erfaringsdatabase også af konkret, praktisk karakter gældende for forskellige lande foruden de overordnede, generelle temaer især af psykologisk art. Adoption & Samfund kunne f.eks. ønske en kortlægning af rettighederne i adoption, sådan som de gælder for de forskellige parter i adoptionstrekanten og med hensyntagen til både internationale konventioner og nationale lovgivninger i de involverede lande.

Indsamling og formidling af viden

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Allerede eksisterende viden skal i spil og være tilgængelig på en måde, som kan bringe den i anvendelse hos de fagprofessionelle, som møder de adopterede og deres familie.	Adoption & Samfund foreslår, at der etableres et videns- og kompetencecenter for adoption, som skal stå for både vidensindsamling/forskning og vidensformidling. Centrets arbejde skal derfor være en del af alle de fire arbejdsområder inden for adoptionsforskning, der er skitseret i nærværende høring. Adoption & Samfund har, da vi for mere end 10 år siden foreslog, at der oprettes et videns- formidlings- og kompetencecenter for adoption, beregnet, at det kan etableres for forholdsvist få midler. I 2012 fremsatte foreningen igen forslaget med grundige og gennembearbejdede beregninger af de forventede årlige omkostninger til drift mv. i lyset af de på daværende kendte tal og prognoser for antallet af adoptioner til Danmark. Det skønnes, at disse omkostninger, i det mindste i en opbyggelsesperiode, kan være lavere end hidtidigt anslået, da antallet af årlige adoptioner er siden faldet betydeligt, men behovet for opfølgende aktiviteter vedrørende allerede adopterede er til gengæld steget bl.a. inden for behovet for

	bistand og rådgivning til søgning af biologisk ophav, og da der forhåbentlig igen bliver større interesse og mulighed for at adoptere et barn i Danmark. Videns- og kompetencecentret skal ligeledes forestå formidling af eksisterende viden til andre målgrupper end fagprofessionelle, herunder også adopterede og adoptivfamilier og den almene offentlighed. Videns- og kompetencecentret skal have til opgave: - At formidle viden og erfaring med alle adoptionsrelaterede områder - At være ansvarlig i Danmark for den årlige begivenhed "Nordic Adoption Joy Week", efter finsk forbillede, hvor de nordiske lande en uge i marts samarbejder om at udbrede det positive budskab om adoption som en god familieform, bl.a. gennem sociale medier mv. - At være overordnet ansvarlig for de adoptionsforberedende kurser, der fremover planlægges, gennemføres og udvikles i samarbejde med alle interessenter på adoptionsområdet - At være overordnet ansvarlig for pre- og post adoption services (samlet herefter betegnet PAS) rådgivningen, der udvides yderligere til at være "livsvarigt", idet adoption er en livslang proces, og PAS udbygges i takt med at yderligere faglige og sociale erfaringer indhentes, herunder erfaringer med og ønsker om grader af åbenhed i adoption - At være ansvarlig for uddannelses- og rådgivningstilbud til fagpersoner samt sikre, at der stadighed er relevante og tidssvarende tilbud til fagpersoner, der møder adopterede og adoptanter, samt biologiske familier, der må forventes at få en stadig større betydning for den adopterede og dennes familie i takt med udvikling af nye kontaktmuligheder, sociale medier, gen-banker, søgning efter rødder osv. - At være ansvarlig for det såkaldte "tekniske PAS", der omhandler det at søge rødder: Opgaven og ansvaret

	skal placeres her, så det ikke længere påhviler og bebyrder DIA, der skal fokusere på formidlingsopgaven - At medvirke til udarbejdelse af kommunikationsmaterialer og kampagner, der understøtter tanken om adoption som en god familieform. *Vi har forsøgt at sætte videnscentrets opgaver ind under de fem punkter vedrørende viden og forskning i denne undersøgelse, skønt opgaverne efter vores opfattelse et tæt forbundne.*
Fokus på muligheden for at iværksætte selvstændige initiativer med henblik på at understøtte den faglige vidensopsamling, der i forvejen sker.	Opsamling og udnyttelse af den viden, der opstår bl.a. i PAS-systemet, men også decentralt i børne- og uddannelsesinstitutioner samt i familier bør samles og benyttes mere systematisk og aktivt, end det sker nu. Videns- og kompetencecentret skal have til opgave at indsamle og formidle viden og erfaring med alle adoptionsrelaterede områder.
SFI skal have fokus på adoptionsområdet og i den forbindelse igangsætte relevante undersøgelser og vidensindsamling. https://www.vive.dk/da/udgivelser/at-vokse-op-som-adopteret-i-danmark-5678/	Videns- og kompetencecentret skal have til opgave: - At igangsætte relevante forskningsprojekter, gerne i tæt samarbejde med VIVE, til belysning af hvordan det går de adopterede, ikke mindst i sammenligning med institutionaliserede børn og unge, uden reelle tilfredsstillende kontakt til voksne, familie og andre - At søge fonds- og andre midler til at finansiere disse tiltag. - At igangsætte forskningsprojekter og Ph.d.-opgaver om adoption i samarbejde med relevante forsknings- og uddannelsesinstitutioner eller uddelegering til disse. Emner for forskningsprojekter: - Åbenhed/lukkethed i adoption. Hvilke former for åbenhed findes der de facto i de danske adoptivfamilier? Hvilke konsekvenser har åbenhed hhv. lukkethed i adoption for den adopteredes trivsel og livskvalitet? Forske i forskellige former for og grader af åbenhed og konsekvenserne af disse for både den adopterede og de øvrige parter i adoptionstrekanten. Erfaringer efter mødet med biologisk familie: Hvilke konsekvenser har det, og

	hvad sker der efterfølgende med kontakten/relationen? - Sprogtilegnelse og dens betydning for den kognitive udvikling. Herunder: har barnets oprindelige sprog (sprogstamme), sproglige niveau og alder ved adoption betydning for sprogtilegnelsen. Hvilken rolle spiller det, om barnet får modersmålsundervisning efter ankomst til Danmark eller ej? Har barnets oprindelige sprog og sprogskiftet betydning for udviklingen af f.eks. dysleksi eller andre boglige eller indlæringsmæssige vanskeligheder? - Rettigheder for parterne i adoptionstrekanten set i tværnationalt perspektiv. Hvilke rettigheder findes ifølge internationale konventioner og hvilke i nationale lovgivninger? Hvilke rettigheder og hvilke parters rettigheder har forrang for andre, hvis der er konflikt? - I hvilket omfang møder internationalt adopterede i Danmark racisme og etnisk stigmatisering i det danske samfund, evt. i den udvidede familie, og hvad betyder det for de adopteredes trivsel og livskvalitet? - Barselsperioden i et adoptionsperspektiv – herunder barselsregler for eneadoptanter.
Skærpet fokus på inden for de eksisterende rammer at dokumentere den viden, som genereres gennem PAS-ordningen, og som på anden måde udvikles og indsamles i forbindelse med administrationen af området.	Videns- og kompetencecentret skal have til opgave: - At indsamle og formidle viden og erfaring med alle adoptionsrelaterede områder - At sikre at faserne i godkendelsesprocessen til stadighed evalueres og tilpasses i forhold til eksisterende rammer og vilkår, og ikke mindst de faktuelle forhold i oprindelseslandene, herunder ændringer i de lokale sociale forhold og kulturelle forudsætninger
Oprettelse af en kontakt mellem Ankestyrelsen og VISO for så vidt angår international adoption.	Indtast bidrag ift. pkt. 2 og 3

4. Kontakt til Ankestyrelsen

Hvis vores henvendelse giver anledning til spørgsmål kan I kontakte Charlotte Karstenskov Mogensen eller Karin Rønnow Søndergaard på Ankestyrelsens e-mail ast@ast.dk eller hovedtelefonnummer 33 41 12 00 mandag til fredag klokken 9-15.

Hvis I har forslag til andre interesseorganisationer, der kan være relevant at inddrage i processen, er I også velkomne til at kontakte os. Vi gør opmærksom på, at Danish International Adoption, Adoptionsnævnet og Familieretshuset allerede er inddraget i vores arbejde med undersøgelsen, og vil også blive hørt i relation til evalueringen del 2.

Venlig hilsen

Karin Rønnow Søndergaard

ADOPTIONSPOLITISK FORUM

Midgårdsgade 15, 4th.
2200 København N

Telefon: 26744969
E-mail: info@adoptionspolitik.org

København, d.4.11.2019

Indledende bemærkninger fra Adoptionspolitisk Forum til Ankestyrelsens undersøgelse og evaluering af adoptionsreformen fra 2016

Adoptionspolitisk Forum vil indledningsvis understrege, at transnational adoption som internationalt system skaber en økonomisk ikke-rentabel struktur, idet man ikke kan forhindre, at det nuværende adoptionssystems økonomiske struktur skaber afhængighed på tværs af grænser.

Adoptionspolitisk Forum noterer sig, at Ankestyrelsens undersøgelse alene fokuserer på, hvorledes adoptionsformidlingen i Danmark økonomisk kan oppebære sig selv og ikke ligge staten til byrde i form at fordyrende omkostninger. Derfor forudser vi, at denne undersøgelse udmønter sig i en række anbefalinger med henblik på besparelser, der på ingen måde grundlæggende ændrer ved eller sikrer en retfærdig og uafhængig økonomi i adoptionssystemet.

Udtrykket "et bæredygtigt adoptionssystem" må derfor siges at være hult, eftersom adoption i sig selv skaber forskellige former for afhængighed, der aldrig bliver bæredygtige, og fordi ankestyrelsen ikke undersøger sig selv samt adoptionssystemets påvirkning uden for Danmark grænser. Derved kan man fortsætte en udbytning af afgiverlande, i hvilke man som følge af økonomisk afhængighed stadig griber til kriminelle handlinger i formidlingen af personer til adoption.

APF finder det i det hele taget upassende at brugen af begrebet "bæredygtigt" i forbindelse med et system, der bygger på udveksling af mennesker og betydelige pengebeløb på tværs af grænser.

Vores kommentarer til Ankestyrelsens spørgsmål er derfor foretaget ud fra ovenstående fokus. Adoptionspolitisk Forum påpeger fortsat at man fra statslig side bør arbejde på:

a) at fjerne af Haagerkonventionen som juridisk konvenstionsramme for al fremtidig adoptionsarbejde
b) at afskaffe privatformidlende adoptionsorganisationer
c) at sikre et øget fokus på at forhindre forfalskninger af papirer, ulovligheder og økonomisk afhængighed af adoptionsøkonomien i afgiverlandene.

Med venlig hilsen
Adoptionspolitisk Forum

Se venligst kommentarerne fra Adoptionspolitisk Forum (i svarene APF)

Godkendelse af kommende adoptanter

Når kommende adoptanter godkendes, sker det med den hensigt at udvælge de bedst egnede adoptanter af hensyn til barnet.	
Fremadrettet skal benyttes en ny godkendelsesramme i form af én godkendelse, der rummer ældre børn og børn med flere behov.	APF mener, det bør præciseres: a) Man skal ikke kunne adskille søskende efter adoptionen. De ældre søskende bør i tilfælde af institutions-, plejefamilieanbringelse eller andet ophold uden for hjemmet sikres en ret til jævnlig kontakt til øvrige søskende. b) Adoptanter må ikke kunne foretage en prioritering i forhold til typer af børn, hvor visse børn bliver anset som "sidste løsning". c) Det bør sikres, at adoptanter i valget af børn ikke foretager prioriteringer, de egentlig ikke ønsker eller magter. d) Det bør kræves, at adoptanter anerkender og opretholder den adopteredes ret til egen historie før adoptionen og betragter adoptionspapirer som den adopteredes ejendom.
Der skal fortsat være krav om sammenhæng mellem ansøgernes alder og barnets alder.	Ved søskendeadoption udregnes aldersvurderingen ud fra det yngste barns alder.
Godkendelses- og undersøgelsesforløbet skal tilpasses, så det understøtter en ny godkendelsesramme.	Godkendelsesrammen skal indeholde: a) en screening af racisme hos ansøgerne - herunder ubevidst/uerkendt racisme b) en undersøgelse af ansøgernes viden om håndtering af racisme, herunder racisme i familie, skole og nære omgivelser.
Der skal være mulighed for at iværksætte en nærmere undersøgelse af de individuelle ressourcer allerede i godkendelsesforløbets første fase.	Det bør præciseres, hvad der menes med "individuelle ressourcer", og hvorledes de kan få betydning for adoptionsprocessen.

Støtte til adoptivfamilien

Den rådgivning og støtte adoptivfamilien tilbydes før og efter, at barnet kommer til Danmark skal afspejle formidlingsbilledet og de krav der stilles til adoptanterne, samt de behov adoptivfamilien har.	
Obligatorisk PAS-rådgivning lige før og efter, at barnet kommer til Danmark, i et øget omfang.	APF ønsker, at den obligatoriske PAS-ordning er rettet mod og følger *den adopterede*, og at den skal kunne tilbydes i hele den adopteredes liv. På baggrund af kendskabet til den eksisterende PAS-rådgivning ønsker APF at understrege, at de udvalgte PAS-rådgivere udtrykkeligt bliver instrueret i:

	a) ikke at sygeliggøre den adopteredes normale emotionelle reaktioner på adoptionen b) at have et øget fokus på sorgbearbejdelse og chokreaktioner hos den adopterede og mindre på ad hoc-diagnoser c) at PAS-rådgivningen også omfatter rådgivning om racisme og diskriminationshåndtering.
Temaaftener med PAS-konsulenter og adoptanter for kommende adoptanter.	APF ønsker, at de udvalgte PAS-konsulenter skal: a) være trænet i at rådgive om håndtering af racisme generelt samt i den nære familie og nære omgivelser b) kende til nyeste dansksprogede forskning om adoption og racisme c) kunne håndtere adoptanters forventninger versus den adopteredes ret til egen historie og identitet. APF foreslår derudover, at de planlagte temaaftener kan afholdes af andre end PAS-konsulenterne, f.eks. af personer, der repræsenterer specialviden inden for adoptionsrelaterede områder.
Obligatoriske landemøder i organisationerne, som kommende adoptanter skal deltage i som en fortsat forberedelse på adoptionen, mens de venter på at blive matchet med et barn.	APF ønsker, at adoptanterne bliver pålagt obligatoriske møder med organisationer for adopterede - f.eks. alle modtagere af invitationen til dette høringssvar. Evt. landemøder bør afholdes og faciliteres af en uvildig enhed, der ikke har en politisk agenda i forhold til adoptionsområdet. Der bør ikke være en økonomisk eller politisk interesse i at afholde landemøder.
Omlægning af eksisterende PAS-rådgivning for at sikre adgang til rådgivning frem til den adopterede fylder 18 år, hvor der vil skulle være et stigende fokus på rådgivning til den adopterede selv i takt med dennes alder.	APF ønsker (jf. ovenfor): a) adgang for den adopterede til selvstændig og uafhængig PAS-rådgivning fra det 12. år og resten af livet b) at den adopterede skal have mulighed for selv at vælge PAS-rådgiver/-forløb i form af en økonomisk tildelingsordning, hvor bevillingen følger den adopterede.
PAS-rådgivningen kan fremover rumme spørgsmål om åbenhed og kontakt med oprindelig slægt.	APF finder det afgørende, at de udpegede PAS-rådgivere skal kunne håndtere spørgsmål om åbenhed og kontakt til oprindelig familie i den adopteredes interesse.
Forsøgsprojekt med PAS-rådgivning til voksne adopterede med en efterfølgende politisk drøftelse som opfølgning på forsøget.	Se ovenfor.

Åbenhed og adoption

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Krav om at organisationer og myndigheder løbende har fokus på at sikre tilgængeligheden af oplysninger om den adopteredes baggrund, børnehjem m.v.	APF mener: Der skal være krav om, at afgivende og modtagende adoptionsformidlende organisationer samt myndigheder i afgiver- og modtagerland løbende sikrer validiteten af og tilgængeligheden af oplysninger om den adopteredes baggrund - herunder den udvidede familie med kontaktoplysninger - dokumenteret samtykke om adoption, oplysninger fra børnehjem m.m.
Krav om fokus på at sikre slægten viden om barnets opvækst gennem opfølgningsrapporter, i det omfang der er ønske om denne viden, og i det omfang den kan videregives i overensstemmelse med oprindelseslandets regler.	APF mener: a) Der skal være krav om, at den adopterede sikres kontakt med den oprindelige udvidede familie, og at denne kontakt formidles gennem en uafhængig organisation, der får overdraget ansvaret for sikring af kontakten. b) Der skal være krav om, at adoptanter sikrer, at den adopterede kan fastholde oprindelig kultur gennem hjemrejse samt gennem sprog- og kulturundervisning.
Indskærpelse af den moralske og aftaleretlige forpligtigelse til som adoptant at udarbejde opfølgningsrapporter.	APF gør opmærksom på, at spørgsmålet om opfølgningsrapporter ikke er uproblematisk, eftersom: a) der er ikke tillid til, at håndteringen af rapporterne foregår gennem de korrekte instanser b) de ikke er garant for ægtheden af den oprindelige familie c) der kan være tvivl om, at kommunikationsformen er den optimale og opfylder sit formål d) opfølgningsrapporter ikke opfylder deres oprindelige formål. Opfølgningsrapporter bør i stedet erstattes med: a) en alderssvarende undervisning af den adopterede i oprindelig sprog og kultur b) kontaktmuligheder der tilgodeser den adopteredes behov og alder.
Temaaftener med PAS-konsulenter om åbenhed og kontakt med oprindelig slægt.	Temaaftener om åbenhed i adoption bør have en bred repræsentation af viden om og erfaring med adoption - meget gerne repræsentation af den oprindelige familie.
Iværksættelse af forskning der belyser åbenheds betydning for den adopteredes trivsel og livskvalitet. https://ast.dk/publikationer/abenhed-i-adoption	APF ønsker at understrege: a) at det skal være et krav, at forskningen er uvildig uden støtte fra eller medvirken af private eller statslige aktører i adoptionssystemet b) at bevillingerne af forskningsmidler skal gå til projekter, der inddrager forskere fra flere fagområder c) at der i første omgang prioriteres en grundlæggende undersøgelse af spørgsmålet om åbenhed i adoption og følgerne for den adopterede.

Indsamling og formidling af viden

I forhold til spørgsmålet om åbenhed og adoption skal den adopteredes ret til egen historie understøttes, ligesom den oprindelige slægts adgang til orientering om barnets opvækst skal støttes.	
Allerede eksisterende viden skal i spil og være tilgængelig på en måde, som kan bringe den i anvendelse hos de fagprofessionelle, som møder de adopterede og deres familie.	APF vil understrege vigtigheden af: a) at den formidlede viden er bredt fagligt funderet og både inddrager dansk og international indsamlet viden b) at indsamlingen af viden inddrager adopteredes egne vidnesbyrd og oplevelser såvel som den sum af erfaringer og viden, der indhentes på organisations- og aktivistniveau, og som formidles gennem adopteredes egne organisationer.
Fokus på muligheden for at iværksætte selvstændige initiativer med henblik på at understøtte den faglige vidensopsamling, der i forvejen sker.	Der bør være fokus på at understøtte initiativer, der er bredt funderede og indsamler viden på mange niveauer om adoption og adopterede. Dette indbefatter bl.a.: a) voksne adopteredes oplevelser med racisme og forskelsbehandling i sociale og professionelle sammenhænge (f.eks. job/arbejdsløshed og karriere) b) ældre adopteredes erfaringer og levevilkår i arbejdslivet og som pensionister c) tilbundsgående undersøgelser på tværs af lande om brud på rettigheder og ulovligheder i adoptionssystemet fra f.eks. Grønland, Tyskland, Bangladesh, Korea osv.
SFI skal have fokus på adoptionsområdet og i den forbindelse igangsætte relevante undersøgelser og vidensindsamling. https://www.vive.dk/da/udgivelser/at-vokse-op-som-adopteret-i-danmark-5678/	APF henviser til kommentaren under "Åbenhed og adoption" pkt. 5. APF finder det derudover ikke betimeligt at udpege en bestemt aktør til foretagelse af undersøgelser om indsamling af viden om adoptionsområdet.
Skærpet fokus på inden for de eksisterende rammer at dokumentere den viden, som genereres gennem PAS-ordningen, og som på anden måde udvikles og indsamles i forbindelse med administrationen af området.	APF ønsker, at der kommer skærpet fokus på at dokumentere den viden, som genereres gennem hele adoptionsprocessen. Dette indbefatter indsamling af oplysninger om forfalskede papirer og oplysninger om den adopterede (navn, alder, familieforhold m.m.). I tillæg hertil anbefaler APF, at der oprettes en dansk klageinstans for adopterede til udpegelse af juridisk ansvar for uregelmæssigheder og ulovligheder.
Oprettelse af en kontakt mellem Ankestyrelsen og VISO for så vidt angår international adoption.	IAB - så længe det ikke omhandler en øget sygeliggørelse af den adopterede.

Adoptionstrekanten
- fordi vi hører sammen

På vegne af Adoptionstrekanten takker jeg hermed for det tilsendte Høringsmateriale. Vi ser det som en positiv udvikling, at der siden 2014 er sket en gradvis nedgang af antallet af internationale adoptioner ligesom antallet af godkendte ansøgere er faldet markant, for det betyder jo, at langt færre familier bliver splittet ad. Vi erkender, at adoption i enkelte tilfælde kan være den rette beslutning til barnets bedste, men dette skal være absolut sidste udvej, som det jo også hedder sig i Haagerkonventionen. Det må være klart for enhver, at børn tager varig skade af, at blive unødigt skilt fra sin familie, og vi mener derfor, at det nære familiebånd i langt højere grad skal værnes om, bevares og respekteres.

Vi kan forstå, at der er store økonomiske udfordringer med den fortsatte adoptionsformidling, og at det er anledning til denne undersøgelse. Vi finder det dog langt vigtigere at sikre, at alt foregår på et etisk og juridisk forsvarligt grundlag med samme respekt for alle tre parter i adoptionstrekanten. Etik og legalitet bliver gentagne omtalt i kommissoriet, men der er nu ikke meget, der tyder på, at dette bliver overholdt. Eksempelvis bliver det fremhævet, at Ankestyrelsen skal godkende af alle matchningsforslag som et centralt element i en øget styring af området fra myndighedernes side. Dette bliver omtalt som en meget væsentlig kilde til viden om adoptionsforløbene og dermed til at sikre legaliteten i adoptionerne. Det siger jo intet som helst om, hvorvidt det drejer sig om stjålne, kidnappede eller franarrede børn, eller hvordan vi sikrer os mod dette.

Der står endvidere, at ”undersøgelsen har ikke til hensigt at undersøge årsagen til udviklingen, men retter sig imod, hvordan konsekvenserne af udviklingen kan håndteres” Der kan dog ikke ske fremskridt, hvis der ikke bliver stillet spørgsmålstegn til selve fundamentet. Danmark bliver endda fremhævet som foregangsland, når det kommer til legalt og etisk forsvarlige adoptioner. Der er dog langt igen, for at vi kan leve op til disse ord. Hermed nogle vigtige punkter til forbedring:

1. I høringen omtales gentagne gange tryghed og sikkerhed for nuværende og kommende ansøgere, men ikke en eneste gang omtales der tryghed og sikkerhed for børnenes oprindelige familier, Dette må prioriteres mindst lige så højt. Man bør sikre sig, at alle familier har haft mulighed for at træffe et indformeret valg.

2. Alle adoptioner bør fremover så vidt muligt være åbne således, at familiebåndet bevares, vedligeholdes og respekteres.

3. Så nær kontakt som muligt bevares. Dette kan gøres gennem brevveksling, udveksling af fotos, gaveudveksling og besøg, når det er muligt.

4. Man bør sikre, at alle familier får de pligtige opfølgningsrapporter direkte tilsendt oversat til deres eget sprog samt en kopi til formidlingsbureauet.

5. Ligesom der stilles rådgivning til rådighed for nuværende og kommende adoptanter, bør der sikres rådgivning og livslang krisehjælp til rådighed for de familier, der har mistet eller er i fare for at miste deres børn til adoption.

6. Ligesom der bliver lavet spørgeskemaundersøgelser til adoptanterne, skal der også laves spørgeskemaundersøgelser til de oprindelige familier, således at man sikrer sig, at de er helt trygge, føler sig hørt og respekterede, og at alt er foregået på et etisk og juridisk korrekt grundlag.

7. Barnets ret til en familie. I bilag 2 under kommissoriet står bl.a. "Akkrediteringen skal bygges op omkring et fokus på organisationernes evne til at varetage barnets interesser og prioritere barnets bedste i arbejdet med barnets ret til en familie ."
Det er almindeligt kendt, at omkring 95 % af de børn, der får prædikatet forældreløse faktisk har mindst 1 levende forælder. Hvis vi skal leve op til en standart som foregangsland for etisk og juridisk korrekte adoptioner, er vi nødt til at sikre os, at børn, der har en funktionel familie ikke bliver adopteret bort.

6. Alle adopterede og deres oprindelige familier skal om ønsket have den nødvendige hjælp og støtte til at finde hinanden og genoptage kontakten

7. Ingen samarbejde med lande, der ikke er tilsluttet Haagerkonventionen.

8. Ingen samarbejde med lande, som ikke kan tilgodese etisk og juridisk forsvarlige adoptioner

9. Ingen samarbejde med lande som nægter, at de oprindelige familier får opfølgnings-rapporter.

10. I kommissoriet bliver det pointeret, at økonomi må ikke påvirke adoptionsformidling og at adoption må ikke ske med profit for øjet. Men i andre afsnit bliver det beskrevet hvor mange mio. den danske stat yder til international adoptionsformidling: Der er til den samlede aftale om et fremtidigt adoptionssystem afsat 14,4 mio. kr. i 2015, 13,2 mio. kr. i 2016, 11,5 mio. kr. i 2017 og herefter 8,5 mio. kr. årligt fra 2018 og frem. Grundet et fortsat underskud hos DIA, er der bevilliget sats-puljemidler til dette. I november 2018 blev der bevilget midler til at understøtte DIA's drift i 2019 og 2020 samt iværksætte en undersøgelse Der er for 2019 afsat 0,3 millioner for at understøtte den nuværende formidling, 1,8 mio. kr. Til understøttelse af Dia, samt 1 mio. kr. til denne undersøgelse

Der er rigtig mange penge på spil her, alt sammen for at formidle relativt få børn, mange mennesker bliver aflønnet i dette system, mens det er ikke på nogen måde er godtgjort, at det er til børnenes bedste – tværtimod. Som vi ved, har et stort antal adopterede meget store udfordringer i livet sammenlignet med den øvrige befolkning. Hvis vi gjorde en reel indsats for, at disse børn kunne blive i deres egne familier, ville vi kunne spare rigtig mange penge både til adoptionsformidling og til livslang PAS-rådgivning til de adopterede samt PAS-rådgivning til adoptiv-familierne i 18 år. Hvis man reelt ønsker børnenes bedste, så skulle vi i langt højere grad yde bistand til, at børn kunne blive i deres egne familier. Pengene ville kunne gøre langt større gavn ved, at de blev brugt som hjælp til, at de udsatte familier kunne beholde deres egne børn, og mange lidelser kunne undgås. Uanset hvor veluddannede adoptivfamilierne bliver og uanset hvor meget psykologbistand, der bevilliges kan dette aldrig erstatte den tryghed og sikkerhed, det er for et barn at vokse op i og være omgivet af sin egen familie i sit eget land. Der er postet rigeligt med penge i formidling af børn til danske familier, hvis man fremadrettet sørger for at kun reelt forældreløse børn og børn uden anden familie der kan tage sig af dem, bliver tilbudt en ny familie, vil der ske en yderligere reduktion af adoptioner og dermed en yderligere besparelse.

Tilbage i 2013 søgte jeg om satspulje midler til støtte for et projekt der skulle være til gavn for de ca. 10.000 danske familier, der har mistet børn til adoption. Min ansøgning blev afvist. Der gives heller ingen hjælp til de familier fra andre lande, som har mistet børn til adoption, end ikke de, som er blevet franarret deres børn til danske familier. Der ydes fortsat kun hjælp og støtte til de, der modtager andre folks børn, mens de, der mister deres børn til adoption såvel her i landet som i de lande, vi adopterer børn fra, er ladt fuldstændig i stikken. Det kan vi ikke være bekendt.

Det er helt rimeligt, at der ydes den nødvendige hjælp til adoptivfamilier, og som det bliver pointeret, at de får den samme hjælp som den øvrige befolkning, dette ligestillingsprincip mangler dog at blive overholdt i forhold til de familier, der har mistet eller er i fare for at miste børn til adoption jævnfør punkt 5. og 6

Som sagt anerkender vi, at der kan være enkelte børn, som reelt har brug for en ny familie, men vi er nødt til at sikre os, at det er de rette børn, der får dette tilbud. Det er menneske-skæbner, vi arbejder med. Alt for mange lider og har lidt under dette systems fejl livet igennem. Det er vi nødt til at få rettet op på.

Den danske statsminister Mette Frederiksen har for nylig givet en undskyldning til Godhavns-drengene godt nok 50 år senere end, overgrebene fandt sted, de for længst voksne børn fra det grønlandske eksperiment bliver de næste, der får en undskyldning. I 2013 gav Prime Minister Julia Gillard Australien en officiel undskyldning til de mange ofre for tvangs-adoptioner. Der sker en udvikling, men vi er mange der synes, det går alt for langsomt, mon vi skal vente yderligere 50 år på at få en undskyldning for de mange børn, som under det nuværende systems fejl og er blevet frarøvet et liv i deres egen familie, og de familier der unødigt har mistet deres børn til adoption?

Set i lyset af de senere års udvikling må vi nok gøre os klart, at international adoption over de kommende år vil blive mere eller mindre afviklet og med tiden afløst at et nyt tidsvarende system, der bygger på medmenneskelighed frem for profit og udnyttelse af de svageste borgere. Det ser vi frem til. Et samfund skal kendes på den måde det behandler sine svageste borgere.

Med kærlig hilsen

Aniella Bonnichsen

Adoptionstrekanten

Foreningen for bedsteforældre og øvrig familie til anbragte børn

www.bedsteforeningen.dk eller www.facebook.com/bedsteforeningen

Aarhus 3. november 2019

Til Ankestyrelsen!

Høringssvar angående ny undersøgelse af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016

Bedsteforeningen her i Aarhus har igennem et par år arbejdet med emnet adoption uden samtykke, vi får udelukkende henvendelser fra bedstemødre der oplever at deres voksne børn får tvangsfjernet nyfødte til tvangsbortadoption. Adoptionsreformen er af afgørende betydning for de her forældre og bedsteforældre. Der kom nogle lempelser i 2015/16, som gjorde det lettere at adoptere et barn uden samtykke. Man skal blot godkendes som plejeforældre for at adopter et barn uden samtykke.

Det er dog glædeligt at internationale adoptioner er faldet historisk lavt, det er glædeligt at man måske er begyndt at bruge prævention i udviklingslandene, samt at man er ved at få så god en økonomi, at man selv kan forsørge sine børn globalt set. Det kan jo betyde at man kan begynde at udfase internationale adoptioner, og på den måde nedlægge den adoptionsformidlende Dias, den vil jo blive overflødiggjort eftersom, der bliver mindre efterspørgsel på udenlandske børn efterhånden, som der kommer mere velstand på globalt plan. Men det har været til stor bekymring for os, der arbejder frivilligt på anbringelses området, at der er blevet tvangsbortadopteret 21 børn i 2017. Tallet for 2018 kendes ikke. Tallet er mørke lagt, kommunerne har tvangsfjernet et par hundrede nyfødte/ufødte til tvangsbortadoption 2018/19, en kommunen alene ca. 50 ufødte/nyfødte, nogle kommuner har oprettet familie teams, der tvangsfjerner nyfødte omkring 2 måneders alderen. Man stresser forældrene/enlig mødre og barn. Begrundelse er manglende mentalisering og øjenkontakt. Amningen bliver ødelagt bevidst og barnet taber sig.

Med hensyn til internationale nationale adoptioner er det også kommet frem i Sporløs, at mange af di internationale adoptioner ikke er på frivilligt basis. Vi er betænkelige ved at Dan Adopt er blevet til DIA, sammen med AC Børnehjælp. Det er jo kommet frem i medierne at Dan Adopt har været indblandet i tyveri af nyfødte i Afrika og Indien. Vi i Bedsteforeningen, der får henvendelser fra bedstemødre, der skal have tvangsfjernet ufødte/nyfødte børn bliver urolig, når økonomien har betydnings for DIA, s økonomi og bæredygtighed.

En anden vig ting, Vi vil gerne at der står Ankestyrelsens hjemme side, hvor mange ufødte/nyfødte der bliver tvangsfjernet om året. Hvor mange der officielt står på venteliste til at adopter/plejefamilie til nyfødte børn. Samt at der står helt præcist, hvor mange børn der er adopteret uden samtykke, så vidt jeg kan se, er tallet blandet sammen med anonyme adoptioner.

Foreningen for bedsteforældre og øvrig familie til anbragte børn

Man kan jo bortadopter sit barn væk frivilligt. Hvor mange gør det, samt har adoptionsnævnet taget stilling til at der frivilligt. Det er glædeligt at Adoptionsnævnet er strenge, det ville være ønskeligt, hvis plejefamilier til børn under 3 år også bliver lagt under adoptions nævnet, og underlagt de samme regler som adoptanter.

Det er yderst bekymrende at læse (***landsmøde 18 og årsberetning 2018 adoptionsnævnet). At det er blevet lettere at adopter et barn på det Grå marked Polen eks***. Vi har desværre stor erfaring for at dem, som bliver afvist til at adoption, forholds vist let kan adopter et tvangsfjernet barn på gråt papir, via kommunerne. Man skal blot være pleje forældre, det er meget let at blive godkendt til plejeforældre, kommunerne har svært ved at rekrutter plejeforældre, så de er rimeligt desperate. ***På side 22-23 i Adoptions nævnets Årsberetning: afslag på godkendelse som adoptant fra 24 % -37 % i perioden 2014-2017***.

Når vi mener de barnløse plejefamilier adopter tvangsfjernede nyfødte på gråt papir, er det fordi at forældrene til de tvangsfjernede børn ikke er mental retederet men ordblinde, de kan ikke bestå intelligens test, da de ikke kan læse. De beskikkede advokater har ikke tid til at sætte sig ind i sagerne. I mange af sagerne er borgerne på overførsels indkomst, det har ikke betydning, at den ene forældre har fast arbejde og aldrig har været i systemet. Man går ind og ser på bedsteforældrenes liv og barndom i de her sager, selv om bedsteforældrene ikke er part i sagen. Hele familien er i kommunens søgelys. Kommuner overholder ikke loven om netværkspleje i de her sager, familien ofte bedsteforældre, får afslag på netværkspleje og familie adoption. Det betyder at forældre/bedsteforældre er retsløse i de her sager, forældrene får ikke altid , et officielt dokument på at deres børn er bortadopteret. Ingen kender det præcise tal, det tal vi har på adoption uden samtykke passer ikke med Ankestyrelsens tal. Det er mere reglen end undtagelsen, at kommunerne ikke overholder Forældrenes retssikkerhed. Vi vil anbefale at tvangsbortadoption bliver gjort ulovligt. Der er ikke grundlag for at tvangsbortadopter børn i Danmark, da samfundet yder økonomisk støtte til fattige i Danmark, gode uddannelses muligheder, skoler, daginstitutioner i Danmark. Vi vil gøre opmærksom på at ansøger til nationale adoptioner også falder, på grund af bedre fertilitetsbehandling. Mange barnløse vil i øvrigt også hellere gøre brug af ruge mor, der er barnløse der tager til udlandet for at bruge rugemor. I Danmark vil man helst have sine egne børn, de fleste får også kun to børn i Danmark, så føles det urimeligt at myndighederne bestemmer, hvem der skal være forældre, og ikke giver borgerne en chance for at danne familie. Det handler ikke om barnets tarv, det er et yderst misbrugt ord i anbringelses og adoptions regi. Det kan også retfærdiggør at systemet ødelægger børn og voksne få at få ret.

Foreningen for bedsteforældre og øvrig familie til anbragte børn

I følge rapporten august 2018 Adoption uden samtykke side 27. Er nogle plejefamilier heller ikke interesseret i at adopter på grund at plejefamilien vil miste støtte og plejevederlag fra kommunen.

Tvangsbortadoption af børn til plejefamilie er en overtrædelse af alle konventioner, som Danmark har forpligtet sig til. Da Danmark har skrevet under på EU grundloven. at de overhold forpligtelser i henhold til mennesket rettighederne. Vi henviser til Lobben dommen fra Norge her i september måned, EU menneske rettigheder artikel 8, alle har ret til familie, man ikke må adskille familie. Tvangsbortadoption af børn er også en overtrædelse af grundloven, samt i henhold til alle konventioner, Haag og FN. Der udover er det også en overtrædelse af børns rettigheder i henhold til børnekonventionen der giver dem beskyttelse, i ikke at blive brugt som en handelsvare. Danmark er et rigt land og skal løft opgaven til at i værk sætte hjælp til de børnefamilie, der har det svært i samfundet. Således at det kan komme børn og forældre til gode. Det er ikke meningen som der nu, hvor samfundet gør det svært at være familie.

Den nuværende lov giver ikke familien beskyttelse af deres rettigheder. Men derimod sker der over greb i form af fysiske og psykiske totur. Både på børn og forældre. Mange af de berørte familier får P.TS.D. som ikke bliver behandlet i form af psykologhjælp, da systemet ikke yder gratis psykologhjælp i forbindelse med tvangsfjernelse og tvangsbortadoption. Det er kun plejefamilier der kan få gratis psykologhjælp. Men i stedet burde man sætte målrettet ind, med støtte foranstaltninger i sted for tvangsfjernelser og tvangsbortadoption. Den hjælp der målrettet sættes ind tilgodeses både børn og forældre. Tvangsbortadoption har store menneskelige omkostninger for den enkelte familier, som bliver ramt. Familierne bliver kørt ud over kanten, i den sidste ende kan det medføre døden for nogle forældre, der er flere der har taget deres eget liv eller er døde af stress.

De forældre og bedsteforældre vi er i kontakt med gerne vil samarbejde med kommunen. De har gentagne gange bedt om forældre undervisning, støtte og vejledning i hjemmet, men det er blevet afvist gang på gang af kommunerne.

Vi vil gøre opmærksom på side 24, i Adoptionsnævnets årsberetning 2018: En nylig rapport, der er udarbejdet af det nationale forsknings og analyse center for velfærd, viser bland andet, at der blandt adoptivbørn er 7 % der anbringes uden for hjemmet, mens der for ikke adopteret er 5 %. Her udover har op mod 18 % af de adopteret været i kontakt med psykiatrien, hvorimod tallet for ikke adopteret er 9 %.

Det er jo tegn på at internationale adoptioner skal udfases og adoption uden samtykke skal stoppes. Der er jo mulighed for frivillig adoption, selv om gratis tilbud om svangerskabsforebyggelse og klinikker hvor kvinder kan henvende sig anonymt vil være det mest optimale. Her op weekenden 1,2 november 2019, har Ankestyrelsen meldt ud at kommunerne har

lavet fejl i mere end 50 % af sagerne. Både danske og udenlandske undersøgelser viser at tvangsfjernelse er skadeligt for børn, nyfødte får svære tilknytnings forstyrrelser. Større børn får også tilknytningsforstyrrelser, men de er i loyalitets konflikt mellem kommune/plejefamilie og forældre. De føler sig ofte svigtet af forældrene, fordi at forældrene ikke har kunnet beskytte dem imod de "gode menneskers intentioner i kommunen". Det skal være svære at kunne tvangsfjerne børn. Kommunen skal kunne dokumenter at forældrene er til skade for barnet. De børn der er skadet, tager ikke skade af at vente med anbringelsen. Men de børn der har trygge og kærlige hjem, får psykiske skader af de brutale tvangsfjernelsesmetoder, med politi o.sv. Underetninger skal ikke være anonyme, det skal være med Nem ide og cpr. Tvangsfjernelse og adoption uden samtykke er et stor indgreb i menneskers liv. Man må stå ved sine underretninger og handlinger. V i foreslår også at alle personer på området får autorisation, og kan retsforfølges, når de laver fiktive sager underretninger. For det er i virkeligheden på bekostninger af de familier ,som har brug for anbringelse. De er glade for anbringelsen, har et godt samarbejde med kommunen, derfor blander de sig ikke i debatten.

Kilder:

Ankestyrelsens hjemmeside:

Adoptionsnævnet landsmøde 2018

Adoptionsnævnet: Årsberetning 2018

Rapport :August 2018 Adoption uden samtykke, kommunernes brug af og kendskab til reglerne og mulighederne for råd og vejledning

På bedsteforeningens Aarhus, vegne

Heidi Christensen

Dorte Bøgeskov

Gitte Christensen

Ankestyrelsen
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5. november 2019

Vedrørende jeres J.nr. 18-39833, 19-16282: Høringsrunde angående ændringer i adoptionsloven – internationale adoptioner

Til trods for at Ankestyrelsen ikke har henvendt sig til "Foreningen for bedsteforældre og øvrig familie til anbragte børn" - i daglig tale blot kaldet "Bedsteforeningen" - så finder vi det alligevel påkrævet, at vi giver vort bidrag. Internationale adoptioner og nationale adoptioner har så mange beslægtede træk og stadig flere og flere tvangsfjernelser i Danmark ender ud i en tvangsbortadoption.

Et etiopisk søskendepar i førskolealderen blev i 2008 bortadopteret til et dansk barnløst par.
Dette adoptionsforløb blev fulgt tæt af et dokumentar-hold fra DR, og pågældende dokumentar blev vist i 2012. Sagen tog dog undervejs en helt ukendt drejning på flere fronter: adoptivforældrene endte med at anbringe den ældste, pigen Masho, på et børnehjem i Danmark, da de ikke magtede hende i det lange løb. Det viste sig også, at børnene var nogle år ældre end det danske par havde fået oplyst. Endvidere var det etiopiske forældrepar ikke døende, som man ellers havde fået at vide. De var godt nok fattige og havde HIV men medicin hjalp dem til at få et normalt liv. De biologiske forældre havde fået oplyst af de etiopiske myndigheder, at de stadig ville kunne have kontakt med børnene og få løbende underretninger om, hvordan det gik med dem. Begge dele var usandt.

Mediernes søgelys var også rettet mod sagen om Amy Steen, som ligeledes var adopteret fra Etiopien. Hun trivedes heller ikke med sine adoptivforældre, men kom så i en plejefamilie, hvor det gik langt bedre. Men adoptivforældre og kommune ville have hende på en institution i stedet og det ville hun absolut ikke.

Begge ovenstående sager var massivt dækket af mange medier. Også politisk kom der fokus på adoptionsområdet. Etiopien og andre 3. verdens lande lukkede mere eller mindre ned for bortadoption til Danmark, da sagsbehandlingen på området viste sig at være bundkorrupt. Danmark begrænsede ligeledes sin tidligere interesse for adoptivbørn fra disse lande. Begge de to pigers adoption blev senere omstødt af hjemlandet i 2016.[1] Så vidt vides befinder Masho sig dog stadig på en dansk døgninstitution, da hendes biologiske forældre stiller sig ambivalente i forhold til at få hende hjem.

Kort efter – i Danmark – blev lovgivningen omkring adoptioner af danske børn også ændret. Det blev nu langt lettere for de sociale myndigheder at indstille til tvangsbortadoption af et barn, som tidligere "blot" ville have været anbragt udenfor hjemmet barndommen ud, men stadig med kontakt til sin oprindelige familie. Hvor myndighederne førhen havde skullet "godtgøre", når de vurderede manglende omsorgskompetence hos de biologiske forældre, så skulle de fremadrettet blot "sandsynliggøre". Muligheden for at blive adopteret som voksen af fx plejeforældre var og er stadig til stede og havde været

[1] https://www.bt.dk/udland/husker-du-dokumentaren-om-masho-nu-har-sagen-taget-en-dramatisk-drejning

fuldt tilstrækkelig, såfremt det drejede sig om tilknytning til omsorgsperson under opvæksten og fremadrettet.

Mange var betænkelige, da loven trådte i kraft i sommeren 2015 og med rette: man må konstatere, at kommunerne i stadigt større udstrækning bruger muligheden for tvangsbortadoption som en spare-øvelse og som substitut i stedet for en ordinær anbringelse.

Tvangsfjernelsesområdet i Danmark trænger i forvejen til et stort "service-eftersyn", da det kniber gevaldigt med overholdelse af borgernes retssikkerhed; og der menes i denne forbindelse ikke ubetydelige "kommafejl". Både borgerrådgiveren i København samt Rigsrevisionen har udtalt omfattende og alvorlig kritik i offentligheden. Det er derfor yderst kritisabelt at øge myndighedernes beføjelser relateret til tvangsbortadoptioner, når man end ikke overholder den gældende lovgivning for anbringelser.
Her følger – i spontan rækkefølge – en række udvalgte eksempler på fejl og mangler i de aktuelle tvangsfjernelsessager – det skal bemærkes, at listen ikke er udtømmende:

1. Notatpligt overholdes ikke: 1. Sagsbehandler skriver ikke, hvad borger oplyser, når oplysningen er til fordel for pågældende. 2. Sagsbehandler skriver gerne og overdriver til det uigenkendelige, hvis borgers oplysning kan opfattes som belastende for pågældendes sag. 3. Sagsbehandler fordrejer borgers oplysninger ved fx at tage en sætning ud af kontekst, så denne får en helt anden og negativ betydning for borgeren og dennes sag. Det skal bemærkes, at det er noget nær umuligt at få slettet sådanne forkerte og skadelige oplysninger i en sag uanset om man har omfattende dokumentation for det modsatte. Det skal ligeledes oplyses, at såfremt man får kendskab til muligheden for at sende sin indsigelse og gør det, så bruger myndighederne det ikke. Indsigelse mod et eller flere sagsakter ligger ofte langt fra det dokument, det vedrører, når sagen fx behandles i Børn og Unge udvalget. Det kræver således et større arbejde for 3. part at få "parret" indsigelser med de pågældende sagsdokumenter og oftest sker dette ikke. Hvis indsigelse altså overhovedet udleveres til udvalget.
2. Berigtigelsesanmodninger og indsigelser ignoreres eller afvises altså i massivt omfang jf. ovenstående. Det skal bemærkes, at Datatilsynet yderst sjældent er til nogen hjælp for borgerne i dén forbindelse.
3. Formandsbeslutninger træffes ofte på et uoplyst grundlag. Fx er et nyfødt barn som udgangspunkt ikke i umiddelbar fare, når det og dets forældre end ikke har forladt fødeafdelingen og de i øvrigt får pæne udtalelser derfra. Det ses endvidere ofte, at disse formandsbeslutninger træffes på baggrund af forældede oplysninger, således at familiens problemer allerede er løst, når forvaltningen møder frem på adressen for at tage familiens barn/børn eventuelt i selskab med politiet. (Det findes dog også eksempler på, at familiens problemer er vokset til et langt alvorligere niveau end dengang de kom i myndighedernes søgelys eller selv henvendte sig dertil. Altså at kommunerne undlader at skride ind med mindre indgribende foranstaltninger for at forebygge en anbringelse, mens det stadig er muligt. Kommunerne reagerer for langsomt i mange sager, mens de i andre sager reagerer overilet og i så fald ikke med den mest optimale og hensigtsmæssige løsning.)
4. De politiske medlemmer af kommunens Børn og Unge udvalg er ofte beskæftiget i helt andre erhverv end på det sociale område. De lader sig derfor ofte dupere af de mange socialfaglige

termer i sagsbehandlers indstilling til tvangsfjernelse og godkender derfor denne til trods for, at det jo altså er deres opgave i dén forbindelse at repræsentere den menige borger

5. Der afsættes ved forelæggelse af sagen for Børn og Unge udvalg helt uhørt utilstrækkelig tid til at den berørte familie og deres advokat kan forelægge deres synspunkter samt moddokumentation for forvaltningens påstande – se eventuelt punkt 1. Det kan dreje sig om 0-1 eller få minutter, hvilket slet ikke er tilstrækkeligt, såfremt man tilstræber en sober partshøring. Det skal i denne forbindelse bemærkes, at mængden af manglende/forkerte/fordrejede oplysninger, som omtalt under punkt 1 meget hurtigt bliver særdeles omfattende, hvilket familien på ingen måde kan lastes for, tværtimod. Det er derfor påkrævet med al den tid, som forældre/barn/deres advokat har behov for til at kunne afparere de mange urimelige anklager mod deres familie. ½ dag ville formentlig ikke være for meget.
6. Sagsakter relateret til sagens forelæggelse i Børn og Unge udvalg udleveres oftest alt for sent til familien og deres advokat. Dette bevirker, at sagsakter ikke kan nås hverken at gennemlæses eller at opbygge et retvisende og fyldestgørende kontrasvar/forsvar desangående.
7. Der findes tilfælde, hvor sagen afgøres i børn og unge udvalg helt uden papirer og hvor genbehandlingsfristen desuagtet fastsættes til flere år.
8. De berørte familier orienteres i mange sager ikke om deres rettigheder eller misinformeres om samme. Fx ses det ofte, at sagsbehandler ”truer”/”lokker” forældre til at vælge en frivillig anbringelse med forkerte påstande om flere rettigheder, mere samvær etc selvom forældre slet ikke er enige i beslutningen om anbringelsen. Dette er usaglige hensyn, magtmisbrug og i strid med flere bestemmelser i blandt andet Serviceloven.
9. Sagsbehandlers såkaldte ”børnesamtale” med den anbragte afholdes ofte ikke eller afholdes ikke med de frekvenser, som loven foreskriver.
10. §50 undersøgelse udarbejdes ikke eller udarbejdes alt for sent
11. Handleplan for det anbragte barn udarbejdes ikke, udarbejdes alt for sent jf. gældende lovgivning og opdateres ofte ikke såfremt den altså er udarbejdet
12. Handleplan for forældre udarbejdes ikke, udarbejdes alt for sent jf. gældende lovgivning og opdateres ofte ikke såfremt den altså er udarbejdet.
13. Psykologer, som udarbejder forældrekompetenceundersøgelse er ofte og tydeligvis svært påvirkede af forvaltningens forudindtagede opfattelse af forældrene. Forældre tilsværtes i en grad, så andre fagfolk med kendskab til familien slet ikke kan genkende de pågældende
14. Vedrørende ovenstående punkter 5-9 ses i overvejende grad en flittig brug af ”Copy/Paste” fra myndighedspersoners side dvs der kopieres og sættes ind (klippes og klistres) og ovennævnte er i så fald slet ikke individuelle vurderinger af de pågældende. En del familier konstaterer et meget stort sammenfald af beskrivelser i deres sagsakter, når de sammenligner med hinanden. For så vidt angår psykolograpporter, så er der mange tilfælde, hvor rapporterne er enslydende hele vejen igennem og kun navne er ændret. Ja, nogle gange har psykologen endda ”glemt” at ændre navne på de personer, undersøgelsen omhandler.
15. Familien mødes ofte af ignorance, når der anmodes om aktindsigt.
16. Rekvireret aktindsigt modtages alt for sent jf. gældende lovgivning
17. Til trods for at IT systemer hos størstedelen af landets sociale forvaltninger er opsat til at udskrive både sagsakter og dokument-lister samtidig så er det typisk en langvarig ”kamp” for familierne at få udleveret dokument-listerne, således at de kan afstemme de udleverede

sagsakter dertil. Efterfølgende er der endnu en ”kamp” for at få udleveret de manglende sagsakter jf. dokument-listen.

18. I en del tilfælde tvangsanbringes børn med handicap eller udviklingsforstyrrelser selvom det havde været fuldt ud tilstrækkeligt med en langt mindre indgribende indsats. Dette har i sagens natur medført at stadigt færre familier tør kontakte forvaltning for ekstern faglig hjælp til familiens problemer. (Proportionalitets princippet) Det vil være vanskeligt at få officielt overblik over blandt andet denne problematik, da sagsbehandler samt psykolog etc blot sørger for at forvanske de faktiske omstændigheder angående familien, således at indhold i sagsakter stemmer overens med en indstilling om anbringelse. Se eventuelt punkt 1 m.fl.
19. Ved anbringelse af nyfødte, spæde eller få måneder gamle børn begrunder socialforvaltning ofte deres påstand om omsorgssvigt/mangelfuld forældreevne med ”manglende øjenkontakt hos barnet”. Dette burde udløse stor-alarm hos børn og unge udvalg, Ankestyrelse, byretter osv idet små børn slet ikke har udviklet deres synssans så tidligt. Endvidere kan den ”øjenkontakt” som trods alt forekommer også blive for intens/langvarig, så barnet ”trækker sig”. Dette burde også være elementær viden hos fagfolk, at småbørn let afledes af lyde og således drejer hovedet væk fra mor/far og i en anden retning, når det fx hører en kommunal familiekonsulent tale eller lave andre lyde.
20. Det er et stort retssikkerhedsmæssigt problem, at såvel børn og unge udvalg, Ankestyrelse samt byretter hovedløst ”blåstempler” afgørelser fra anden ”lavere” instans desuagtet, at familien har omfattende mod-dokumentation overfor de mange forkerte påstande i sagsakter. Dette gør forelæggelse for børn og unge udvalg samt klage til de to ankeinstanser til en ren skueproces. Året før reglerne for tvangsbortadoption blev markant mere lempelige[2] for myndighederne så blev også muligheden for at anke en anbringelsessag til Landsretten stort set elimineret i 2014. Den politiske begrundelse var at man i lighed med andre typer af sager betragtede en anbringelsessag som en ”bagatelsag[3]”. Ligeledes begrundede man ændringen med, at stort set ingen ordinære borgere fik medhold i Landsretten i en tvangsfjernelsessag, hvorfor man ligeså godt kunne afskaffe denne mulighed. Det anerkendes ikke – og blev derfor heller i dén anledning taget i betragtning – at retssikkerheden i meget vid udstrækning ikke overholdes i tvangsanbringelsessager jf. samtlige ovenstående punkter. Og at dette er årsagen til manglende medhold.

    Det skal endnu en gang oplyses og præciseres, at ovenstående liste jo altså ikke er udtømmende.

    Som det kan konstateres, så er der en masse forhold at rette op på. Det er derfor helt forkert at implementere yderligere lovgivning førend den helt grundlæggende – borgernes retssikkerhed – er på plads og overholdes fuldt ud i samtlige sager.

Det ville være hensigtsmæssigt såfremt Ankestyrelsen som minimum løbende registrerede ovennævnte problemstillinger og des lignende, når en tvangsfjernelsessag påklages til AST og gerne

[2] https://www.kl.dk/nyhed/2014/oktober/regeringen-vil-lempe-reglerne-for-adoption-ved-tvang/

[3] https://www.domstol.dk/Procesbevillingsnaevnet/nyheder/Oevrigenyheder/Pages/Nyeappelbegr%C3%A6nsningsreglerpr1juli2014.aspx

også tog sig af en tilsvarende registrering af statistik, når sagerne ender i retterne samt allerede i børn og udvalgene.

F. s. v. a. de hidtidige sager om tvangsbortadoptioner, som Bedsteforeningen har kendskab til, kan det oplyses at:

- Moderat ordblinde forældre beskrives i FKUer og sagsakter som multiretarderede og barnet tvangsbortadopteres
- Udviklingshæmmede med en i øvrigt normal, rask og velfungerende familie/netværk får tvangsbortadopteret deres barn, som derved mister kontakten til hele sin biologiske familie
- Socialt udsatte/skrøbelige forældre beskrives som tilsvarende ovenstående og barn indstilles til tvangsbortadoption
- Forældre med "udseendet imod sig" samt eventuelt sociale og/eller mentale udfordringer beskrives som tilsvarende ovenstående og mister deres barn til adoptanter
- Forældre på overførselsindkomster er i langt større risiko for at få tvangsbortadopteret deres barn/børn, som fjernes permanent i lighed med ovenstående

Afslutningsvis skal det bemærkes, at vi finder det ønskværdigt at blive en del af den officielle høringsliste fremadrettet ved behandling af emner relateret til vort virke på det sociale børneområde. Kontakt kan rettes til vores formand Tove Clausen tove-clausen@live.dk eller Tove Clausen Dommervænget 5F 4000 Roskilde.

Tak fordi I tog jer tiden til at inddrage vores betragtninger i jeres arbejde.

Med venlig hilsen

På vegne af Bedsteforeningen

Tove Clausen, formand for foreningen

Heidi Christensen, tovholder i Aarhus

KLIP Nordic Association
Joint Nordic association for parents of children placed into care, their children and supporters of their cause

CVR-nummer: 40584951

København 3. November 2019

Til Charlotte Karstenskov Mogensen
og Karin Rønnow Søndergaard
i Ankestyrelsen

Svar på Høring angående undersøgelsen af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016

Foreningen Klip som undertegnede er formand for, har oplevet den ære, at blive inviteret til, at give høringssvar i denne sag.

Kort om os:

Foreningen Klip er en nystartet forening som primært består af forældre til anbragte børn og som har en bestyrelse hvor alle medlemmer selv har anbragte børn. Vi er så vidt os bekendt den eneste formelt registrerede forening som bestyres af mennesker som selv har anbragte børn. Vi mener derfor, at det er oplagt, at vi giver vores stemme til kende i forhold til denne høring da vi kan belyse en side af dette som ellers meget sjældent er belyst. Vi kan fortælle noget om hvordan det er, at være forældre til et barn som fjernes.

Vores høringssvar

Lad mig starter dette høringssvar med, at gøre opmærksom på det simpel forhold, at love og regler kan misbruges. Vi ser det hele tiden. Særlig med skatteregler ved vi, at der altid vil sidde nogen som er gode til, at analysere regler og finde smuthuller og anvende dem til egen vinding. Selv regler som er skabt med de bedste hensigter vil kunne drejes og bruges af mennesker som har egennyttige hensigter.

Det udsendte materiale i forbindelse med denne høring omtaler ikke direkte spørgsmål vedrørende tvangsadoption. Vi vil dog mene, at dette spørgsmål er essentielt i forbindelse med overvejelser omkring muligheden for et nyt adoptionssystem og evaluering af de ændringer af adoptionssystemet som blev indført i 2016.

Systemets mulighed for tvangsadoption er netop siden 2016 blevet et særligt aktuelt med indførelsen af den lettede adgang til anvendelse af tvangsadoption i systemet og med et øget politisk fokus på denne mulighed. Særlig den nye socialdemokratisk leddede regering er kommet tæmmelige utvetydige udmeldinger, om at de vil arbejdet på, at gøre det nemmere, at tvangsadoptere børn fra Danmark.

Der er nogle umiddelbart foruroligende perspektiver ved dette. Udgifter til anbringelsesområdet er meget høje. Vi er i **Foreningen Klip** nået frem til, at det koster cirka en million kroner om året, at anbringe et barn. Hvis man i stedet for, at anbringe barnet kunne tvangsadoptere det så ville det koste stort set ingen ting. Der ligger altså et stort økonomisk incitament til, at lave flere tvangsadoptioner. Vi er i **Foreningen Klip** sikre på, at det økonomiske incitament allerede nu fører til, at der gennemføres tvangsadoptioner som ikke burde være gennemført. Med det øgede politiske pres på netop denne løsning tror vi kun det retssikkerhedsmæssige skred som vi mener er opstået vil fortsætte.

I oplægget til denne høring gøres der opmærksom på, at adoptioner fra udlandet er faldet drastisk i de sidste 10 - 15 år. Det som der ikke gøres opmærksom på er, at ventelisterne til indenrigsadoptioner i den samme periode er steget proportionalt. Det er endnu et incitament i systemet til, at gennemføre flere tvangsadoptioner og, at sænke de retssikkerhedsmæssige barriere for disse adoptioner.

Selvom høringsoplægget slet ikke kommer ind i overvejelser vedrørende tvangsadoptioner så mener vi, at det er det vigtigste spørgsmål overhovedet, at tage op i forbindelse med mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016.

Vores høringssvar vedrøre derfor alene denne problemstilling. Det er en problemstilling som vi i **Foreningen Klip** har nogle helt særlige forudsætninger for, at udtale os om på et kvalificeret grundlag.

Omkring år 1992 foretog man i Danmark og øvrige nordiske lande i skift i sit syn på børneforsorg. Man gik fra en familiebaseret indsats til en børnecentrisk indsats. En børnecentrisk indsats vil sige, at man begyndte, at se barnets behov som isoleret fra familiens behov.

Selvom indførelsen af den børnecentriske forståelsesramme sikkert er sket ud fra de bedste hensigter så har det vist sig, at det er en model som er særlig sårbar for misbrug.

Det ved vi forældre til anbragte børn for vi har selv mærket det på vores egen krop. Vi har set hvordan plejefamilier, institutioner, psykologer og sagsbehandler har tiltaget sig magt ved, at definere hvad der var barnets behov. Vi har set hvordan barnet er blevet udsat for påvirkning så det svarede og reagerede på en måde, som

understøttede det som de forskellige professioncelle ønskede.

Vi i **Foreningen Klip** har spurgt hinanden, om vi overhovedet kan se et formål med tvangsadoption når vi ser det fra barnets synspunkt og vi er kommet frem til, at tvangsadoption ikke lader sig forsvare ud fra hensyn til barnets tarv.

Man har talt om en tvangsadoption kan give barnet ro. Vi kan ikke se, at en tvangsadoption giver barnet mere ro. Det vil stadig kunne blive opsøgt af sine biologiske forældre og det vil stadig have nogle biologiske rødder, som det i en eller anden udstrækning er forbundet med.

Man har talt, om at tvangsadoption vil kunne sikre barnet en en tryg og stabil tilknytning. Vi kan ikke se, at tilknytningen til en plejefamilie skulle blive mere tryg eller stabil af, at man gennemtvinger en adoption imod de biologiske forældres vilje.

Der hvor vi kan se, at adoption vil gøre en forskel er i de økonomiske forhold. Det er dyrt for stat og kommune, at have et barn anbragt. Med 14 tusinde anbragte i børn i Danmark er der tale om en voldsom belastning af budgetterne. Adoption derimod er stort set gratis. Vi er i **Foreningen Klip** ikke i tvivl om, at grunden til, at man fra lovgivningens side ønsker, at lempe reglerne for tvangsadoption er et håb om, at finde løsning på et økonomisk problem. Det er uacceptabelt, at det er jagten på besparelser som skal være udslagsgivende for et barns ret til, at behold den formelle tilknytning til sine biologiske forældre og forældres ret til, at beholde den formelle tilknytning til deres børn.

Det er også vigtigt for os, at gøre opmærksom på, at Norge den 10 september 2019 blev dømt for overtrædelse af menneskerettighederne ved en dom i storkammeret ved den *Europiske menneskerettighedsdomstol* herefter kaldet *EMD.* Det var sagen "Strand Lobben mf. v. Norway". Denne sag var netop en sag om tvangsadoption. Når en sag afgøres i storkammeret i *EMD,* er det fordi det er en principiel sag af særlig vigtig betydning.

Det som blev klart under denne sag og i den endelige dom var, at *EMD* ikke deler det syn på tvangsanbringelse og tvangsadoption som Norge og Danmark anvender. Man tilslutter sig ikke den børnecentriske tilgang, hvor man ser barnets tarv isoleret fra familiens (Det er i stred med artikel 8). Danmark er nød til, at rettes sig ind i disse sager efter den linje der lægges fra EMD.

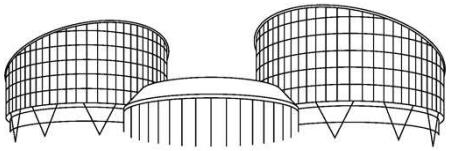
Jeg vedlægger en kopi af dommen så udvalget selv vil kunne danne sig et overblik over domstolens forståelser og holdning. Det skal nævnes, at *EMD* har optaget et uhørt stort antal sager fra den norske børneforsorg (36 på nuværende tidspunkt). Der er ingen tvivl, om at *EMD* ønsker, at understrege, at den adoptionspolitik som Norge har ført er i strid med menneskerettighederne.

Konklusionen på dette høringssvar fra **Foreningen Klip** er, at vi mener, at tvangsadoption slet ikke bør findes sted. Hvis en forældremyndighedsindehavende forældre har åndsnærværelse nok til aktivt, at kunne sige "nej" til adoption, så bør den ikke kunne iværksattes. Vi er klar over, at børneforsorgen er voldsomt udgifttung og, at der er behov for, at finde besparelser, men vi mener ikke, at disse besparelser skal findes ved, at overgå fra tvangsanbringelser til tvangsadoptioner. Vi mener i stedet, at de skal findes ved en drastisk nedbringelse af antallet af anbringelser. Nedbringelsen af anbringelser kan ske ved, at man overgår fra en separerende princip til en rehabiliterende princip.

I sundhedsvæsenet indførte man omkring årtusindeskiftet den rehabiliterende tilgang. Den rehabiliterende tilgang har medført store besparelser på sundhedområdet. Samtidig har den rehabiliterende tilgang ført til oplevelser af bedre livskvalitet og større oplevelser af sammenhæng for borger, som kommer i kontakt med sundhedssystemet.

Det var det vi fra **Foreningen Klips** side fandt det vigtigt at biddrage med i forbindelse med denne høring.

Med venlig hilsen
Formand for **Foreningen Klip**, Mikkel Meinike Nielsen.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF STRAND LOBBEN AND OTHERS v. NORWAY

(Application no. 37283/13)

JUDGMENT

STRASBOURG

10 September 2019

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Strand Lobben and Others v. Norway,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Linos-Alexandre Sicilianos, *President,*
Guido Raimondi,
Robert Spano,
Vincent A. De Gaetano,
Jon Fridrik Kjølbro,
Ganna Yudkivska,
Egidijus Kūris,
Carlo Ranzoni,
Armen Harutyunyan,
Georges Ravarani,
Pere Pastor Vilanova,
Alena Poláčková,
Pauliine Koskelo,
Péter Paczolay,
Lado Chanturia,
Gilberto Felici, *judges,*
Dag Bugge Nordén, ad hoc *judge,*

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 17 October 2018 and 27 May 2019, Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 37283/13) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Norwegian nationals, Ms Trude Strand Lobben, her children, X and Y, and her parents, Ms Sissel and Mr Leif Lobben, on 12 April 2013.

2. The first applicant, Ms Trude Strand Lobben, and the second applicant, X ("the applicants"), who had been granted legal aid, were ultimately represented by Mr G. Thuan Dit Dieudonné, a lawyer practising in Strasbourg. The Norwegian Government ("the Government") were represented by their Agents, Mr M. Emberland and Ms H.L. Busch, of the Attorney General's Office (Civil Matters).

3. The applicants alleged, in particular, that the domestic authorities' decisions not to lift the care order for X and instead withdraw the first applicant's parental responsibilities for him and authorise his adoption by

his foster parents, violated their rights to respect for family life under Article 8 of the Convention.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 1 December 2015 the President of the Fifth Section decided to give notice of the applicants' complaint to the Government. On 30 November 2017 a Chamber of that Section, composed of Angelika Nußberger, Erik Møse, André Potocki, Yonko Grozev, Síofra O'Leary, Gabriele Kucsko-Stadlmayer, Lətif Hüseynov, judges, and Milan Blaško, Deputy Section Registrar, gave judgment. The Chamber unanimously declared the application by the first and second applicants admissible and the remainder inadmissible. It held, by a majority, that there had been no violation of Article 8 of the Convention. The joint dissenting opinion of Judges Grozev, O'Leary and Hüseynov was annexed to the judgment.

5. On 30 January 2018 the applicants requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. On 9 April 2018 the panel of the Grand Chamber granted that request.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court. At the final deliberations, Jon Fridrik Kjølbro, substitute judge, replaced Aleš Pejchal, who was unable to take part in the further consideration of the case (Rule 24 § 3).

7. The applicants and the Government each filed observations (Rule 59 § 1) on the merits of the case.

8. The President of the Grand Chamber granted leave to the Governments of Belgium, Bulgaria, the Czech Republic, Denmark, Italy, Slovakia and the United Kingdom, and Alliance Defending Freedom (ADF) International, the Associazione Italiana dei Magistrati per i Minorenni e per la Famiglia (AIMMF), the Aire Centre and X's adoptive parents, to intervene in the written procedure, in accordance with Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 17 October 2018.

There appeared before the Court:

(a) *for the respondent Government*

Mr F. SEJERSTED, Attorney General, Attorney General's Office,
Mr M. EMBERLAND, Agent, Attorney General's Office,
Ms H. LUND BUSCH, Agent, Attorney General's Office *Agents*,
Ms A. SYDNES EGELAND, Attorney, Attorney General's Office,
Mr H. VAALER, Attorney, Attorney General's Office,
Mr D.T. GISHOLT, Director, Ministry of Children and Equality,
Ms C. FIVE BERG, Senior Adviser, Ministry of Children and Equality,

Ms H. BAUTZ-HOLTER GEVING, Ministry of Children and Equality,
Ms L. WIDTH, Municipal Attorney, *Advisers*;

(b) *for the applicants*
Mr G. THUAN DIT DIEUDONNÉ, Lawyer, *Counsel*,
Ms T. STRAND LOBBEN, *First applicant*.

The Court heard addresses by Mr Thuan Dit Dieudonné and Mr Sejersted and their replies to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

10. In May 2008 the first applicant turned to the child welfare services because she was pregnant and was in a difficult situation: she did not have a permanent home and was temporarily staying with her parents.

11. On 10 June 2008 the first applicant and the putative future father, Z, visited a gynaecological polyclinic at the regional hospital. According to the medical notes recorded that day, the doctor was informed that the first applicant had had a late abortion in October 2007 and that she also wanted to abort this time. A chlamydia test and an ultrasonography were carried out, and the first applicant and Z informed that an abortion would not be possible.

12. On 23 June 2008 the hospital confirmed that the result of the chlamydia test taken on 10 June 2008 was positive. As one of the measures taken by the birth clinic to monitor the first applicant and her situation, the doctor noted that a social worker would make contact with the child welfare services, in agreement with the first applicant. A social worker, J.T., at the hospital noted the following day that the first applicant had expressed a strong wish for a place at a parent-child institution on the grounds that she was limited on account of a brain injury (*begrensninger på grunn av hjerneskade*) sustained following an epileptic seizure; she had no home, and a difficult relationship with the child's putative father and other family members; and that she wanted help to become as good a mother as possible. It was noted by the hospital that any stay at a parent-child institution would be voluntary and that the first applicant and her child could leave whenever they wished.

13. On 1 July 2008 the hospital notified the child welfare services that the first applicant was in need of guidance concerning the unborn child and monitoring with regard to motherhood. The hospital also indicated that she needed to stay at a parent-child institution. The child welfare services took on the case, with the first applicant's consent. She agreed to stay at a parent-child institution for three months after the child was born, so that her ability to give the child adequate care could be assessed.

14. On 16 July 2008 a meeting with the child welfare services took place. A psychologist, I.K.A., from the Office for Children, Youth and Family Affairs attended the meeting. According to the notes from the meeting, it was agreed that the first applicant should receive psychological counselling on a weekly basis in the social worker's absence during the summer, and that the psychologist would give subsequent reports to the child welfare services.

15. On 16 September 2008 a formal decision was taken to offer the first applicant and her child a place at a parent-child institution for three months. The decision stated that the child welfare services were concerned about the first applicant's mental health and her ability to understand the seriousness of taking responsibility for a child and the consequences.

16. Some days earlier, on 9 September 2008, the child welfare services and the first applicant had agreed on a plan for the stay. In the plan it was stated that the main purpose of the stay would be to examine, observe and guide the first applicant in order to equip her with sufficient childcare skills. A number of more specific aims were also included, involving observation of the mother and child and examination of the mother's mental health (*psyke*) and maturity, her ability to receive, understand and avail herself of advice in relation to her role as a mother, and her developmental possibilities. Working with the first applicant's network was also included as an aim in the plan.

17. On 25 September 2008 the first applicant gave birth to a son, X, the second applicant. The first applicant then refused to provide the name of X's father. Four days later, on 29 September 2008, the first applicant and X moved to the parent-child institution. For the first five days X's maternal grandmother also stayed there with them.

18. On 10 October 2008 the parent-child institution called the child welfare services and expressed concern on the part of their staff. According to the child welfare services' records, the staff at the institution stated that X was not gaining sufficient weight and lacked energy. With regard to nappy changes, the staff had to repeatedly (*gang på gang*) tell the first applicant that there were still traces of excrement, while she continued to focus on herself.

19. On 14 October 2008 the staff at the parent-child institution said that they were very concerned about X and the first applicant's caring skills. It had turned out that the first applicant had given an incorrect weight for the

baby and that X had, accordingly, lost more weight than previously assumed. Moreover, she showed no understanding of the boy's feelings (*viser ingen forståelse av gutten sine følelser*) and seemed unable to empathise with the baby (*sette seg inn i hvordan babyen har det*). The staff had decided to move the first applicant into an apartment on the main floor in order to get a better overview and to monitor her even more closely. The next meeting between the first applicant, the staff at the parent-child institution and the child welfare services had been scheduled for 24 October 2008, but the staff at the institution wanted to bring the meeting forward as they were of the view that the matter could not wait that long.

B. Proceedings to place X in emergency foster care

20. On 17 October 2008 a meeting between the parent-child institution, the first applicant and the child welfare services was held. The first applicant stated at the meeting that she wanted to move out of the institution together with her child, as she no longer wanted guidance. The staff at the institution stated that they were very concerned about the first applicant's caring skills. She did not wake up at night, and the boy had lost a lot of weight, lacked energy and appeared dehydrated. The health visitor was also very concerned, whereas the first applicant was not. The institution had established close 24-hour monitoring. Staff had stayed awake at night in order to wake the first applicant up to feed the child. They had monitored the first applicant every three hours round the clock in order to ensure that the boy received nourishment. They expressed the fear that the child would not have survived had they not established that close monitoring pattern. The child welfare services considered that it would create a risk if the first applicant removed the child from the institution. X was below critical normal weight (*kritisk normalvekt*) and in need of nutrition and monitoring.

21. In the decision taken on the same date it was also stated that the first applicant had given information about the child's father to the child welfare services, but that she had refused him permission to take a paternity test and to sign as father at the hospital. It was stated that the father wanted to take responsibility for the child, but that he did not yet have any rights as a party to the case.

22. It was decided to place X in an emergency foster home and that the first applicant and her mother should visit him for up to one and a half hours weekly. As to the boy's needs, it was stated that he had lost a lot of weight and accordingly needed close and proper monitoring. It was emphasised as very important that good feeding routines be developed. Further, according to the plan, the placement was to be continuously assessed by the first applicant, the emergency foster parents, a specialist team (*fagteam*) and the child welfare services. The municipality was to stay in contact with the emergency foster parents and be responsible for being in contact with and

following up on the first applicant. Preliminary approval of the decision was given by the chair of the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) on 21 October 2008.

23. On 22 October 2008 the first applicant appealed to the County Social Welfare Board against the emergency decision. She claimed that she and X could live together at her parents' house, arguing that her mother stayed at home and was willing to help care for X and that she and her mother were also willing to accept help from the child welfare services.

24. On 23 October 2008 a family consultant and a psychologist from the parent-child institution drew up a report of the first applicant's and her mother's stay there. The report referred to an intelligence test that had been carried out in which the first applicant had obtained a higher score than 67% of persons of her age on perceptual organisation (meaning organisation of visual material) and below 93% of persons her age on verbal understanding. On tasks that required working memory – the ability to take into account and process complex information – the first applicant had scored below 99% of persons her age. According to the report, the tests confirmed the clinical impression of the first applicant. Furthermore, the report stated that the institution's guidance had focused on teaching the first applicant how to meet the child's basic needs in terms of food, hygiene (*stell*) and safety. The first applicant had received verbal and hands-on guidance and had consistently (*gjennomgående*) needed repeated instructions and demonstration. In the staff's experience, the first applicant often did not understand what was told or explained to her, and rapidly forgot. In the conclusion the report stated, *inter alia*:

> "The mother does not care for her child in a satisfactory manner. During the time the mother and child have stayed [at the parent-child institution] ..., the staff here ... have been very concerned that the child's needs are not being met. In order to ensure that the child's primary needs for care and food are met, the staff have intervened and closely monitored the child day and night.
>
> The mother is not able to meet the boy's practical care needs. She has not taken responsibility for caring for the boy in a satisfactory manner. The mother has needed guidance at a very basic level, and she has needed advice to be repeated to her several times.
>
> Throughout the stay, the mother has made statements that we find very worrying. She has expressed a significant lack of empathy for her son, and has several times expressed disgust with the child. The mother has demonstrated very little understanding of what the boy understands and what behaviours he can control.
>
> The mother's mental functioning is inconsistent and she struggles considerably in several areas that are crucial to the ability to provide care. Her ability to provide practical care must be seen in the light of this. The mother's mental health is marked by difficult and painful feelings about who she herself is and how she perceives other people. The mother herself seems to have a considerable unmet care need.
>
> Our assessment is that the mother is incapable of providing care for the child. We are also of the opinion that the mother needs support and follow-up. As we have

verbally communicated to the child welfare services, we believe it to be important that especially close care is taken of the mother during the period following the emergency placement.

The mother is vulnerable. She should be offered a psychological assessment and treatment, and probably needs help in finding motivation for this. The mother should have an individual plan to ensure follow-up in several areas. The mother has resources (see the abilities tests) that she needs help to make good use of."

25. On 27 October 2008 the Board heard the appeal against the emergency placement decision (see paragraphs 22 and 23 above). The first applicant attended with her legal-aid counsel and gave evidence. Three witnesses were heard.

26. In a decision of the same day, signed by the Board's chairperson, the Board concluded that it had to rely on the descriptions given by the psychologist at the parent-child institution, who had drafted the institution's report, and the representative from the municipal child welfare services. According to those descriptions, the first applicant had been unable to care for X properly (*betryggende*) in entirely essential and crucial respects (*helt vesentlige og sentrale områder*). Furthermore, she had said that she wanted to leave the institution. It had been obvious that she could not be given care of X without creating a risk that he would suffer material harm. Afterwards, the first applicant's parents had said that they would be capable of ensuring that X was adequately looked after. However, the Board concluded that this would not provide X with sufficient security. The first applicant's mother had given evidence before the Board and had stated that during her stay at the parent-child institution she had not experienced anything that gave rise to concern with respect to the first applicant's care for X. This was in stark contrast to what had been reported by the psychologist. The Board also concluded that it was the first applicant who would be responsible for the daily care of X, not her mother.

27. On the same day, 27 October 2008, X was sent to a child psychiatry clinic for an assessment.

28. On 30 October 2008 the first applicant appealed against the Board's decision of 27 October 2008 (see paragraphs 25-26 above) to the City Court *(tingrett*).

29. On 13 November 2008 the first applicant visited X in the foster home; according to the notes taken by the supervisor, Z had received the result of a paternity test the day before which had shown that he was not the father. The first applicant stated that she did not know who the father could be. She could not remember having been with anyone else. The first applicant and the adviser from the child welfare services agreed that the first applicant would contact her doctor and ask for a referral to a psychologist.

30. On 21 November 2008 an adviser working with emergency placements (*beredskapshjemskonsulent*) at the Office for Children, Youth

and Family Affairs produced a report on the implementation of the emergency measure. In the conclusion she stated:

> "The boy arrived at the emergency foster home on 17/10 with little movement in his arms and legs, and making few sounds. He could not open his eyes because they were red, swollen and had a lot of discharge. He was undernourished, pale and weak [(*slapp*)]. After a few days he started to move, make sounds and develop skin colour. He ate well at all meals, and enjoyed bodily contact. He opened his eyes upon receiving the correct medication and gradually started to be in contact with his surroundings. Good routines were put in place and he was closely followed up with respect to nourishment and development.
>
> The boy has developed very well in all areas in the five weeks he has been living in the emergency foster home. The doctor and health visitors were satisfied with the boy's development and have monitored him closely. Bup [(*Barne- og ungdomspsykiatrisk poliklinikk* – the Children's and Young People's Psychiatric Out-Patient Clinic)] has also followed up on the boy and reported possible stress symptoms developed by the boy during the pregnancy or the first weeks of his life. The emergency foster parents have provided favourable conditions for the boy to work on his development, and this has worked well. The boy needs stable adults who can give him good care, appropriate to his age [(*aldersadekvat omsorg*)], and satisfy his needs in future."

31. On 28 November 2008 the municipality applied to the County Social Welfare Board for a care order, submitting that the first applicant lacked caring skills with respect to a child's various needs. They considered that X would rapidly end up in a situation in which he would be subjected to serious neglect if he were returned to the first applicant. As to contact rights, the municipality submitted that they assumed that it would be a matter of a long-term placement and that X would probably grow up in foster care. They stated that the first applicant was young, but that it was assumed that her capacity as a mother would be limited, at least in relation to X (*[m]or er ung, men det antas at hennes kapasitet som mor vil være begrenset, i hvert fall i forhold til dette barnet*).

32. On 5 December 2008 the team at the child psychiatry clinic, who had carried out six different observations between 3 and 24 November 2008, in accordance with the instructions of 27 October 2008 (see paragraph 27 above), set out their results in a report, which read, *inter alia*, as follows:

> "[X] was a child with significantly delayed development when he was sent to us for assessment and observation. Today he is functioning as a normal two-month-old baby, and has the possibility of a good normal development. He has, from what can be observed, been a child at high risk. For vulnerable children the lack of response and confirmation, or other interferences in interaction, can lead to more or less serious psychological and developmental disturbances if they do not receive other corrective relationship experiences. The quality of the earliest interaction between a child and the closest caregiver is therefore of great importance for psychosocial and cognitive development. [X] bears the mark of good psychosocial and cognitive development now."

33. The City Court, composed of one professional judge, one psychologist and one lay person, pursuant to section 36-4 of the Dispute Act

(see paragraph 133 below), heard the appeal against the Board's decision in the emergency case (see paragraphs 25-26 and 28 above) on 12 January 2009. In its judgment of 26 January 2009 it stated first that an interim decision pursuant to the second paragraph of section 4-6 of the Child Welfare Act (see paragraph 122 below) could only be made if the risk of harm was acute and the child would suffer material harm if not moved immediately. It went on to state that the case concerned a child who had been practically newborn when the interim care order had been made, and that the placement had since been reconsidered several times following appeals on the part of the mother.

34. In its conclusion the City Court stated that it was in no doubt that X's situation had been serious when the interim care order had been issued. He had shown clear signs of neglect, both psychologically and physically. The City Court found that the "material" harm requirement (*vesentlighetskravet*) in the second paragraph of section 4-6 of the Child Welfare Act (see paragraph 122 below) had been met. X was at the time of its judgment in better health and showed normal development. This was due to the emergency foster parents' efforts and follow-up. The City Court did not consider that the first applicant's ability to provide care had changed and feared that X would suffer material harm if he were now returned to her. This was still the case even if the first applicant lived with her parents and they supported her. It was her ability to provide care that was the matter of assessment.

35. Based on the above, the City Court did not find grounds to revoke the emergency care order pending a decision by the County Social Welfare Board on the question of permanent care.

36. The first applicant did not appeal to the High Court (*lagmannsrett*).

C. Proceedings for a care order

1. Proceedings before the County Social Welfare Board

37. The Board, composed of an administrator qualified to act as a professional judge, a psychologist and a lay person, in accordance with section 7-5 of the Child Welfare Act (see paragraph 122 below), held a hearing on the child welfare services' request for a care order (see paragraph 31 above) on 17 and 18 February 2009. The first applicant attended and gave evidence. Seven witnesses were heard, including experts and the first applicant's parents, their neighbour and a friend of the family. At the hearing the child welfare services requested that X be taken into local authority care, placed in a foster home and that the first applicant be granted contact rights for two hours, four times per year, under supervision. The first applicant sought to have the request for a care order rejected and X

returned to her. In the alternative, she asked for contact rights of a minimum of once per month, or according to the Board's discretion.

38. In a decision of 2 March 2009 the Board stated at the outset that, independently of the parties' arguments and claims, its task was to decide whether X was to be taken into care by the child welfare services. If a care order were issued, the Board would also choose a suitable placement and determine the contact arrangements.

39. The Board concluded that the fundamental condition set out in letter (a) of the first paragraph of section 4-12 of the Child Welfare Act had been met (see paragraph 122 below). In its opinion, a situation involving serious deficiencies in both psychological and practical care would arise if X were returned to live with the first applicant.

40. The Board emphasised that it had assessed the first applicant's ability as a caregiver and changes in her approach, not her condition or personality traits. However, the Board noted that the parent-child institution had considered the first applicant's inability to benefit from guidance to be linked to her cognitive limitations. Reference was made to conclusions drawn by the institution to the effect that the relevant test results were consistent with their daily observations (see paragraph 24 above). The tests carried out at the institution were also largely consistent with previous assessments of the first applicant, and also with the concerns reported by, *inter alia*, the psychologist at the Office for Children, Youth and Family Affairs in the summer of 2008 (see paragraph 14 above). In the Board's view, the above factors suggested that the first applicant's problems were of a fundamental nature and that her potential for change was limited (*sier noe om at mors problematikk er av en grunnleggende karakter og at endringspotensialet er begrenset*).

41. The Board stated that it had to conclude that a care order was necessary and in the best interests of X. As to a suitable placement, the Board stated that, having regard to his age and care needs, a foster home placement was clearly the best solution for X at the time. It issued a care order to that effect. Based on X's age and vulnerability, the Board also decided that he should be placed in enhanced foster care – an arrangement whereby the foster home was given extra assistance and support – at least for the first year.

42. Turning to the question of contact rights, the Board went on to state that, under section 4-19 of the Child Welfare Act (see paragraph 122 below), children and parents were entitled to contact with each other unless otherwise decided. When a care order was issued, the Board would determine the amount of contact and decisions regarding contact had to be in the child's best interests, as provided for by section 4-1 of the Child Welfare Act (ibid.). The purpose and duration of the placement also had to be taken into consideration when the amount of contact was determined.

43. On the grounds of the information available at the time of the Board's decision, the Board envisaged that X would grow up in the foster home. This was on account of (*har sammenheng med*) the first applicant's fundamental problems and limited potential for change (*mors grunnleggende problematikk og begrensede endringspotensial*) (see paragraph 40 above). This meant that the foster parents would become X's psychological parents, and that the amount of contact had to be determined in such a way as to ensure that the attachment process, which was already well under way, was not disrupted. X had to be given peace and stability in his everyday life, and he was assumed (*det legges til grunn*) to have special needs in that respect. In the Board's opinion, the purpose of contact had to be to ensure that he had knowledge of his mother.

44. Based on an overall assessment, including of the above factors, the amount of contact was set at two hours, six times per year. The Board stated that it had some misgivings as to whether this was too frequent, particularly considering X's reactions. However, it believed that contact could be somewhat improved by the child welfare services providing more guidance and adaptation and by a considerable reduction in the frequency of contact.

45. In the Board's opinion, it was necessary for the child welfare services to be authorised to supervise contact in order to ensure that X was properly cared for.

46. The Board's decision concluded with a statement to the effect that it would be for the child welfare services to decide on the time and place of the contact sessions.

2. Proceedings before the City Court

47. On 15 April 2009 the first applicant appealed to the City Court against the Board's decision that X should be taken into public care (see paragraphs 38-46 above). She submitted, in particular, that adequate conditions in the home could be achieved through the implementation of assistance measures and that the care order had been decided without sufficient assistance measures having first been implemented.

48. On 6 May 2009 the child welfare services sent the first applicant a letter in which she was invited to a meeting to discuss what sort of help they could offer her. The letter stated as follows:

> "The child welfare services are concerned that you receive help to process what you have been through in relation to the taking into care, etc. It is still an offer that the Child Welfare Service cover the costs of a psychologist, if you so wish."

49. On 14 May 2009 the first applicant attended a contact session together with two acquaintances. According to the report, a situation arose in which the supervisor from the child welfare services stated that the first applicant would have a calmer time with X if she were alone with him. The first applicant said that the supervisor had to understand that she wanted to

bring people with her because she was being badly treated. It was ultimately agreed that one of the acquaintances would accompany the first applicant. During the session the first applicant stated that she had received an unpleasant (*ukoselig*) letter from the child welfare services offering her an appointment to discuss any help that she might need (see paragraph 48 above). The first applicant stated that she did not want any help and that she certainly did not need psychological counselling.

50. On 19 August 2009 the City Court gave judgment on the question of the care order (see paragraph 47 above). At the outset the City Court stated that the case concerned judicial review of a care order issued pursuant to section 4-12 of the Child Welfare Act (see paragraph 122 below), which was to be considered pursuant to the rules in chapter 36 of the Dispute Act. When undertaking a judicial review of the County Social Welfare Board's decision, the court had power to review all aspects of the decision, both legal and factual, as well as the administrative discretion. It was well established in law that its review of the Board's decision should not be based on the circumstances at the time of the Board's decision, but on the circumstances at the time of its judgment. The court would not therefore normally go into more detail regarding the Board's assessment of the grounds for issuing a care order. However, the City Court went on to state that it nonetheless found that special reasons made it necessary to do so in the instant case.

51. Based on the evidence presented to it, the City Court ultimately concluded that it had not, either at the time of its judgment or previously, been sufficiently substantiated that there existed such deficiencies in the first applicant's ability to provide care that the conditions for the child welfare services maintaining care and control of X were met. It found*, inter alia*, that X's problems with weight gain could have been due to an eye infection. The Board's decision should therefore be revoked.

52. X was therefore to be returned to the first applicant and the City Court found that the parties understood that this had to be done in a way that would prevent X from facing further trauma. X had lived with his foster parents for ten months and had formed an attachment to them. Based on what had emerged during the proceedings, the City Court assumed that the child welfare services would give the first applicant and the foster parents the assistance they needed. The first applicant had said that she was willing to cooperate and, given that willingness, the City Court believed that it must be possible to establish the cooperative environment necessary for the child welfare services to be able to provide the help she might need.

53. In the days following the City Court's judgment there were a number of email exchanges between the first applicant's counsel and the child welfare services, and a meeting was held on 26 August 2009. The following day the first applicant, through her counsel, requested an appointment so that she could immediately (*omgående*) pick X up from the foster home and

bring him home with her. She also requested that this be on Saturday 29 August 2009. She stated that the foster mother could deliver X and stay as long as she wanted. The foster mother was also welcome to visit X when she wished, upon agreement with the first applicant. Representatives from the child welfare services were not welcome.

54. The applicant's request to have X immediately returned to her was not met by the child welfare services, but the amount of contact was increased. On 1, 3, 4 and 7 September 2009 contact sessions were held at the house of the first applicant's parents. The supervisor took detailed notes from each session as well as from conversations with the foster mother, and made a summary report of all the sessions. She noted, *inter alia*, that the foster mother had stated that the session on 1 September 2009 had "gone well [(*gikk greit*)] in many ways", but that X had become very tired afterwards. He had been uneasy and difficult to put to bed. At the end of the session on 3 September, the supervisor noted that X appeared completely exhausted and pale. X's apparent tiredness was noted also in relation to the sessions on 4 and 7 September. Furthermore, it emerges from the notes that the supervisor found it strange (*underlig*) that X had not been offered food, even though the family had been informed that it was his meal time. The supervisor had noted that the first applicant had taken note of this information on the first day, but then forgotten it again by the next day. The report stated that the supervisor was uncertain as to whether this had to do with the first applicant's insecurity and fear of asking. The report also contained details about X's reactions to the sessions, with respect to crying, sleeping, digestion and other behaviour.

3. Proceedings before the High Court

55. On 4 September 2009 the municipality sought leave to appeal against the City Court's judgment (see paragraphs 50-52 above), requested that the Board's decision of 2 March 2009 be upheld (see paragraphs 38-46 above), and concurrently applied for implementation of the City Court's judgment to be suspended. The municipality argued, firstly, that the City Court's judgment was seriously flawed. They claimed that it was unlikely that the eye infection could have been the reason for X's slow weight gain. Moreover, the first applicant had had visits with X, but they had not worked well even though she had been given advice on how to improve them. X had had strong reactions after those visits. Secondly, the municipality submitted that the case raised a question of general interest, namely relating to the first applicant's intellectual functioning (*kognitive ferdigheter*). They stated that she had general learning difficulties and that tests had shown that she had specific difficulties, with consequences for her daily functioning. Her abilities in verbal reasoning, relating to complex information and analysing and acting in situations that arose, were matters relevant to the provision of adequate care for a child. In that context the municipality referred to a

number of questions that, in their view, had to be answered, relating, *inter alia*, to what the first applicant was or was not capable of doing – and whether it was appropriate to leave a small child with her – and whether there were realistic assistance measures that could compensate for her shortcomings.

56. On 8 September 2009 the City Court decided to stay enforcement of its judgment until the High Court had adjudicated the case.

57. In her response of 11 September 2009 to the municipality's appeal, the first applicant, through her counsel, stated that the municipality had proceeded on the grounds that she was almost retarded (*nærmest er tilbakestående*) and therefore incapable of taking care of a child, which she found to be an insulting allegation (*grov beskyldning*). Nor were there, in her view, any flaws in the City Court's judgment.

58. On 9 October 2009 the child welfare services decided to appoint two experts – a psychologist, B.S., and a family therapist, E.W.A. – to assess X in relation to his strong reactions after the period in which there had been frequent contact sessions at the home of the first applicant's parents (see paragraph 54 above). In addition to examining the reasons for X's reactions, the experts were asked to provide advice and guidance to the foster mother as to how to handle the reactions and to the first applicant, if she agreed, with respect to the contact sessions.

59. On 12 October 2009 the High Court granted leave to appeal on the ground that the ruling of, or procedure in, the City Court had been seriously flawed (see paragraph 55 above and paragraph 133 below). It also upheld the City Court's decision to stay enforcement of the judgment (see paragraph 56 above).

60. On 4 November 2009 the first applicant's counsel asked the child welfare services whether the offer of counselling to the first applicant (see paragraph 48 above) was still valid. In their response, of 12 November 2009, the child welfare services stated that they were worried about the first applicant and that it was important that she obtained help. They confirmed that they would cover the costs of a psychologist or other counsellor of the first applicant's choice and that they would not ask the person chosen for any information or to act as a witness in the child welfare case.

61. On 15 November 2009 the High Court appointed an expert psychologist, M.S., to assess the case.

62. On 20 February 2010 the two experts appointed by the child welfare services to examine the contact sessions and the effects on X (see paragraph 58 above) delivered their report, which was over 18 pages long. In the report they stated that they had not observed any contact sessions, "as this [had been] done by the expert appointed by the High Court". They further stated that the first applicant had refused guidance with respect to the contact sessions. In the chapter entitled "Is it possible to hypothesise on

parents' competence in contact situations based on their competence as caregivers?", the following was stated:

> "When reviewing the various documents we find that [the parent-child institution] describes a severe lack of the abilities that are required in the mothering role, which is similar to the pattern we see during the contact sessions more than one year later. For example, the mother demonstrates a lack of ability in basic parental care during the contact sessions, as we have described above. Furthermore, her parental regulation during the contact sessions is insensitive. She seems to have significant problems with identifying X's affects by sharing joy and making him feel secure and guiding him through confirmation and putting names on things. This is very serious.
>
> We find that the mother has significant problems in all the contact sessions and that it is difficult not to say that these problems will also extend to her general competence as a caregiver. In a report dated 19 February 2008, i.e. two years ago, Dr Philos. [H.B.], a specialist in clinical neurology, states the following:
>
> 'There are no significant changes in the results of intelligence tests conducted before the operation and at the check-up two years after the operation. Her results in the intelligence tests have been very similar since she was 10.5 years old, i.e. her intelligence has been stable throughout all these years.'
>
> He says that her intellectual functioning is approximately two standard deviations below her peers and that she has problems with her long-term memory and with transferring information from one thing to another.
>
> We find that it is more problematic than usual for the mother to have supervised contact sessions because of her cognitive issues, because from time to time [(*fra gang til gang*)] she does not know what to do in relation to the boy and because she is very driven by impulses. [H.B.]'s report also states that she has problems understanding the content of what she is reading, and we also find that she cannot read and understand the situation when she is with her child. We find this to be an important and fundamental issue in shedding light on the mother's competence in contact situations and her competence as a caregiver. As regards the mother's competence as a caregiver in relation to the mother's cognitive skills, we assume that this will be further elucidated by [M.S.], the expert psychologist appointed by the Court of Appeal. This is considered to play a role in relation to the mother's behaviour vis-à-vis X during the contact sessions and her struggle to become emotionally attuned to his needs at different ages.
>
> On page 5 of its report [(judgment)] from 2009, the City Court summarises [the situation] as follows:
>
> 'It is generally known that many women, especially women who are giving birth for the first time, can have a psychological reaction after the birth which, in extreme situations, can take the form of serious postnatal depression. All reactions in the form of feelings of alienation and insecurity in relation to the newborn are within the normal range.'
>
> We find that the mother's difficulties during the contact sessions cannot be regarded as serious postnatal depression since the mother's difficulties during the contact sessions have shown a similar pattern for more than 1.5 years. This is more a sign of inadequate basic parenting skills and is not related to postnatal depression alone. We consider it crucial [(*avgjørende viktig*)] that the mother's difficulties during the contact sessions and her competence as a caregiver in general be understood in the light of more complex psychological explanatory models relating to both cognitive

issues and serious traumatic experiences both early in life and as an adult, which we know, based on research, affect a person's ability to function as a parent without considerable individual efforts and treatment. We assume that the expert psychologist will describe this in more detail."

63. On 3 March 2010 the expert psychologist appointed by the High Court, M.S. (see paragraph 61 above), delivered her report. She had observed two contact sessions, one attended by the first applicant alone and the other attended by the first applicant together with her mother and sister. The chapter entitled "Social and academic functioning" contained, *inter alia*, the following:

"Throughout the years SSE [(*Statens senter for epilepsi*)] has carried out repeated assessments of [the first applicant] using tests that measure the course of her illness and tests that focus more on describing her functioning. In this case, there has been a particular focus on the WISC-R test, which has been conducted both pre- and postoperatively. The results from this test are expressed as an IQ score which has been a topic of discussion in the child welfare case of which the present report is also a part. It is therefore relevant to make some comments on these test scores.

The WISC-R is a very well-known and frequently used test to measure intellectual abilities in children. Such abilities are associated with school performance. The test result provides useful information about a child's ability to learn and make use of learning. A functioning profile from a WISC-R test therefore forms the basis for targeted special education measures in school and can help when preparing individually adapted educational arrangements for children with special needs.

The end-product of an intelligence test is an IQ score, which is an operational definition of intelligence that provides a numeric expression of how abilities defined as intelligence are distributed among individuals in a population. The test is standardised, i.e. there is a statistical normal distribution with an average deviation on both sides. The WISC-R has a defined average of 100 with a standard deviation of +-15. A score within the range of distribution 85-115 is said to be within the normal range, where 68% of the population of comparison are situated, whereas 98% are within two standard deviations, i.e. 70-130 points. When conducting a diagnostic assessment of an IQ score, persons with IQ scores between 50 and 69 are defined as slightly mentally retarded. Intelligence test performance can be improved in the course of a person's developmental history if the fundamental cognitive resources are there. In this case, there is information that [the first applicant]'s IQ score has been stable throughout her childhood and adolescence, which means that she has not caught up intellectually after her brain surgery.

1.3. Summary

Anamnestic information from the school, the specialist health service and the family provides an overall picture of weak learning capacity and social functioning from early childhood into adulthood. [The first applicant] performed poorly at school despite good framework conditions, considerable extra resources and good efforts and motivation on her own part. It is therefore difficult to see any other explanation for her performance than general learning difficulties caused by a fundamental cognitive impairment. This is underlined by her consistently low IQ score – regardless of the epilepsy surgery.

She also had problems with socio-emotional functioning, which has also been a recurring topic in all the documents that deal with [the first applicant's] childhood and

adolescence. A lack of social skills and social adaptation is reported, primarily related to social behaviour that is not commensurate with her age [(*ikke-aldersadekvat sosial fremtreden*)] ('childish') and poor impulse control. It is also stated that [the first applicant] has been very reserved and had low self-confidence, which must be seen in conjunction with her problems."

In the chapter entitled "Assessment of care functioning, competence in contact situations and the effect of assistance measures", the report contained the following:

"5.1. Competence as a caregiver

As is clear from the above, I have placed particular emphasis on the consequences of [the first applicant's] condition in relation to her general functioning and whether she has what it takes to care for a child. It is important to note that neither [the first applicant] herself nor her parents believe that there is a connection between her history of illness, her adult functioning and her ability to provide care.

It is not the case that epilepsy deprives people of their ability to provide care, just as a low IQ score in itself is not a reason to take a child into care. However, a test result can help to elucidate why someone's functioning capacity is impaired, particularly if this is seen in conjunction with other observations and descriptions.

[The first applicant] has had serious refractory epilepsy since she was an infant. This is an unstable form of epilepsy that changes the brain and affects the entire personality development. There is also the matter of the side effects of the strong medication she took throughout her childhood. Dr [R.B.L.] at SSE, who knows [the first applicant]'s history very well, talks about 'the burden of epilepsy', i.e. the socio-emotional problems that can be generated through a reduced ability to learn and social maladjustment. It is therefore completely reasonable to assume that the burden of the disease in itself has set her back somewhat. Objective measurements of her functioning made at different times during her upbringing confirm this. Seen in conjunction with clinical observations, an impression is formed of [the first applicant] as a young woman with significant cognitive impairment. In my opinion, this is what the public health services identified when [the first applicant] reported her pregnancy and that gave cause for concern. Terms such as 'immature' and 'childish' frequently occur in descriptions of her behaviour throughout her upbringing and are still used now that she is 24 years old. [The first applicant]'s appearance and behaviour largely qualify her for the use of such adjectives: she is small, delicate and looks much younger than her chronological age. She lives at home with her parents where her room has *Moomins* wallpaper and is filled with objects you would expect to see in a teenager's room.

I am concerned about [the first applicant]'s self-care. She seems young, insecure and partly helpless. Her relationship with men seems unclear. She had a romantic relationship with a man whom she also lived with for a short time, but the relationship was characterised by turbulence with episodes of sexual violence. She became pregnant with X while she was still together with her boyfriend, without [the first applicant] having been able to explain how it came about that her boyfriend is not the child's father. She has seemed confused about this and has told different stories. She has also contracted a sexually transmitted disease (chlamydia) without knowing the source of the infection. [The first applicant] has wanted a child, but has left things up to chance without considering the consequences of having sole responsibility for the child and what this requires. On 7 November 2007 she told the doctor at SSE that she was not using birth control and thought that she might be pregnant at that time. Later

that same day she said that she wanted to become pregnant. An abortion was carried out on the basis of social indications at [R. hospital] in November 2007 of a foetus in the 18th week of the pregnancy. [The first applicant] took a photograph of the foetus, which may seem like a bizarre action. She also received a hand and footprint of the foetus. [R. hospital] described [the first applicant] as immature with a limited network.

The circumstances surrounding both pregnancies say something about [the first applicant]'s awareness of her own choices and their consequences. This is important in the assessment of her ability to care for a child.

Furthermore, [the first applicant] has not completed an education and has not been in permanent employment. She has for the most part lived at home in her old room and has little experience of living as an independent adult with responsibility for creating structure in her life, ensuring an income and deciding on financial priorities. Her relationship with her parents is described as good at the moment, but there have been conflicts in the past. I perceive their relationship to be vulnerable. [The first applicant] herself expresses a great deal of ambivalence towards her mother, because, on the one hand, she thinks that her mother interferes too much with her life, while, on the other hand, she is very dependent on her, takes her opinions as her own and trusts her to be her guide. At the same time she is annoyed that her mother defines many things for her and wishes that her mother 'would get it into her thick head' that she needs a bit more privacy than at present. According to her mother, [the first applicant] just sat in her room after her son was taken into care. Her mother is very worried and says that she 'can hardly stand' seeing her daughter like that.

In my opinion, [the first applicant] has problems with emotional regulation, which makes interaction with other people difficult for her. Since the child was taken into care, [the first applicant] has been offended, hurt and angry. These emotions are fully understandable when you feel that you have been treated unfairly, but in this case they are expressed without censorship to such an extent that it seems conspicuous. Describing the County Social Welfare Board as 'a bunch of rotten women who are bought off by the child welfare services' and the staff at [the parent-child institution] as 'those psychotic people' does not help to create an impression of an adult person who is capable of socialising with other adults in a socially appropriate manner. [The first applicant]'s intense outbursts of crying, both at home with her parents when we are discussing the case and during contact sessions, is also unusual behaviour for an adult. Nor is sobbing into the lap of one's father or mother (as described in connection with the contact sessions) a sign that one is able to control one's emotions in a manner that is commensurate with one's age. Nor has [the first applicant] handled her son's behaviour very maturely, but has rather felt personally rejected and acted accordingly.

It is difficult to stick to the matter at hand with [the first applicant]. Her cognitive style is characterised by an inability to see connections, or to generalise. She demonstrates egocentric thinking when she keeps bringing up the evil child welfare services and when referring to how her parents and everyone else find it incomprehensible that the child was taken into care. I refer to the statement by the psychologist from [the parent-child institution] that 'the mother makes statements that are difficult to attach any meaning to.' The view that I have formed of [the first applicant] during our conversations is that she has a fragmented view of situations, meaning that different episodes are understood as individual episodes that have no connection. Accordingly, guidance is perceived as criticism, good advice as scolding etc. This inability to generalise is characteristic of [the first applicant]'s thinking. She also lacks the capability of abstract thinking and formal thought operations. It is difficult for her to think forwards and backwards in time. Hence, it is not easy to get

an answer as to what ideas she has regarding a possible return of the child. She makes some general statements, for example that she must ask what he likes to eat and whether he watches children's TV, whereas she does not offer any reflections on what special measures should be taken relating to the child's emotional stress if he were to be moved. When I ask what the foster mother should do to help during the process of returning the child, [the first applicant] has no constructive suggestions. What she wants, however, is 'that she (the foster mother) should feel as shitty as I have for the past year'. Such a statement, combined with the manifest hostility (*uttalt fiendtlighet*) during the contact sessions, does not bode well for co-operation with either the foster home or the child welfare services should the boy be returned.

[The first applicant] has used a lot of energy on her aggression and developing hostile opinions. This has contributed to cementing the stereotypes about the child welfare services and all other helpers as adversaries. [The first applicant]'s thinking is characterised by an 'if you're not with me, you're against me' attitude, and she is unable to see nuances. Such black-and-white thinking is characteristic of individuals with limited cognitive capacity. Furthermore, I perceive [the first applicant] as being depressed. I consider her intense aggression as a strategy for holding it together psychologically.

There is no reason to doubt [the first applicant]'s intense wish to become a good mother. She contacted the support services herself for this purpose. What ideas and expectations she had in that regard remain unclear, however. Her mother has indicated that they thought [the parent child-institution] was a sort of hotel where you could get practical help with child care. Despite all the preparatory work and thorough information provided beforehand, they did not understand that an assessment stay requires the parent to show their qualities, be observed and be placed in a learning situation. Consequently, [the first applicant] feels very betrayed and deceived – which is expressed as abusive language and threats.

The stay at [the parent-child institution] illustrates that [the first applicant] had problems handling and retaining information in such a manner that it could be used to guide her behaviour. It is not a question of a lack of willingness but of an inadequate ability to plan, organise and structure. Such manifestations of cognitive impairment will be invasive in relation to caring for the child and could result in neglect.

5.2. The effect of assistance measures

Weight is attributed to the fact that [the first applicant] is now living with her parents and can continue to do so for as long as is necessary. This is an assistance measure of sorts. This may become more problematic than it would seem, however: [the first applicant] is 24 years old and wishes to become autonomous, a desire which may conflict with her mother's desire to help. Neither her parents nor anyone else will be able to dictate how [the first applicant] should organise her life and her child's life. If [the first applicant] wants to move out, she can do this whenever she wishes. Her parents are not concerned about this. A decision must therefore be based on the fact that – should the child be returned – one cannot with a sufficient degree of certainty know where the child's care base will be in future. It must therefore primarily be based on [the first applicant]'s ability to provide care, not her network's ability to provide care.

The stay at the family centre was a strong assistance measure which had no effect. The child welfare services' follow-up of contact sessions has had a negative impact on the cooperation between the [applicant's] family and the child welfare services. Both the family and [the first applicant] have stated that they do not want follow-up or assistance in connection with returning the child.

5.3. Conclusions

In my assessment, there are grounds for claiming that there were serious deficiencies in the care the child received from the mother, and also serious deficiencies in terms of the personal contact and security he needed according to his age and development. [The first applicant]'s cognitive impairment, personality functioning and inadequate capacity for mentalisation make it impossible to have a normal conversation with her about the physical and psychological needs of small children. Her assessments of the consequences of having the child returned to her care and what it will demand of her as a parent are very limited and infantile, with her own immediate needs, there and then, as the most predominant feature. It is therefore found that there is a risk of such deficiencies (as mentioned above) continuing if the child were to live with his mother.

It is also found that satisfactory conditions for the child cannot be created with the mother by means of assistance measures pursuant to section 4-4 of the Child Welfare Act (e.g. relief measures in the home or other parental support measures) due to a lack of trust and a reluctance to accept interference from the authorities – taking the case history into consideration."

64. The High Court held a hearing from 23 to 25 March 2010. The first applicant attended with her legal-aid counsel. Eleven witnesses were heard and the court-appointed expert, psychologist M.S. (see paragraph 61 above), made a statement. The municipal child welfare services submitted, principally, that there should be no contact between the applicants. In the alternative, contact should take place only twice a year. The child welfare services maintained that it was a matter of a "long-term placement" (*langvarig plassering av barnet*).

65. In a judgment of 22 April 2010 the High Court upheld the Board's decision that X should be taken into compulsory care (see paragraphs 38-46 above). It also reduced the first applicant's contact rights to four two-hour visits per year.

66. The High Court had regard to the information in the report produced by the parent-child institution on 23 October 2008 (see paragraph 24 above). It also took account of the family consultant's testimony before the court, in which it had been stated that the first applicant's mother had lived with her at the institution for the first four nights (see, also, paragraph 17 above). It went on to state:

"It was particularly after this time that concerns grew about the practical care of the child. The agreement was that [the first applicant] was to report all nappy changes etc. and meals, but she did not. The child slept more than they were used to. [The family consultant] reacted to the child's breathing and that he was sleeping through meals. Due to weight loss, he was to be fed every three hours around the clock. Sometimes, the staff had to pressure the mother into feeding her son."

67. The High Court found that the parent-child institution had made a correct assessment and – contrary to the City Court (see paragraph 51 above) – considered it very unlikely that the assessment would have been different if X had not had an eye infection.

68. Furthermore, the High Court referred to the report of 5 December 2008 from the child psychiatry clinic (see paragraph 32 above). It also took into account the report of the court-appointed expert, M.S. (see paragraph 63 above).

69. As the stay at the parent-child institution had been short, the High Court found it appropriate to consider the first applicant's behaviour (*fungering*) during the contact sessions that had been organised subsequent to X's placement in foster care. Two people had been entrusted with the task of supervising the sessions, and both had written reports, neither of which had been positive. The High Court stated that one of the supervisors had given an "overall negative description of the contact sessions".

70. The High Court also referred to the report of the psychologist and the family therapist appointed by the child welfare services, who had assessed X in relation to the reactions that he had shown after visits from the first applicant (see paragraphs 58 and 62 above).

71. Furthermore, the High Court noted that the court-appointed psychologist, M.S. (see paragraphs 61 and 63 above), had stated in court that the contact sessions had appeared to be so negative that she was of the opinion that the mother should not have a right of contact with her son. The contact sessions were, in her view, "not constructive for the child". In conclusion to the question of the first applicant's competence as a carer, she stated in her report (see paragraph 63 above) that the stay at the parent-child institution had illustrated that the first applicant "had problems handling and retaining information in such a manner that it could be used to guide her behaviour". She went on to state:

> "It is not a question of a lack of willingness, but of an inadequate ability to plan, organise and structure. Such manifestations of cognitive impairment will be invasive in relation to caring for the child and could result in neglect" (ibid.).

72. The High Court agreed with the expert M.S.'s conclusion before proceeding to the question whether assistance measures could sufficiently remedy the shortcomings in the first applicant's parenting skills. In that respect, it noted that the reasons for the deficiencies in competence as a carer were crucial. The High Court referred at this point to the expert's description of the first applicant's medical history, namely how she had suffered from serious epilepsy since childhood and until brain surgery had been carried out in 2005, when the first applicant had been 19 years old.

73. The High Court noted that M.S. had also pointed out that the first applicant's medical history must necessarily have affected her childhood in several ways. It based its assessment on the description by M.S. of the first applicant's health problems and the impact they had had on her social skills and development. It further noted that placement at a parent-child institution had been attempted as an assistance measure (see paragraph 17 above). The stay had been supposed to last for three months, but had been interrupted after just under three weeks. As a condition for staying longer, the first

applicant had demanded a guarantee that she be allowed to take her son home with her after the stay. The child welfare services had been unable to give such a guarantee, and the first applicant had therefore returned home on 17 October 2008.

74. The High Court noted that relevant assistance measures were assumed to consist of a supervisor and further help and training in how to care for children. However, the High Court found that it would take so long to provide the first applicant with sufficient training that it was not a real alternative to continued foster-home placement. Furthermore, the result of such training was uncertain. In that connection the High Court attached weight to the fact that both the first applicant and her immediate family had said that they did not want follow-up or assistance if X were returned to them. It agreed with the conclusions of the court-appointed expert, M.S. (see paragraph 63 above).

75. The High Court's conclusion in its judgment of 22 April 2010 was that a care order was necessary and that assistance measures for the mother would not be sufficient to allow her son to stay with her. The conditions for issuing a care order under the second paragraph of section 4-12 of the Child Welfare Act were thus met (see paragraph 122 below). In that connection the High Court also gave weight to the attachment that X had formed to his foster parents, particularly the foster mother. As to contact rights, the High Court stated that exceptional and strong reasons were required to deprive a parent of the right of contact after a child had been taken into care, since contact was normally considered to be in the child's best interests, particularly in a long-term assessment. In the instant case, despite the negative information about the contact sessions and the expert psychologist M.S.'s recommendation that the first applicant should not be given any contact rights, the High Court found that exceptional and strong reasons for denying contact did not exist, but that contact sessions should not take place at too short intervals. It went on to state:

> "As regards the frequency of the contact sessions, the High Court is split into a majority and a minority.
>
> The majority ... have found that an appropriate amount of contact would be two hours four times a year.
>
> The majority find reason to emphasise that only the mother has a right of contact. The fact that she has rarely met with [X] alone has had some unfortunate consequences. The tense atmosphere between the adults present has intensified. The stress for the child must be assumed to increase when more people are present. Fewer participants will lead to a calmer atmosphere. This is also in line with the psychologist [M.S.]'s observations. The atmosphere between the adults may also become less tense when the case has been legally resolved and some time has passed. The fact that the contact sessions will become less frequent than under the previous arrangement will also reduce the stress for the child. It must be assumed that the child's subsequent reactions will then decrease. However, the most important factor will be whether the mother and, if relevant, any other family members manage to cooperate better and

preferably convey a positive attitude towards the foster mother, in particular during the contact sessions.

The majority's conclusion that the contact sessions cannot be more frequent than four times a year is related to what is discussed above. In addition, the placement will most likely be a long-term arrangement. The contact sessions may thus serve as a way of maintaining contact between the mother and son so that he is familiar with his roots. This is believed to be important to the development of identity. The purpose of the contact sessions is not to establish a relationship with a view to a future return of the child to the care of his biological mother.

The child welfare services must be authorised to supervise the exercise of the right of contact. This is necessary for several reasons, including to limit the number of participants during the sessions."

The minority of the High Court – one of the professional judges – was of the opinion that the contact rights should be fixed at twice a year.

76. The first applicant did not lodge an appeal against the judgment, which thus became legally binding.

D. The first applicant's complaint to the County Governor

77. In an undated letter the first applicant complained about the child welfare services to the County Governor (*fylkesmannen*). She alleged that the child welfare services had lied and said that she was retarded; the psychologist appointed by the High Court (see paragraph 61 above) had been partial and should never have been allowed to come into her home; in contact sessions, the first applicant was bullied and harassed by the supervisor and the foster mother if she came alone, and she was not allowed to bring her own parents any more. She stated that one could only wonder how retarded they were, or how low an IQ they had. The whole case, she maintained, had been based on lies. She also alleged that the child welfare services removed a person's capacities (*umyndiggjør*) and gladly made people retarded (*gjør gjerne folk evneveike*) in order to procure children for themselves or their friends.

78. The director (*barnevernleder*) of the municipal child welfare services replied on 22 July 2010 saying that the first applicant and her family were more interested in conflict with the child welfare services than in establishing good and positive contact with X. The first applicant had complained early on about the staff from the child welfare services, who, in return, had met her wish to be assigned a new supervisor, but nothing had changed in the first applicant's attitude. The amount of contact had been increased to three times a week in accordance with the City Court's judgment (see paragraph 54 above), and X had had strong reactions to this. The director of the child welfare services further stated that they understood that the situation was difficult for the first applicant and had offered her help (see, *inter alia*, paragraph 48 above). With respect to the contact sessions, they had tried several alternatives. They had at first carried out the sessions

in a meeting room at their offices, where the supervisor and foster mother could sit at a table some distance away from the first applicant and X, though in a manner that enabled them to intervene if supervision were necessary. The first applicant had complained about this solution. There had then been some sessions in the foster home, but the foster mother had found this difficult because the atmosphere was very bad and they wanted the foster home to be a secure environment for X. Thereafter they had borrowed an apartment designated for purposes such as contact sessions. This had also not suited the first applicant, who had again complained. They had then gone back to having visits at the child welfare services' offices, where a new room for such purposes had since been made available.

79. The director of the child welfare services also stated that the foster mother was still present during contact sessions. This had been considered as entirely necessary, as she was the secure carer for X. It had also been considered necessary to have a supervisor present to guide the first applicant. The supervisor's task was also to stop the contact sessions if the first applicant refused guidance. So far, sessions had not been stopped, but the supervisor had tried to tell the first applicant that it was important to focus on X and enjoy being with him, instead of yelling at the child welfare services and the foster mother.

80. In a letter to the first applicant, dated 26 July 2010, the County Governor, following the child welfare services' response to their inquiry, informed her that they had no objections to the work of the child welfare services in the case.

E. Proceedings to lift the care order or withdraw the first applicant's parental responsibilities for X and authorise his adoption

1. Proceedings before the County Social Welfare Board

(a) Introduction

81. On 29 April 2011 the first applicant applied to the child welfare services for termination of the care order or, in the alternative, extended contact rights with X.

82. On 13 July 2011 the municipal child welfare services forwarded the request to the County Social Welfare Board. The municipality proposed that it be rejected; that the first applicant's parental responsibilities for X be withdrawn (transferred to the authorities), and that X's foster parents, with whom he had resided since he was taken into care (see paragraph 22 above), be granted permission to adopt him. The identity of X's biological father was still unknown to the authorities. In the alternative, the municipality proposed that the first applicant's contact rights be removed.

83. During a contact session on 6 September 2011 the supervisor noticed that the first applicant was pregnant and asked when the baby was due, to

which the first applicant, according to the supervision notes, answered that she thought it was around New Year's Eve. According to the notes, the contact session went well.

84. On 13 September 2011 the first applicant's counsel engaged a specialist in clinical neurology to test her abilities and to map her cognitive capacities.

85. In letters of 14 September and 28 October 2011, in the course of the proceedings before the Board, the municipality asked for further information about the first applicant's husband, in order to be able to make contact with him and talk to him about his future role in the first applicant's life.

86. Meanwhile, on 18 October 2011, the first applicant gave birth to Y. She had married the father of Y in the summer of that year. The new family had moved to a different municipality. When the child welfare services in the first applicant's former municipality became aware that she had given birth to another child, they sent a letter expressing concern to the new municipality, which started an investigation into her parenting abilities.

87. Also on 18 October 2011, the specialist in clinical neurology engaged by the first applicant's counsel (see paragraph 84 above) produced his report. His conclusion read as follows:

> "Wechsler Adult Intelligence Scale III (WAIS-III) shows an IQ of 86. Standard errors in measurements indicate that, with a 95% probability, she has an IQ of between 82 and 90. The normal range is between 85 and 115. Ability-wise, [the applicant] is within the lower part of the normal range. In addition she shows considerable learning difficulties that are ... [greater] than what her IQ should indicate [(*betydelige lærevansker som er svakere enn hva hennes IQ skulle tilsi*)]. These difficulties are considered to be consistent with a cognitive impairment."

In response to a request for follow-up, he wrote to the first applicant's counsel on 27 October 2011 stating as follows:

> "A general IQ of between 82 and 90 is not in itself a disqualifying factor with respect to having care for children. Care abilities should to a greater extent be examined through observation of the care person and the child, and anamnestic information about other circumstances. Not being an expert in this field, I think that an assessment of crucial factors would include, among other things, the care person's ability for empathy and meeting the child, understanding of the child's needs, ability to interpret signals from the child, and ability to set aside [(*utsette*)] their own wishes for the benefit of the child's needs.
>
> Such an assessment should be made by a qualified psychologist with experience in the field."

88. On 8 November 2011 the first applicant's counsel sent a copy of a medical journal dated 2 November 2011 to the Board. It appeared from the copy that a doctor had agreed to give evidence by telephone during the upcoming case and that the doctor could not see that there was anything connected with the first applicant's epilepsy or cognition that would indicate that she was not capable of taking care of her child.

89. On 28, 29 and 30 November 2011 the County Social Welfare Board, composed of a lawyer, a psychologist and a lay person, held a hearing at which the first applicant was present together with her legal representative. Twenty-one witnesses were heard.

(b) The Board's decision

90. On 8 December 2011 the Board decided that the first applicant's parental responsibilities for X should be withdrawn and that X's foster parents should be allowed to adopt him. The Board found that there was nothing in the case to indicate that the first applicant's parenting abilities had improved since the High Court's judgment of 22 April 2010 (see paragraphs 65-75 above). Therefore she was still considered incapable of giving X adequate care. Moreover, the Board stated:

> "In her statement before the County Social Welfare Board, the mother maintained her view that the care order was a conspiracy between the child welfare services, [the parent-child institution] and the foster parents for the purpose of 'helping a woman who is unable to have children'. In the mother's words, it was a question of 'an advance order for a child'. The mother had not realised that she had neglected [X], and stated that she spent most of her time and energy on 'the case'.
>
> The reports from the contact sessions between the mother and [X] consistently [(*gjennomgående*)] show that she is still unable to focus on [X] and what is best for him, but is influenced by her very negative view of the foster mother and of the child welfare services.
>
> [The first applicant] has married and had another child this autumn. The psychologist [K.M.] has stated before the Board that he observed good interaction between the mother and child and that the mother takes good care of the child. The Board takes note of this information. In the County Social Welfare Board's opinion, this observation cannot in any case be used as a basis for concluding that the mother has competence as a caregiver for [X].
>
> The County Social Welfare Board finds it reasonable to assume that [X] is a particularly vulnerable child. He experienced serious and life-threatening neglect during the first three weeks of his life. Reference is also made to the fact that there have been many contact sessions with the mother, some of which have been very stressful for [X]. All in all, he has been through a lot. He has lived in the foster home for three years and does not know his biological mother. If [X] were to be returned to the care of his mother, this would require, among other things, a great capacity to empathise with and understand [X] and the problems he would experience, not least in the form of mourning and missing his foster parents. The mother and her family appeared to be completely devoid of any such empathy and understanding. Both the mother and grandmother stated that it would not be a problem, 'he just had to be distracted', and thus gave the impression of not having sympathy with the boy and therefore also being incapable of providing the psychological care he would need in the event of a return."

91. In addition, the Board had especially noted the conclusions of the expert M.S. (see paragraph 63 above). They had been quoted by the High Court in its judgment of 22 April 2010 (see paragraphs 65-75 above). The Board found that this description of the first applicant was still accurate. In

any event, it was decisive that X had established such a connection to his foster family that removing him would result in serious and permanent problems for him.

92. The Board further stated:

"[X] has lived in the foster home as an equal member of the family for three years. These three years are the boy's whole life. We find it to be substantiated that his primary source of security and sense of belonging is his foster family. He sees the foster parents as his psychological parents. In addition to his foster family, [X] receives good follow-up in kindergarten and from the rest of the foster parents' family. We have no doubt that removing [X] from this environment and returning him to his biological mother would lead to considerable and serious problems. Reference is made to the fact that he had already developed considerable problems after one year, when the amount of contact was increased significantly. In our assessment, it is of crucial importance to the boy's development and welfare that he continue to live in the foster home.

On this basis the County Social Welfare Board must determine the question of withdrawal of parental responsibilities and, if relevant, consent to adoption.

The first and second paragraphs of section 4-20 of the Child Welfare Act state that a decision to withdraw parental responsibilities from the parents can be made, and is a precondition for granting consent to adoption. The condition is that the County Social Welfare Board has made a care order for the child.

The Board bases its decision on established case-law allowing for parental responsibilities to be withdrawn from biological parents in order to make an adoption possible. This is the primary objective of the child welfare services' proposal to withdraw the mother's parental responsibilities in the present case.

The wording of section 4-20 of the Child Welfare Act specifies far stricter conditions for granting consent to adoption than for withdrawing the parents' parental responsibilities. However, when the purpose of a decision pursuant to the first paragraph is to open up the possibility for adoption, the grounds that indicate adoption will also constitute the grounds for withdrawal of parental responsibilities.

The matter to be determined in this case is thus whether the conditions for granting consent to adoption are met. The third paragraph of section 4-20 of the Child Welfare Act reads as follows:

'Consent may be given if

(a) it must be regarded as probable that the parents will be permanently unable to provide the child with proper care or the child has become so attached to persons and the environment in which he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her, and

(b) adoption would be in the child's best interests, and

(c) the persons applying for adoption have been the child's foster parents and have shown themselves to be fit to bring up the child as their own, and

(d) the conditions for granting an adoption under the Adoption Act are satisfied.'

The County Social Welfare Board will start by observing that there are good grounds for withdrawing the mother's parental responsibilities for [X], regardless of the issue of adoption. Reference is made to the fact that [X] has lived in the foster home for practically his whole life, and it is therefore most natural that the foster

parents make the decisions on his behalf that come with parental responsibilities. The mother's insensitive behaviour, not least online, also indicates that she could cause many problems for him [(*ramme ham hardt*)] when he becomes old enough to understand.

The County Social Welfare Board considers [(*legger til grunn*)] that the mother will be permanently unable to provide [X] with proper care, and that [X] has become so attached to his foster parents, foster brother and the rest of the family that moving him would lead to serious problems for him. Reference is made to the above discussion. The condition in letter (a) of [the third paragraph of] section 4-20 of the Child Welfare Act is met.

Adoption is a particularly invasive measure in relation to the biological parents and the child. Therefore, particularly weighty reasons are required. Pursuant to Supreme Court case-law, the decision must be based on a concrete assessment, but must also build on general experience from child psychology or child psychiatry. Reference is made in particular to the Supreme Court decision in Rt. 2007 page 561 ff., which refers to a court-appointed expert who had stated that general experience indicated that a foster-home relationship was not the preferable option for long-term placement of children who had come to the foster home before establishing an attachment to their biological parents. In such cases, adoption would be most conducive to the child's development. The judgment stated that considerable importance must be attached to such general, but nuanced experience.

The County Social Welfare Board bases its decision [(*legger til grunn*)] on the mother not consenting to [X] being adopted. As shown above, she has a strong, if inappropriate [(*uhensiktsmessig*)], commitment to having him returned to her care.

In the County Social Welfare Board's assessment, consent to an adoption will clearly be in [X]'s best interests. The County Social Welfare Board does not believe that returning [X] to his mother's care is an option. This foster-home placement is considered permanent. [X] sees his foster parents as his psychological parents, and they are the only parents he knows. An adoption would give [X] further assurance that he is his foster parents' son."

93. The Board went on to make another reference to the Supreme Court's (*Høyesteretts*) decision in *Norsk Retstidende* (*Rt.*) 2007, page 561 (see, also, paragraph 125 below) and found that the reasoning underlying the following passage from that judgment – reiterated in *Aune v. Norway* (no. 52502/07, § 37, 28 October 2010) – was also pertinent in the present case:

"A decision that he should remain a foster child would tell him that the people with whom he has always lived and who are his parents and with whom he established his earliest ties and sense of belonging should remain under the control of the child welfare services – the public authorities – and that they are not viewed by society as his true parents but rather as foster parents under an agreement that can be terminated. ..."

The Board considered these general reflections to be an accurate description of X's situation as well. An adoption would be in X's best interests. The condition in letter (b) of the third paragraph of section 4-20 of the Child Welfare Act (see paragraph 122 below) was deemed to be met.

94. Furthermore, the foster parents had been X's emergency foster parents and later his foster parents since his emergency placement when he was three weeks old. The Board stated that it had been documented that they had provided X with excellent care and that the attachment between them and X was good and close. The foster parents had a strong wish to adopt X. In the Board's opinion, the foster parents had demonstrated that they were suited to raise X as their own child. The conditions set out in letter (c) of the third paragraph of section 4-20 of the Child Welfare Act Section 4-20 (see paragraph 122 below) were deemed to be met.

95. In conclusion, the adoption would be in X's best interests. The Board took Article 8 of the Convention into consideration when making its decision.

2. Proceedings before the City Court

(a) Introduction

96. On 19 December 2011 the first applicant appealed against the decision, claiming that the Board had made an incorrect evaluation of the evidence when deciding that she was unable to give X adequate care. She considered that it would be in X's best interests to be returned to her and argued that her situation and her caring skills had changed. She was now married and the couple had a baby. She submitted that the child welfare services in their new municipality assisted them in taking care of the baby. Moreover, in her view, removing X from the foster home would cause him problems only in the short term; no long-term problems could be expected. X had only stayed in the foster home for a short time, and it had not been the foster parents who had expressed a wish to adopt the child but the child welfare services who had taken that initiative. The first applicant also claimed that the visits between her and X had worked satisfactorily; if the child welfare services considered the contact sessions to be inadequate it was for them, as the stronger party, to take action to ensure that they be made satisfactory.

97. The municipality opposed the appeal and submitted in their response that X, who was then three years and four months old and had lived in the foster home since he was three weeks old, had become attached to the foster home. They maintained that it would cause serious and long-lasting problems for him if he were returned at the present time. He had no recollection of the period when he had been in his mother's care. In the municipality's view, the first applicant's ability to care for X had not changed since the High Court's judgment of 22 April 2010. The visits between X and the first applicant had not worked well. She had had outbursts during the visits and had left before the time was up. Afterwards X had reacted negatively. The first applicant and her mother had manifested a very negative attitude towards the child welfare services. The first

applicant had claimed that the child welfare services assisted them in taking care of the baby, whereas the truth was that they had denied the child welfare services access to their home and, accordingly, no assistance measures had been implemented. It had, admittedly, been the child welfare services that had taken the initiative to petition for adoption, but this was their duty in a case such as the present. It was better for X to be offered the firm attachment to the foster home that an adoption would give him. The municipality stressed that it was not the first applicant's epilepsy or her IQ that gave reason to take measures, but her immaturity and actual lack of caring skills. The psychologist, K.M., engaged by the first applicant (see paragraph 98 below) should not be allowed to give evidence. He had videotaped a contact session without the parties' agreement; refused to send the video to the child welfare services; had never provided anything in writing, nor anything that had been quality-checked such as was the ordinary procedure for expert reports; the municipality had already reported him to the health supervision authorities and the Ethics Council of the Psychologists' Association.

98. On 22 February 2012 the City Court, composed of one professional judge, one psychologist and one lay person, in accordance with section 36-4 of the Dispute Act (see paragraph 133 below), upheld the decision after having held a hearing which lasted from 13 to 15 February 2012 and during which twenty-one witnesses were heard. Among the witnesses called by the child welfare services were the persons responsible for supervision of the foster home and the contact sessions, S.H. from the Children's and Young People's Psychiatric Out-Patient Clinic, expert psychologists B.S. and M.S. (see, *inter alia*, paragraphs 58, 61, 62 and 63 above) and the family consultant from the parent-child institution (see, for example, paragraph 24 above). Among the witnesses called by the first applicant were members of her family, her husband and members of his family, the medical director at the hospital where the first applicant had undergone surgery in 2005 (see paragraph 72 above) and specialist in psychology K.M. (see paragraph 97 above). The first applicant was present together with her legal aid counsel.

(b) The City Court's reasoning regarding whether X's public care could be discontinued

99. As a preliminary point in its judgment the City Court stated that during the hearing some time had been spent shedding light on the circumstances existing prior to the decision ordering X to be taken into care. The City Court stated that it would only examine the situation prior to the placement decision in so far as necessary to assess the situation at the time of its judgment appropriately.

100. The City Court went on to note that the first applicant's situation in some areas had improved during the last year. She had married in August 2011, her husband had a permanent job and they had a daughter, Y. It also

noted that the child welfare services in the couple's current municipality were conducting an ongoing inquiry concerning the mother's ability to care for Y. A staff member of the child welfare services in that new municipality had testified at the oral hearing, stating that they had not received any reports of concern other than the one from the child welfare services in the first applicant's former municipality. As part of their inquiry they had made observations at the first applicant's home. They had observed many good aspects but also that the parents might need some help with routines and structure. The City Court found that this indicated that the child welfare services in the municipality to which the first applicant had moved considered that the parents could give Y adequate care if assisted by the child welfare services. Y was not a child with any special care needs.

101. However, on the basis of the evidence the situation was different with regard to X, whom several experts had described as a vulnerable child. The City Court referred in particular to a statement from a professional at the Children's and Young People's Psychiatric Out-Patient Clinic explaining that, as late as December 2011, X was easily stressed and needed a lot of quiet, security and support. If his emotional development in the future were to be sound, the carer would have to be aware of that and take it into account. When the first applicant gave evidence in court, she had clearly shown that she did not realise what challenges she would face if X were to be moved from the foster home. She could not see his vulnerability, her primary concern being that he should grow up "where he belonged". The first applicant believed that returning him would be unproblematic and still did not understand why the child welfare services had had to intervene when he was placed in the emergency foster home. She had not wished to say anything about how she thought X was developing in the foster home. In the City Court's view, the first applicant would not be sufficiently able to see or understand X's special care needs, and if those needs were not met, there would be a considerable risk of abnormal development.

102. The City Court also took account of how the foster parents and supervisor had described X's emotional reactions after contact sessions with his mother, namely, his inconsolable crying and need for a lot of sleep. During the contact sessions X had repeatedly resisted contact with the first applicant and, as the sessions had progressed, reacted with what had been described as resignation. The City Court considered that a possible reason for that was that the boy was vulnerable to inexpedient interaction and information that was not adapted to his age and functioning. The first applicant's emotional outbursts in situations during the contact sessions, for example when X had sought out his foster mother and called her "Mummy", were seen as potentially frightening (*skremmende*) and not conducive to X's sound development.

103. The City Court held that the presentation of evidence had "clearly shown" that the "fundamental limitations" (*grunnleggende begrensningene*)

that had existed at the time of the High Court's judgment still existed. Nothing had emerged during the City Court's consideration of the case to indicate that the first applicant had developed a more positive attitude to the child welfare services or to the foster mother, beyond a statement made by her to the extent that she was willing to cooperate. She had snubbed the foster mother when she had said hello during the contact sessions and had never asked for information about X. The first applicant had left in frustration forty minutes before the last visit had been scheduled to end. Everyone who had been present during the contact sessions had described the atmosphere as unpleasant. The City Court considered that one possible reason why the first applicant's competence at contact sessions had not improved was that she struggled so much with her own feelings and with missing X that it made her incapable of considering the child's perspective and protecting him from her own emotional outbursts. An improvement was contingent upon her understanding X and his needs and on her being willing to work on herself and her own weaknesses. The first applicant had not shown any positive developments in her competence in contact situations throughout the three years she had had rights of contact. The fact that her parents had a remarkably negative attitude to the municipal child welfare services did not make it any easier for her.

104. The first applicant had claimed in court that she was a victim of injustice and that she would fight until X was returned to her. To shed light on her own situation, she had chosen to post her story on the Internet in June 2011 with a photograph of herself and X. In that article and several comments posted during the autumn of 2011, she had made serious accusations against the child welfare services and the foster parents – accusations which she had admitted in court were untrue. The first applicant did not consider that public exposure and repeated legal proceedings could be harmful for the child in the long term.

105. The City Court noted that the psychologist K.M. (see paragraphs 97-98 above), who had examined and treated the first applicant, had testified that she did not meet the criteria for any psychiatric diagnosis. He had counselled her in connection with the trauma inflicted on her by having her child taken away. The goal of the treatment had been to make the first applicant feel like a good mother. He believed that the previous assessments of the first applicant's ability to provide care had at that time been incorrect, and argued before the City Court that the best outcome for X would be to be returned to his biological mother. However, the City Court stated that the psychologist K.M.'s arguments had been based on research conducted in the 1960s, and found them to be incompatible with recent infant research. It noted that the other experts who had testified in court, including the psychologists B.S. and M.S., had advised against returning X to his mother, as this would be very harmful for him.

106. In conclusion thus far, the City Court agreed with the County Social Welfare Board that the first applicant had not changed in such a way as to indicate that it was highly probable that she would be able to provide X with proper care. It endorsed the Board's grounds, holding that the first applicant's clear limitations as a carer could not be mitigated by an adapted transitional scheme, assistance measures or support from her network. It did not find reason to consider other arguments regarding her ability to provide care in more detail, as returning X to her was in any case not an option owing to the serious problems it would cause him to be moved from the foster home. The City Court agreed at this point with the Board in its finding that X had developed such an attachment to his foster parents, his foster brother and the general foster home environment that it would lead to serious problems if he had to move. X's primary security and sense of belonging were in the foster home and he perceived the foster parents as his psychological parents. On those grounds the care order could not be revoked.

(c) The City Court's reasoning regarding whether parental responsibilities for X should be withdrawn and consent to his adoption given

107. Turning to the issues of withdrawal of parental responsibilities and consent to adoption, the City Court stated at the outset that where a care order had been issued, it was in principle sufficient for removal of parental responsibilities that this be in the child's best interests. At the same time, it had been emphasised in several Supreme Court judgments that removal of parental responsibilities was a very invasive decision and that therefore strong reasons were required for making such a decision (see, *inter alia*, paragraph 125 below). The requirements in respect of adoption were even more stringent. However, the questions of withdrawal of parental responsibilities and consent to adoption had to be seen in conjunction, since the primary reason for withdrawing parental responsibilities would be to facilitate adoption. The court also took into consideration that if the first applicant retained her parental responsibilities, she might engage in conflicts in the future about the rights that such responsibility entailed, such as exposing the child on the Internet.

108. The City Court went on to declare that adoption could only be granted if the four conditions in the third paragraph of section 4-20 of the Child Welfare Act were met (see paragraph 122 below), and endorsed the Board's grounds for finding that such was the case regarding the criteria in letters (a), namely that it had to be regarded as probable that the first applicant would be permanently unable to provide X with proper care or that X had become so attached to his foster home and the environment there that, on the basis of an overall assessment, removing him could lead to serious problems for him; (c), namely that the persons applying for adoption had been X's foster parents and had shown themselves fit to bring him up as

their own child; and (d), namely that the conditions for granting an adoption under the Adoption Act (see paragraph 132 below) were satisfied; as to letter (d), further documents had also been submitted to the court. In the present case the decisive factor was therefore whether adoption was in X's best interests under letter (b), and whether consent for adoption should be given on the basis of an overall assessment. Regarding that assessment, several Supreme Court judgments had stated that strong reasons must exist for consenting to adoption against the will of a biological parent. There must be a high degree of certainty that adoption would be in the child's best interests. It was also clear that the decision must be based not only on a concrete assessment, but also on general experience from child-psychology research. Reference was made to the Supreme Court's judgment in *Rt.* 2007, page 561 (see paragraph 125 below).

109. Applying the general principles to the instant case, the City Court first noted that X was at that time three and a half years old and had lived in his foster home since he was three weeks old. His fundamental attachment in the social and psychological sense was to his foster parents, and it would in any event be a long-term placement. X was moreover a vulnerable child, and adoption would help to strengthen his sense of belonging with his foster parents, whom he regarded as his parents. It was particularly important to a child's development to experience a secure and sound attachment to its psychological parents. Adoption would give X a sense of belonging and security in the years ahead for longer than the period a foster-home relationship would last. Practical considerations also indicated that persons who had care and control of a child and who in reality functioned as its parents should carry out the functions that derived from parental responsibilities.

110. The City Court noted that adoption meant that the legal ties to the biological family were severed. In its opinion, X, despite spending the first three weeks of his life with his mother and having many contact sessions, had not bonded psychologically with her. That had remained the case even though he had been told at a later stage that the first applicant had given birth to him.

111. Furthermore, the court took account of the fact that even if no further contact sessions were organised, the foster parents had taken a positive view of letting X contact his biological parent if he so wished.

112. Based on an overall assessment, the City Court found that it would be in X's best interests for the first applicant's parental responsibilities to be withdrawn and for the foster parents to be allowed to adopt him. The court believed that particularly weighty reasons existed for consenting to adoption in the present case.

113. The City Court stated, lastly, that since it had decided that X should be adopted, it was unable to decide on contact rights for the first applicant, since that question would be up to the foster parents to decide. It mentioned

that section 4-20a of the Child Welfare Act provided a legal basis for determining rights to contact subsequent to adoption (see paragraph 122 below, where that provision is reiterated, and paragraph 128 below, on the "open adoption" system). The City Court was not competent, however, to examine or determine such rights since its competence was dependent on a party to the case having made a request to that effect. In the instant case, neither of the parties had done so.

3. Proceedings before the High Court and the Supreme Court

114. On 14 March 2012 the first applicant, through her counsel, appealed against the judgment, claiming that the City Court had evaluated the evidence incorrectly when concluding that the first applicant was permanently unable to care for X. Counsel stated that the High Court should appoint an expert to assess the first applicant's husband's help to mother and child, and the first applicant's caring skills at the time. In response to a letter from the High Court, dated 16 March 2012, counsel also argued that the City Court should have obtained an assessment by an expert witness concerning her and her husband's ability to provide adequate care.

115. In their response, dated 26 April 2012, to the first applicant's arguments that an expert assessment was necessary in the light of her new situation, the municipality stated, *inter alia*, that they had made several requests to be allowed to get to know the first applicant's husband (see, for example, paragraph 85 above), and that the first applicant had consistently chosen to disregard those requests. Since the child welfare services responsible for X did not have any insights into the family's situation in their new municipality, they could only rely on the information they had received from the child welfare services in that municipality, from which they could not infer that the first applicant could take care of X.

116. On 12 June 2012 the first applicant, who had then instructed new counsel, submitted to the High Court a statement from the child welfare services in her new municipality. It emerged from the statement, dated 21 March 2012, that those child welfare services had visited the family five times, each time for one and a half hours. They considered that the family needed assistance in the form of guidance with respect to interaction with their baby, which they could obtain from the local "baby team" (*spedbarnsteamet*) as well as a social worker (*miljøterapeut*) in the home, who could help with routines, structure and cleanliness. The first applicant's counsel also argued that the foster mother's presence during the contact sessions had disturbed (*virket forstyrrende på*) their implementation.

117. On 23 August 2012 counsel for the first applicant submitted a report from the child welfare services in the first applicant's new municipality, dated 5 June 2012. In the report it was stated, *inter alia*, that the parents had stated early on that they would accept advice and guidance if the child welfare services so recommended. The mother had stated that

she had had a bad experience with the "baby team", but that she could accept help from them if another person on the team was appointed to be her contact. In the report it was further stated that the child welfare services considered that it had observed two parents who showed that they wanted the best for their child. The first applicant played with the child, talked to her and engaged actively with her. On the basis of all the information contained in the observations, the child welfare services considered that the parents had to work on routines, cleanliness and involvement with the child. The parents accepted that a social worker be assigned to help them in the home.

118. In the meantime, on 22 August 2012, the High Court had decided not to grant leave to appeal because the conditions in section 36-10 of the Dispute Act (see paragraph 133 below) had not been met. The High Court stated that the case did not raise any new legal issues of importance for the uniform application of the law. With regard to whether new information had emerged, the court noted that the assessment dated 21 March 2012 had been made by, *inter alia*, a person who had testified before the City Court and that the document would not change the outcome of the case. The first applicant's caring skills had been thoroughly examined in connection with the Board's processing of the case and no new information had emerged that indicated changes in that respect. Moreover, the City Court's reasons were convincing and the High Court observed that the first applicant had not asked for an expert witness to be heard in the City Court and had not given any reasons as to why it was necessary to appoint an expert before the High Court. As had just been mentioned, there was no new information that indicated any changes in her caring skills. Thus there were no serious flaws in the City Court's judgment or procedure and no reasons for granting leave to appeal.

119. On 24 September 2012 the first applicant appealed against the decision to the Supreme Court. She submitted an assessment concerning the experience of the social worker in respect of her work with the family and their care for Y (see paragraph 117 above), dated 14 August 2012. In that document it was concluded that a positive development had started and that the social worker should continue to assist the family. The first applicant argued that the City Court had relied more on older documents than on the circumstances at the time of its judgment and had disregarded the fact that its judgment would have the effect of depriving Y of contact with X. She further repeated her argument that the foster mother's presence had disturbed the contact sessions (see paragraph 116 above) and maintained that the child welfare services had not properly organised the sessions.

120. In its reply of 4 October 2012 the municipality stated, *inter alia*, that it was positive that the first applicant and her husband had managed to avail themselves of the guidance received from the social worker, but that X was a vulnerable child whereas Y did not face similar challenges. As to the

first applicant's argument that the City Court had not based its decision on the circumstances at the time of its judgment, the municipality pointed to the fact that five out of the eight witnesses they had called, and all the witnesses called by the first applicant, had given evidence before the City Court on the circumstances as they were at that time. They further stated that Y would not be deprived of contact with X as long as the first applicant accepted X's foster home and contributed to making it a good experience for the children. As to Y's father, it was argued that it had emerged from his testimony before the Board and City Court that he knew little about X's placement in care and about the challenges surrounding the contact sessions. The municipality also submitted that they would argue before the Supreme Court that X's right to respect for his family life was also protected by Article 8 of the Convention and that his need for stability in the foster home and good care would be best ensured if he were adopted.

121. On 15 October 2012 the Supreme Court Appeals Board (*Høyesteretts ankeutvalg*) dismissed the first applicant's appeal against the High Court's decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Child Welfare Act

122. The relevant sections of the Child Welfare Act of 17 July 1992 (*barnevernloven*) provide:

Section 4-1. Consideration of the child's best interests

"When applying the provisions of this chapter, decisive importance shall be attached to finding measures which are in the child's best interests.

This includes attaching importance to giving the child stable and good contact with adults and continuity in the care provided."

Section 4-6. Interim orders in emergencies

"If a child is without care because the parents are ill or for other reasons, the child welfare services shall implement such assistance as is immediately required. Such measures shall not be maintained against the will of the parents.

If there is a risk that a child will suffer material harm by remaining at home, the head of the child welfare administration or the prosecuting authority may immediately make an interim care order without the consent of the parents.

In such a case the head of the child welfare administration may also make an interim order under section 4-19.

If an order has been made under the second paragraph, an application for measures as mentioned in section 7-11 shall be sent to the county social welfare board as soon as possible, and within six weeks at the latest, but within two weeks if it is a matter of measures under section 4-24.

If the matter has not been sent to the county social welfare board within the time-limits mentioned in the fourth paragraph, the order shall lapse."

Section 4-12. Care orders

"A care order may be issued

(a) if there are serious deficiencies in the daily care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development,

(b) if the parents fail to ensure that a child who is ill, disabled or in special need of assistance receives the treatment and training required,

(c) if the child is mistreated or subjected to other serious abuse at home, or

(d) if it is highly probable that the child's health or development may be seriously harmed because the parents are unable to take adequate responsibility for the child.

An order may only be made under the first paragraph when necessary due to the child's current situation. Hence, such an order may not be made if satisfactory conditions can be created for the child by assistance measures under section 4-4 or by measures under section 4-10 or section 4-11.

An order under the first paragraph shall be made by the county social welfare board under the provisions of Chapter 7."

Section 4-19. Contact rights. Secret address

"Unless otherwise provided, children and parents are entitled to have contact with each other.

When a care order has been made, the county social welfare board shall determine the extent of contact, but may, for the sake of the child, also decide that there should be no contact. The county social welfare board may also decide that the parents should not be entitled to know the child's whereabouts.

...

The private parties cannot request that a case regarding contact be dealt with by the county social welfare board if the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months.

..."

Section 4-20. Withdrawal of parental responsibilities. Adoption

"If the county social welfare board has made a care order for a child, it may also decide that the parents must be stripped of all parental responsibilities. If, as a result of the parents being stripped of parental responsibilities, the child is left without a guardian, the county social welfare board shall as soon as possible take steps to have a new guardian appointed for the child.

Where an order has been made withdrawing parental responsibilities, the county social welfare board may give its consent for a child to be adopted by persons other than the parents.

Consent may be given if

(a) it must be regarded as probable that the parents will be permanently unable to provide the child with proper care or the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her, and

(b) adoption would be in the child's best interests, and

(c) the persons applying for adoption have been the child's foster parents and have shown themselves fit to bring up the child as their own, and

(d) the conditions for granting an adoption under the Adoption Act are satisfied.

Where the county social welfare board consents to adoption, the Ministry [of Children and Equality] shall issue an adoption order."

Section 4-20a. Contact between the child and his or her biological parents after adoption [added in 2010]

"Where the county social welfare board issues an adoption order under section 4-20, it shall, if any of the parties have requested it, at the same time consider whether there shall be contact between the child and his or her biological parents after the adoption has been carried out. If limited contact after adoption in such cases is in the child's best interests, and the persons applying for adoption consent to such contact, the county social welfare board shall make an order for such contact. In such case, the county social welfare board must at the same time determine the amount of contact.

...

A contact order may only be reviewed if special reasons justify doing so. Special reasons may include the child's opposition to contact or the biological parents' failure to comply with the contact order.

..."

Section 4-21. Revocation of care orders

"The county social welfare board shall revoke a care order where it is highly probable that the parents will be able to provide the child with proper care. The decision shall nonetheless not be revoked if the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her. Before a care order is revoked, the child's foster parents shall be entitled to state their opinion.

The parties may not request that a case concerning revocation of a care order be dealt with by the county social welfare board if the case has been dealt with by the county social welfare board or a court of law in the preceding twelve months. If a request for revocation of the previous order or judgment was not upheld with reference to section 4-21, first paragraph, second sentence, new proceedings may only be requested where documentary evidence is provided to show that significant changes have taken place in the child's situation."

Section 7-5. The board's composition in individual cases

"In individual cases, the county social welfare board shall consist of a chairman/chairwoman, one member of the ordinary committee and one member of the expert committee. When necessary due to the complexity of the case, the chairman/chairwoman may decide that the board, in addition to the

chairman/chairwoman, shall consist of two members of the ordinary committee and two members of the expert committee.

If the parties consent thereto, the chairman/chairwoman may decide cases as mentioned in the first paragraph alone unless this is precluded by due regard for the satisfactory hearing of the case.

Where the case concerns a request for an alteration in a previous decision/order or judgment, the chairman/chairwoman may decide the case alone if this is unobjectionable with due regard for the subject of the case, its complexity, the need for professional expertise, and a proper hearing of the case.

Where the case concerns an extension of a placement order made by the county social welfare board under section 4-29, the chairman/chairwoman shall decide the case alone."

B. Case-law under the Child Welfare Act

123. The Supreme Court has delivered several judgments on the Child Welfare Act. Of relevance in the present context is its judgment of 23 May 1991 (*Rt.* 1991, page 557), in which the Supreme Court stated that since withdrawal of parental responsibilities with a view to adoption involves permanently severing the legal ties between the child and its biological parents and other relatives, strong reasons have to be present in order for a decision of that sort to be taken. It emphasised, moreover, that a decision to withdraw parental responsibilities must not be taken without first having carried out a thorough examination and consideration of the long-term consequences of alternative measures, based on the concrete circumstances of each case.

124. In a later judgment, of 10 January 2001 (*Rt.* 2001, page 14), the Supreme Court considered that the legal criterion "strong reasons" in this context should be interpreted in line with the Court's case-law, in particular *Johansen v. Norway*, no. 17383/90, § 78, 7 August 1996. This meant, according to the Supreme Court, that consent to adoption contrary to the wish of the biological parents could only be given in "extraordinary circumstances".

125. The above case-law was developed further, *inter alia*, in the Supreme Court's judgment of 20 April 2007 (*Rt.* 2007, page 561), after the Court had declared a second application by the applicant in the above-mentioned case of *Johansen v. Norway* inadmissible (see *Johansen v. Norway* (dec.), 12750/02, 10 October 2002). The Supreme Court reiterated that the requirement that adoption be in the child's best interests, as set out in section 4-20 of the Child Welfare Act (see paragraph 122 above), meant that "strong reasons" (*sterke grunner*) must be present in order for consent to adoption to be given contrary to the wish of the biological parents. In addition, the Supreme Court emphasised that a decision of this kind had to be based on the concrete circumstances of each case, but also take account of general experience, including experience from

research into child psychology or child psychiatry. The Supreme Court examined the general principles in the case-law of the Strasbourg Court and concluded that the domestic law was in conformity with those principles: an adoption could only be authorised where "particularly weighty reasons" were present. That case was subsequently brought before the Court, which found no violation of Article 8 of the Convention (see *Aune*, cited above, § 37, for a recapitulation of the Supreme Court's analysis of the general principles developed in the case-law of the Supreme Court and the Court).

126. The Supreme Court again set out the general principles applicable to adoption cases in a judgment of 30 January 2015 (*Rt.* 2015, page 110). It reiterated that forced adoptions had a severe impact and generally inflicted profound emotional pain on the parents. Family ties were protected by Article 8 of the Convention and Article 102 of the Constitution. Adoption was also an intrusive measure for the child and could, under Article 21 of the Convention on the Rights of the Child (see paragraph 134 below), accordingly only be decided when in his or her best interests. However, where there were decisive factors from the child's point of view in favour of adoption, the parents' interests would have to yield, as had been provided for in Article 104 of the Constitution and Article 3 § 1 of the Convention on the Rights of the Child (ibid.). Reference was made to *Aune*, cited above, § 66, where the Court had stated that an adoption could only be authorised where justified by "an overriding requirement pertaining to the child's best interests", which corresponded to the standard of "particularly weighty reasons" as established by the Supreme Court in the judgment that had been scrutinised by the European Court of Human Rights in *Aune* (see paragraph 125 above).

127. Parliament had examined, and a majority had supported, a proposal from the Government (*Ot.prp.* no. 69 (2008-2009)) discussing the issue of a considerable decline in adoptions in Norway. In the proposal it had been suggested that the child welfare services had developed a reluctance to propose adoptions in the aftermath of the Court's finding of a violation in *Johansen*, cited above, even though research had shown that it was in a child's best interests to be adopted rather than experience a continuous life in foster care until reaching their majority. The Supreme Court interpreted the proposal as emphasising that the child welfare services should ensure that adoption would actually be proposed where appropriate, but that the proposal did not imply that the legal threshold, under Article 8 of the Convention, had changed. The Supreme Court added that the general information obtained from research on adoption was relevant to the concrete assessment of whether an adoption should be authorised in an individual case.

128. The Supreme Court also examined the implication of amendments of the rules concerning contact between the child and the biological parents, which had been coined as an "open adoption" in the above proposal. The

rules had been incorporated into section 4-20a of the Child Welfare Act, which had been in force since 2010. They required that an "open adoption" be in the child's best interests and that the adoptive parents consent (see paragraph 122 above). It observed that the legislature's reasons for introducing the system of "open adoptions" had been to secure the child stable and predictable surroundings in which to grow up, while at the same time ensuring some contact with its biological parents where this would be in the child's best interests. The child would thus have all the benefits of the adoption, while still having contact with its biological parents. The Supreme Court found that the introduction of the system of "open adoptions" had not meant that the legal threshold for authorising adoptions had been lowered. However, in some cases further contact between the child and the biological parents could mitigate some of the arguments against adoption. Reference was made to *Aune*, cited above, § 78.

129. The Supreme Court considered anew the general principles concerning adoption in a judgment of 11 September 2018. The Supreme Court observed, *inter alia*, that the European Court of Human Rights, in the case of *Mohamed Hasan v. Norway*, no. 27496/15, § 148, 26 April 2018, had stressed the strict procedural requirements that must be met by the domestic decision-making authorities in cases concerning adoption. When summarising the subject of its review, the Supreme Court stated that the best interests of the child were the most important and weighty concerns when deciding the adoption issue. As adoption was such a radical and irreversible measure, it could only be justified – from the child's point of view – by particularly weighty reasons. These grounds had to be balanced against the consequences of adoption for the child's contact with its biological parents in the individual case. Where there had been little or no contact between the parents and the child, the concern for protection of their family life would be given less weight than in cases where a more normal family life had existed.

130. The current position in respect of knowledge and research on adopted children had been studied by a court-appointed expert and presented in an appendix to his statement to the Supreme Court. The expert believed that the summary in the Supreme Court's judgment of 20 April 2007 (*Rt.* 2007, page 561; see paragraph 125 above) was still accurate. Based on an updated study of relevant research and professional experience as a psychologist, the expert had stated the following in the case at hand:

> "Children in long-term foster care who are adopted undergo better psychosocial development than children in a similar situation who are not adopted. It is the durability of the child's sense of belonging that seems to be essential."

131. The expert had specified in his statement before the Supreme Court that this was a difficult area of research, one of the reasons being that few forced adoptions were carried out annually in Norway. And, as had been

emphasised in the Supreme Court's judgment of 20 April 2007 (*Rt.* 2007 page 561; see paragraph 125 above), a specific, individual assessment had to be made in each case. But, as emphasised in the same judgment, such a research- and experienced-based perception of what was generally best for the child, had to be given particular weight. Also, the abovementioned (see paragraph 127) proposal from the Government (*Ot.prp.* no. 69 (2008-2009)) had stressed that research showed that "... for some children, adoption may give a safer and more predictable upbringing than long-term foster care".

C. The Adoption Act

132. The Adoption Act of 28 February 1986, in force at the relevant time, contained the following relevant provisions:

Section 2

"An adoption order must only be issued where it can be assumed that the adoption will be to the benefit of the child [(*til gagn for barnet*)]. It is further required that the person applying for adoption either wishes to foster or has fostered the child, or that there is another special reason for the adoption."

Section 12

"Adoptive parents shall, as soon as is advisable, tell the adopted child that he or she is adopted.

When the child has reached 18 years of age, he or she is entitled to be informed by the Ministry [of Children and Equality] of the identity of his or her biological parents."

Section 13

"On adoption, the adopted child and his or her heirs shall have the same legal status as if the adopted child had been the adoptive parents' biological child, unless otherwise provided by section 14 or another statute. At the same time, the child's legal relationship to his or her original family shall cease, unless otherwise provided by special statute.

Where one spouse has adopted a child of the other spouse or cohabitant, the said child shall have the same legal status in relation to both spouses as if he or she were their joint child. The same applies to children adopted pursuant to section 5 b, second, third and fourth paragraphs."

Section 14 a. Contact after adoption

"In the case of adoptions carried out as a result of decisions pursuant to section 4-20 of the Child Welfare Act, the effects of the adoption that follow from section 13 of the present Act shall apply, subject to any limitations that may have been imposed by a decision pursuant to section 4-20 a of the Child Welfare Act regarding contact between the child and his or her biological parents."

D. The Dispute Act

133. The first paragraph of section 36-4 and the third paragraph of section 36-10 of the Dispute Act of 17 June 2005 (*tvisteloven*) read:

Section 36-4 The composition of the court. Expert panel

"(1) The district court shall sit with two lay judges, one of whom shall be an ordinary lay judge and the other an expert. In special cases, the court may sit with two professional judges and three lay judges, one or two of whom shall be experts."

Section 36-10 Appeal

"(3) An appeal against the judgment of the district court in cases concerning the County Board's decisions pursuant to the Child Welfare Act requires the leave of the court of appeal.

Leave can only be granted if

a) the appeal concerns issues whose significance extends beyond the scope of the current case,

b) there are grounds to rehear the case because new information has emerged,

c) the ruling of the district court or the procedure in the district court is seriously flawed [(*vesentlige svakheter ved tingrettens avgjørelse eller saksbehandling*)], or

d) the judgment provides for coercive measures that were not approved by the County Board."

III. RELEVANT INTERNATIONAL LAW MATERIALS

A. The United Nations

134. The United Nations Convention on the Rights of the Child, concluded in New York on 20 November 1989, contains, *inter alia*, the following provisions:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

Article 18

"1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible."

Article 20

"1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

Article 21

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the

child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

..."

135. In its General Comment no. 7 (2005) on implementing child rights in early childhood, the United Nations Committee on the Rights of the Child sought to encourage the States Parties to recognise that young children were holders of all rights enshrined in the Convention on the Rights of the Child and that early childhood was a critical period for the realisation of those rights. In particular, the Committee referred to the best interests of the child:

"13. Article 3 sets out the principle that the best interests of the child are a primary consideration in all actions concerning children. By virtue of their relative immaturity, young children are reliant on responsible authorities to assess and represent their rights and best interests in relation to decisions and actions that affect their well-being, while taking account of their views and evolving capacities. The principle of best interests appears repeatedly within the Convention (including in articles 9, 18, 20 and 21, which are most relevant to early childhood). The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights:

(a) Best interests of individual children. All decision-making concerning a child's care, health, education, etc. must take account of the best interests principle, including decisions by parents, professionals and others responsible for children. States parties are urged to make provisions for young children to be represented independently in all legal proceedings by someone who acts for the child's interests, and for children to be heard in all cases where they are capable of expressing their opinions or preferences."

136. The United Nations Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, mentions the following as elements "to be taken into account when assessing the child's best interests":

"(a) The child's views

...

(b) The child's identity

...

(c) Preservation of the family environment and maintaining relations

...

(d) Care, protection and safety of the child

...

(e) Situation of vulnerability

...

(f) The child's right to health

...

(g) The child's right to education

..."

Under the headings "Balancing the elements in the best-interests assessment" and "Procedural safeguards to guarantee the implementation of the child's best interests", *inter alia*, the following is included:

"84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.

...

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure ... .

...

87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children."

B. The Council of Europe

137. The Council of Europe's Revised Convention on the Adoption of Children of 27 November 2008 contains, *inter alia*, the following provisions:

Article 3 – Validity of an adoption

"An adoption shall be valid only if it is granted by a court or an administrative authority (hereinafter the 'competent authority')."

Article 4 – Granting of an adoption

"1. The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the best interests of the child.

2. In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home."

Article 5 – Consents to an adoption

"1. Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

a the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place;

b the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years;

c the consent of the spouse or registered partner of the adopter.

2. The persons whose consent is required for adoption must have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin. The consent must have been given freely, in the required legal form, and expressed or evidenced in writing.

3. The competent authority shall not dispense with the consent or overrule the refusal to consent of any person or body mentioned in paragraph 1 save on exceptional grounds determined by law. However, the consent of a child who suffers from a disability preventing the expression of a valid consent may be dispensed with.

4. If the father or mother is not a holder of parental responsibility in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.

5. A mother's consent to the adoption of her child shall be valid when it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.

6. For the purposes of this Convention 'father' and 'mother' mean the persons who according to law are the parents of the child."

138. The Council of Europe's Parliamentary Assembly adopted Resolution 2049 on 22 April 2015. The Resolution includes, *inter alia*, the following:

"5. Financial and material poverty should never be the only justification for the removal of a child from parental care, but should be seen as a sign for the need to provide appropriate support to the family. Moreover, showing that a child could be placed in a more beneficial environment for his or her upbringing is not enough to remove a child from his or her parents, and even less of a reason to sever family ties completely.

...

8. The Assembly thus recommends that member States:

...

8.2. put into place laws, regulations and procedures which truly put the best interest of the child first in removal, placement and reunification decisions;

8.3. continue and strengthen their efforts to ensure that all relevant procedures are conducted in a child-friendly manner, and that the children concerned have their views taken into account according to their age and level of maturity;

8.4. make visible and root out the influence of prejudice and discrimination in removal decisions, including by appropriately training all professionals involved;

8.5. support families with the necessary means (including financially, materially, socially and psychologically) in order to avoid unwarranted removal decisions in the first place, and in order to increase the percentage of successful family reunifications after care;

8.6. ensure that any (temporary) placement of a child in alternative care, where it has become necessary as a measure of last resort, be accompanied by measures aimed at the child's subsequent reintegration into the family, including the facilitation of appropriate contact between the child and his or her family, and be subject to periodic review;

8.7. avoid, except in exceptional circumstances provided for in law and subject to effective (timely and comprehensive) judicial review, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent;

8.8. ensure that the personnel involved in removal and placement decisions are guided by appropriate criteria and standards (if possible in a multidisciplinary way), are suitably qualified and regularly trained, have sufficient resources to take decisions in an appropriate time frame, and are not overburdened with too great a caseload;

...

8.10. ensure that, except in urgent cases, initial removal decisions are based only on court orders, in order to avoid unwarranted removal decisions and to prevent biased assessments."

139. The Council of Europe's Parliamentary Assembly adopted Resolution 2232 ("Striking a balance between the best interest of the child and the need to keep families together") on 28 June 2018. The Resolution states, *inter alia*:

"4. The Assembly reaffirms that the best interest of the child should be a primary consideration in all actions concerning children, in accordance with the United Nations Convention on the Rights of the Child. However, the implementation of this principle in practice depends on the context and the specific circumstances. It is sometimes easier to say what is not in the best interests of children: coming to serious harm at the hands of their parents, or being removed from a family without good cause.

5. It is with this caveat in mind that the Assembly reiterates the recommendations it made in Resolution 2049 (2015) and recommends that Council of Europe member States focus on the process in order to achieve the best results for children and their families alike. Member States should:

...

5.2. give the necessary support to families in a timely and positive manner with a view to avoiding the necessity for removal decisions in the first place, and to facilitating family reunification when possible and in the child's best interest: this includes the need to build better collaboration with parents, with a view to avoiding

possible mistakes based on misunderstandings, stereotyping and discrimination, mistakes which can be difficult to correct later on once the trust has gone;

...

5.5. seek to keep at a minimum the practices of removing children from parental care at birth, basing placement decisions on the effluxion of time, and adoptions without parental consent, and only in extreme cases. Where in the child's best interests, efforts should be made to maintain family ties;

5.6. where the decision to remove a child from their family has been made, ensure that:

5.6.1. such decisions are a proportionate response to a credible and verified assessment by competent authorities subject to judicial review that there is a real risk of actual and serious harm to the children involved;

5.6.2. a detailed decision is provided to the parents and a copy of the decision is also retained, that the decision is explained in an age-appropriate way to the child or that the child is otherwise granted access to the decision, and that the determination outlines the circumstances that led to the decision and provides reasons for the removal;

5.6.3. removing children is a last resort and should be done only for the necessary period of time;

5.6.4. siblings are kept together in care in all cases where it is not against the best interest of the child;

5.6.5. as long as it is in the best interest of the child, children are cared for within the wider family unit so as to minimise the disruption of family bonds for the children involved;

5.6.6. regular consideration is given to family reunification and/or family access as is appropriate taking into account the best interests and views of the child;

5.6.7. visitation and contact arrangements facilitate the maintenance of the family bond and work towards reunification unless manifestly inappropriate;"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

140. The applicants complained that the refusal to discontinue the public care of X and the deprivation of the first applicant's parental responsibilities for him and the authorisation granted to his foster parents to adopt him had violated their right to respect for family life as guaranteed by Article 8 of the Convention, which reads:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

141. The Government contested that submission.

A. Preliminary issues before the Grand Chamber

1. Scope of the case before the Grand Chamber

(a) Temporal scope

(i) The parties' submissions

142. The Government maintained that it fell outside the Grand Chamber's jurisdiction to consider whether the domestic proceedings relating to the taking into care of X and the first applicant's contact rights – prior to those relating to the authorisation of adoption – had complied with Article 8 of the Convention. Contrary to the requirements in Article 35 § 1 of the Convention, the applicants had failed to exhaust domestic remedies and to comply with the six-month time-limit with respect to the emergency care order of 17 October 2008, the care order of 2 March 2009 and the decisions on contact rights. In any event, the application to the Court of 12 April 2013 had been directed only at the measures upheld by the Supreme Court decision of 15 October 2012, that is, the removal of parental responsibilities and authorisation of adoption. The Chamber minority had overstepped the Court's competence and disregarded the scope of the applicants' application in order to voice abstract criticism against an entire child welfare system. It was not open to the applicants to expand the case through their referral request to the Grand Chamber. While the latter could have regard to prior proceedings, this was only to the extent that they had been referred to and relied upon in the decision relating to the removal of parental responsibilities and the authorisation of adoption.

143. Disagreeing with the Government's position, the applicants submitted that the Grand Chamber had competence to examine not only the removal of parental responsibilities and the authorisation of adoption but also the initial emergency decisions, the decisions relating to X's being taken into public care and those relating to the first applicant's contact rights. Its jurisdiction comprised the entirety of the domestic proceedings – even if it were ultimately to find a violation only in respect of a part of these. The consent to adoption had to be considered as the final decision in a sequence of events that had started with the emergency decision. The decision to remove parental responsibilities and to authorise adoption had been a consequence of the lack of attachment between X and the first applicant, which in turn had been a direct result of the decisions of

2 March 2009 and 22 April 2010 on long-term public care, in which the first applicant's contact rights had been considerably and unjustifiably reduced.

(ii) The Court's considerations

144. The Court reiterates that the content and scope of the "case" referred to the Grand Chamber are delimited by the Chamber's decision on admissibility. This means that the Grand Chamber cannot examine those parts of the application which have been declared inadmissible by the Chamber (see, for example, *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 100, 4 December 2018). In the present case, the Grand Chamber notes that the Chamber declared admissible the complaint lodged by the applicants (see paragraph 2 above), which concerned the deprivation of parental responsibilities and authorisation of adoption first decided by the County Social Welfare Board on 8 December 2011 and then upheld on appeal (see, *inter alia*, paragraphs 3, 76, 93, 94 and 111 of the Chamber's judgment).

145. The Grand Chamber observes that X was taken into emergency foster care in 2008 (see paragraphs 20-22 above) and into ordinary foster care following the decision of the County Social Welfare Board of 2 March 2009 (see paragraphs 38-46 above). In the same decision the first applicant was granted limited contact rights (see paragraphs 42-46 above). She appealed against that decision, which was ultimately upheld by the High Court in its judgment of 22 April 2010 (see paragraphs 65-75 above), again granting the first applicant limited contact rights (see paragraph 75 above). As the applicant did not avail herself of the possibility of lodging an appeal, the High Court's judgment became final on the expiry of the time-limit for doing so.

146. In their request for referral to the Grand Chamber, the applicants sought to expand their complaints to encompass also the above proceedings from 2008 to 2010. These grievances did not, however, form part of their application as it was declared admissible by the Chamber. They were in any event filed for the first time before the Grand Chamber more than six months after the last domestic decisions taken in the proceedings in question and, as mentioned above (see paragraph 145), without domestic remedies having been exhausted in the most recent of these.

147. Consequently, the Court does not have jurisdiction to review the compatibility with Article 8 of the Convention of the proceedings, including those relating to the restrictions on contact rights, that predated or ended with the High Court's judgment of 22 April 2010 (see paragraph 76 above).

148. Nonetheless, in its review of the proceedings relating to the County Social Welfare Board's decision of 8 December 2011 and the decisions taken on appeal against that decision, notably the City Court's judgment of 22 February 2012, the Court will have to put those proceedings and decisions in context, which inevitably means that it must to some degree

have regard to the former proceedings and decisions (see, similarly, for example, *Jovanovic v. Sweden*, no. 10592/12, § 73, 22 October 2015, and *Mohamed Hasan*, cited above, § 151).

(b) Material scope

149. The Court observes that the applicants' application lodged with the Court on 12 April 2013 expressly targeted only the decision to withdraw the first applicant's parental responsibilities in respect of X and to authorise the latter's adoption by his foster parents (see the City Court's decision in paragraphs 107-12 above), not the concurrent conclusion reached on the same occasion that the conditions for lifting the care order concerning X had not been met (see paragraphs 99-106 above).

150. The Chamber considered that the decision not to lift the care order was nonetheless intrinsically related to the decision to deprive the first applicant of her parental responsibilities for X and to authorise the latter's adoption, and accordingly reviewed the former decision on the merits (see paragraphs 113-17 of the Chamber's judgment) regardless of the applicants' having focused expressly on the latter decision in their application and submissions before the Chamber.

151. The Grand Chamber notes that, while the respondent Government did not express disagreement with the Chamber's approach in this regard, the applicants made submissions before it indicating that their complaint also encompassed the decision not to lift the care order taken in the same proceedings.

152. The Grand Chamber observes that the refusal to lift the public care order is so closely related to and intertwined with the decision to remove the first applicant's parental responsibilities and to authorise adoption that it must be considered to be an aspect of her initial complaint to the Court. Indeed, as follows from the terms of section 4-20 of the Child Welfare Act (see paragraph 122 above), it was a prerequisite for application of that provision that public care continued to be justified. The Grand Chamber will therefore, as was done by the Chamber, include the decision not to lift the care order in its examination of whether the applicants' Article 8 rights have been violated.

2. The first applicant's standing to lodge a complaint on behalf of the second applicant

(a) The Chamber's judgment

153. The Chamber, emphasising that the complaint concerned the decision to deprive the first applicant of her parental responsibilities for X and to authorise his adoption – which resulted in the former losing legal guardianship over X – rather than facts subsequent to that decision,

concluded that the first applicant was competent to lodge a complaint on behalf of the second applicant, X.

(b) The parties' submissions

154. By way of preliminary objection before the Grand Chamber, the Government argued that the first applicant did not have standing to lodge an application on behalf of X. His adoptive parents would have had standing, but had not done so. The Court's acceptance of the mother's lodging of an application on her child's behalf in *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, had been due to the particular circumstances of that case. In the instant case X's interests were also represented by his adoptive parents, who had intervened before the Court.

155. The applicants submitted that, according to the Court's established case law, a biological parent whose parental responsibilities had been withdrawn could submit a complaint against that withdrawal on behalf of the child in question. The first applicant accordingly had an unquestionable right to represent X in the instant case.

(c) The Court's considerations

156. The Court observes that the disputed deprivation of parental responsibilities and the authorisation of adoption decided by the County Social Welfare Board on 8 December 2011 and upheld by the City Court on 22 February 2012, against which leave to appeal was refused by the appellate courts, undoubtedly led to the severance of the legal ties between the first and second applicants. The Court has held that this factor is not decisive for whether a parent may have *locus standi* to lodge an application on behalf of the child before the Court (see, for example, *A.K. and L. v. Croatia*, no. 37956/11, § 46, 8 January 2013). In that judgment, the Court further stated:

> "... The conditions governing the individual applications under the Convention are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 and, while those purposes may sometimes be analogous, they need not always be so (see, *mutatis mutandis*, *Norris v. Ireland*, 26 October 1988, § 31, Series A no. 142).
>
> 47. The Court would draw attention to the principle that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions, both procedural and substantive, be interpreted and applied so as to render its safeguards both practical and effective (see amongst other authorities, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, §§ 70-72, Series A no. 310). The position of children under Article 34 calls for careful consideration, as children must generally rely on other persons to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense (*P.C. and S. v. the United Kingdom* (dec.), no. 56547/00, 11 November 2001). The Court considers that a restrictive or technical approach in this area is to be avoided" (ibid., § 46-47).

157. Since X was adopted, his only representatives under national law in respect of any issues concerning facts that occurred after the adoption had become final would be his adoptive parents. However, in respect of the adoption proceedings, conducted at a time when the first applicant still had full responsibilities for X, according to the Court's case-law, it is in principle in a child's interests to preserve family ties, save where weighty reasons exist to justify severing those ties (see, for example, *A.K. and L. v. Croatia*, cited above, § 49). In addition, on several occasions the Court has accepted in the context of Article 8 of the Convention that parents who did not have parental rights could apply to it on behalf of their minor children (see *Scozzari and Giunta*, cited above, §§ 138-39), the key criterion for the Court in these cases being the risk that some of the children's interests might not be brought to its attention and that they would be denied effective protection of their Convention rights (see *mutatis mutandis*, *Lambert and Others v. France* [GC], no. 46043/14, § 94, ECHR 2015 (extracts)).

158. Where an application has been lodged before it by a biological parent on behalf of his or her child, the situation may nonetheless be that the Court identifies conflicting interests between parent and child. A conflict of interest is relevant to the question of whether an application lodged by one person on behalf of another is admissible (see, for example, *Kruškić v. Croatia* (dec.), no. 10140/13, §§ 101-02, 25 November 2014). The Government have objected on such grounds in the instant case.

159. The Court considers that the question of a possible conflict of interest between the first and second applicants overlaps and is closely intertwined with those which it is called upon to examine when dealing with the complaint, formulated by the first applicant on her own behalf and on behalf of the second applicant, of violations of their right to respect for family life under Article 8. It discerns no such conflict of interest in the present case as would require it to dismiss the first applicant's application on behalf of the second applicant. Accordingly, the Government's objection must be dismissed.

B. Merits

1. The Chamber's judgment

160. The Chamber was satisfied that the domestic proceedings complained of were in accordance with 1992 Child Welfare Act and pursued the legitimate aims of "the protection of health or morals" and the "rights and freedoms" of X in accordance with Article 8 § 2 of the Convention. As to the further question whether the disputed interference was also "necessary", the Chamber considered that the first applicant had been fully involved in the domestic proceedings, seen as a whole, and that

the domestic decision-making process had been fair and capable of safeguarding the applicants' rights under Article 8. The majority of the Chamber further observed that the City Court had been faced with the difficult and sensitive task of striking a fair balance between the relevant competing interests in a complex case. In the majority's view, the City Court had clearly been guided by the interests of X, notably his particular need for security in his foster-home environment, given his psychological vulnerability. Also taking into account the City Court's conclusion that there had been no positive development in the first applicant's competence in contact situations throughout the three years in which she had had contact rights and the fact that the domestic authorities had had the benefit of direct contact with all the persons concerned, the majority of the Chamber found that there were such exceptional circumstances in the present case as could justify the measures in question and that the domestic authorities had been motivated by an overriding requirement pertaining to X's best interests.

2. The parties' submissions

(a) The applicants

161. The applicants submitted that in its judgment the Chamber had failed to take account of the particular context concerning Norway, namely that there was widespread criticism both nationally and internationally of the Norwegian child welfare system, indicating a serious systemic problem.

162. Under the Court's case-law, the margin-of-appreciation concept was, in the applicants' opinion, characterised by its casuistic nature. The margin to be accorded to the competent national authorities would vary in the light of the nature of the issues and the seriousness of the interests at stake. It was well established that in cases relating to placement of children in public care and adoption, the domestic authorities enjoyed a wide margin of appreciation. However, the Court tended to hide behind the margin-of-appreciation concept in a way which could to some extent undermine its control and functions.

163. Given the nature and seriousness of the interference at stake, the margin of appreciation ought to have been particularly narrow even in regard to the first child-welfare measures that had been taken. The Chamber majority had, moreover, not addressed the grounds for the extremely limited contact rights that had been granted from the beginning.

164. It was clearly established in the Court's case-law that the protection of the biological family was a priority. The instant case concerned a very young child; in such cases the authorities could act only on extraordinarily compelling grounds. X's particular vulnerability referred to by the domestic authorities in their decisions had never been supported by concrete and tangible evidence. Nor had his special care needs ever been explained, as pointed out by the minority in the Chamber.

165. Contact rights in Norway were notably restrictive and had been denounced by the Court in several cases. Considering that limited contact rights had a particularly detrimental impact in the first weeks, months and years of an infant's life, the facts of the instant case were particularly shocking. The first applicant's contact rights had been drastically limited without objective reasons and over a very short space of time. The imposition of extremely restricted access rights had destroyed any chance of family reunification and had made it impossible for X to forge natural bonds with the first applicant. Since the domestic authorities were directly responsible for the family breakdown, the argument that X had had no psychological bonds with his mother was unacceptable.

166. There had been a conflict between the first applicant, the foster mother and the child welfare services; a conflict of that nature was hardly exceptional and was readily understandable. The authorities had done absolutely nothing to pacify the first applicant's relations with the authorities and the foster mother. On the contrary, the foster mother had been present during all contact sessions, even though this had not been ordered or permitted by any of the domestic decisions. The positive obligation incumbent on the authorities under Article 8 of the Convention required that they proposed altering the terms of the contact rights or took decisions to that effect. The County Social Welfare Board and the City Court had focused only on the short-term consequences of a separation of X from his foster parents and had failed to consider the long-term impact on him of a permanent separation from his biological mother. The domestic authorities should have resorted to less intrusive measures.

167. The domestic authorities had not dealt with the case in good faith, quite the contrary. The alleged lack of caring skills on the part of the first applicant was firmly contradicted by the case-material. She could not be blamed for having asked the same questions several times when at the parent-child institution, and the institution's staff had threatened her with taking X into public care. While the expert reports contained global formulas such as "a severe lack of the abilities that are required in the mothering role", "problems with emotional regulation" and "inadequate basic parent skills", these had not been substantiated. There had been no concrete and tangible evidence to justify the alleged fundamental limitations of the first applicant and her caring skills.

168. Old and new research on infant attachment suggested that the domestic authorities had failed to abide by basic and fundamental attachment principles to support reunification. They had not proved that returning X to the first applicant would cause him serious problems.

(b) The Government

169. Overall, the Government invited the Grand Chamber to follow the approach of the Chamber majority, which had been correct and exemplary

both in interpretation and application of Convention law. In contrast, they cautioned against the Chamber minority's attempt to carry out a "forensic examination of the facts": reassessing facts that had been established by the national courts many years ago risked making the review arbitrary and was contrary to the Court's fourth-instance doctrine.

170. The Government argued that the domestic decision-making process had been fair and capable of safeguarding the applicants' rights under Article 8 of the Convention. The case had been reviewed independently and impartially by several levels of court.

171. The child's best interests, which had changed over time, were paramount. The first applicant sought to assert her right to family life, but although she had submitted a claim that had to be assessed under Article 8 of the Convention, it was in essence not so much a claim for the protection of existing "family life", as an assertion of a biological right even under circumstances involving little or no actual attachment. The second applicant, X, also had a right under Article 8 to have his family life protected. The question therefore arose as to whether his "family life" consisted of his biological ties to the first applicant or of the only family life that he had known, namely with the persons who had assumed care for him since he was three weeks old and who, in his mind, were his actual parents.

172. The case involved competing interests, but there was no consensus among the Contracting States as to the extent to which public authorities could interfere with family life in the interests of the well-being of a child, which suggested that they should be accorded a wider margin of appreciation. In the case under consideration, the reasons given by the domestic authorities for the impugned decisions had been relevant and sufficient. X had been subjected to very serious neglect during the first weeks of his life. The first applicant had subsequently failed to show any development with regard to her approach to him. X was vulnerable to a repetition of the same pattern of disturbances and reactions. If his care needs were not met, there was a risk of retraumatisation and a reversal of positive development with regard to his functioning. The first applicant had continued to appear "completely devoid of any such empathy and understanding" that would be called for should X be returned to her.

173. The domestic authorities had complied with their positive obligations. The first applicant had not accepted help from the child welfare services. The authorities had also taken note of her recent marriage and second child, but those developments had not been sufficient to outweigh the necessity of the impugned measures. The Chamber minority had erroneously assumed that the inquiry made by the child welfare services in the municipality to which the first applicant had moved had disclosed "no shortcomings".

174. The Chamber minority had disregarded Article 35 § 1 of the Convention and had "reopened" earlier cases. In doing so, the minority had

wrongfully applied the standard of a "stricter scrutiny", not merely to the adoption decision, but also to the prior decisions relating to the taking into care of X. In addition, the minority had erred with respect to the facts. There had been a previous order awarding the minimum legal contact rights; further contact had not been precluded had this been in X's best interest. However, three experts had concluded that there had been no positive development whatsoever in the relationship between X and the first applicant. Rather than availing herself of the supportive measures, the first applicant had continued to use the contact sessions as an arena for cultivating her opinion that she had been a victim of injustice, instead of focusing on X. It had been primarily in the first applicant's and her family's view that there had been a "conflict" between the first applicant, the child welfare services and the foster mother.

175. In short, the circumstances had been exceptional and the impugned decisions had clearly been motivated by an overriding requirement pertaining to X's best interests. The City Court had succeeded in its difficult and sensitive task of striking a fair balance between the relevant competing interests in a complex case.

3. Third-party comments

(a) The Government of Belgium

176. The Government of Belgium stated that, while perceptions varied as to what manner of intervention with respect to child welfare was appropriate, Belgian legislation did not allow for adoption contrary to the biological parents' wishes. They further submitted that domestic authorities in cases such as the present one had to balance the best interests of the child against the interests of the biological parents. The Belgian Government went on to express a number of considerations as to the facts as they had been restated in the Chamber judgment, and highlighted that these differed from those in the case of *Aune*, cited above.

(b) The Government of Bulgaria

177. The Government of Bulgaria submitted that the child welfare case should be reviewed in its entirety because earlier decisions such as on placement in care and contact rights were intrinsically linked to the adoption proceedings. The Contracting Parties had a wide margin of appreciation when deciding on placement in public care, but a stricter scrutiny was called for in respect of any further limitations. When further limitations were involved, the Court was called upon not only to examine the procedural aspects of the decision-making process, but to go beyond the form, if necessary, and assess the substance of the case. Furthermore, the Bulgarian Government emphasised the positive duty to make concrete efforts to facilitate family reunification as soon as reasonably feasible and stressed

that it was not enough to show that a child could be placed in a more beneficial environment for his upbringing.

(c) The Government of the Czech Republic

178. The Government of the Czech Republic focused mainly on the approach of the respective authorities after emergency or permanent placements of children in foster care, since, they submitted, immediate active work with the biological families after the placement as well as the frequency of contact between the children and their biological parents appeared to be crucial factors in maintaining original family ties.

179. They further stressed that when assessing the compliance of authorities with their obligations under Article 8 of the Convention, the situation of all members of the family must be taken into account. There was a broad consensus, including in international law, that in all decisions concerning children, their best interests must be paramount. However, the "best interests" principle was not designed to be a kind of "trump card". Article 8 covered both the best interests of the child and the right of the parents to be assisted by the State in staying or being reunited with their children. The child welfare systems should not disregard the existence of the biological parents' rights, which should be duly taken into account and balanced against the best interests of the child, rather than minimised to the point of being ignored.

180. In addition, the Government of the Czech Republic emphasised the importance of contact between biological parents and their child in public care and other measures to reunite the family, *inter alia*, in order to ensure that a taking into care remained a temporary measure: restrictions on contact could be the starting point of the child's alienation from his or her biological family and, thus, of the impossibility for the family to reunite. In order for the effort to reunite the family to be serious, contact would have to occur several times a week, even under supervision or with assistance, and increase in time up to daily visits. If that were the case, it would be possible to talk about a slow establishment of a bond between the child and their biological parents. Speedy procedures were also required.

181. As to adoption, they maintained that the Court must strike a balance between the rights of the biological and the adoptive parents. The best interests of the child had to be assessed on an *ad hoc* basis that sometimes conflicted with other interests involved: there were other rights that had to be taken into account when determining whether or not a child should be considered adoptable.

(d) The Government of Denmark

182. The Government of Denmark argued that the domestic authorities had made a comprehensive and thorough evaluation of the matter, and the Court's assessment should be limited to an assessment of the decision-

making process. The Court should not, as had the Chamber minority, carry out a "forensic examination of the facts" and substitute its own assessment for that of the domestic courts, who had undertaken a balancing exercise in conformity with the criteria laid down in Article 8 of the Convention and the Court's jurisprudence.

183. The Chamber majority had made a correct assessment of the matter and there were no strong reasons why the Court should reassess the facts of the case as a fourth-instance tribunal several years after the incidents and based on documentary evidence presented to the Court. Reference was made to paragraph 28(c) of the Copenhagen Declaration. By expressing a dissenting opinion implying an entirely new assessment, the Chamber minority had attempted to don the mantle of a fourth-instance tribunal. The domestic authorities had clearly demonstrated that they had made a thorough assessment of the matter comprising a comprehensive balancing of opposing interests and had shown an understanding of the fact that the case concerned far-reaching intrusions into family and private life, and had also taken into account Article 8 of the Convention and loyally applied the criteria laid down in the Court's jurisprudence.

(e) The Government of Italy

184. The Government of Italy submitted that the first applicant's interests did not necessarily align with those of X. If the Court wanted to ensure that X's interests were looked after, it could indicate to the respondent Government that counsel should be appointed for him. Moreover, the Italian Government argued that the decisions taken prior to that concerning X's adoption had become final and if the Court were to re-examine them now in connection with the complaint against the adoption decision, this would run counter to Article 35 of the Convention. Those prior decisions were only facts and ought to be treated as such.

185. In addition, the Italian Government emphasised that there was no European consensus on the topic of protecting parents and children's rights to respect for their family life; the Contracting Parties had a wide margin of appreciation. There were examples in the Court's jurisprudence of cases that had been approached in contradiction to the general principles usually set out by the Court, cases where the Court had taken on a fourth-instance role and examined whether there existed circumstances justifying the removal of the child – which was linked to the idea of a "forensic examination of the facts" mentioned in the dissenting opinion in the Chamber judgment – as well as cases in which the Court had assumed that the best interests of the child coincided with those of his or her biological parents.

186. As to the best interests of the child, the Italian Government emphasised that in the relevant international materials a child was considered to be neglected when the parents did not maintain the necessary relations for his or her upbringing or development, or provide psychological

and material assistance. In that connection the Italian Government raised issues with long-term care; children in care lived in limbo between biological parents and substitute carers, with resulting problems such as loyalty conflicts. References were made to *Barnea and Caldararu v. Italy*, no. 37931/15, 22 June 2017 and *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017. Specialists and experts had emphasised that it was not a rule that biological family ties should be preserved, and that should only be the case where it represented a benefit to the child in the specific case. Only the national decision-makers could carry out the necessary assessment of that individual question. The Court did not have the necessary tools to be a fourth-instance tribunal and carry out a "forensic examination of the facts".

(f) The Government of Slovakia

187. The Government of Slovakia submitted that the Court's case-law was perfectly clear in that it primarily protected the biological family. Placing a child in foster care was an extreme measure and domestic authorities were required to adopt other measures if such were able to achieve the pursued aim. In particular, where a decision had been explained in terms of a need to protect the child from danger, the existence of such a danger should be actually established. Simultaneously, taking a child into care should be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child.

188. The Slovakian Government made further comments on a case in which Slovak citizens had been affected by child welfare measures and on international concern about child welfare measures adopted in the respondent State.

(g) The Government of the United Kingdom

189. The Government of the United Kingdom submitted that in cases such as the present the Court ought in principle to focus on the adequacy of the procedures and sufficiency of the reasons adopted by the domestic authorities, rather than undertake a *de novo* analysis of the facts.

190. The Court had enumerated a number of identifiable factors that were likely to be relevant in a case such as the present. The UK Government noted, in particular, that permanency was an inherent part of any adoption decision, and that a balancing of interests was required, but guided by the paramountcy of the best interests of the child. The child's bonds to his or her *de facto* family were therefore to be considered, and Article 8 of the Convention did not require that domestic authorities make endless attempts at family reunification.

191. With respect to subsidiarity, the UK Government pointed to paragraph 28 of the Copenhagen Declaration. In cases such as the present, account should be taken of the relative expertise and involvement of the domestic authorities compared with the Court, the level of participation of the parties affected by the domestic process, and the level of consensus amongst Contracting States. The seriousness of the intervention at issue was also relevant, but a closer scrutiny could not entail a fresh assessment of the facts and particularly not if considerable time had elapsed since the decision under review. The Chamber minority could be understood as seeking to establish that the Court should undertake its own assessment of the underlying facts, rather than reviewing the decisions, particularly by its reference to the need for "a forensic examination of the facts" and by indications that the dissenting judges envisaged that the Court itself should render a "substantive" decision. The Grand Chamber was invited to reject this approach; as had been stated by the Chamber majority, the Court was required to consider whether the domestic authorities had adduced relevant and sufficient reasons for their decisions, but only the domestic authorities were in a position to determine what was in the child's best interests.

(h) ADF International

192. ADF International submitted that family was internationally recognised as the fundamental group of society and of particular importance to children. According to the Court's case-law, the Contracting Parties were required to organise their child welfare services in a manner aimed at facilitating family reunification, unless there was clear evidence of danger to the child's welfare. Furthermore, ADF International emphasised the duty to maintain contact between parents and children and to provide practical assistance to families.

(i) The AIMMF

193. The AIMMF emphasised the importance of personal participation of the natural parent, with legal assistance, before the domestic authorities, as had been the case for the first applicant. In addition to making some comments on the emergency decision, the organisation also highlighted the need for the child to have legal assistance in order to ensure that his or her best interests be protected.

194. Furthermore, the AIMMF submitted that the multi-disciplinary composition of the County Social Welfare Board and the City Court was a particularly important aspect that had also been highlighted by the Court in *Paradiso and Campanelli*, cited above, § 212. Decision-makers with multi-disciplinary competences formed a crucial aspect of a justice system adapted for children.

195. Moreover, the organisation emphasised the importance of bearing in mind that this case concerned X specifically, and solutions had to be

found for him in the light of his vulnerability and history, including the experiences with contact sessions and his ties to the foster parents. Based on the Chamber judgment, the Chamber majority had shown a greater understanding of X's needs than what was reflected in the dissenting opinion. It was precisely on the basis of X's individual circumstances and history that the domestic authorities had arrived at the conclusion that it was in his best interests to strengthen his relations with the foster parents.

(j) The AIRE Centre

196. The AIRE Centre invited the Court to reiterate that the Convention was a "living instrument" and that the evolving nature of children's rights under the Convention on the Rights of the Child had to be taken into account.

197. As to the assessment of the child's best interests, the organisation emphasised the importance of family unity and the child's right to be heard, as protected by Article 12 of the Convention on the Rights of the Child. With respect to the thresholds for removal and adoption of a child, the organisation reiterated the principles relevant to the questions of necessity and proportionality. It further pointed to the need for both legal certainty and flexibility, and highlighted "*adoption simple*" or long-term fostering as alternatives to a "closed" adoption. While it could be that in very exceptional circumstances it would not be in a child's best interests to retain contact with the birth parents (for example, when those parents had been operating a paedophile ring or engaging in child trafficking or serial child abuse), this conclusion should not flow automatically from the decision that the child needed a stable, permanent home that was not with the birth parents.

198. The AIRE Centre further submitted that children of parents with intellectual disabilities were commonly taken away as infants, with neglect such as slow weight gain, general failure to thrive, and lack of understanding of children's needs, as the primary concern. Parents with intellectual disabilities had the right to support and, *inter alia*, General Comment No. 14 (2013) to the Convention on the Rights of the Child stressed this positive obligation.

(k) The adoptive parents

199. X's adoptive parents submitted that his representation before the Court raised a crucial question in the case. The principle of the best interests of the child had also to be applied to the procedural rules of representation. Under the Court's case-law, the rules relating to representation of children had been flexible and applied so as to ensure that all relevant interests would be brought to the Court's attention. Allowing the natural parents to represent a child who had a protected family life with foster or adoptive

parents did not ensure an effective protection of the child's rights under the Convention.

200. According to the Court's case-law, "family life" was essentially a question of fact. Striking a fair balance between the public interest and the many different private interests at play had been emphasised by the Court as particularly important in a case where the child had developed family ties with two different families. Reference was made to, *inter alia*, *Moretti and Benedetti v. Italy*, no. 16318/07, 27 April 2010. Due regard also had to be given to other ties that had formed, for instance with siblings.

201. Furthermore, the Court's case-law had established the principle of the best interests of the child as the paramount consideration and the decisive factor in cases relating to the placement in public care and adoption of children. The Grand Chamber should seek to combine the case-law concerning family life between the child and the foster parents and that concerning the paramountcy of the best interests of the child in the instant case.

4. The Court's considerations

(a) General principles

202. The first paragraph of Article 8 of the Convention guarantees to everyone the right to respect for his or her family life. As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that is or are legitimate under its second paragraph and can be regarded as "necessary in a democratic society" (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII; and *Johansen*, cited above, § 52).

203. In determining whether the latter condition was fulfilled, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, among many other authorities, *Paradiso and Campanelli*, cited above, § 179). The notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests (ibid., § 181).

204. In so far as the family life of a child is concerned, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities,

Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 135, ECHR 2010). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Jovanovic*, cited above, § 77, and *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX).

205. At the same time, it should be noted that regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8. Accordingly, in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible (*K. and T. v. Finland*, cited above, § 178).

206. In instances where the respective interests of a child and those of the parents come into conflict, Article 8 requires that the domestic authorities should strike a fair balance between those interests and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents (see, for instance, *Sommerfeld v. Germany* [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts)), and the references therein).

207. Generally, the best interests of the child dictate, on the one hand, that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see *Gnahoré*, cited above, § 59). On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, *Neulinger and Shuruk*, cited above, § 136; *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII; and *Maršálek v. the Czech Republic*, no. 8153/04, § 71, 4 April 2006). An important international consensus exists to the effect that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (see Article 9 § 1 of the United Nations Convention on the Rights of the Child, recited in paragraph 134 above). In addition, it is incumbent on the Contracting States to put in place practical and effective procedural safeguards for the protection of the best interests of the child and to ensure their implementation (see the United Nations Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the

child to have his or her best interests taken as a primary consideration, paragraphs 85 and 87, quoted at paragraph 136 above).

208. Another guiding principle is that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, for instance, *Olsson v. Sweden (no. 1)*, 24 March 1988, § 81, Series A no. 130). The above-mentioned positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see, for example, *K. and T. v. Finland*, cited above, § 178). In this type of case the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent with whom it does not live (see, *inter alia*, *S.H. v. Italy*, no. 52557/14, § 42, 13 October 2015). Thus, where the authorities are responsible for a situation of family breakdown because they have failed in their above-mentioned obligation, they may not base a decision to authorise adoption on the grounds of the absence of bonds between the parents and the child (see *Pontes v. Portugal*, no. 19554/09, §§ 92 and 99, 10 April 2012). Furthermore, the ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other (see *Scozzari and Giunta*, cited above, § 174; and *Olsson (No. 1),* cited above, § 81). However, when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *K. and T. v. Finland*, cited above, § 155).

209. As regards replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants' legal ties with the child are definitively severed, it is to be reiterated that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see, for example, *Johansen*, cited above, § 78, and *Aune*, cited above, § 66). It is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family (see *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011).

210. In determining whether the reasons for the impugned measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of

the Convention, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *K. and T. v. Finland*, cited above, § 154; and *Johansen*, cited above, § 64).

211. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care (see, for example, *K. and T. v. Finland*, cited above, § 155; and *Johansen*, cited above, § 64). However, this margin is not unfettered. For example, the Court has in certain instances attached weight to whether the authorities, before taking a child into public care, had first attempted to take less drastic measures, such as supportive or preventive ones, and whether these had proved unsuccessful (see, for example, *Olsson (no. 1)*, cited above, §§ 72-74; *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013, § 86; and *Kutzner v. Germany*, no. 46544/99, § 75, ECHR 2002-I). A stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (see *K. and T. v. Finland*, cited above, ibid., and *Johansen*, cited above, ibid.).

212. In cases relating to public-care measures, the Court will further have regard to the authorities' decision-making process, to determine whether it has been conducted such as to secure that the views and interests of the natural parents are made known to and duly taken into account by the

authorities and that they are able to exercise in due time any remedies available to them (see, for instance, *W. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121, and *Elsholz*, cited above, § 52). What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case (see, for example, *W. v. the United Kingdom*, cited above, § 64; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V (extracts); *Neulinger and Shuruk*, cited above, § 139; and *Y.C. v. the United Kingdom*, no. 4547/10, § 138, 13 March 2012). From the foregoing considerations it follows that natural parents' exercise of judicial remedies with a view to obtaining family reunification with their child cannot as such be held against them. In addition, in cases of this kind there is always the danger that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. Equally, effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time (see *W. v. the United Kingdom.*, cited above, § 65).

213. Whether the decision-making process sufficiently protected a parent's interests depends on the particular circumstances of each case (see, for example, *Sommerfeld*, cited above, § 68). With a view to its examination of the present instance, the Court observes that in the aforementioned case it was called upon to examine the issue of ordering a psychological report on the possibilities of establishing contact between the child and the applicant. It observed that as a general rule it was for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B). It would be going too far to say that domestic courts are always required to involve a psychological expert on the issue of awarding contact to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sommerfeld*, cited above, § 71).

(b) Application of those principles to the present case

214. It is common ground between the parties, and the Court finds it unequivocally established, that the impugned decisions taken in the proceedings instituted by the first applicant on 29 April 2011 (see paragraph 81 above), starting with the Board's decision of 8 December 2011 and ending with the Supreme Court Appeals Board's decision of 15 October 2012, entailed an interference with the applicants' right to respect for their family life under the first paragraph of Article 8. It is

further undisputed that they were taken in accordance with the law, namely the Child Welfare Act (see paragraph 122 above), and pursued legitimate aims, namely the "protection of health or morals" and "rights and freedoms" of X. The Court sees no reason to hold otherwise. The interference thus fulfilled two of the three conditions of justification envisaged by the second paragraph of Article 8. The dispute in the present case relates to the third condition: whether the interference was "necessary in a democratic society".

215. Bearing in mind the limitations on the scope of its examination as described in paragraphs 147 to 148 above, the Court will centre its examination on the City Court's review as reflected in its judgment of 22 February 2012, which ultimately gained legal force on 15 October 2012 when the Supreme Court Appeals Board dismissed the first applicant's appeal (see paragraphs 98-113, 118 and 121 above).

216. At the outset the Court notes that the City Court's bench was composed of a professional judge, a lay person and a psychologist. It held a three-day hearing that the first applicant attended together with her legal-aid counsel and in which twenty-one witnesses, including experts, gave testimony (see paragraph 98 above). In addition, the Court notes that the City Court acted as an appeal instance and that proceedings similar to those before that court had previously been conducted, and similarly extensive reasons given, by the County Social Welfare Board, which had also had a composition similar to that of the City Court (see paragraphs 89-95 above). The City Court's judgment was subject to review in leave-to-appeal proceedings before the High Court (see paragraphs 114-18 above), which were in turn examined by the Supreme Court Appeals Board (see paragraphs 119-21 above).

217. In its judgment the City Court decided not to lift the care order for X, to deprive the first applicant of her parental responsibilities for him and to authorise his adoption by his foster parents, in accordance with sections 4-21 and 4-20 of the Child Welfare Act respectively (see paragraph 122 above). While observing that the City Court relied on several grounds in order to justify its decisions, the Court notes that under the aforementioned provisions a central condition for the imposition of the impugned measures related to the natural parent's ability to assume care. Thus, pursuant to section 4-21, a precondition for revoking the care order was the high probability that the parent would be able to provide the child with proper care. Under section 4-20, consent to adoption could be given if it had to be regarded as probable that the parent would be permanently unable to provide the child with proper care.

218. The City Court assessed that issue primarily in the part of its reasoning devoted to the applicant's request to have the care order lifted, which can be summarised as follows. Her situation had improved in some areas (see paragraph 100 above). However, X was a vulnerable child who had shown emotional reactions in connection with the contact sessions (see

paragraphs 101-02 above). The evidence adduced had clearly shown that the first applicant's fundamental limitations at the time of the High Court's judgment in the previous set of proceedings still persisted. She had not improved her ability to handle contact situations; she had affirmed that she would fight until the child was returned to her; and she had stated that she did not consider that public exposure and repeated legal proceedings could be harmful for the child in the long term (see paragraphs 103-04 above). Moreover, the experts who had testified in court, other than K.M., had advised against returning X to his mother (see paragraph 105 above). There was no reason to consider in further detail any other arguments regarding the first applicant's ability to provide care, since returning X to her was in any event not an option owing to the serious problems it would cause him to be moved from the foster home (see paragraph 106 above).

219. In deciding on the child welfare services' application for removal of the first applicant's parental responsibilities in respect of X and authorisation of the latter's adoption, the City Court endorsed the Board's reasoning regarding the alternative criteria in letter (a) of section 4-20 of the Child Welfare Act, namely that it had to be regarded as probable that the first applicant would be permanently unable to provide X with proper care or that X had become so attached to his foster home and the environment there that, on the basis of an overall assessment, removing him could cause him serious problems (see paragraph 108 above). In so far as the question of caring skills is concerned, the following findings of the Board are noteworthy in this context. There was nothing to indicate that the first applicant's caring skills had improved since the High Court's judgment of 22 April 2010. She had not realised that she had neglected X and was unable to focus on the child and what was best for him. Whilst note had been taken of the information that the first applicant had married and had had a second child, this was not decisive in respect of her capacity to care for X. He was a particularly vulnerable child and had experienced serious and life-threatening neglect during the first three weeks of his life. The Board had also taken account of the experience during the contact sessions. Moreover, since X had lived in the foster home for three years and did not know the first applicant, returning him to her would require a great capacity to empathise with and understand him and the problems that he would experience. Yet the first applicant and her family were completely devoid of any such empathy and understanding (see paragraph 90 above).

220. The Court is fully conscious of the primordial interest of the child in the decision-making process. However, the process leading to the withdrawal of parental responsibilities and consent to adoption shows that the domestic authorities did not attempt to perform a genuine balancing exercise between the interests of the child and his biological family (see paragraphs 207 and 208 above), but focused on the child's interests instead of trying to combine both sets of interests, and moreover did not seriously

contemplate any possibility of the child's reunification with his biological family. In this context, the Court, in particular, is not persuaded that the competent domestic authorities duly considered the potential significance of the fact that at the time when the first applicant applied to have the care order lifted or, in the alternative, to be granted extended contact rights she was going through substantial changes in her life: in the same summer and autumn as the impugned proceedings commenced she married and had a second child. In this regard, as the City Court's decision was largely premised on an assessment of the first applicant's lack of capacity to provide care, the factual basis on which it relied in making that assessment appears to disclose several shortcomings in the decision-making process.

221. The Court notes that the decisions under consideration had been taken in a context where there had only been very limited contact between the first applicant and X. The Board, in its decision of 2 March 2009, and the High Court, in its judgment of 22 April 2010 (overturning the City Court's judgment of 19 August 2009), had relied on the consideration that it was most likely that the foster care arrangement would be a long-term one, and that X would grow up in the foster home (see paragraphs 31, 43 and 75 above). The High Court stated that contact sessions could thus serve as a means of maintaining contact between the mother and son, so that he would be familiar with his roots. The purpose was not to establish a relationship with a view to the child's future return to the care of his biological mother (ibid.). As regards the implementation of the contact arrangements, the Court also notes that these had not been particularly conducive to letting the first applicant freely bond with X, for example with regard to where the sessions had been held and who had been present. Although the contact sessions had often not worked well, it appears that little was done to try out alternative arrangements for implementing contact. In short, the Court considers that the sparse contact that had taken place between the applicants since X was taken into foster care had provided limited evidence from which to draw clear conclusions with respect to the first applicant's caring skills.

222. Furthermore, the Court regards it as significant that there were no updated expert reports since those that had been ordered during the previous proceedings between 2009 and 2010 relating to the taking into public care. Those were the report by psychologist B.S. and family therapist E.W.A, ordered by the child welfare services and concerning X's reactions to the contact sessions in the beginning of September 2009 (see paragraph 58 above), and the report by psychologist M.S., who had been appointed by the High Court on 15 November 2009 (see paragraph 61 above). The former dated back to 20 February 2010 and the latter to 3 March 2010 (see paragraphs 62 and 63 above respectively). When the City Court delivered its judgment on 22 February 2012, both reports were two years old. Indeed, alongside other witnesses such as family members, psychologists B.S. and

M.S. also gave evidence during the hearing held by the City Court in 2012 (see paragraph 98 above). However, the two psychologists had not carried out any examinations since those prior to their reports dating back to early 2010 and only one of the reports, the one by psychologist M.S., had been based on observations of the interplay between the applicants, and then only on two occasions (see paragraph 63 above).

223. The Court does not overlook the fact that the child welfare services had sought information from the first applicant concerning her new family that she apparently refused to provide (see paragraphs 85 and 115 above). At the same time it notes that counsel for the first applicant had expressly requested that a new expert assessment be made but that the High Court dismissed the request (see paragraphs 114 and 118 above). Nor had the City Court ordered a new expert examination *proprio motu* in the course of the proceedings before it. While it would generally be for the domestic authorities to decide whether expert reports were needed (see, for example, *Sommerfeld*, cited above, § 71), the Court considers that the lack of a fresh expert examination substantially limited the factual assessment of the first applicant's new situation and her caring skills at the material time. In those circumstances, contrary to what the City Court seems to suggest, it could not reasonably be held against her that she had failed to appreciate that repeated legal proceedings could be harmful for the child in the long run (see paragraphs 104 and 218 above).

224. In addition, from the City Court's reasoning it transpires that in assessing the first applicant's caring skills it had paid particular regard to X's special care needs, seen in the light of his vulnerability. However, whereas X's vulnerability had formed a central reason for the initial decision to place him in foster care (see, for instance, paragraphs 31 and 42 above), the City Court's judgment contained no information on how that vulnerability could have continued despite the fact that he had lived in foster care since the age of three weeks. It also contained barely any analysis of the nature of his vulnerability, beyond a brief description by experts that X was easily stressed and needed a lot of quiet, security and support, and stating his resistance to and resignation toward having contact with the first applicant, notably when faced with her emotional outbursts (see paragraphs 101 to 102 above). In the view of the Court, having regard to the seriousness of the interests at stake, it was incumbent on the competent authorities to assess X's vulnerability in more detail in the proceedings under review.

225. Against this background, taking particular account of the limited evidence that could be drawn from the contact sessions that had been implemented (see paragraph 221 above)**,** in conjunction with the failure – notwithstanding the first applicant's new family situation – to order a fresh expert examination into her capacity to provide proper care and the central importance of this factor in the City Court's assessment (see

paragraphs 222-3 above) and also of the lack of reasoning with regard to X's continued vulnerability (see paragraph 224 above), the Court does not consider that the decision-making process leading to the impugned decision of 22 February 2012 was conducted so as to ensure that all views and interests of the applicants were duly taken into account. It is thus not satisfied that the said procedure was accompanied by safeguards that were commensurate with the gravity of the interference and the seriousness of the interests at stake.

226. In the light of the above factors, the Court concludes that there has been a violation of Article 8 of the Convention in respect of both applicants.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

227. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

228. The applicants each claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

229. The Government asked the Court, in the event of a finding of a violation, to afford just satisfaction within the limits of Article 41 of the Convention.

230. The Court considers that awarding damages to the first applicant is appropriate in this case, having regard to the anguish and distress that she must have experienced as a result of the procedures relating to her claim to have X returned and the child welfare services' application to have her parental responsibilities for X withdrawn and his adoption authorised. It awards the first applicant EUR 25,000 under this head. In respect of X, having regard to his age at the relevant time and to the fact that he did not experience the procedures in question in the same way as the first applicant, the Court finds that a finding of violation can be regarded as sufficient just satisfaction.

B. Costs and expenses

231. The applicants also claimed EUR 50,000 for the costs and expenses incurred before the domestic authorities and the Chamber and EUR 9,564 for those incurred before the Grand Chamber.

232. The Government asked the Court, in the event of a violation, to afford just satisfaction within the limits of Article 41 of the Convention.

233. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

234. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and before the Chamber, since the applicants have not shown that these expenses were actually incurred. As to the costs and expenses before the Grand Chamber, the Court observes that apart from travel expenses, the claim is submitted with reference to a contingency (no-win no-fee) arrangement, according to which the first applicant is obliged to pay counsel EUR 9,000 in the event of "success before the European Court of Human Rights". Agreements of this nature – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred but also to whether they have been reasonably incurred (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI). Accordingly, the Court must as a basis for its assessment examine the other information provided by the applicants in support of their claim. In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part (see, *inter alia*, *A, B and C v. Ireland* [GC], no. 25579/05, § 281, ECHR 2010). In the instant case, the Court, taking into account that the claim has not been contested, considers it reasonable to award the sum of EUR 9,350 for the proceedings before the Grand Chamber. In the circumstances, it is appropriate to award this compensation to the first applicant only.

C. Default interest

235. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Dismisses*, by fifteen votes to two, the Government's preliminary objection;

2. *Holds*, by thirteen votes to four, that there has been a violation of Article 8 of the Convention in respect of both applicants;

3. *Holds*, by sixteen votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the second applicant;

4. *Holds*, by thirteen votes to four,
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Norwegian kroner (NOK) at the rate applicable at the date of settlement:
      (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 9,350 (nine thousand three hundred and fifty euros), plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the first applicant's claim for just satisfaction.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 September 2019.

Søren Prebensen	Linos-Alexandre Sicilianos
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Ranzoni, joined by Judges Yudkivska, Kūris, Harutyunyan, Paczolay and Chanturia;

(b) concurring opinion of Judge Kūris;

(c) joint dissenting opinion of Judges Kjølbro, Poláčková, Koskelo and Nordén;

(d) joint dissenting opinion of Judges Koskelo and Nordén.

L.A.S.
S.C.P.

CONCURRING OPINION OF JUDGE RANZONI, JOINED BY JUDGES YUDKIVSKA, KŪRIS, HARUTYUNYAN, PACZOLAY AND CHANTURIA

I. Introduction

1. I have voted with the majority in finding a violation of Article 8 of the Convention. However, I partly disagree with the reasoning which, to my mind, does not sufficiently address the main issues which led to the case being referred to the Grand Chamber. In this respect, the majority opted for an excessively narrow approach, entailing a very limited "procedural" violation.

2. The present case can be summarised as follows. On 25 September 2008 the first applicant gave birth to her son, the second applicant. Subsequently, she stayed with him at a family centre. On 17 October 2008 the authorities decided to place the baby in a foster home on an emergency basis, allowing the mother to visit her son for up to one and a half hours per week. By decision of the County Social Welfare Board of 2 March 2009 he was taken into ordinary foster care, and the duration of the mother's contact was set at two hours, six times per year. This decision was revoked by the City Court, but the High Court, in a judgment of 22 April 2010, upheld the Board's decision on compulsory care and reduced the mother's contact rights to four two-hour visits per year. The child remained in foster care until the Board decided on 8 December 2011 to remove the mother's parental authority and to authorise the foster parents to adopt him. Upon an appeal by the first applicant, the City Court on 22 February 2012 upheld that decision, which became final with the Supreme Court Appeals Board's decision of 15 October 2012.

3. Whereas the majority's reasoning focused on the proceedings surrounding the Board's decision of 8 December 2011 and, in particular, the City Court's judgment of 22 February 2012, in my view the "real" issues to be addressed related to the proceedings prior to these decisions and to the specific legal situation in Norway.

II. Shortcomings in the period before December 2011

4. According to the Court's case-law, a care order should be regarded as a temporary measure and, in principle, be consistent with the ultimate aim of reuniting the natural parents and the child (see paragraphs 207-208 of the judgment). In the present case, however, this ultimate aim was absent from the outset of the domestic proceedings. On 21 November 2008 – two months after the child's birth and one month after issuing the care order – the Office for Children, Youth and Family Affairs stated that the boy would

need "stable adults who can give him good care" (see paragraph 30). Seven days later the Social Welfare Board, in the application for a care order, assumed "that it would be a matter of a long-term placement and that X would probably grow up in foster care" and that the applicant's capacity as a mother would be "limited" (see paragraph 31).

5. Even at this early stage the Board did not pursue the aim of reuniting the child with his mother. In its decision of 2 March 2009 – four and a half months after the care order – the Board again envisaged that the child would grow up in the foster home. It emphasised that this would mean "that the foster parents would become X's psychological parents, and that the amount of contact had to be determined in such a way as to ensure that the attachment process [between the foster parents and the child], which was already well under way, was not disrupted" (see paragraph 43). On 22 April 2010 – eighteen months after the care order – the majority of the High Court confirmed that the purpose of the contact sessions was not to establish a relationship with a view to the child's future return to the care of his biological mother (see paragraph 75).

6. Furthermore, the authorities in no way facilitated the development of a good relationship between the mother and her son. On the contrary, the contact sessions were extremely limited – two hours, respectively four and six times a year – and had to take place under supervision and in the presence of the foster mother, sometimes even in the foster home. Under such circumstances these sessions were obviously unable to create a positive atmosphere and to facilitate any rapprochement between mother and child. The authorities' argument that the child's reactions would decrease and the degree of contact could be improved if the sessions became less frequent (see paragraph 75) cannot be considered as anything other than cynical.

7. The domestic authorities never considered the foster care of the child as a temporary measure with the ultimate aim of reuniting the mother and her child, and they did not seriously engage in supporting the mother with a view to improving her capacity as a mother. In this respect, they disregarded the Court's case-law and their respective obligations.

8. The authorities' attitude concurs with the domestic law, setting a very low threshold for taking a child into public care, but an extremely high threshold for discontinuing this public care (see, in particular, section 4-21 of the Child Welfare Act, referred to in paragraph 122). In order for the foster care order to be revoked, the parents have to show that it is "highly probable" that they would be able to provide the child with proper care. Such a requirement is problematic in the light of the Court's case-law and the State's duty to take measures in order to facilitate family reunification as soon as reasonably feasible (see paragraph 208). The Child Welfare Act also seems to grant the authorities unfettered discretion. Moreover, even if in a specific case the parents succeeded in this regard, their attempts would be futile if "the child has become so attached to persons and the environment

where he or she is living that ... removing the child may lead to serious problems for him or her" (see, again, section 4-21 of the Act). In other words, the simple passage of time makes it most unlikely that a care order will ever be revoked.

III. The majority's approach and my own view of the case

9. The focus of the majority's reasoning lay in the assessment of the proceedings of 2011-12, entailing the withdrawal of the first applicant's parental responsibilities for her son and the consent to his adoption. More precisely, the majority centred their examination on the City Court's review as reflected in its decision of 22 February 2012 (see paragraph 215). However, the judgment does not as such deal with the shortcomings in the period from the issuing of the care order in October 2008 until the Board's decision of November 2011. These flaws are briefly mentioned in paragraphs 220 and 221, but solely in order to explain the shortcomings that occurred in the proceedings before the City Court in 2012, particularly the fact that the sparse contact which occurred between the applicants had provided only limited evidence from which to draw clear conclusions with regard to the mother's caring skills. This aspect, together with the lack of updated expert reports, led the majority to conclude that the decision-making process leading to the City Court's decision of 22 February 2012 was flawed and in "procedural" violation of Article 8 of the Convention.

10. I am of the opinion that the finding of a violation of Article 8 is not easily reconcilable with such a narrow approach, and I would have preferred to assess the case more broadly and to look at the "full picture".

11. The judgment only examines the decision-making process before the City Court, which on 22 February 2012 upheld the Board's decision to withdraw the applicant's parental responsibilities and consent to adoption. However, although some shortcomings in this decision-making process before the City Court may have occurred, it should also be recognised that at that point – by which time the child had already lived for three years and four months with the foster parents – the national court had to some extent its hands tied, on account of the previous events and proceedings as well as the simple passage of time. It was confronted with a kind of *fait accomplis*. At that stage the balancing exercise between the interests of the child and those of his biological family would almost inevitably have led to the result of the child remaining with his foster family. As confirmed by the experts and accepted by the court, the child had developed such an attachment to his foster parents, his foster brother and the general foster home environment that it would entail serious problems if he had to move, since his primary security and sense of belonging were in the foster home and he perceived the foster parents as his psychological parents (see, in particular, paragraph 106 of the judgment).

12. The Court should not disregard the reality of life, and it should not engage in a formalistic assessment of the City Court's decision of 22 February 2012 and overemphasise, in particular, the lack of updated expert reports. It seems more than questionable whether any new report on the mother's abilities could at that point in time have overruled the child's best interests in staying with the foster parents. The main shortcomings, for which the authorities were responsible, did not occur in the proceedings of 2011-12, but rather had occurred at the earlier stages.

13. The judgment does not directly address these main shortcomings, due to the lack of jurisdiction (see paragraph 147). While, strictly speaking, it is correct that the Court does not have jurisdiction to review as such the compatibility of the decisions that predated or were reviewed by the High Court's judgment of 22 April 2010 with Article 8 of the Convention, this does not exclude the possibility that the previous flaws can, nevertheless, be addressed directly.

14. The majority (referring to *Jovanovic v. Sweden*, no. 10592/12, § 73, 22 October 2015, and *Mohamed Hasan v. Norway*, no. 27496/15, § 121, 26 April 2018) conceded in paragraph 148 that, in its review of the proceedings relating to the decisions taken in 2011-12, the Court was required to put these proceedings and decisions in context, which inevitably meant that it had to some degree to have regard to the former proceedings and decisions. While I accept that statement as such, I disagree with the majority's narrow understanding of the "related" proceedings, as well as with their restricted interpretation of the "degree" of regard.

15. The judgment examines only the decision-making process directly surrounding the City Court's decision of 22 February 2012. To my mind, the Court should have assessed the entire inter-connected process which ultimately led to the impugned decision. This "process" should, particularly in a case such as the instant one, be understood in a broader context. It concerns not only the final proceedings before the courts, but extends to the previous proceedings before the administrative authorities, which were intrinsically linked to the later proceedings resulting in the impugned decision. Therefore, "related proceedings" should include all relevant actions, omissions and decisions by the authorities which paved the way for the final court decisions, built their inseparable factual and/or legal basis and predetermined their outcome to a large extent.

16. In this respect, the Court has stated in previous cases that the necessity of the interference needs to be assessed in the light of the case as a whole (see, for example, *Paradiso and Campanelli* [GC], no. 25358/12, § 179, 24 January 2017). The Court cannot confine itself to considering the impugned decisions in isolation (see *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no 130, § 68). The decisions relating to the withdrawal of the first applicant's parental responsibilities and the authorisation of the adoption have thus to be placed in context, which means

in my understanding to be put in direct context with the preceding proceedings and the respective facts. It seems to me that the term "case as a whole" should, at least in the present circumstances, be understood in this broader sense, that is, not limited to the final court proceedings, but extended to the full process surrounding a given case and the actual consequences of the decisions taken within that process.

17. Such an approach finds some support in the Court's case-law. Therefore, let us examine to what degree the Court had regard in other cases to the "related proceedings".

18. In *Gnahoré v. France* (no. 40031/98, ECHR 2000-IX) the application was lodged in 1997 and concerned, *inter alia*, a father's complaint against a decision taken in 1996 dismissing his request to have a care order lifted. However, the Court's assessment was not restricted to these proceedings, but also explicitly included the original care order of 1992, the subsequent measures and the several renewals of the care order (ibid., §§ 56-58).

19. In *K. and T. v. Finland* ([GC], no. 25702/94, ECHR 2001-VII) two children were taken into emergency care in June 1993 and one month later were placed in "normal" public care. Whereas the latter decisions were upheld in court proceedings, the former decisions were not appealed against. The Court accepted that the ratification of the emergency care orders had "in effect" been confirmed by the normal care orders and had dispensed the applicants from filing a separate appeal (ibid., § 145). It therefore assessed also the emergency care orders, although the application had been lodged with the Court more than one year after these orders had been issued, and although the Court found that there existed substantive and procedural differences between the two sets of proceedings and that the respective decisions were of different kind.

20. In *Zhou v. Italy* (no. 33773/11, 21 January 2014) the applicant complained about the adoption of her child, decided by court decisions in 2010. However, the Court considered that the decisive point consisted in establishing whether the domestic authorities, before extinguishing the legal relationship between mother and child, had taken all necessary and adequate measures that could reasonably be required in order for the child to live a normal family life within his own family (ibid., § 49). It therefore assessed all of the authorities' previous decisions relating to the placement of the child in a foster family and the mother's contact rights.

21. In *Jovanovic* (cited above) the Court first declared inadmissible the complaints concerning the decision to take the child into public care. However, in its assessment of the complaints concerning the subsequent decision not to terminate the public care, the Court nevertheless examined in some detail the proceedings which had resulted in the first care order and found that the national authorities' decision to place the child in compulsory public care was "clearly justified" (ibid., § 78). Therefore, the Court did not

limit itself to placing the later decisions in the simple context of these preceding proceedings, but took an explicit stand on the justification of the previous decisions, even though it had declared the respective complaints inadmissible.

22. Finally, in the recent case of *Mohamed Hasan* (cited above), the Court began by limiting its examination to the proceedings concerning the removal of parental responsibility and adoption, declaring the earlier proceedings on placement in care to be relevant only in so far as it was necessary for the Court to have regard when carrying out its examination of the later proceedings. However, in a kind of *obiter dictum* the Court stated that there were no grounds to assume that the procedural issues in the previous care proceedings had consequences for the later adoption proceedings "or [for] the case overall in such a manner that they require further examination by the Court when assessing the applicant's complaints against the removal of parental authority and adoption" (ibid., § 151).

23. In contrast, these requirements are fulfilled in the present case. The preceding care proceedings between 2008 and 2011 actually had decisive consequences for the decisions taken in the subsequent 2011-12 proceedings and thus did require such further examination by the Court when assessing the applicants' complaints against the removal of parental responsibility and the adoption.

24. In such a situation the Court is compelled to scrutinise, as set out, *inter alia*, in the above-cited *Zhou* case, whether the domestic authorities, before extinguishing the legal relationship between parent and child, had taken all necessary and adequate measures that could reasonably be required in order for the child to live a normal family life within his own family. In so doing, it needs to take into account all previous proceedings that were intrinsically linked to this final decision, irrespective of whether or not the previous decisions were officially taken within the same formal framework of adoption proceedings or in separate proceedings preceding the adoption proceedings.

25. As already mentioned above, the authorities in the present case failed from the outset to pursue the aim of reuniting the child with his mother, but rather immediately envisaged that he would grow up in the foster home. This underlying assumption runs like a thread through all stages of the proceedings, starting with the care order. The City Court's decision of 22 February 2012 – taken when the child had already lived with the foster parents for three years and four months – seems to have been merely the "automatic" and "unavoidable" consequence of all the previous events and decisions. In other words, the shortcomings from October 2008 onwards led to the *de facto* determination in 2011-12 that the relationship between the applicants had broken down.

26. This aspect also formed an essential element of the dissenting opinion to the Chamber judgment. The minority underlined that the

decisions to place the child in care "fed inexorably into the decisions leading to adoption, created the passage of time so detrimental to the reunification of a family unit, influenced the assessment over time of the child's best interests and, crucially, placed the first applicant in a position which was inevitably in conflict with that of the authorities which had ordered and maintained the placement and with the foster parents, whose interest lay in promoting the relationship with the child with a view ultimately to adopting him." While not calling into question the decisions of the domestic authorities regarding placement, the minority held that it was "not possible to ignore the sequence of events which preceded and led to the adoption" (see paragraph 18 of the separate opinion). I fully agree with these considerations.

27. Furthermore, it must be emphasised that assessing the "process" at national level and the reasons given by the domestic authorities does not mean, as the Chamber majority did and, to an extent, the Grand Chamber majority have also done, exclusively focussing on the procedural steps taken. Procedural requirements have no end in themselves, but they rather provide a means for protecting an individual against arbitrary action by public authorities. Therefore, one must look beyond and behind the formalities of a procedure. The authorities' attitudes and objectives have likewise to be examined. Procedural assessment cannot be reduced exclusively to an assessment of the form taken by the final decisions. If at national level, as in the present case, the authorities performed only a "formalistic" assessment from the outset, without a real and substantive engagement in taking account of all interests involved and without balancing these interests in the light of the Court's case-law on Article 8 of the Convention, the proceedings seen "as a whole", including the relevant previous decisions and actions, were not conducted in a satisfactory manner and were not accompanied by safeguards commensurate with the gravity of the interferences and the seriousness of the interests at stake.

IV. Conclusion

28. I would very much have hesitated to vote in favour of finding a violation of Article 8 of the Convention had I been required to follow the majority's approach and formally to assess only the review proceedings leading to the City Court's decision of 22 February 2012 – at a time when the child had already lived with the foster parents for three years and four months. However, by examining the case as brought before the Court in a broader manner and addressing the "real" issues related to the proceedings prior to the said decision, which were the actual source of the problem, I had no difficulties in joining the majority with regard to the outcome of this application and in finding that there has been a violation of Article 8 in respect of both applicants.

CONCURRING OPINION OF JUDGE KŪRIS

1. I (together with some other colleagues) have joined the Concurring opinion of Judge Ranzoni. Here I add only a few remarks.

2. It has been observed by many that case-law in general (not only that of the Strasbourg Court) has become increasingly "analytical" in the disruptive sense of the word, in that the facts which are complained of by litigants and, accordingly, the application of law to these facts tend to be severed into small parts, which are then dealt with separately. In a recent Grand Chamber case (with a different subject matter) my two colleagues and I expressed our disagreement with the majority's decision to split, artificially and very formalistically, the period under consideration into two parts and to assess only the later part of it as a separate period, notwithstanding the fact that whatever took place during that latter "period" had its roots in the preceding one (I refer to the separate opinion of judges Yudkivska, Vehabović and myself in *Radomilja and Others v. Croatia*, [GC], nos. 37685/10 and 22768/12, 20 March 2018). In the present case a similar structural problem has been created.

3. From whichever angle we consider it, reality is a whole. This is a matter of fact – and of principle. While it has been admitted in the present judgment that "in its review of the proceedings relating to the County Social Welfare Board's decision of 8 December 2011 and the decisions taken on appeal against that decision, notably the City Court's judgment of 22 February 2012, the Court will have to put those proceedings and decisions in context, which inevitably means that *it must to some degree have regard* to the former proceedings and decisions" (see paragraph 148; emphasis added), it is unclear what that "degree" is and what is meant by "having regard".

Courts must not leave ambiguities in their judgments. Here, an ambiguity has been deliberately created.

4. I surmise that the ambiguity in question has something to do with the formula that has been repeated and made use of in so many cases, to the effect that "the content and scope of the 'case' referred to the Grand Chamber are delimited by the Chamber's decision on admissibility" (see paragraph 144 of the present judgment). While in many instances the concurrence of the Chamber's and the Grand Chamber's views on the scope – temporal or material – of a given case does not raise problems, this is not always so (on this point, I refer to my separate opinion in *Lupeni Greek Catholic Parish and Others v. Romania*, [GC], no. 76943/11, 29 November 2016). Such "pruning" of the applicants' complaint is overly mechanical. It is undertaken without the Grand Chamber having itself considered the matter. What is more, the Chamber judgment whereby part

of an applicant's complaint is found inadmissible never becomes final. Thus, no legal basis for the "pruning" ever in fact comes into existence.

Although the Court's determination to "have regard [to some unspecified degree] to the former proceedings and decisions" (which, at least formally, are *not* under examination from the perspective of *their* compliance with Article 8 of the Convention) has helped to bypass the rigidity of the limits imposed on the Grand Chamber by the Chamber (through its never-finalised judgment), would it not be rational and fair, at some point in time, to look into whether these limits themselves are justified? For until this matter is properly addressed and reviewed, the Grand Chamber will constantly find itself obliged to invent ingenuous formulas in order to circumvent the obstacle which it has itself erected. What is at stake in such cases is the comprehensiveness of the Court's examination of the case.

Perhaps it is a fortunate coincidence that in the present case an acceptable outcome (a finding of a violation of Article 8) has been reached, despite the fact that a process which ought to have been examined as a whole was divided into two parts: the one formally under consideration, and the other only being "had regard" to.

5. Had the process in question been examined as a whole (that is, the initial period not merely been given "regard" to), it would have been even more obvious that the fundamental problem dealt with in this case lies not only and not so much in the concrete circumstances of the applicant's case, but rather, to put it very mildly, in certain specificities of the Norwegian policy which underlies the impugned decisions and the process as a whole.

It is hardly a coincidence that so many third-party interveners have joined the present case. They include those States whose authorities have had to deal with the consequences for their under-age citizens of the decisions taken by Norway's *Barnevernet*.

Sapienti sat.

JOINT DISSENTING OPINION OF JUDGES KJØLBRO, POLÁČKOVÁ, KOSKELO AND NORDÉN ON THE MERITS OF THE CASE

1. We have regrettably been unable to agree with the majority in its finding that there has been a violation of Article 8 in the present case.

2. Amongst ourselves we have taken different positions on the admissibility of the application in so far as the first applicant's right to pursue the complaint on behalf of the second applicant is concerned. As regards the merits of the case as declared admissible by the majority, however, our views are shared.

3. Essentially, we concur with the position taken by the majority in the Chamber, the judgment of which we find both well-considered and well-reasoned, and consonant with the proper role of this Court (see paragraphs 111-30 of the Chamber judgment).

4. In the following considerations, however, we would like to make some further observations arising from the subject matter of the present case and the approach taken by the majority.

Some remarks on the Court's general principles

5. We note at the outset that the present case concerns issues in relation to which the general principles developed in the Court's case-law have a rather long history, marked in part by changes in the societal and legal environment which informs the Court's approach to the rights of persons as individuals, family members and children. The complexity of the issues, the dynamics of the underlying factual and legal developments and the diversity of the values and contextual conditions prevailing in these matters have all contributed to a situation where, at present, the general principles as set out by the Court are riddled not only with some inevitable ambiguities but also with some undeniable tensions and outright contradictions, "internally" as well as in relation to the relevant specialised legal instruments, particularly the International Convention on the Rights of the Child (CRC).

6. One notable point of such tensions and contradictions concerns the question of how to reconcile the "sanctity" of the biological family with the best interests of the child – the latter as enshrined in the CRC, as well as in many subsequent constitutional provisions at national levels and in the EU Charter of Fundamental Rights. There is indeed no doubt that the removal of a child from his or her natural parents cannot be justified by a finding that such a measure would enable the child to be placed in a more beneficial environment for his or her upbringing. The principle according to which the removal of a child from the care of his or her natural parent(s) is subject to a test of necessity in terms of the child's best interests and is available only as

a measure of last resort is uncontroversial. The same is true for the position that the domestic authorities must be allowed a wide margin of appreciation in determining whether the best interests of the child do require that he or she should be taken into public care. The main point of difficulty and tension arises in situations where long-term measures come under consideration.

7. In the general principles as set out in the Chamber judgment, it was reiterated as "the guiding principle" that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see paragraph 105 of the Chamber judgment). Similarly, according to the present judgment, "regard for family unity and reunification... are inherent considerations in the right to respect for family life under Article 8" and, "in the case of an imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible" (see paragraph 205).

8. The dilemma is well illustrated by the above rendition of the position in the Chamber judgment. Under this approach, reuniting the natural parent(s) and the child is the "inherent" and "ultimate" aim and the "guiding principle" to be followed. This guiding principle is "subject to" the proviso that the "ultimate aim" (of reuniting the biological family) must be "balanced against" the duty to "consider" the best interests of the child. This gives the impression that the "ultimate aim" of reuniting the biological family might override the best interests of the child. Under the CRC, and similar constitutional or other provisions in many domestic legal orders, however, the position has evolved to one where the best interests of the child are recognized as a primary, or paramount, consideration – based on children's particular need for protection as dependent and vulnerable human beings. This in turn implies that the best interests of the child may, where the circumstances so demand, override the aim of reuniting the child with the biological parent(s).

9. The background of these two approaches can no doubt be traced back to the history and context of each legal instrument. The ECHR is rooted in the protection, and balancing, of the rights of everyone within a State's jurisdiction, including those who have formed a family, whereas the CRC is focused on strengthening and protecting children as holders of distinct individual rights. The tension referred to above should be neither over-emphasised nor ignored. It is always the case that efforts must be made

to reconcile the rights of each of the individuals concerned. There are, however, inevitable limits to the possibilities available for such reconciliation. Consequently, it may ultimately be necessary to decide which consideration takes precedence. In this sense, it does make a difference whether the determinative precept is that reuniting the biological family can take precedence over the best interests of the child, or whether the determinative precept is that the best interests of the child may take precedence even where this entails renouncing the child's reunification with his or her biological parent(s).

10. It appears undeniable that this remains a point of principle on which the Court is struggling. As a result, it has difficulty formulating general principles with all the desirable clarity and coherence.

11. Another manifestation of the tension referred to above is the fact that on the one hand, the Court has – quite rightly – been concerned about the impact of time on the prospects of successful family reunification. Thus, it has held that the positive obligation to take measures toward family reunification as soon as reasonably feasible will weigh on the authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see § 209 of the present judgment). On the other hand, the Court has also accepted that the impact of time may weigh against such reunification. Thus, it has held that when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *K. and T. v. Finland* [GC], no. 25702/94, § 155, ECHR 2001 VII). In this context, the Court has thus made it clear that the best interests of the child may ultimately take precedence over the "ultimate aim" of reunification.

12. Yet another manifestation of the tensions mentioned above is the fact that the Court has held that it is "in principle in a child's interests to preserve family ties, save where weighty reasons exist to justify severing those ties" (see paragraph 157 of the present judgment). However, especially in situations where it has been necessary to adopt care measures in respect of an infant and to maintain placement with a foster family for a long period, the child's *de facto* family life and family ties may be almost exclusively with the foster family rather than the biological parent(s). In this sense, too, the ultimate question may be which perspective, namely that of the child or that of the biological parent(s), and (accordingly) which family life, should take precedence.

13. These tensions in the general principles are bound to be a source of some real difficulties for the domestic authorities in several Contracting States, not least those where constitutional provisions entail that the best interests of the child be regarded as a pivotal consideration.

The majority's approach

14. In the present case, the position taken by the majority is presented as being concerned with the decision-making process at the domestic level. The key paragraph (§ 220) reveals, however, that the actual underlying problem as perceived by the majority is a substantive one, namely that the domestic authorities "focused on the interests of the child" and did not "seriously contemplate" the child's reunification with his biological family. This key passage recaptures and reveals the tension discussed above, and reflects the view taken by the present majority on the question of principles.

15. We find it problematic that the Court should proceed in this manner, effectively substituting its own preferences for the assessment made by the domestic authorities, despite the fact that the latter have carried out a thorough examination of the case in proceedings involving courts composed of both judicial and other professionals with expertise in the field, and on the basis of extensive evidence. The problem is not only that the Court is extremely ill-placed to take on a "fourth-instance" role in these kinds of situations. The more profound problem is that by giving priority to its own preferences as to how the competing interests should be weighted and balanced, the Court in effect curtails the margin of appreciation that it is important to preserve, especially in situations where the domestic authorities must consider individual rights and interests that may well be contradictory and where views may differ as to how the relevant values, principles and competing considerations should best be reconciled in the given circumstances. This is all the more so in a context such as the present one, where the domestic authorities are under a duty to fulfil positive obligations toward a vulnerable child.

16. In the present case, it clearly appears that the manner in which the majority have identified "procedural shortcomings" in fact arises from the substantive view taken, as a result of which the domestic authorities are faulted for "focusing on the interests on the child" instead of his reunification with the biological family. The majority thus consider that they are in a position to conclude that the "lack of a fresh expert examination substantially limited the factual assessment" (see paragraph 223 of the present judgment) and that any evidence that could be drawn from the contact sessions was "limited" (see paragraph 225).

17. Moreover, the majority even question the domestic court's findings concerning the (particular) vulnerability of X (the child). On this point, we refer to paragraph 224 of the judgment, where the majority imply doubts as to "how the vulnerability could have continued despite the fact that the child had lived in foster care since the age of three weeks", which is to be contrasted with paragraph 90, citing the Social Welfare Board's conclusion in this regard concerning the "serious and life-threatening neglect suffered by the child during the three first weeks of his life"). In this matter, our

reservations go beyond the problem of the Court adopting a "fourth-instance" mode. Members of the Court cannot be expected to be familiar with child psychology in general, or with research concerning the long-term effects of early neglect of an infant in particular. Furthermore, we find it highly problematic that the Court should question the domestic findings on the particular vulnerability of the individual child – which were reached by instances having taken evidence on this matter and possessing the professional expertise which this Court is clearly lacking – without having raised this particular question in the course of the proceedings before the Court, and thus without providing the parties with the opportunity to shed light on the "nature of the vulnerability" of X (the child), which the Court is apparently unable to comprehend or attach much credence to. The Court should ensure that issues identified as being of particular significance are subjected to adversarial debate.

18. In sum, this is a case where it is hard to avoid the conclusion that the majority dislike the outcome of the case at the domestic level and have sought to address the substantive objections or misgivings under the guise of procedural shortcomings. Yet the underlying value judgments and preferences deserve to be ventilated with greater transparency.

Our position

19. First of all, and limiting our attention now to the specific context of the impugned decisions (refusal to discontinue the care order, deprivation of parental rights, permission for the foster parents to adopt the child), we subscribe to the Court's case-law to the effect that measures which totally deprive a parent of his or her family life with his or her child and which thus abandon the aim of reuniting them should "only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see, for instance, *Jansen v. Norway*, no. 2822/16, 6 September 2918, § 93, and *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010).

20. In our view, there is no basis for the Court to conclude that the impugned decisions failed to comply with the above requirements, or to hold that there were any significant deficiencies in the domestic decision-making process.

21. Although the Court is concerned only with the most recent set of decisions, taken in 2012, it should not be overlooked that the case has a long history, starting with support measures put in place even before X (the child) was born, followed by assiduous support measures after his birth, with a view to assisting the mother in learning to take responsibility and care for her baby. Nor can it be overlooked that the care measures were triggered because the assistance provided, although intensive, proved to be unsuccessful. Instead, extremely serious circumstances arose which

rendered the care measures necessary for the protection of the child's life and health. The facts of the case as recounted in the present judgment provide plenty of insight into the challenges faced by the domestic authorities. In particular, it is to be noted that although the first applicant did not contest the High Court's care order of 2010, she appears not to have realised why any of the imposed measures had been deemed necessary, and continued to perceive the authorities' actions as a "conspiracy" against her (see paragraphs 77, 90 and 101 of the present judgment). Furthermore, it appears that the contact sessions were also affected by these difficulties, in that the first applicant's antagonism toward the welfare authorities and foster mother tended to prevail over her attention to the child (see paragraphs 90, 101-03).

22. As regards the particular point that no fresh expert report was requested on the alleged recent improvements in the mother's situation and caring skills (see paragraph 223 of the present judgment), we do not consider that the facts of the case justify departing from the usual approach under which it is for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see, in particular, *Sommerfeld v. Germany* [GC], no. 31871/96, § 71, ECHR 2003-VIII (extracts)). We find it rather far-fetched to criticise the City Court, as the majority do, for not having commissioned a new expert examination. The domestic court was informed of the positive developments in the mother's situation, and it was not in dispute that, together with her husband and assisted by a social worker, she was capable of taking care of her daughter. However, given the concurrent findings by the County Board and the City Court regarding the mother's striking lack of empathy and understanding with regard to X and the challenges entailed for the latter if he were to be returned to her care (see paragraphs 90 and 101 of the present judgment), together with his strong social and psychological attachment to his foster parents, we are unable to share the conclusion that the lack of a new expert examination could, in the circumstances of the present case, be considered a significant shortcoming in the domestic decision-making process.

23. In view of the facts of the case as recorded in the present judgment, it is clear that the domestic authorities were faced with a situation where serious issues were at stake in terms of the child and his best interests. It would be wrong, from the perspective of this Court, to underestimate the complexity and difficulty arising from such circumstances. Against this background, the domestic authorities should not, in our view, be criticised for having "focused on the best interests of the child". We are unable to perceive a sufficient basis for this Court to conclude that, in the particular circumstances of the case, their efforts were misguided or are to be regarded as an unjustified failure to reunify the child with his biological family (mother). Whilst it is true that the impugned measures were based on an assessment of what was required to secure the best interests of the child, we

can accept that in the present case, in the light of the facts of the case and the thorough examination given to them in the domestic proceedings, there were exceptional circumstances which justified the drastic measures taken, for reasons pertaining to the overriding requirement to protect the child's best interests (see point 19 above).

JOINT DISSENTING OPINION OF JUDGES KOSKELO AND NORDÉN ON THE QUESTION OF THE FIRST APPLICANT'S RIGHT TO REPRESENT THE SECOND APPLICANT

1. We have voted against point 1 of the operative part of the present judgment, whereby the majority dismiss the Government's preliminary objection concerning the first applicant's (i.e. the mother's) capacity to act before the Court also on behalf of the second applicant (i.e. the child). We consider that there is, in the circumstances of the present case, a conflict of interests between the mother and the child which is of such a nature as to preclude the mother from representing her child in the proceedings before the Court. In this respect, the present case exemplifies issues which, in our view, require changes to be made in the practice followed by the Court to date.

General remarks

2. As holders of rights under the Convention, children give rise to particular challenges in terms of the procedural safeguarding of those rights, in that, as minors, they are unable to act on their own as applicants before the Court. It has been acknowledged in the case-law that the position of children under Article 34 of the Convention calls for careful consideration, since children must generally rely on other individuals to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense (see *A.K. and L. v. Croatia*, no. 37956/11, § 47, 8 January 2013, and *P., C. and S. v. the United Kingdom* (dec.), no. 56547/00, 11 November 2001). The Court has found it necessary to avoid a restrictive and purely technical approach in this area; in particular, consideration must be given to the links between the child in question and his or her "representatives", to the subject-matter and the purpose of the application and to the possibility of a conflict of interests (see S.*P., D.P. and A.T. v. the United Kingdom*, no. 23715/94, Commission decision of 20 May 1996, unreported; *Giusto, Bornacin and V. v. Italy* (dec.), no. 38972/06, ECHR 2007-V; and *Moretti and Benedetti v. Italy* (no. 16318/07, § 32, 27 April 2010). One example of a case where the situation of minors was considered to justify granting *locus standi* to a relative who had lodged an application only on behalf of the minors and not on her own behalf is that of *N.TS. and Others v. Georgia*, no. 71776/12, §§ 55-59, 2 February 2016).

3. In situations involving public care measures, the Court's concern has been the danger that the child's interest may not be brought to the Court's attention and that the child will therefore be deprived of effective protection

of his or her rights under the Convention. In the event of a conflict between a natural parent and the State over a minor's interests with regard to the question of deprivation of custody, the State as holder of custodial rights cannot be deemed to ensure the child's Convention rights, which is why the natural parent has been recognised as having *locus standi* on behalf of his or her child before the Court, even though the parent may no longer be vested with parental rights as a matter of domestic law (see *Lambert and Others v. France* ([GC], no. 46043/14, § 94, ECHR 2015; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000 VIII; and *Sahin v. Germany* (dec.), no. 30943/96, 12 December 2000).

4. While this approach is understandable and justifiable in the light of the underlying concern relating to minors' access to the Court, it nevertheless gives rise to problems in situations where the natural parent who wishes to act on behalf of the child is himself or herself involved in the facts of the case in such a way that the parent's and the child's interests are not aligned but are instead in conflict.

5. This brings us to the crux of the issue. The need to ensure effective protection of the rights of minors under the Convention entails two key requirements: firstly, it must be possible to bring before the Court complaints alleging the violation of a child's Convention rights; secondly, the child's interests must be properly represented in proceedings brought on behalf of a child. Focusing on the first aspect is not sufficient for the effective protection of the rights of children. The second aspect becomes acute precisely in situations where the circumstances of the case indicate that there may be a conflict between the interests of the person acting on behalf of the child, be this a natural parent or anyone else, and the child himself/herself.

6. The need to distinguish between the positions of the parent and the child, particularly in situations involving measures taken by the domestic child-welfare authorities, is accentuated by the fact that their perspectives may differ. From the perspective of the parent any measures taken – notably where they are imposed against his or her will – constitute interference in family life between the parent and the child, whereas from the perspective of the child such measures represent fulfilment of the positive obligations incumbent on the State authorities *vis-à-vis* the child in order to protect the his or her rights and vital interests, while simultaneously entailing an interference in the child's existing family life. The very context and its complex nature thus indicate that the two perspectives, that of the parent and that of the child, may not be aligned on the question of the necessity and justification of the impugned measures.

7. Ensuring the proper representation of the child in proceedings before the Court is all the more important when, as is often the case, the issues to be resolved depend on an assessment of whether the best interests of the child have been adequately safeguarded at the domestic level. The concept

of the child's best interests is a broad, multifaceted and complex one. It comprises various elements which, in the specific circumstances of a given case, may be in a relationship of tension or conflict with each other. The perception of where a child's best interests lie in specific situations may depend on the perspective taken, especially for those personally involved, and become intertwined with the individual's own interests. When a serious conflict has arisen between a natural parent and the State's child-welfare authorities over the child's interests, the reality is that neither those authorities nor the parent whose acts or omissions are at issue can be regarded as detached from that conflict. If the child's rights and best interests are to be taken seriously, the child needs independent representation by a person who is not involved in the underlying conflict and is capable of taking the child's perspective in the matter.

8. The International Convention on the Rights of the Child, adopted already three decades ago and in force for nearly as long, established the position of a child as a subject of distinct individual rights. As stated in its Preamble "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection" (citing the Declaration of the Rights of the Child, adopted by the UN General Assembly on 20 November 1959). Accordingly, the key standard of the child's best interests has an important procedural component, also set out in the General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. In this document, the UN Committee on the Rights of the Child states, *inter alia*: "The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies. In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision."

9. In this Court, the need for a child to be separately and independently represented in situations of a conflict of interest between the child and the parent purporting to act on both his or her own and the child's behalf has so far not been given the attention it requires. The case of *X, Y and Z v. the United Kingdom* (no. 21830/93, 22 April 1997, *Reports of Judgments and Decisions* 1997-II) appears to have been the first occasion where, in a context different from the present one, Judge Pettiti in his concurring opinion referred to the conflict of interests between parents and children and observed that in similar situations arising in the future, "it would no doubt be desirable for [the Commission and] the Court to suggest to the parties that a lawyer be instructed specifically to represent the interests of the child alone". This suggestion, however, has remained without impact on the Court's practices.

10. It appears clear to us that changes are required in this respect, but also that the present legal framework governing proceedings before the Court is not adequate to meet the needs of ensuring that children are able to have both access to and appropriate, non-conflicted representation in proceedings before the Court. In this context, it seems necessary to make a distinction between the admissibility of an application lodged on behalf of a child by a natural parent (or other person) and the right to represent the child for the purposes of submissions relating to the merits of alleged violations of that child's rights under the Convention.

11. This issue merits consideration by the Court and the Contracting Parties in order to develop adequate solutions and practices, taking into account also the need to comply with the constraints set out in Article 35(1) of the Convention (see, in this respect, the recent joint concurring opinion by Judges Koskelo, Eicke and Ilievski in the case of *A and B v. Croatia*, no. 7144/15, 20 June 2019).

Assessment in the present case

12. Turning to the present case, the majority "discern no such conflict of interest in the present case as would require it to dismiss the [mother's] application on behalf of the [child]" (see paragraph 159 of the judgment). We are unable to agree with this assessment, which furthermore is devoid of any explanation or reasoning.

13. On the contrary, the existence of a conflict of interests is in our view obvious in the light of the facts of the case. When assessing this particular issue – and notwithstanding the position taken on the scope of the Court's examination on the merits (with which we are in agreement), namely that the latter must be limited to the proceedings which resulted in the domestic judgment by the City Court on 22 February 2012, which subsequently became final – it is also pertinent to take into account the background to the measures taken by the child-welfare authorities in respect of the second applicant. The facts of the case as established by the domestic courts show that during her first pregnancy the first applicant was identified as requiring assistance and support once the child would be born. Having given birth, she was accommodated in a specialised facility with a view to receiving such assistance and support, foreseen as lasting for three months. Even in the early days of this stay, the professionals in charge of the facility grew increasingly concerned about the mother's ability to care for the infant and satisfy his basic needs, including feeding and hygiene. The situation was serious, as baby was suffering from dramatic weight loss. The staff were forced to introduce round-the-clock monitoring in order to safeguard him, including measures to wake the mother up at night-time to ensure she would feed her newborn (see paragraph 20 of the present judgment). However, less than three weeks into a stay scheduled to last three months, the mother

announced her intention to leave the facility with the baby, which is when and why the initial emergency care measure was imposed (ibid.).

14. Thus, the facts from which the present case originate lie in a situation where the assistance and support given to the mother had to be replaced by emergency care measures, because the mother's behaviour and her intention to abandon the support and assistance put in place gave rise to a real risk of life-threatening maltreatment of the newborn child. Yet the facts as they transpire from the case file also show that the mother was unable to understand, even at the time of the impugned proceedings before the City Court, why the measures had been taken, and was unaware that there had been any neglect of the baby on her part (see paragraphs 101 and 220 of the present judgment). Instead, she perceived the imposed measures as being based on lies (as per her complaint to the County Governor; see paragraph 77 of the judgment) and characterised them as a conspiracy against herself (statement to the County Social Welfare Board in 2011; see paragraph 90 of the judgment).

15. If such circumstances do not make for a conflict sufficing to preclude the mother from acting before the Court to represent not only her own position but also the interests of her child, it is difficult to see what would. The interests at stake cannot be assimilated with each other; there is a stark tension between them. Neither the fact that the issue raised before the Court concerns a domestic decision to sever the legal ties between the mother and the child, nor the Court's case-law according to which it is in principle in a child's interests to preserve family ties, nor the fact that the domestic proceedings were conducted while the mother was vested with parental rights over the child (see paragraphs 156-57) are capable of overriding the existence of a conflict of interests arising from the specific circumstances of the case. In our opinion, such a conflict cannot be disregarded when determining whether the parent may act on behalf of the child throughout the proceedings before this Court.

Conclusion

16. In our opinion, the facts show the existence of a clear and serious conflict of interests. Under such circumstances, the first applicant should not have been allowed to represent her child before this Court.

17. It is high time for the Court to reconsider its approach and practices regarding the issue of permitting a natural parent to act on behalf of his or her child even where the circumstances of the case indicate an actual or potential conflict of interests between them. If the Court is genuinely to embrace, in line with the Convention on the Rights of the Child, the idea of children as subjects of distinct individual rights and the need to regard the best interests of the child as a primary consideration, it appears necessary to make changes also in the procedural practices.

Korea Klubben

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6. november 2019

Ankestyrelsen
7998 Statsservice

Vedrørende høring angående undersøgelsen af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016.

Vi ønsker at bidrage med information til denne høring, da vi mener, et vigtigt tema er negligeret i det oprindelige skema.

Vi fremstiller undren over den manglende repræsentation af de voksne adopterede. På nuværende tidspunkt tilhører vi en kategori afhængig af adoptivfamilierne. Det er blot en understregning af den infantilisering, vi som oftest oplever i systemet.

Den nye PAS-ordning for voksne adopterede burde derfor stå isoleret og ikke som en underkategori, der udspringer fra støtte til adoptivforældrene.
Den omtalte PAS-ordnings permanentgørelse er imødekommende over for de voksne adopteredes udfordringer. Vi har erfaret markant gavn af ordningen og ønsker derfor, at denne fortsætter.

Ydermere vil vi gøre opmærksom på den manglende hjælp til de børn og unge voksne, der nu befinder sig i Danmark.
Vi foreslår, at man afsætter midler til et støtteprogram, hvor voksne adopterede støtter og videreformidler viden om adoption til unge adopterede. Dette program skulle være et mentorprogram.
Da vi er en forening, hvor adopterede drager nytte af indbyrdes erfaringer, ved vi, hvor gavnligt dialog med ligesindede er.

Hos Korea Klubbens søsterforening har man stor succes med mentorprogrammet. Also-Known-As. Inc i New York hjælper unge adopterede på områder, hvor PAS-ordningen alene viser sig utilstrækkelig.

Vi håber, dette vil tilgås med stor alvor og værdsætter muligheden for at bidrage til denne høring.

Venlig hilsen

Sanne Mogensen

Næstformand, Korea Klubben

Karin Rønnow Søndergaard København/Aalborg 1. november 2019

Ankestyrelsen
7998 Statsservice

Ankestyrelsen - Høring angående undersøgelsen af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016

"Åbenhed i Adoption (ÅIA) har følgende svar og kommentarer til Ankestyrelsens høring angående undersøgelsen af mulighederne for et nyt adoptionssystem og evalueringen af adoptionsreformen fra 2016.

ÅIA arbejder for adopteredes rettigheder iht. FN's Børnekonvention.
ÅIA vil gerne gøre opmærksom på, at adopteredes organisationers høringssvar til helhedsanalysen (Socialministeriet, 28. juni 2013) desværre ikke blev taget i betragtning ved adoptionsreformen fra 2016.

Vi anmoder om følgende bliver taget i betragtning, før der bliver taget flere tiltag til nye adoptionssystemer:

FN's Børnekonvention implementeres fuldt ud i Ankestyrelsens arbejde med børn og familier.
Haagerkonventionen er i modstrid med FN's Børnekonvention, herunder artikel 7, 8, 20 og 21 litra b (subsidaritetsprincippet). Dertil legitimerer Haagerkonventionen ikke finansiering til adoptionsbureauer. Adoptionsbureauerne er private virksomheder.

Der findes fortsat ingen uafhængig hjælp til adopterede, som søger oprindelig familie, genoprettelse af identitet og bevarelse af kontakt til oprindelig familie. DIA, Datatilsynet og Ankestyrelsen kan ikke hjælpe med genoprettelse af identitet.

Tidligere adoptionsskandaler bør stadig afdækkes og undersøges tilbundsgående, så disse kan forsøges undgået i fremtiden, og ofrene for disse kan få både undskyldning og kompensation, og de ansvarlige drages til ansvar. Dette fordrer en åbning og systematisk dybdegående gennemgang af alle adoptionssager til Danmark.

Der er utallige gange verden over, igennem tiden, forsøgt at evaluere og forbedre adoptionssystemet. Dette har ikke medført, at handlen med børn er blevet fjernet fra adoptionssystemet, eller at børn og familiers rettigheder er blevet respekteret. Det har ikke modvirket adopteredes traumer over mistet identitet, racistiske overgreb, mord eller selvmord.

Myndighedernes økonomiske, administrative og politiske støtte til adoptionsbureauerne, gør myndighederne og ministrene medansvarlige for overgreb, børnehandel, skandaler og krænkelser af FN's Børnekonvention.

Luk Danish International Adoption (DIA), før der påbegyndes og gennemføres yderligere adoptioner.

Åben alle gennemførte adoptioner op, både internationalt og nationalt, og påbegynd en systematisk gennemgang af dem alle.

Undersøg om adopterede special needs børn, både internationalt og nationalt adopterede, i Danmark har fået den støtte de har krav på i kommunerne og regionerne.

Opret et finansieret uvildigt organ af adopterede der kan varetage adopteredes rettigheder for høringsret, genoprettelse og opretholdelse af identitet, familiesøgning og kontakt, også til søskende, herunder DNA-tests og tilbagerejser, sprogkurser, uvildig gratis eller tilskudsberettiget psykolog/adoptionhealing bistand hele livet, kompensation mv.

Opret en fond med midler - bestyret af det uvildige organ - til at støtte adopterede i familiesøgning, DNA-tests, tilbagerejser, kontakt, sprogkurser mv.

Opret en kommission med deltagelse af det uvildige organ af adopterede der kan se på hvorledes de lande, der er adopteret fra, og fortsat adopteres fra, bedst kan støttes til at opbygge egne bæredygtige socioøkonomiske understøttende systemer til udsatte børn og kvinder/familier.

Dertil bør Danmark tage initiativ til oprettelse af en international fond der arbejder for at støtte disse lande i at opbygge bæredygtige alternativer til international adoption f.eks. ud fra Guardianship og børneby principperne og støtter lokale udsatte familier med behov for socioøkonomisk hjælp

eller/og specialpædagogisk støtte, præcis som den hjælp f.eks. enlige forsørgere i blandt andet Danmark får, tilpasset de enkelte landes prissætning og i respekt for deres egne ønsker.

Desuden bør der oprettes et center for åbenhed i adoption/åben adoption med levede erfaringer og uvildige ansatte der kan vejlede og bistå i søgning og kontakt i samråd med det uvildige organ, hvor adoptanter, adopterede og oprindelige familier, herunder søskende, kan få uvildig hjælp.

Opret et nationalt special register under Justitsministeriet til kvinder/forældre der siden 1955 og til igangværende sager i dag med og uden tvang bortadopterer deres børn til undersøgelse af de oprindelige familiers forhold, hvor mange børn det handler om og hvorfor kvinderne/forældrene bortadopterede. Vær opmærksom på skyggetal fra uregistrerede og illegale sager. Lav en undersøgelse om overgreb i adoptionerne baseret på telefon/interviews som udmøntes anonymt/navngivent i en offentlig rapport. Brug erfaringerne internationalt, da det er samme mønster i landene der adopteres fra.

Adopterede børn sikres samme ret i samme alder (førskole) til at blive hørt til ønsker om kontakt med oprindelige forældre som børn i skilsmisse, samværs- og bopælssager. Adopterede børn sikres retten til at vide, at de altid må høres uafhængigt af deres adoptivforældre. Der kan f.eks. oprettes en uvildig åben anonym børnetelefon for adopterede via det uvildige organ eller/og centeret for åbenhed i adoption/åben adoption.

Iværksættelse og uvildig økonomisk støtte til selvstændige initiativer fra særligt adopterede til vidensopsamling på området.

Guardianship- og uvildig adoptionsforskning samt forskning i totale familiebrud og adoption trafficking sættes på finansloven.

Det uvildige organ, kommissionen og centret for åbenhed i adoption/åben adoption skal sammen med Ankestyrelsen være VISO-leverandør."

Ankestyrelsen har fået til opgave at undersøge, hvordan der kan skabes en økonomisk bæredygtig struktur for den internationale adoptionsformidling i Danmark.

"Som svar på Ankestyrelsens opgave til at undersøge, hvordan der kan skabes en økonomisk bæredygtig struktur for den internationale adoptionsformidling i Danmark, gør ÅIA opmærksom på, at økonomisk

bæredygtighed og international adoptionsformidling ikke kan forenes, da økonomisk bæredygtighed i hjælpearbejde med børns bedste altid vil indebære, at børn hjælpes i egen familie, placeres i slægtspleje/adoption, pleje, institution, børneby eller adoption i eget fødeland, hvor langt flere børn og deres familier kan hjælpes socioøkonomisk bæredygtigt end de få børn der adopteres internationalt for flere penge, og måske har så særlige behov, at de ikke kan hjælpes medicinsk eller specialpædagogisk i egne fødelande, men heller ikke får rette støtte i Danmark.

Disse reelle special needs børn med betydelige og varige fysiske og psykiske funktonsnedsættelser kan Danmark ikke tage vare på, da de danske kommuner ikke har hverken specialiseret ekspertise eller økonomisk råderum til at hjælpe som Serviceloven ellers skal. Dette gælder også allerede adopterede børn og unge med betydelige og varige psykiske og fysiske funktionsnedsættelser i nationale adoptioner og tvangsbortadoptioner, der ikke støttes som de skal i kommunerne trods Serviceloven foreskriver, at de skal. Dette bør undersøges nærmere i alle gennemførte nationale adoptioner, før der tages stilling til om special needs børn overhovedet kan rummes i Danmark. Ellers er det en stort set umulig opgave for de danske adoptivfamilier.

Selvsagt kan der ikke findes en bæredygtig økonomisk model for international adoptionsformidling, da denne netop modvirker oprettelse og opretholdelse af bæredygtige beskyttende socioøkonomiske modeller i landene der adopteres fra. Erfaringen er, at pengestrømmene i international adoption skaber så stærke økonomiske incitamenter, at handel med børn finder sted på en måde, så selv de bedste intentioner og tilsyn ikke har mulighed for at udelukke dem. Det er et kæmpe problem, at adoptionsindustrien forhindrer lande i at oprette sociale offentlige og private systemer som Danmark selv gennem tiden har udviklet.

Såfremt myndighederne overtager adoptionsformidlingen, bliver myndighederne direkte ansvarlige for børnehandel og eventuel øvrig kriminalitet i den sammenhæng, som ex. kidnapning, afpresning, udbytning, overgreb, dokumentfalskneri, overtrædelse af børn og familiers menneskerettigheder, fejl i rapporter, forfalskning af persondata mv.

ÅIA anbefaler, at det eneste danske adoptionsbureau Danish International Adoption (DIA) lukkes, så den lempelige pengepolitik stoppes, da Haagerkonventionen ikke legitimerer finansiering af adoptionsbureauer og det tydeligt har vist sig, at de massive økonomiske vanskeligheder ikke kan afhjælpes varigt af endnu en tilførsel af midler fra staten som i 2018, og det dermed ikke har haft nogen egentlig effekt at fusionere AC Børnehjælp og Dan Adopt i 2014.

"NYT FRA SATSPULJEN (1.november 2018)
I dag har DIA modtaget en orientering om, at der gennem de næste år tilføres yderligere midler til adoption fra satspuljen.

Dette fremgår af aftaleteksten på Børne- og Socialministeriets hjemmeside:

"Der er sket en række væsentlige ændringer i formidlingsbilledet for international adoption siden indgåelsen af den politiske aftale fra 2014 om et nyt adoptionssystem i Danmark. Disse ændringer har skabt et væsentligt ændret økonomisk grundlag for international adoption. Aftalepartierne er derfor enige om, at der afsættes midler til at understøtte den nuværende struktur for international adoptionsformidling og til at undersøge, hvordan der kan skabes en bæredygtig struktur for formidlingsopgaven. Der afsættes i alt 3,1 mio. kr. i perioden 2019-2020."

Direktør Jeanette Larsen:

"Vi synes, at det er positivt at de udfordringer vi har peget på, er blevet imødekommet og at der bliver tilført midler til vores arbejde i de næste år. Nu afventer vi en nærmere tilbagemelding om, hvordan midlerne vil blive udmøntet, og når vi ved mere om det vil vi kunne orientere vores familier yderligere."

Formidlingsbilledet er ændret fordi international adoption lukker ned i de forskellige lande, fordi landene forsøger at opbygge egne bæredygtige socioøkonomiske systemer til at hjælpe børnene i egne fødelande, så de kan forblive i deres egne familier, deres eget land, med deres eget sprog, egen kultur og egen religion. Dette bør Danmark støtte, da det er det mest skånsomme for børnene og langt flere børn kan hjælpes.

DIA er tydeligvis under fortsat massivt økonomisk pres, præcis som Dan Adopt og AC Børnehjælp var, hvorfor høringen finder sted. Det har intet at gøre med et nyt og bedre adoptionssystem. Årsrapporten fra 2018 viser, at DIA har udsigt til minus i 2020, måske allerede i 2019, og næppe kan overleve trods yderligere statstilskud fra 2021.

ÅIA kan ikke anbefale nogle adoptionsansøgere at stille sig på venteliste hos DIA. Der er ikke argumentation for flere ansøgere med færre børn til international adoption. Der er kun gennemført 64 adoptioner i 2018 og formentlig færre endnu i 2019. DIA er ikke garanteret overlevelse med negative tal udover 2020. DIA sælger ud af deres akter og obligationer. Hvorfor har de overhovedet investeret i disse? En non-profit organisation? Forretningen er ikke bæredygtig og selvom statsstøtte måske vil give DIA 5 år mere på markedet, overlever DIA næppe. Derfor er det ikke bæredygtigt økonomisk at investere mere i DIA. Skal international adoption fortsætte, skal det nødvendigvis overgå til staten - ellers stoppes helt.

Det ses over hele verden at adoptionsbureauer lukker grundet mangel på børn til adoption. Information spredes hurtigt via internettet og skaber bevidsthed som modvirker det globale nords udnyttelse af det globale syd. Vi har set adoptionsindustrien flytte sig fra kontinent til kontinent, land til land for at finde nye steder, hvor adoption ikke har været kendt. En epoke er formentlig omsider ved at være slut.

Dog er den Europæiske Union særligt gennem de sidste 10 år blevet manipuleret af adoptions lobbyister og økonomiske investorer, hvilket har påvirket måden der ses på adoption og børns rettigheder. Den Europæiske Union har ikke kompetencer til legalisering af familielovgivning, det har de enkelte medlemslande suverænt selv. I 1997 bestemte Europarådet, at FN's børnekonvention er EU lov. Haager konventionen derimod er en privat lov som oprindeligt var ment til at

modvirke handel med børn, men i praksis i f.eks. Rumænien skabte netop et marked i børn, hvor der øverst i isbjerget lå adoption og under overfladen korruption, magtmisbrug og udnyttelse af børn i pædofile undergrundsmiljøer. Både den Europæiske Union og Europarådet krævede, at Rumænien skulle overholde FN's Børnekonvention, særligt artikel 21b der handler om at begrænse international adoption ved udelukkende at bruge den som en allersidste udvej efter at alle andre lokale muligheder som plejefamilie, institution eller lokal adoption er forsøgt afprøvet (subsidiaritetsprincippet).

USA, Israel, Frankrig, Spanien, Sverige, Danmark, Norge mv. valgte dog at fortolke børns rettigheder/barnets bedste på anden vis. På den ene side respekterer disse lande (med undtagelse af USA) – endnu – artikel 21b for deres egne børn, mens de benytter Haagerkonventionen i de lande de adopterer fra. Haagerkonventionen er tydeligvis i konflikt med artikel 21b, da den ikke ser plejefamilie eller anbringelse i institution som barnets bedste, kun som en kortere midlertidig transit, hvor hjemsendelse til familien, lokal eller international adoption er det eneste rigtige. De to første muligheder er underlagt strenge tidsbegrænsninger for gennemførelse, hvilket nærmest automatisk fører til international adoption.

ÅIA ser med meget stor bekymring på om de stærke økonomiske incitamenter, der udnytter barnløses drømme om adoption, lykkedes med at fjerne FN's Børnekonvention som EU lov, så den reduceres til anvisninger, hvor Haagerkonventionen promoveres stærkt, hvilket nu ses i f.eks. Bulgarien, hvor det lykkes med at ødelægge de gode initiativer der er taget lokalt, så international adoption igen kan dyrke rovdrift på udsatte børn og familier. UNICEF og EU kommissionen samarbejder om dette. EU er hovedsponsor af UNICEF.

EU medlemslande og tiltrædelseslande som Portugal, Bulgarien, Letland, Polen, Serbien og Montenegro mv. bliver kørt i stilling til adoptions afgiverlande. Det lykkes ikke at lave Den Europæiske Adoptionspolitik i årene 2006-2009, men nu prøves der igen under navnet Cross-border adoptions med alvorlige konsekvenser for udsatte familier der kunne hjælpes lokalt. Det er imod europæiske værdier og dansk lovgivning der kræver, at udsatte familier hjælpes til at beholde deres børn eller at børnene anbringes midlertidigt til de igen kan komme hjem. ÅIA ser derfor med stor bekymring på, at også Danmark gennemfører sandsynliggjorte tvangsadoptioner ud fra kritisable metoder. Lige nu foregår det lokalt. Vil det indgå i det europæiske Cross-border adoptionsprogram om nogen år? ÅIA henviser til Romania For Export Only, The Untold Story Of The Romanian 'Orphans' af Roelie Post, Against Child Trafficking (ACT) for forståelse af disse mekanismer.

Ankestyrelsens egen forskning i åben adoption viser tydeligt, at FN's Børnekonvention bør være "best practice" i adoption."Åbenhed i adoption

og betydningen heraf" sat i udbud og bestilt af Ankestyrelsen og udarbejdet af Inger Glavind Bo & Hanne Warming, Aalborg Universitet 2017 file:///C:/Users/ibenh/Downloads/%C3%85benhed%20i%20adoption.pdf

Åbenhed i adoptions (ÅIA) feedback på rapporten kan læses her: https://www.facebook.com/groups/aabenhediadoption/permalink/910095212529853/

Ankestyrelsen taler om at sikre kommende og nuværende adoptionsansøgere tryghed og sikkerhed i formidlingen. Adoption handler ikke om at finde børn til barnløse, men om at finde forældre til forældreløse. Mange børn har mindst en levende forælder eller mulighed for at blive i egen slægt eller i pleje i eget land med rette økonomiske støtte. Forældreløse eller børn der ikke kan bo hjemme har mulighed for plejeanbringelse i andre familier, Guardianship, børneby eller institution, såfremt disse systemer styrkes lokalt bæredygtigt økonomisk uden stærke økonomiske incitamenter fra udenlandske adoptionsbureauer og barnløse.

Bæredygtighed og fair trade er begreber der omhandler f.eks. økologiske bananer produceret under ordentlige forhold for mennesker og natur. Essensen i bæredygtighed er kort og godt en levemåde og produktion som ikke har konsekvenser for kommende generationer. International adoption har intet med bæredygtighed at gøre. De økonomisk sårbare familier taber og de rige familier vinder på den globale ulighed. Adoption har derfor massive konsekvenser for kommende generationer lokalt. Og de mange økonomiske tilskud til DIA er selvsagt ikke bæredygtigt økonomisk heller. Økonomisk bæredygtighed i international adoption er ikke eksisterende, men er et opfundet buzz-ord for at fastholde international adoption i en tid der er løbet fra international adoption.

International adoption er i krise, fordi tiden er løbet fra international adoption. Bag de oprindelige gode intentioner ligger udnyttelse og brud på FN's Børnekonvention. I stedet for at genopbygge et korthus, der hele tiden vælter, bør der i stedet for endnu "et nyt adoptionssystem" og udnyttelse af f.eks. sårbare tiltrædelseslande i EU, arbejdes for forandring og håndgribelige resultater i et globalt samfund med social og økonomisk lighed og lokal bæredygtighed, hvilket forudsætter en grundlæggende ændring i måden "barnets bedste" tænkes og økonomiske strømninger prioriteres."

- FNs Børnekonvention, gældende dansk lov.

  "I henhold til kgl. resolution af 5. juli 1991, og efter at Folketinget den 31. maj 1991 har meddelt sit samtykke dertil, har Danmark ratificeret en på De Forenede Nationers generalforsamling den 20. november 1989 vedtagen konvention om Barnets Rettigheder."

  "Artikel 7
  1. Barnet skal registreres umiddelbart efter fødslen og skal fra fødslen have ret til et navn, ret til at opnå

et statsborgerskab og, så vidt muligt, ret til at kende og blive passet af sine forældre.
2. Deltagerstaterne skal sikre gennemførelsen af disse rettigheder i overensstemmelse med deres nationale lovgivning og deres forpligtelser ifølge de relevante internationale instrumenter på dette område, især hvis barnet ellers ville blive statsløs.

Artikel 8
1. Deltagerstaterne påtager sig at respektere barnets ret til at bevare sin identitet, herunder statsborgerskab, navn og familieforhold, som anerkendt af loven og uden ulovlig indblanding."

https://www.retsinformation.dk/forms/r0710.aspx?id=60837

Ankestyrelsen har fået til opgave at evaluere adoptionsreformen af 2016 – adoptivfamiliens forhold. Herunder elementer der er velfungerende og elementer der kalder på justeringer.

"ÅIA mener ikke, at der er grundlag for at tale om at styrke de i forvejen privilegerede adoptivfamilier yderligere før adopteredes – samt deres oprindelige familiers - rettigheder styrkes, herunder implementering af FN's Børnekonvention, åbning og undersøgelse samt støtte og kompensation af alle allerede gennemførte adoptioner, oprettelse af uvildigt organ, fond og kommission samt center og nationalt special register til undersøgelse af oprindelige familiers forhold.

Udvælgelse af eventuelle kommende adoptanter bør ske ud fra en overholdelse af FN's Børnekonvention og en tilstræbelse af så vidt muligt at barnet mest skånsomt matches med de bedst egnede uanset nummer på venteliste, så der tages hensyn til barnets behov for ret til egen identitet, egen race dvs. racial spejling i match, sprog, kultur, religion mv., hvorfor ansøgere med oprindelse eller tilhørsforhold til barnets fødeland eller fast bopæl i barnets fødeland sammen med børnefaglige erfaringer, herunder erfaringer med forældresamarbejde, foretrækkes. Alle ansøgere skal tidligt i forløbet igennem psykologisk undersøgelse med hovedfokus på barnløshed, børnefaglig egnethed, samarbejde med oprindelig familie og racisme. Godkendelse skal indebære foretræde for det uvildige organ bestående af adopterede. Dette gælder internationale såvel som nationale adoptioner.

Ankestyrelsens PAS-rådgivning er ikke uvildig og skal enten erstattes af eller have supervision og deltagelse af det uvildige organ bestående af adopterede. Ansøgere og adoptanter skal helt obligatorisk deltage i rådgivning før, under og efter adoptionen i hele barndommen, præcis som plejefamilier (tilsyn).

Adoptantorganisationer, herunder landeforeninger, og adoptionsbureauer bør ikke være en del af dette, da disse ikke er hverken uvildige eller besidder de nødvendige børnefaglige kvalifikationer.

Adopterede skal frit kunne vælge gratis eller tilskudsberettiget uvildig psykologbistand/adoptionhealing på lige fod med PAS-rådgivningen.

Al erfaring med PAS-rådgivning viser, at den ingen brugbar viden har om racisme, familiesøgning og åbne adoptioner i praksis.

Der skal oprettes et center for åbenhed i adoption med levede erfaringer og uvildige ansatte der kan vejlede og bistå i søgning og kontakt, hvor adoptanter, adopterede og oprindelige familier, herunder søskende kan få uvildig hjælp. Adoptanter forpligtes til at gennemgå kurser i dette regi som en del af godkendelsen og forpligtelsen før og efter adoption. Al eksisterende viden sættes i spil og er tilgængelig på en måde, så den kan bringes i anvendelse hos de fagprofessionelle som møder adopterede og familierne omkring dem.

Alle adopterede fra børn til voksne har ret til at kende deres identitet, familie og historie hvor muligt. Alle adopterede fra børn til voksne har ret til at kende og rejse til deres fødelande og mulige familie og bevare en åben kontakt. Dette må aldrig være op til adoptanterne. Adopterede børn sikres samme ret i samme alder til at blive hørt til ønsker om kontakt som børn i skilsmisse, samværs- og bopælssager.

Alle oprindelige familier skal sikres retten til at kende deres børn med undtagelse af de ganske få sager, hvor dette er til direkte fare for barnets sikkerhed. Økonomisk bistand, juridisk bistand, psykologbistand mv sættes ind for at sikre de oprindelige familier dette.

Alle gennemførte adoptioner åbnes op.

Åbne adoptioner er ikke en ny metode til at gennemføre nye adoptioner. Børn i transit skal have undersøgt alle muligheder for at blive hos eller genforenes med forældre og slægt eller alternative anbringelsesformer i eget fødeland, og hvor der er kendt familie og slægt gennemføres adoptioner ikke. Barnet støttes i guardianship til at bevare en kontakt med familie og slægt i eget fødeland f.eks. i børneby-lignende koncepter, hvor familiekontakt kan ske. Alternativt kan adoptanter tage permanent ophold i børnenes fødelande.

Nationale og internationale tvangsbortadoptioner er ikke en acceptabel metode til at skaffe udsatte børn til barnløse, det er en økonomisk model der tilgodeser kommunernes økonomi. Gennem historien har tvangsadoption og tvangsforflytning af børn fra oprindelig slægt og kultur vist sig at være et uholdbart socialt eksperiment som mange nationer nu undskylder for. Historien har ligeledes vist, at disse børn har lidt massiv skade af indgrebene, den tabte identitet og tabte slægt og kultur. Hvorfor gentager Danmark historien?

Opret et nationalt special register under Justitsministeriet til kvinder/forældre der siden 1955 og til igangværende sager i dag med og uden tvang bortadopterer deres børn til undersøgelse af de oprindelige familiers forhold, hvor mange børn det handler om og hvorfor kvinderne/forældrene bortadopterede. Vær opmærksom på skyggetal fra uregistrerede og illegale sager. Lav en undersøgelse om overgreb i adoptionerne baseret på telefon/interviews som udmøntes anonymt/navngivent i en offentlig rapport. Brug erfaringerne internationalt, da det er samme mønster i landene der adopteres fra.

Styrkelse af guardianship fremfor totalt familiebrud ved adoption bør være vejen frem, så juridiske bånd til søskende og udvidet familie ikke brydes, selvom båndene til forældre måske brydes. Guardianship og forældremyndighed er to sider af samme sag. Hvis et barns forældre ikke er egnede til forældremyndighed, vil en kvalificeret værge få forældremyndigheden over barnet, men forældrene stadig være forældre. Er forældrene ikke egnede til at have barnet boende, kan barnet anbringes hos slægt, værge, plejefamilie, søskendehus, børneby, institution. Forældre eller/og slægt kan bevare en kontakt, hvor stor eller lille den måske er. Børnene bevarer en ret til identitet og ret til at kende til egen historie – også selvom der ikke længere er samvær. Kun i få særlige situationer, hvor barnet er i direkte fare bør ophør af kontakt finde sted. Barnets kendskab til historien bevares uanset.

Iværksættelse og uvildig økonomisk støtte til selvstændige initiativer fra særligt adopterede til vidensopsamling på området.

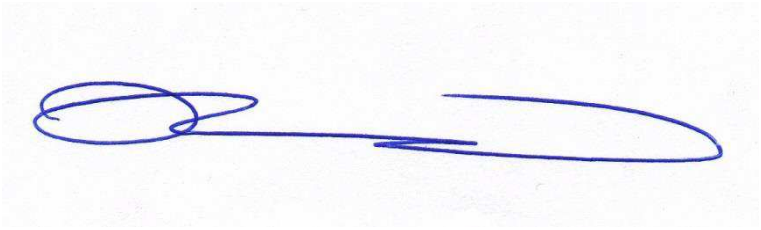
Uvildig guardianship- og adoptionsforskning samt forskning i totale familiebrud og adoption trafficking sættes på finansloven.

Det uvildige organ, kommissionen og centret for åbenhed i adoption skal sammen med Ankestyrelsen være VISO-leverandør.

ÅIA imødeser yderligere brugerinddragelse, særligt blandt adopteredes organisationer, og medvirker naturligvis meget gerne i videre dialog og

samarbejde om de massive udfordringer adopterede og udsatte familier der udnyttes til adoption står med.

Jin Vilsgaard jinvilsgaard@hotmail.com , adopteret, & Iben Krarup Brown Høgsberg ibenhoegsberg@gmail.com , adoptant, Åbenhed i adoption, København/Aalborg november 2019.



Bilag 5

"Exploring Potential Solutions to Improve the Danish Intercountry Adoption system for Children, January – July 2019" (ISS, juli 2019)

EXPLORING POTENTIAL SOLUTIONS TO IMPROVE THE DANISH INTERCOUNTRY ADOPTION SYSTEM FOR CHILDREN

January – July 2019

Prefatory note

This independent assessment was commissioned by the Division of Family Affairs, the Central Adoption Authority of Denmark (CA), which is part of the National Social Appeals Board, under the Ministry of Social Affairs and the Interior. It was carried out by Mia Dambach (Director, International Reference Centre for the Rights of Children Deprived of their Family and Coordinator of the Advocacy and Policy Development Unit) and Cécile Jeannin, (Coordinator, Research and Publication Unit) based at the General Secretariat of International Social Service[1], Geneva (ISS/IRC). A special thanks to Amanda Lowndes for her background research in preparing this report, as well as to Christina Baglietto and Lisa Robinson for their precious feedback and editing.

As this assessment was carried out by an independent team and consequently, any opinions and/or recommendations in the present report do not necessarily reflect the policies and views of actors in Denmark. Any recommendation seeks to be grounded in the framework of international standards, notably the 1993 Hague Convention.

The report is part of a broader study of the future structure for intercountry adoption mediation, which examines the role of different service providers in the adoption procedure in Denmark and explores alternatives to the current structure. Such service providers include the CA, competent authorities and bodies (including accredited adoption bodies) and other actors. One reason for the initiation of this broader study has been the decrease in the number of PAPs application and/or approvals since 2014, which has directly impacted upon the operations of Danish International Adoption (DIA), the sole accredited adoption body (AAB) in Denmark.[2]

In November 2018, resources were granted to initiate a study to explore the feasibility of a new and sustainable economic structure for international adoption mediation in Denmark. The objectives of the study are to identify alternatives to the current structure, including the degree of State involvement required by any proposed alternative. Likewise, consideration is given to improving the status quo as a way forward.

The report will therefore serve as a basis for political decisions about the structure for mediation in intercountry adoption. The study is undertaken by the National Social Appeals Board. A steering group has been appointed by the Ministry of Social Affairs and the Interior to approve the direction and framework of the study. This report by ISS/IRC has been included in the study at the request of the Division of Family Affairs, and provides its international expertise by way of assessing the current system and providing an analysis of the envisaged solutions in terms of advantages and disadvantages.

[1] ISS is an international non-governmental organisation that has consultative status with the United Nations Economic and Social Council (ECOSOC), as well as with UNICEF and other intergovernmental bodies. For more information, see https://www.iss-ssi.org/index.php/en/.

[2] DIA communication on 1 May clarifies that "according to the statistical data it is not the number of adoption applications that has declined since 2014, but the number of applicants that are actually approved. There has only been a small decline in the number of new applicants since 2014, from 169 in 2014 to 147 in 2017, whilst in the same period there has been a significant decline in the number of applicants that gets an approval, from 119 in 2014 to 57 in 2017."

The report aims to:

- Analyse the current system and the role and competences of each actor involved
- Discuss the advantages and disadvantages of at least three possible solutions
- Examine solutions with a view of maintaining the ethical Danish intercountry adoption system in any future developments

To this end, in addition to reviewing pertinent documentation, the authors of the assessment undertook remote interviews with the Danish CA, DIA and State Administration bodies, including the Secretariat of the Joint Council in January and February 2019. A pre-mission report was shared with the Danish CA to help frame the assessment. An in-country visit to Denmark occurred on 11 and 12 March 2019, where relevant actors, notably governmental officials and DIA, were met with. A first draft version of the report was reviewed by the Danish CA, the National Board of Adoption, the Agency of Family Law and DIA with helpful suggestions to improve the accuracy of our findings and clarify our understanding of the current system. A revised version was then submitted to the Danish CA for any final comments.

We would like to express sincere thanks to all the actors (see Annex 1) that provided valuable input throughout the drafting of this report, remotely and in person. A special note of thanks to Thomas Colerick, Karina Haahr-Pedersen, Sidsel Lund Nielsen and Karin Rønnow Søndergaard for giving us the privileged opportunity to be part of the Danish reforms and their endless hours of assistance in understanding the issues at stake.

We hope that this report will build on the momentum of multiple initiatives and political will for ensuring intercountry adoptions are truly in the child's best interests.

Mia Dambach and Cécile Jeannin
July 2019, Geneva

Contents

Abbreviations

AAB	*Adoption Accredited Bodies*
AFL	*Agency of Family Law*
CA	*Central Adoption Authority*
DIA	*Danish International Adoption*
GGP1	*The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No 1*
GGP2	*Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2*
ICA	*Intercountry adoption*
ISS/IRC	*International Social Service/International Reference Centre for children deprived of their families*
NBA	*National Board of Adoption*
PAPs	*Prospective Adoptive Parents*
PAS	*Post adoptive service*
Special Commission	*Special commission on the practical operation of the 1993 Hague Intercountry Adoption Convention*
The 1993 Hague Convention	*Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*
The 1996 Hague Convention	Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

Introduction

Global trends in Intercountry Adoption

A brief look at intercountry adoption (ICA) trends is necessary to contextualize the broader study undertaken in Denmark. In terms of historical ICAs considerations[3], the overall numbers of adoptions by receiving countries began an upward curve from 1980 until 2004 - the peak year with more than 42,000 ICAs for the top 12 receiving countries alone. In 2005 however a gradual decrease began and is still ongoing today, although less steep in the last few years. According to Peter Selman[4] between 2004 and 2009, a fall of 35% of the number of ICAs was registered (see statistics collected by ISS/IRC below).

The reasons behind and the long term consequences of this steady decrease are numerous. For instance, changes occurred in many countries of origins linked to the ratification of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Hague Convention) and ensuing development of improved systems. Likewise in countries of origin, social changes played an important role such as the development of the middle class, increasing domestic adoption rates, legalisation of abortion in certain countries, and evolving attitudes towards certain groups (single mothers, ethnic minority groups, etc.). As a result the profile of the children declared adoptable for ICA has evolved. ICA today mainly concerns older children, siblings, and children with health problems including disabilities. Simultaneously, supplementary criteria are required for PAPs by the countries of origin[5].

Statistics collected by ISS/IRC between 2002 and 2017 (receiving countries in order of adoptions) [6]

Receiving countries	2002	2003	2004	2005	2006	2007	2008	2009
USA	20 099	21 616	22 884	22 728	20 679	19 613	17 433	12 753
Italy	2 225	2 772	3 402	2 874	3 188	3 420	3 977	3 964
France	3 551	3 995	4 079	4 136	3 977	3 162	3 271	3 017
Spain	3 625	3 951	5 541	5 423	4 472	3 648	3 156	3 006
Germany	1 919	1 720	1 632	1 453	1 388	1 432	1 251	1025

[3] For more detailed information on this issue *Historical considerations: irregularities in intercountry adoption by Hervé Boéchat* in Baglietto C, Cantwell N, Dambach M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva, Switzerland: International Social Service

[4] See *Twenty years of the Hague Convention: a Statistical Review* by Peter Selman, available in English at: https://www.hcch.net/en/instruments/conventions/publications1/?dtid=32&cid=69

[5] See ISS/IRC monthly review n°226 of November 2017.

[6] Sources: *CIC (Canada), Department of Family Affairs (Denmark), Service de l'Adoption Internationale (France), Commissione per le Adozioni Internazionali (Italy), Dutch Ministry of Justice (The Netherlands), Bufdir (Norway), Ministerio de Trabajo y Asuntos Sociales (Spain), Swedish National Board of Intercountry Adoptions, MIA (Sweden), Autorité centrale fédérale en matière d'adoption internationale (Switzerland), Statistisches Bundesamt (Germany), US Department of State (USA).*

1) From 1st October 2008 to 30 September 2009.

Canada	1 926	2 180	1 955	1 871	1 535	1 712	1 208	605
Sweden	1 107	1 046	1 109	1 083	879	800	793	912
Netherlands	1 130	1 154	1 307	1 185	816	782	767	682
Denmark	**609**	**522**	**527**	**586**	**448**	**429**	**395**	**497**
Switzerland	558	722	658	452	455	394	497	444
Australia	561	472	502	585	576	568	440	441
Norway	747	714	706	582	448	426	304	344
Total	**36 938**	**39 670**	**43 142**	**41 921**	**38 285**	**35 818**	**32 834**	**27691**

Receiving countries	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
United States of America	11 058	9 319	8 668	7 094	6441	5648	5372	4714
Italy	4 130	4 022	3 106	2 825	2206	2216	1872	1439
France	3 504	1 995	1 569	1 343	1 069	815	953	685
Canada	2 006	1 785	1 367	1 242	905	895	790	621
Spain	2 891	2 560	1 669	1 188	824	799	567	531
Sweden	551	538	466	341	345	336	257	240
Netherlands	705	528	488	401	354	304	214	210
Belgium	n/a	360	265	219	144	136	121	133
Norway	353	297	231	154	142	132	126	127
Germany	1 412	934 (579)	801 (420)	661 (272)	209	308	213	81
Denmark	**419**	**338**	**219**	**176**	**124**	**97**	**84**	**79**
Switzerland	301	367	314	280	226	197	101	69
Australia	222	215	149	129	114	83	82	69
Total	**27 552**	**23 258**	**19 312**	**16 053**	**13 103**	**11 966**	**10 752**	**8 998**

Statistics collected by ISS/IRC between 2010 and 2017 (countries of origin) [7]

Countries of origin	2010	2011	2012	2013	2014	2015	2016	2017
1. China	4 672	4 098	3 998	3 316	2734	2817	2475	2189
2. Colombia	1 549	1 522	901	562	355	359	314	542
3. India	473	688	362	298	242	233	323	518
4. Ethiopia	3 977	3 144	2 648	1 933	975	543	235	466
5. Haiti	1 361	142	262	460	551	236	324	398
6. South Korea	991	920	797	206	494	406	362	396
7. Vietnam	n/a	620	216	293	285	287	248	356
8. Russia	3 158	3 017	2 442	1 703	381	210	151	319
9. Philippines	413	472	374	525	405	354	313	304
10. Bulgaria	230	259	350	421	323	262	324	289
11. Ukraine	1 091	1 054	713	674	560	339	339	270
12. Hungary	n/a	154	145	104	77	84	88	233
13. Thailand	124	258	251	272	207	172	250	218
14. Nigeria	n/a	218	238	225	175	163	139	206
15. Poland	n/a	304	236	332	106	107	148	191
16. Taiwan	310	311	291	188	147	172	150	157
17. South Africa	71	120	81	147	176	172	103	130
18. Brazil	373	359	337	246	31	32	29	127
19. USA	n/a	97	178	167	155	160	147	89
20. Latvia	120	116	59	131	96	189	89	84
21. Uganda	n/a	219	246	289	203	208	191	60
22. DRC	166	339	499	580	240	229	627	54
23. Liberia	n/a							22
24. Ghana	n/a	107	172	188	128	93	32	22
25. Central African Republic[13]	12	19	43	73	44	15	7	14

In the context of a decrease in ICA, and generally limited opportunities for domestic adoptions in receiving countries, adoption applications by prospective adoptive parents

[7] Sources: Central Authorities in intercountry adoption and other governmental entities; for further information, please contact the ISS/IRC.

(PAPs) in receiving countries remain significantly higher than the number of children declared adoptable.

Yet, at the same time, there is a growing awareness by PAPs of the changing ICA landscape through awareness raising by authorities as well as the media. There is a better understanding that adoption is a child protection measure providing a family for a child and that there is no right to a child. For example, it is now clearer that the profile of children needing adoption are not small babies in good health, and that fewer children are being declared adoptable. Additionally, it seems that media attention to illicit practices linked primarily to the earlier years of ICAs[8] – as many of these adoptees are now adults - has likewise contributed to the reluctance of PAPs to initiate proceedings. This reluctance has also been influenced by the growing attention surrounding adoption breakdowns[9] again by the media, and also within the wider community.

However the reality remains that many people are still seeking to parent children. Consequently in the context explaining the decrease in ICA and growing waiting times, it is recognised that PAPs may turn to other forms of parenting. This has led to, for example, the growth in assisted reproductive procedures including surrogacy. The 2019 COE report Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children estimates approximately 8 million children have been born to date through ART medical procedures.[10]

As a consequence, receiving countries therefore are facing challenges – a primary question being rethinking the role of adoption accredited bodies (AABs). AABs must adapt – not only to these decreases, but also to the changing profiles of internationally adopted children, and to the supplementary criteria required for PAPs. Given this changing landscape, arguably the expertise of AABs' is increasingly more desired. AABs operating well with the framework of the 1993 Hague Convention offer quality and specialised services.[11]

Yet the changing landscape means that their financial sustainability is at risk – calling into question, their continued ability to offer services. This precarious situation is essentially due to the decrease in adoption cases as adoption fees are, for many of them, the main source of income. This situation is compounded by the lack of public understanding and support of their work – all of which is made even more challenging due to the financial crisis that occurred in 2014 and politics of austerity.[12]

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[8] Baglietto C, Cantwell N, Dambach M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva: Switzerland. International Social Service

[9] Jeannin, C. (Ed.) (2018). *Towards a greater capacity: Learning from intercountry adoption breakdowns.* Geneva: Switzerland. International Social Service

[10] http://website-pace.net/documents/19855/5665827/20190128-DonationRights-EN.pdf/1ea3d70f-4da0-440b-a243-9f28c0670bd6

[11] More and more AABs provide specialized services. For instance : AAB Emmanuel Adoption en Communauté française de Belgique, Médecins du Monde in France, Nuevo Futuro in Espagne, Aiuti all'infanzia in Italie, etc. The Indian CA has published a guide dedicated to AABs entitled *Special Children for Special Parents: A Guide for Adoption Agencies* giving several guidelines for preparing PAPs adopting a special needs child. Likewise, Sweden has developed a guide entitled *Special parents for special children* (both guides available in English at ISS/IRC).

[12] ISS/IRC comparative analysis (2015). *The financing of Adoption Accredited Bodies and challenges faced: searching for promising practices.*

The current reflections regarding the system in Denmark fall within this context: the aim to find a sustainable structure for its ICA system, whilst maintaining its ethical commitment to deliver high quality services to children and families. Whilst the Danish adoption system is evolving to meet the needs of children and families, there is today an urgent need to address the dilemma of sustainability that its AAB is currently facing.

Historical Legal and Policy Developments

Briefly "until the end of Second World War, adoption in Denmark was domestic and could be either simple or full. Improvements in the social integration and living conditions for single mothers in the 1950's allowed the number of national adoptions to decrease progressively, from 1'200 in 1949 to 400 in 1959[13]. The legalisation of abortion in 1972 amplified this decrease. At this time, there was no State adoption procedure: adoptions were organised by a private organisation traditionally in charge of domestic adoption. The first State procedure was created in 1976, which grounded the foundations of the actual adoption system that allows only full adoptions. In 1999, the adoption of a stepchild was opened to homosexuals living in a registered partnership. In 2009, these couples were authorised to adopt nationally and internationally" [14].

In recent years, Denmark has made substantial improvements to its adoption regulations by way of the 2014 political agreement, which introduced a new adoption system more in line with international standards. The agreement recognized the impact of developments in ICA on the Danish system (see above). Proposals were made through this political agreement to overcome the identified challenges.

Over the years a number of improvements have been made in terms of PAPs assessment, preparation and post adoption support. As of January 2000, all PAPs must attend a pre-adoption course, and as of January 2016, they receive individual counselling before and after adopting the child to ensure the best possible beginning in the new family[15]. Such a pre-requisite is an important factor in ensuring that the adoptive family is prepared for unique adoption experiences as well as favours the reinforcement of the filiation ties to be built.

Specific improvements were also made with respect to accredited adoption bodies (AAB). This included the combination of the two previous AAB; and increased attention give to the competency, agency supervision and financial transparency of adoption services. Changes that were implemented as of 1 January 2016 (see 1.3). To further support these amendments, the Danish government stated in the 2014 agreement (as referenced above) that specific allocations of government funds (DKK 14.4 million in 2015; DKK 13.2 million in 2016; DKK 11.5 million in 2017; and thereafter DKK 8.5 million annually from 2018 onwards) would be used to supervise adoption services.

[13] See "Ready for adoption", p.41.
[14] Extracts of ISS/IRC (2014). *Approval and Preparation of Prospective Adoptive Parents, Post Adoption Service and openness in adoptions*.
[15] See contribution of Ina Dulanjani Dygaard and the Danish National Social Appeals Boards on "Mandatory, continuous and accessible pre-adoption and post-adoption support in Denmark: strengthening the skills of adoptees, adopters, and the social environment of the adoptive families" in Jeannin, C. (Ed.) (2018). *Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (pages 141-143).

Following the 2014 political agreement, within the annual State budget for adoption the DKK 8,5 million amount is allocated as follows[16]:

- 5.2 million DKK to Danish CA for the approval of matching proposals and increased supervision of the AAB;
- 1.3 million DKK (above regular funding) to providing Post Adoption Services (PAS) and counselling for the PAPs shortly before and after the child has arrived in the family (Phase 4); and
- 2.0 million DKK to the AAB (N.B. In 2015 the AAB received an additional 9 million DKK. This amount was to cover the deficit generated by one the former AABs, which had merged with the other AAB, to create the current AAB. It also covered all other expenses related to the merger and establishing the new AAB).

Historical Practical Developments by way of statistics

Since 1970, more than 15,000 children have been adopted by Danish parents through ICA[17], with significantly less children adopted domestically. The following table provides the available statistics for the last nine years in terms of domestic adoption and ICA[18]:

Year	Domestic Adoptions	Intercountry Adoptions
2009	11	497
2010	19	419
2011	15	338
2012	14	219
2013	22	176
2014	14	124
2015	6	97
2016	9	84
2017	21	79
2018	9	64

Intercountry adoptions:

Since 2014 the ICA scene has changed significantly. The number of ICAs has fallen from 124 adoptions in 2014, to 64 adoptions in 2018. This represents a 47% drop in ICAs over four years. This change can to some extent be explained by the fact that the waiting time between approval and the child's arrival has tended to increase, particularly with regard to applicants approved in the period between 2012-2014. However for new applicants after this period, DIA has explained that the waiting time has decreased markedly due to the decline in the number of new ICA applicants that are approved. DIA notes for example that the estimated waiting time for adoption from South Korea has in recent years fallen from approx. five years to under one year. From South Africa, the waiting time has fallen from between three and five years down to between two and three years, and from Taiwan the wait has fallen from approximately five years to less than half a year.[19]

[16] Danish CA communication to ISS/IRC –1 March 2019
[17] See: http://www.statsforvaltningen.dk/site.aspx?p=6406.
[18] Danish CA communication to ISS/IRC – 15 February 2019
[19] Information received from DIA 1 May 2019

Moreover children are arriving at an older age, than in previous years. According to statistics provided by the National Board of Adoption (NBA) between 2011 and 2013, the adoptions of children aged less than one year have decreased from 31% to 19%, while adoptions of children aged 2 years old have increased from 15% to 25%.

Likewise the number of new families approved to adopt internationally has fallen from 85 families in 2014 to 48 families in 2018.[20] DIA notes that this drop in numbers has meant that DIA now lacks enough families on almost of all its waiting lists. DIA is of the view that the reason for this trend is due to increasing fees creating obstacles even for the most well-off families, as well as the negative image linked to adoptions in the media. In addition PAPs are becoming more realistic about their capacities to adopt the children who are now in need of ICA – as reflected by the general frame of adoption (see section 2.2.3 and further discussions below). **Further research might be helpful to explore the reasons behind such trends, given that it seems for example, that the Danish CA is of the view that fees have not increased significantly since 2015.** [21]

Whilst there are no global statistics on the number of PAPs, certain receiving countries do publish national statistics. For example in France, the number of PAPs approved as of 31 December 2016 was 14,070, which was 13% less than in the same period in 2015[22]. In Spain the number of PAPs has continued to decrease significantly over recent years[23].

It is not clear what the trend is in Nordic countries. The Danish CA notes that **"official statistics" from the Nordic countries might be helpful for comparative purposes as alternative information seems to indicate that in Norway the number of approved PAPs has declined almost to the same degree as in Denmark.**[24] Whereas DIA believe that in countries such as Norway and Sweden, statistics indicate that the situation has remained quite stable.[25]

Furthermore there is a general tendency for Danish PAPs to be older than previous years. Their average age in 2013 was 36 and 38 years old.[26] In other countries such as Australia[27] and France[28] the average age is over 40 years old.

Domestic adoptions

The number of domestic adoptions varies a great deal from year to year, however since 2005 the number has not exceeded 25. For example there were 21 adoptions in 2017 and 9 in 2018.

[20] Extracts of Terms of reference for a study of the future structure for international adoption mediation, January 2019.
[21] Information received from Danish CA, 1 May 2019.
[22] https://www.onpe.gouv.fr/system/files/publication/synthese_enquete_pupilles_31dec2016_2018.pdf
[23] Boletín de datos estadísticos de medidas de protección. Boletín numero 20. Datos 2017.
[24] Information received from Danish CA, 1 May 2019.
[25] Meeting held in its Birkerød office, 11 March 2019.
[26] https://ast.dk/naevn/adoptionsnaevnet/udgivelser-fra-adoptionsnaevnet/arsberetninger-og-statistik
[27] https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/contents/table-of-content
[28] https://www.diplomatie.gouv.fr/IMG/pdf/final.12.02.19_cle845e9a-1.pdf

Section 1: Current adoption system

1.1 Legal framework and policies

Denmark ratified the Convention on the Rights of the Child on 19 July 1991. Subsequently, Denmark acceded to the Hague Convention 1993 (which entered into force on 1 November 1997); the 1996 Hague Convention (which entered into force on 1 November 2011); and the European Convention on the Adoption of Children of 1967 revised in 2008.

At domestic level, the following framework is operating: The Danish Adoption Consolidation Act of 2004 amended in 2015; The Executive Order on Adoption n°1863 of 23 December 2015; Executive Order on Approval of Adopters (2009) and Terms of accreditation for DIA (1st January 2016-31st December 2020). The Danish CA notes that Denmark does not have a national action plan related to children[29] as there is no tradition for developing such plans. Instead, policies are reflected and implemented in legislation. Child protection in Denmark is addressed across a number of different pieces of legislation, such as the Social Services Act, the Adoption Act and the Act of Parental Responsibility.

As the ISS/IRC mandate is to focus on the potential roles of four adoption actors in the three models identified by the Danish CA (see 1.2 and 1.3) – noting others exist - discussion is limited to these actors. The specific roles they take part in different parts of the adoption procedure are explored in section 2. A brief overview of actors and their involvement in adoption procedures is summarised provided below.

Actors involved (sections 1.2 - 1.3)	Adoption procedure (section 2)
National Social Appeals Board	Overall supervision of adoptions – national and ICA (1.2.2)
Danish CA	Mandated to supervise ICA under 1993 HC (2.2.1) including activities of accredited adoption body (1.3)
DIA	Preparation of PAPs – first opportunity (2.2.2)
Danish CA, NBA and AFL	Approval of PAPs through four phases of adoption including appeals (2.2.3)
Danish CA and DIA	Completion of adoption procedure in CO (2.2.4)
Danish CA and DIA – with NBA if outside of general frame	Matching and probationary period (2.2.5)
AFL and DIA with Danish CA for appeals	Adoption decision and storage (2.2.6)
Danish CA, AFL and DIA	Post adoption service (2.2.7)
Danish CA and DIA	Fees and sanctions (2.2.8 and 2.2.9)
Ad hoc involvement of all four	Illicit practices (2.2.10)
Ad hoc involvement of all four	Adoption breakdowns (2.2.11)

[29] Danish CA communication to ISS/IRC –1 March 2019

1.2 Government actors

1.2.1 The Minister of Social Affairs and the Interior

The Minister of Social Affairs and the Interior (The Minister) appoints the Central Adoption Authority in accordance with the 1993 Hague Convention, and is formally responsible for accrediting the AAB and grants authorisation to the AAB to cooperate in the States of Origin. The Minister is responsible for laying down the rules.

1.2.2 Division of Family Affairs, National Social Appeals Board, Danish Central Adoption Authority

The Division is part of the National Social Appeals Board under the auspices of the Ministry of Social Affairs and the Interior. It is the principle authority in the field of adoption in Denmark, appointed as the CA in regard with the 1993 Hague Convention.

The CA provides the mandatory Preparation Course for PAPs (phase 2 – see 2.2.3) and provides the relevant information for the Minister to grant authorisation to the Danish accredited body DIA. This accreditation and supervision role takes up a significant amount of time given the new procedures in place (see 1.3.2 and followings)[30]. The CA likewise provides PAS counselling as well as the mandatory counselling shortly before and after the child arrives in the family (phase 4 – see 2.2.3).[31]

The CA likewise plays a role in the matching process (see 2.2.4).

The CA supervises and provide guidance to the AAB regarding financial, organisational and professional matters in Denmark and in the countries of origin (see 1.3).

1.2.3 National Board of Adoption

The NBA was set up in 1976 in order to, *inter alia,* supervise the cases handled by the Joint Council and act as a board of appeal. Appeals can relate to a decision of the Joint Council regarding the approval of PAPs (see 2.2.3) or the ICA matching decisions (see 2.2.5). It should be noted that the matching decisions of the CA cannot be appealed, as both the CA and NBA are involved in this process.

The NBA consists of approximately 10 members with different professional backgrounds, one of them being the Head of the Division of Family Affairs. The chairman is a Judge, and multiple medical professionals assist with various duties. Further, the NBA controls whether the AFL acts in accordance with the rules, when approving the PAPs.

The NBA's duties include:

- Supervising the work of the Joint Council and their secretariats,
- Observing the national and international development in adoption matters,

[30] See Terms of accreditation for DIA (1st January 2016-31st December 2020)

[31] Danish CA communication to ISS/IRC – 15 February 2019. See also contribution of Ina Dulanjani Dygaard and the Danish National Social Appeals Boards on "Mandatory, continuous and accessible pre-adoption and post-adoption support in Denmark: strengthening the skills of adoptees, adopters, and the social environment of the adoptive families" in Jeannin, C. (Ed.) (2018*). Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (pages 141-143).

- Collecting information concerning adoption,
- Identifying paediatricians who can advise PAPs on health issues,
- Conducting information awareness activities, and
- Assisting the CA in the assessment of the adoption case prior to the issuance of the art. 17c-declaration.

The NBA deals with all domestic adoption cases (see 2.1). In such cases, it is funded on a case by case basis, making it cost effective for the State. The NBA undertakes the matching by examining the entire list of national PAPs, which has the advantage for the child that the most adequate family is selected as opposed to being matched to the next family on the list, as occurs in ICA cases (see 2.1).

In terms of ICAs, as of 1 January 2016 the NBA does not supervise the AAB – all responsibilities in regard to the supervision of the AAB are under the CA (see 1.2.2 and 1.3.2). However in terms of supervision, the NBA can hear appeals of cases where the Joint Council does not approve a PAP application. As part of this work, the NBA has undertaken a broader analysis of all appeals, analysing the extent of successful appeals and the reasons for such (see 1.2.4). For example, when there have been improvements in treatment of medical conditions as deemed by the medical professionals working within their team, there is more openness to approve a PAP with certain cancers. Moreover there are more opportunities for the NBA to observe improvements in PAP applications, as the PAPs will have six months to improve conditions for which their application was refused before being heard by the NBA.

In terms of supervision of the AAB, the Danish CA will consult with the NBA in matters regarding the children's health and psychosocial condition (see 2.2.5)[32].

The Board likewise assists with adoption breakdowns, attempting to find a new family for the child among its domestic PAP waiting list (see 2.1). In practice, this is undertaken on a case by case basis.

ISS/IRC commends the quality of the independent matching committee, with its multi-disciplinary approach, which seems to be extremely cost effective[33] considering the high quality services delivered. ISS/IRC encourages the NBA's practice of using its website to publish information regarding improving the adoption process and on disseminating appeal decisions. **ISS/IRC recommends wider dissemination of its decisions and practices through regular joint training with all Danish Adoption Actors, perhaps annually, which could help further improve the Danish adoption system.** Lastly, the key role the NBA plays in responding to adoption breakdowns should be clearly identified in any future model.

[32] Danish CA communication to ISS/IRC – 15 February 2019
[33] Meeting with the chairman and the Secretary of the NBA, 12 March 2019

1.2.4 Agency of Family Law (previously named Regional State Administration's) and Joint Council

The Regional State Administration - called the Agency of Family Law (AFL) since 1 April 2019 - is the local authority in the field of adoption. The new name follows structural changes made regarding processing cases, mainly under the Parental Responsibility Act. Before July 2012, there were 5 AFL based in the different regions of Denmark. The AFL is now based in Ringkøbing and has ten social workers dealing with adoption, five based in Copenhagen and five covering other parts of Denmark.

In matters of adoption, the AFL performs tasks such as:
- Gathering information needed from PAPs to apply and gain approval,
- Preparing follow-up reports, and
- Providing families with guidance in the context of Post-adoptive Services.
- Recognizing the adoption carried out abroad
- Issuing the adoption decision when the adoption is carried out in Denmark

The AFL collaborates with the Joint Council, originally set up by the Ministry of Justice, regarding the approval process for PAPs. The Joint Council is composed of a social worker, lawyer and physician, one being an employee of the AFL. The lawyer is the chairman of the Joint Council. The AFL is the secretariat of the Joint Council.

The Joint Council has decision-making power regarding phases 1 and 3 of the Approval process (see 2.2.3). They have the authority to refuse or to accept the extension of a PAP's approval. The Joint Council is the competent authority for decision-making regarding the approval of PAPs. The AFL prepares the case/home report for the Joint Council.

The Joint Council approves the matching proposals and issues the article 17 c agreement, if the specific needs of a child are not compatible with the PAP's general frame of approval, and the PAPs wish to apply for an expanded frame of approval for the child on question. The Joint Council decides whether or not the PAPs have the required resources to adopt the proposed child.

The ISS/IRC commends the work of the AFL and its social workers, in preparing extensive PAPs reports. The quality of their work can be seen in the limited number of successful of appeals to the NBA, which for the most part, succeeded only to due to changes that occurred since the time of approval (*i.e.* in the family situation or medical field).

The ISS/IRC is, however, concerned by the long waiting lists to access AFL services, which we were told is about six months and the continual reduction in State support. To this end, if there is a political decision to support adoptions – both domestic and intercountry – more broadly, further State resources should be invested into AFL so that they are able to absorb the demand.

1.3 Adoption accredited body

DIA is currently the only body in Denmark accredited by the Danish Ministry of Social Affairs and the Interior to act as an intermediary accredited body for ICAs in accordance with the 1993 Hague Convention.[34] For ICA, all PAPs must pass through an AAB – DIA – for the adoption to be approved in Denmark, with the exception of intra-familial adoptions. **Therefore to our knowledge, there are no private and independent adoptions, which is to be commended as compliant with international standards. It should be noted that it is not compulsory to have an AAB, a condition that the CA has capacity to ensure that the 1993 Hague Convention and all other relevant standards have been complied with).**

According to the GGP1 "The decision whether to allow accredited bodies or approved (non-accredited) persons to perform child protection or adoption functions in their State is a policy matter for each individual State. (…) The role and functions of Central Authorities in relation to individual adoptions are addressed in Chapter 7 (of GGP1). If a State of origin prefers to conduct adoptions only through the Central Authority of a receiving State, the State of origin must be satisfied that the Central Authority has the powers and resources to perform all the necessary functions for the adoption procedure." Further, the GGP2 specifies that "The Convention permits the Contracting States to call upon accredited bodies to perform some of the functions of Central Authorities, but does not require any State to appoint accredited bodies or use them. However, some receiving States and States of origin do require by law the use of accredited bodies to mediate intercountry adoptions."

ISS/IRC recalls that according to arts. 9 and 22 of the 1993 Hague Convention, a CA may delegate its obligations and responsibilities of general nature to AABs. Minimum standards regarding AAB's activities, set out by the 1993 Hague Convention and further developed by the Guide to Good Practice n° 2[35] and the Explanatory Report on The 1993 Hague Convention[36], are:

- Principle of professionalism and ethics in adoption
- Principle of non-profit objectives
- Principle of preventing improper financial gain
- Principle of demonstrating and evaluating competence using criteria for accreditation and authorisation
- Principle of accountability of accredited bodies
- Principle of using representatives with an ethical approach
- Principle of adequate powers and resources for authorities

The 1993 Hague Convention does not specify on how and by whom these delegated functions shall be financed. Each CA decides on the specific cooperation with its AAB's, reason why there exists a wide range of different systems. *As stated in the ISS/IRC Manifesto[37], "(…) specific regulations must be in place and set clear criteria regarding the nature of the organisation, its mission and objectives, how it operates and its financial transparency, in addition to its regular supervision by an independent authority."*

[34] The National Social Appeals Board. Division of Family Affairs. *An introduction to the Danish legislation in the field of intercountry adoption.* Available in English upon request.
[35] Hague Conference on Private International Law (2012). *Accreditation and Adoption Accredited Bodies: Guide to good practice Guide No. 2.* Available at: https://assets.hcch.net/upload/adoguide2en.pdf.
[36] Available at: https://assets.hcch.net/upload/expl33e.pdf
[37] Available at: https://www.iss-ssi.org/images/Publications_ISS/ENG/ISS_Manifesto_ANG.pdf.

According to ISS/IRC, it is crucial to remember that AABs are fulfilling delegated public functions according to the standards set out in international standards and must therefore receive the adequate public support, including financial assistance and follow up support at all levels (ethical, professional and practical).

1.3.1 Legal and ethical framework

DIA established in 1964, is governed by a Board with operational responsibility for the organisation. The DIA is statutorily required to have a manager; be staffed by persons who have an educational background, or professional profile/expertise that relates to children; have at least one employee with a master's degree in Law; and at least one employee with education and experience in business and accountancy.[38]

In accordance with international standards (see 1.3.4a)[39], DIA is obliged to protect and give priority to the best interests of the child. The organisation is required to work in an ethically and professionally responsible basis, and without seeking financial gain; and to ensure that ICAs are only carried out when it is possible to complete the adoption in a legal, ethical and professionally responsible way[40].

The support the DIA provides includes establishing a connection between PAPs residing in Denmark and children from other countries with a view to adoption (instruction support) (see 2.2.4); facilitating the completion of the adoption procedure (completion support) (see 2.2.5); and PAS for families after the child has been taken home (see 2.2.7).

DIA's adoption assistance activities are governed by, and must be in accordance with: International Standards; the adoption legislation in the countries with which DIA cooperates; and the Danish legislation on adoption (see 1.1). This latter includes the Terms of accreditation as agreed between the Danish Ministry of Social Affairs and the Interior and DIA for the period 1st January 2016- 31st December 2020 (as described in more detail below).

The DIA holds extensive knowledge of both relevant legislation and founding principles in the area of adoption in Denmark, and the States that the DIA works with.[41] This knowledge has been gained due to the lengthy working relationships with the same 12 countries of origin, gaining in depth knowledge of the country in some cases over 50 years. As the newest country of origin is at least ten years old, relationships and trust have been maturely developed between DIA staff and the country of origin. Over the last ten years, the DIA has not initiated new agreements with any countries of origin. **Any future model should give significant consideration to this wealth of knowledge and how to preserve it.**

[38] Chapter 2, 2.5 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020
[39] The 1993 Hague Convention, arts.9 and 11; GGP2.
[40] Chapter 2, 2.3 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020
[41] Chapter 2, 2.6 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020

1.3.2 Supervision

The Danish CA is responsible for supervising and monitoring the fulfilment of the terms and conditions required for DIA's accreditation with regard to both its activities in Denmark and abroad. This includes general oversight of DIA's administrative and economic activities:

- Substantial organisational changes, such as changes in employees and partners in the country of origin[42];
- Ensuring continuing professional education for DIA employees in Denmark and abroad on regulations and principles in the area of adoption (in Denmark and abroad)[43];
- General supervision, including of cooperation programs with countries of origin; reviewing all matching cases and ad hoc hearings when new information becomes available; and
- Review of Organisation's economic schedule as well as ongoing reporting including payments for development aid (contributions and donations)[44].

1.3.3 Supervision and education

The CA is responsible for providing **educational training** to the DIA (see 1.3.2). As part of this responsibility, since 2016 ad hoc training regarding handling of matching cases, the conclusions from the Financial Aspects Working Group and PAS has been provided. However it seems that centralised (regular) training appears not to have occurred. This has the associated consequence that there are few opportunities to open dialogue between the different adoption actors, resulting in a feeling of working in silos

In order to improve internal collaboration, ISS/IRC recommends that efforts be made to organise centralised training and information sharing for all Danish adoption actors, at least annually. Such training could involve external trainers with experience in alternative care, and adoption actors. Information sharing should involve measures that allow representatives of each Danish adoption actor to share their expertise and exchange information on their daily working practice.

1.3.4 Supervision of general activities

DIA's general activities are subject to the general supervision and approval of the CA, and they cannot act outside that approval. For example, the DIA may only mediate an ICA from country partners where DIA has the Danish CA's approval for that cooperation. The approval is given for a defined period of time (two years).

The 2016 changes notably, resulted in improvements in the Danish CA's monitoring of DIA. In practice this can mean that the Danish CA may send multiple questions to DIA about cooperation programs, ad hoc hearings and individual cases. For example, they are now more insistent when crucial documents or information is missing (e.g. principle of subsidiarity and background information related to siblings) or when new information

[42] Chapter 2, 2.5 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020
[43] Chapter 2, 2.6 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020
[44] Chapter 4, 4.1 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020

becomes available necessitating an ad hoc hearing (e.g. refunds that biological mothers may receive according to South African laws and clarification about DIA's practice in this regard).

The Danish CA has the primary obligation to ensure that adoptions are Hague Compliant, and it has the final responsibility for understanding and approving of how countries of origin operate. In providing supervision, and meeting this obligation, the fact that DIA has longstanding relationships with countries of origin, whilst having many benefits, poses challenges for the Danish CA (see 1.3.1).

For example, DIA has been working with authorities in Burkina Faso with a representative in the country for 22 years, since 1997. Whilst this arrangement has resulted in a good level of trust between DIA and the Burkinabe CA facilitating the adoption process, it can also have a downside when potential questions arise due to changes in practices. In this regard, the CA has noted a certain level of reluctance on DIA's behalf to examine their practices in Burkina Faso, as it may jeopardise the existing relationship with the Burkinabe CA.

From the perspective of DIA, some of this perceived reluctance surrounding matters of longstanding cooperation can be explained. Whilst most requests are 'legitimate' especially with respect to cases, other responses are part of the existing knowledge of different practices gained from working in the country; and thus in their view do not require requests for extra information from the CO. For example, culturally it is acceptable in South Korea to have the name of the child written in different formats, accordingly questions regarding this practice do not necessarily need further explanations. Additionally, such requests are seen as a burden for DIA absorbing their limited resources.

ISS/IRC recommends that for questions that may typically arise about cultural practices of the 12 countries that they work with, that the DIA prepare a standard brief of questions and answers. Such a brief can act as a gatekeeping mechanism so that only essential questions are directed to DIA. Such harmonisation should likewise be part of any future model that is to be considered.

For 'legitimate' requests, DIA explained that they are willing to ask further questions, but are sometimes challenged by the short timeframes given in which to respond. Further, DIA often felt uncomfortable sending a list of questions to the CAs of countries of origin, without context or explanation behind why the questions were being asked – despite having worked in these countries for long periods without any issues arising. Regarding questions related to cooperation, it was explained that the CAs in countries of origin did not necessarily have the mandate for certain aspects of the child protection system and therefore lacked the competency to provide information. Accordingly, when DIA insists on asking the same questions repetitively, it can jeopardise their longstanding relationship with CAs of countries of origin - who feel it is like an interrogation in court proceedings, as opposed to an open discussion to understand their system. In such situations, it seems that there may be a lack of appreciation by some CAs of countries of origin regarding their obligations under the 1993 Hague Convention. It is important to note that such obligations are primarily the responsibility of State actors, and arguably should be part of their cooperation agreements.

Even in cases where a country of origin has not ratified the 1993 Hague Convention, the responsibility falls upon the Receiving country to ensure full compliance[45].

In other cases, DIA explained their preference of having the opportunity to obtain answers to the questions during their next visit to the country, where it would be easier have a direct dialogue with the authorities.

ISS/IRC recommends for questions by the Danish CA related to the general child protection framework, that they rely on information from existing reliable sources such as the HCCH country profiles, UNICEF country reports, ISS/IRC country situations and reports to the various UN treaty bodies such as the UN Committee on the Rights of the Child. If additional information is required, then ISS through its network can be mandated to furnish this information.

ISS/IRC recommends that for questions by the Danish CA related to individual cases, that DIA be equipped to provide the necessary responses in collaboration with the authorities in the countries of origin. In cases, where the latter do not have existing capacity to furnish such information (e.g. social worker system does not exist, lack of understanding of principle of subsidiarity), ISS/IRC recommends that the Danish CA work with other receiving countries to provide technical assistance to build the capacity of local actors. Such assistance should ideally be provided by a neutral organisation with experience in alternative care and/or adoption such as the HCCH the intercountry adoption technical assistance programme (ICATAP), ISS and UNICEF.

1.3.5 Supervision of general economic activities

ISS/IRC recalls that the 1993 Hague Convention contains specific provisions on financial aspects of ICA, such as framework, control and monitoring. Fees and costs related to the work of AAB's is, in principle, regulated by countries: they shall not charge unreasonably high fees in relation to their rendered services, and are obliged to ensure the transparency of costs to avoid "improper financial or other gain". In the current complex environment - where AABs must adapt to the notable decrease in ICA, the profiles of children are evolving, supplementary criteria for PAPs is required by countries of origin, and there is an increased demand for specialised services by CAs, PAPs, adoptive families or local partners in the country of origin - the issue of how AAB's are financed and supported is of extreme importance[46].

As part of their annual accounts[47], DIA is required provide an information note outlining the spread of their expenses regarding specific countries. This is written in according to the following subgroups:

[45] See Conclusions and recommendations n°1 and 36 of the Special Commission of 2010.
[46] The 1993 Hague Convention, arts.8 and 32; See Factsheet n°2 on Financial Aspects of ICA for the 2015 Special Commission meeting, http://www.hcch.net/upload/wop/factsheet_finasp_en.pdf.
[47] Chapter 4, 4.1.2 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020

- **Case specific costs** in Denmark which are given for each of the following items: Translation, legalisation, postage, paediatrician fees, travel Insurance and follow-up.
- **Case specific costs abroad** which are for each of the following items: tests, medical examinations, care and board for child, legal support, translation, visa(s) and passport(s).
- **General costs abroad** which are given for each of the following items (and which are not connected to the individual child): fixed ongoing costs/running costs with individual institutions, wages for the organisation's staff in the relevant State(s) (calculated per employee/function) and the organisation's general administration costs in that State.
- **Travel activities** which are given for each of the following items: trips to (and in) the relevant State, trips from the relevant State, outreach and consolidation work in the relevant State.
- **Donations and supportive work that is given for each of the following**: support for aid projects, support/donations to individual institutions from the DIA and further donations negotiated for private individuals after the child has been taken home.

In addition to this annual report, DIA must produce quarterly and half-year reports.[48] The Danish CA has appointed an external auditor for ongoing review of the DIA's finance and accounting for use in supervision. DIA supply accountancy staff and managers every half year at the agreed times in relation to the external financial auditing.[49]

DIA has explained that this reporting is onerous and easily consumes the entire 2.million DKK that is received for this purpose (see introduction).[50] At the same time, the supervision of financial accounts is part of the obligation of the CA under 1993 Hague Convention, who in turn receive 5.2 million DKK for this task. Given this international obligation, the CA has chosen to employ an external auditor to fulfil this function, which likewise has cost implications.

There is a challenge of identifying the right balance in supervision of financial and administrative activities of the AAB, as required by international standards, yet at the same time ensuring that the AAB is not over burdened by such requirements. When such obligations are too burdensome, there is less time for DIA to invest in its work with PAPs and children. However, this must be balanced with the fact that such supervision is essential in preventing illicit adoption practices and possible breakdowns. Finding this balance is essential in determining the feasibility of any model proposed in this report (see section 3). ISS/IRC recommends that the Danish authorities consider using the HCCH model form[51] for reporting of financial accounts to streamline the reporting. Moreover, the Danish CA should be in a position to not only assess the transparency and reasonableness of costs, but also whether they are ethical. The first step would necessitate a change in the law, repealing the necessity to link technical aid to the adoption process (see 1.3.5b).

[48] Chapter 4, 4.1 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020
[49] Chapter 4, 4.1 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020
[50] Internal communication with DIA, 4 March 2019
[51] Available at https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption.

1.3.5b Supervision of economic activities related to development aid and contributions

Fees that are paid by PAPs may only be used to cover costs that are directly related to the running of the organisation's adoption business in Denmark and abroad, including expenses for children's aid work that is connected to adoption. Travelling and accommodation costs in the country of origin are excluded. DIA approximates that adoption fees are approximately 215 000 DKK for each PAP. Once the adoption is finalised, adoptive families may apply for a subsidy of 55 000 DKK from the Danish authorities.

Fees paid, directly or indirectly, may be used for project work or other work in the nature of humanitarian aid work with a connection to adoption assistance.[52] In addition, contributions from PAPs are seemingly permitted only after the adoption is finalised, without a maximum threshold. Such contributions must be centralised by DIA and cannot be paid directly to actors in the country of origin. It is noted that due to the lack of a legislative mandate, supervision of contributions by PAPs by the Danish CA is only through a post adoption (and non-compulsory) survey (see 2.2.7). In practice the Danish CA is involved when DIA has doubts regarding the legitimacy of the contribution. Based on a survey regarding payments and gifts in Madagascar, Ethiopia and Vietnam, the Danish CA has also proactively taken a role. In the latter cases the Danish CA has asked DIA about the payments and how they guide the PAPs about good practice in this regard.[53]

Since 2016, DIA notes that there has not been any proofs of connection with the number of adoptions and the provision of adoption-related relief work. It is DIA's view that there is great transparency in the support provided by them to improve children's living conditions and the subsidiarity principle.[54] Accordingly, DIA expressed their desire to preserve the possibility that the organization can continue to provide adoption-related support. DIA notes that if a separation between humanitarian aid and adoption work is desired, it could be countered by less intrusive restriction, for example that DIA can only provide humanitarian work not related to adoption in those countries where DIA does not actively have a cooperation regarding adoption. [55] As to this suggestion, ISS/IRC notes that there could be a risk for such humanitarian aid to be part of a scoping mission for future countries of origin to work and build relationship.

It should be noted that any development aid of more than 50 000 DKK needs to be approved by the Danish CA. DIA indicated that some of their development aid expenditure has included developing a manual for adoptions in Burkina Faso, direct support to residential care institutions, and education programs for parents in South Africa.

ISS/IRC recalls that international standards[56] place extensive safeguards on contributions - as they entail risks and may undermine the integrity of a safe adoption procedure[57].

[52] Article 30(b) Adoption (Consolidation) Act 2015
[53] Information received from Danish CA, 1 May 2019.
[54] Information received from DIA, 1 May 2019.
[55] Information received from DIA, 1 May 2019.
[56] Special Commissions of 2010 (recommendation n°14), 2005 (Report and conclusions, n°125) and 2000 (recommendation N°10); GGP2, Chapter 9.

Contributions may have the effect of ICA being prioritised over national solutions and therefore, may result in insufficient support being provided to the birth family and an absence of, or deficient, investigations undertaken into the adoptability of the child and / or the availability of a domestic alternative care solutions (i.e., the subsidiarity principle may not be respected).

Contributions may likewise create a dependency on the part of States of origin on the funds provided through these sources and raise expectations that they will continue to receive them. States wanting to ensure a steady flow of external funds to support child protection efforts may feel obliged to ensure that children are supplied for intercountry adoption. Contributions can also create competition between receiving States and AABs, whereby whoever provides the greatest amount receives the greater number of children.

Furthermore, in UNICEF's view,[58] these types of funds should not be the way in which support is provided from other countries for the development of child protection services and alternative care services in States of origin. When contributions to such funds are mandatory in order for intercountry adoptions to be carried out, the contributor may have little or no influence over the kind of projects financed and, in particular, may have no information concerning whether or not the projects conform to internationally approved policy guidelines in this sphere. Consequently, contributions of this nature cannot automatically be considered as a desirable form of 'development aid'.

To this end, ISS/IRC strongly recommends that contributions should be avoided, in line with international standards. If, despite these standards, a political decision is made to allow contributions, then these should be closely tracked and supervised by the Danish CA. There must be transparency in the contributions of all actors, including DIA and PAPs. Inspiration may be gleaned from the Flemish CA who have a system in place for monitoring PAPs contributions.

It is further recommended, and considered vital, that the Danish legislation be modified to ensure that any development aid is not linked to adoption. Additionally, in the spirit of cooperation promoted by the 1993 Hague Convention, if Danish authorities are considering delivering development aid then initiatives should be promoted that do not create any incentive to undertake adoptions. For example, Danish authorities could consider centralising funds in an independent body working in the country of origin, such as AUSAID, DANIDA, NORAD and SIDA, or a reputable local NGO working on the child protection system without any links to adoption.

If however a political decision is made to insist on a link to adoption, then it should not be a private arrangement but rather between Central Authorities. For example it could be in the form of technical assistance from Danish Authorities to the Authorities in the countries of origin, including through impartial organisations such as HCCH, ISS and UNICEF.

[57] Capacity development plan for family support, foster care and adoption in Cambodia 2018-2023". Available at: https://www.iss-ssi.org/images/Publications_ISS/ENG/Capacity_Development_FamilySupport_Cambodia.pdf.
[58] Note on Financial Aspects of Intercountry Adoption, HCCH, 2014, para. 134.

1.4 Other actors

Whilst ISS/IRC acknowledges that there are many other important actors working on adoption in Denmark, such as adoption associations, professionals, etc. at this stage of this study (see preface), exploring the views of these actors was outside of the mandate. The team were informed that the views of such actors would be included at a later stage.

Section 2: Procedural framework

2.1 Domestic adoption[59]

As the Danish law clearly defines that the resolution of any matter involving a child is to be determined in the child's best interests, the Executive Order on Adoption of 2015 merely delineates the specific procedures necessary for an ethical and legal adoption to occur. The NBA conducts a thorough assessment to ensure that the child is adoptable domestically. A discussion about ICA is not included, as the NBA always find a domestic family for adoption.

The CA notes[60] that domestic adoptions that do not involve relative and stepchild adoptions, are processed by the AFL and the NBA. The process varies if the adoption is carried out with or without the consent of the biological mother or father. All the costs are absorbed by the State and national PAPs are not expected to fund any part of process, which is a quite different approach to the fees that are paid by ICA PAPs (see 2.2.8). National PAPs have access to preparation and PAS offered by the Danish CA (phases 2 and 4 of the approval procedure, see 2.2.3) in the same way as ICA PAPs.

In practice, the numbers of domestic adoptions (see introduction) are rather limited, with the number of PAPs exceeding the limited numbers of adoptable children. It seems that waiting times are quite lengthy, no doubt due to the fact that the process is free of charge and limited numbers of adoptable children.

2.1a Domestic adoption with the consent of biological family

For PAPs who wish to adopt domestically in Denmark they must follow the same approval process as PAPs, who wish to adopt from another country. After the pre-adoption counselling course (the 2nd Phase in the approval process, see 2.2.3) they must register either with DIA or inform the NBA of their wish to adopt domestically before they can proceed to the 3rd Phase (see 2.2.3). The PAPs cannot be registered for both ICA and domestic adoption, although they can freely switch between lists. When the PAPs are approved, they are added to the waiting list for domestic adoption, administered by the NBA.

When a biological parent decides to give his or her child away for adoption, it is the AFL who are responsible for counselling the biological parents about the legal effect of an adoption, to ensure that the biological parents are capable to fully comprehend the total sum of the consequences of a consent to adoption, and to inform and guide the biological parents about the alternatives to adoption. If the biological parents uphold their decision, they give a

[59] Danish CA communication to ISS/IRC – 15 February 2019
[60] Danish CA communication to ISS/IRC –1 March 2019

written consent to adoption to the State Administration. A consent can be given at its earliest three months after the child is born.

After the consent, the child's file is forwarded from the AFL to the NBA, who is responsible for the matching of the child. The NBA selects the most suitable PAPs from the waiting list (based on the needs of the child and with attention to other factors – for example, geography and the biological parents' wishes). The names of the selected PAPs are forwarded to the AFL, who then presents the matching proposal to the selected PAPs.

2.1b Domestic adoption without the consent of biological family

Whilst most domestic adoptions in Denmark are processed with consent of the biological parents, there are a few cases where this is not the case. For example, in some instances children may be left in public places. In these cases, the child is first under protection of Social Services in the municipality, until the police investigation finishes. There are also some cases where the child's parents are known and do not consent to an adoption, however an adoption is pursued in any event. These cases are initiated by Social Services and the Municipality.

2.2 Intercountry adoption

2.2.1 Cooperation with COs

The Danish CA decides which countries of origin it will cooperate with through the Minister.[61] Formally, the Minister decides which countries the AAB is authorised to cooperate with, whilst the Danish CA can decide which concrete organisations in the specific country the AAB is allowed to cooperate with.

Currently the Minister makes decisions based on the general criteria for the AAB's cooperation defined in the Terms of Accreditation, chapter 5.[62] As from 1 January 2016, DIA has not applied for authorisation to cooperate in new States of origin or with new organisations, but the Danish CA has re-authorized the AAB to cooperate with all their existing partners. Every cooperation agreement is re-authorised every second year provided that the cooperation complies with Danish regulations and policy, the rules abroad and the principles in the 1993 Hague Convention.

A notable improvement on the pre-2016 system is a requirement for the Danish CA to undertake regular follow up after having authorized the AABs to cooperate with specific countries of origin or foreign organisations. Previously, such follow up only occurred if the Danish CA received information from, for example, the AABs, adoptive parents, the medias, other receiving states or international organisations (i.e. ISS/IRC) that implied irregularities or misconduct, and then the specific cooperation would be reassessed.

[61] Danish CA communication to ISS/IRC – 15 February 2019
[62] Danish CA communication to ISS/IRC – 15 February 2019

With the 2016 changes to the system, the Danish CA undertook its first round of re-authorisations in 2016 and 2017. The Danish CA approached each cooperation as a "new" country of origin/organisation, with the purpose of independently evaluating to what extent the legislation and the adoption system in the countries of origin were compliant with international standards. The second round of re-authorisation began in 2018, where the main focus is how the principle of subsidiarity is implemented - not only in the rules and regulations in the specific country of origin, but also in practice - and how this can be documented and properly ensured in specific adoption cases. Additionally, the Danish CA focus on how the country of origin handles adoption of siblings (is it a priority to adopt the children into the same adoptive family, or are other considerations taken into account); rules and procedures for ICA of children where the biological parents are not citizens in the country of origin; possibilities for a search of origins for the adoptees; and preparation of the children and the PAPs before they meet.

ISS/IRC commends the Danish CA in its efforts in this regard, as it now more aligned with their responsibilities as CA under the 1993 Hague Convention. The Danish CA itself acknowledges the benefits that this procedure has brought, as it has generated greater knowledge both within the AAB and the Danish CA. For example, it helped the Danish CA better understand their responsibility to ask DIA to gather additional information in concrete matching cases in order to ensure the principle of subsidiarity is followed (see 1.3.2 and 2.2.4). Nonetheless, whilst this treatment of countries of origin as "new" partners was clearly advantageous, it also had the disadvantage of giving the impression of a lack of trust despite having worked in these countries for over a decade[63] (see 1.3.1 and 1.3.2). However, ISS/IRC believes it was a necessary readjustment in order for the Danish CA to fully comply with the responsibilities of a CA of a receiving country. This situation could be further improved with more regular joint Danish CA/DIA in country visits.

ISS/IRC sees the fruit of the new accreditation system, in the decisions made by the Danish CA and DIA regarding which countries to cooperate with. For example, the Danish CA has withdrawn the authorisation to cooperate with Ethiopia following conclusions that the protective measures that had been established for the AABs were insufficient to ensure that the principles in the 1993 Hague convention were respected. Moreover, DIA made a decision to withdraw from Vietnam in November 2017 after the Danish CA raised concerns in December 2016.

Donations and contributions

The CA must approve any donations in countries of origin which exceed 6 500 euros (see 1.3.5).[64]

Development aid

[63] Meeting held in its Birkerød office, the 11 March 2019.
[64] Danish CA communication to ISS/IRC – 21 January 2019

The Danish Adoption Act states that DIA may only perform cooperation projects related to adoption assistance activities, and accredited bodies are not statutorily authorized to perform development aid (see 1.3.5).

2.2.2 Preparation of the PAPs – first opportunity

DIA offers general awareness raising sessions to any interested PAPs prior to the lodgement of an official application (see section 2.2.3). This service is funded by PAPs fees. This can be compared with the practice in other receiving countries. For example, in Switzerland this general awareness raising is provided by the CA and PAPs do not have to pay a fee; whilst in Australia, this activity is provided by the CA but is paid by the PAPs. **Whilst this course is not compulsory in Denmark, ISS/IRC believes that it is extremely important for an introduction to adoptions and dispelling any existing myths.**

2.2.3 Approval of the PAPs

An application for adoption or for approval must be filed with the AFL and comply with the requisite legal requirements[65]. An adoption order may only be granted to an individual who has attained the age of 25. Residents of Denmark may adopt only under the provisions of the Danish Adoption Consolidation Act. Residents of a foreign country may only adopt, if the PAP and his or her spouse/partner is a Danish national and adoption is not possible in the PAP's country of residence, as well as if a Danish adoption order is valid in the country of residence.

An application approval in a non-relative adoption cannot be filed until a minimum of six months have passed since the most recent addition to the family. Before approval is granted, Danish authorities perform a thorough investigation of all PAPs, which is divided into four phases.

- The first phase investigates whether the PAP fulfils the **general conditions for approval** as a PAP including: the age difference between the PAP and child does not exceed 42 years; PAP seeking to adopt a child jointly must have lived together for at least 2.5 years; the physical and psychological conditions of the PAP must be in accordance with the best interests of the child; the PAP's home must be adequate to raise a child; the PAP must show proper financial conditions; and the PAP cannot have a criminal record[66]. AFL social workers undertake this investigation (see 1.2.4).

The ISS/IRC commends the independent nature of AFL's work in this field, as there is no risk that approvals are linked to adoption fees, but rather are based on an objective assessment of PAPs qualifications.

[65] Executive order of adoption, Part 5.
[66] Executive Order on Adoption, Arts. 20, 21, 22.

- The second phase covers a **pre-adoption counselling course** which is mandatory to all PAPs who have not previously adopted a child. The course is provided by the Danish CA[67], in addition to the awareness raising activities initially provided by DIA (see 2.2.3).

- The third phase consists of one or more interviews with the AFL, whereby authorities investigate whether the PAP possess the **sufficient individual resources** necessary to adopt a child, followed by a home study report that is conducted and submitted to the Joint Council - who then make the final decision on whether or not to approve the PAP(s)[68]. A PAP who is married, or has a cohabitating partner, may only be approved as an adopter if his or her spouse/partner is also approved.[69] Approval is valid for four years.[70]

The ISS/IRC commends the independent nature of AFL's work in phase three, as there is little risk that approvals are linked to adoption fees but to an assessment of PAPs individual qualifications. There may be a minimal risk if annual State funding is based on numbers of approvals, instead of needs of social workers to carry out their responsibilities, often dealing with complex issues.

General frame of approval

The Danish CA recognizes the importance of selecting PAPs who are the most suitable to fit the needs of the child. The Government Agreement of 2014 proposed a reform of the approval system, whereby the approval framework becomes just one approval and will include older children and children with special needs.[71]

As of January 2016, a PAP may be approved to adopt a child within the age frame of 0-48 months who has common physical and mental development potential, with the possibility for limited use of support. There is a discretion to expand a given approval frame to include an actual child not within the PAP's existing approval frame.[72]

As an example of children considered within the new frame of approval – based on an individual assessment – approval can be given to adopt a well-treated HIV positive child, as well as pre-mature child, if there is a common development potential, possibly with a limited use of support at the time of the assessment[73]. The purpose of changing the frame approval has been to adapt the frame to accommodate the children who are in need of ICA today.

According to DIA, this general approval criteria may reduce the flexibility of PAPs in exploring their own resources and limits[74]. Indeed PAPs may feel obliged to accept the general

[67] *See* Information on the mandatory pre-adoption preparation course and the post adoption services provided in Denmark p.2; *see also* The Adoption Consolidation Act, Art. 25(c).
[68] An *Introduction to the Danish legislation in the field of intercountry adoption.* Available in English upon request; *see also* Executive Order on Adoption, Art. 17.
[69] Executive Order on Adoption, Art. 19.
[70] Executive Order on Adoption, Art. 24.
[71] Agreement on a new adoption system in Denmark, pg. 6 (2014).
[72] An Introduction to the Danish legislation in the field of intercountry adoption, available in English upon request.
[73] An Introduction to the Danish legislation in the field of intercountry adoption, available in English upon request.
[74] Meeting held in its Birkerød office, the 11 March 2019.

approval requirements in order to be able to adopt, which is not necessarily based on an "objective and honest" assessment of their own capacities. Such situation can increase the risk of breakdowns.

Despite such a risk, ISS/IRC believes that on balance it may be reasonable to set such general approval conditions with these "special needs", if the reality is that it is only such profiles are available for ICA in Denmark at the moment. ISS/IRC recommends in any case an individual assessment of the PAPs capacities, with the possibility of having exceptions to the general conditions where there are justifiable reasons.

The results of the investigation in phases 1 to 3 are presented to the Joint Council who decides whether or not the PAPs may proceed to final approval as a PAP. Approved PAPs must be registered with an agency that has been authorized by the Minister of Social Affairs and the Interior - Danish International Adoption (DIA) being the only one - to adopt a child that is not residing in Denmark (see 1.3.1). The decision made by the Joint Council can be appealed to the NBA. The number of appeals received by the NBA is decreasing over the years (around 20 in 2018 vs 40 four years ago)[75]. According to the statistics provided by the Danish CA, in 2018, 16 appeals were lodged at the NBA: 10 were rejected, 3 were taken into consideration and further information was requested for one of them.

Once approved the PAPs are registered in the waiting list for domestic adoption or ICA, according to their choice. They can easily move from a list to another but PAPs cannot be registered in two lists at the same time. Currently, 59 PAPs are on the waiting list for domestic adoption and 200 are on the waiting list for ICA. From these 200 families, 37 families are in the approval process, awaiting a decision regarding approval. ICA PAPs cannot be on more than one waiting list (i.e. for multiple countries of origin).

-The fourth phase of the approval procedure requires that all adoptive parents receive preparation and counselling immediately before and after the child is transferred to the custody of the adoptive parents.[76] They must receive three hours of counselling twice; the first three hours must be completed between the adoptive parents' acceptance of the proposed match and bringing the child home. The final three hours must be completed within three months after the child has been brought to live with the adoptive parents.[77] The preparation and counselling are provided by the Danish CA and are mainly state funded with phase 4 entirely free of charge. PAPs only have to pay DKK 2,500 for the participation to the pre-adoption counselling course (see 2.2.3).

[75] Meeting with the Chairman and the Secretary of the NBA, 12 March 2019
[76] An Introduction to the Danish legislation in the field of intercountry adoption, available in English upon request; *see also* The Adoption Consolidation Act, Art. 25(d).
[77] *See* Information on the mandatory pre-adoption preparation course and the post adoption services provided in Denmark, pg. 5.

2.2.4 Completion of the adoption procedure in the CO

Once phase 3 has been completed (see 2.2.3), DIA supports the PAPs to identify a country in which they would like to adopt from. DIA prepares the family for the adoption, a requirement under article 5b, of the 1993 Hague Convention.

The preparation consists of informing PAPs about the rules and regulations of the country of origin and as well as the adoption procedure. DIA also helps facilitates their adoption application including translation and legalisations, etc. While waiting for assignment of a child, DIA keeps the PAPs informed about the country they have registered for and provides updates of documents according to the regulations of the country concerned.

DIA keeps close contact with its cooperating partners during the waiting time and, when a child is assigned, the file of the child is assessed by one of DIA's paediatricians. After the approval matching procedure (see 2.2.4), DIA will notify is cooperating partner of the decision of the Joint Council or the CA in case the child is within the PAPs general frame of approval.

DIA will then prepare the necessary documentation related to the acceptance/refusal. DIA offers advice, guidance, travelling advice, formalisation of legal decision related to the case as well as follow-up after coming home from the child's country of origin. DIA is also responsible for the submission of the mandatory follow-up reports prepared by the AFL (see2.2.7). DIA makes sure that the report is translated and sent to the country of origin in accordance with the rules there.[78]

PAPs pay fees for this preparation, which complements the previous preparation (see 2.2.3 and 2.2.4), as it is not covered by any State funding.

2.2.5 Matching and probationary period

For each country that DIA cooperates with, the Danish CA maintains a list of documents and information which must be available in the case file. When DIA receives a matching proposal from the country of origin, DIA shall forward all the required documents and information to the Danish CA or the Joint Council. If the child is within the general frame of approval, DIA forwards the documents to the Danish CA. If not DIA or DIA is in doubt, DIA forwards the documents to the Joint Council.

The Danish CA is primarily responsible for verifying that all the legal requirements of the general approval frame for the child has been complied with, as well as those under the relevant legislation and procedures in the country of origin, and that the basic principles of the 1993 Hague Convention have been respected. The Danish CA will forward all the documents and information to the CA, who consults with the NBA for verifying that the health and social conditions of the child likewise meet the general frame of approval.

[78] Report provided by DIA at the meeting held in its Birkerød office, the 11 March 2019.

In cases where either the Danish CA or NBA decide that the general frame of approval has not been complied with, the case is sent to the Joint Council for an extension of the general approval to assess if requested by the PAP.

At this important stage, when further clarification is required about the child's background, the Danish CA rightly has the responsibility to ensure additional information is provided. The Danish CA relies upon the direct working relationship DIA has with the countries of origin, and accordingly delegates and shares this responsibility with its only AAB.

Social workers within the DIA highlighted that this shared obligation is a clear improvement to the pre-2016 system as it has encouraged more information gathering about the child's background[79]. ISS/IRC can only encourage the comprehensive collection of this necessary information, which is vital for issues such as proper matching, prevention of illicit adoptions and breakdowns, as well as facilitating access to origins (see 1.3.4a). Whilst in practice, it may be challenging to collect such information, and create delays in the processing of adoptions which may also be to the child's detriment, the immense value of such information cannot justify the fast tracking of cases[80]. Such checks and balances are required by the 1993 Hague Convention and the proper respect of the principle of subsidiarity.[81] This improvement is also essential for supporting an informed decision by the PAPs.

Following this assessment, and only once the file is complete, should the general frame of approval be met and the PAPs accept the matching proposal, the Danish CA will issue the Article 17 (c) agreement. Where an extension for approval is sought, the State Administration/Joint Council approves this extension. Where a trial period is stipulated for the adoption, the adoption order will not take effect until such trial period has ended.

In cases where the PAPs would like to appeal the Joint Councils decision, they may refer the case to the NBA (see 1.2.3).

2.2.6 Adoption decisions and storage of orders

When a child is from abroad, based on the original decision in the CO, the adoption order takes effect when the child arrives in Denmark. An adoption establishes the same legal relationship between the adopter and adoptee as exists between biological parents and their child. The child shall have a right to the property of the adopter and that of his or her family, as if the adopted child were the adopter's biological child. An adoption may under specific circumstances be revoked by the Danish CA if the adopter and the adopted child so agree[82].

[79] Meeting held in its Birkerød office, the 11 March 2019.
[80] ISS/IRC monthly review n°199 of February 2016.
[81] GGP1, chapter 2, section 2.1.1; ISS/IRC Manifesto for ethical intercountry adoptions available at https://www.iss-ssi.org/images/Publications_ISS/ENG/ISS_Manifesto_ANG.pdf.
[82] The Adoption (Consolidation) Act, arts.16-24.

In practice, the great majority of records of the entire adoption case with all files related to the child and PAPs from the 1960s onwards are held at the DIA. All adoptions from this period until the 2000s - approximately 20,000 in total - were carried out by the two former AABs. The CA and the National Archives hold approximately 2000 cases from Terre des Hommes who functioned as an AAB from 1970 until 2000. The CA indicates that they rarely receive any requests from adoptees adopted via Terre des Hommes.[83]

According to DIA, the task of archiving the 20,000 files has cost implications in terms of physical storage and delivering of copies of files when required by adoptees. This involves staff retrieving the file and making the necessary copies, all of which at this stage is covered by the general adoption fees received.

ISS/IRC recommends Danish authorities considering either funding DIA for its current practices and/or explore the possibility of having digital archives. Such an initiative would include an initial investment to digitalise the cases, but in the long run would save storage costs and costs related to staff having to physically undertake the copying work. It would still however be necessary to keep copies of such documents (e.g. photos) which could be precious in their original format to adoptees and their families.

2.2.7 Post Adoption Services (PAS)

The Danish social welfare system secures free treatment and assistance, both medically and economically, for every citizen[84]. Accordingly, and unsurprisingly, the Danish authorities currently finance most PAS offered by the State adoption actors.

Follow-up reports

The AFL offers guidance and home visits to the adopters after the child has arrived in the family, and assists in the preparation of statements and follow up reports when it is requested to do so by authorities in Denmark or abroad.[85] The drafting of such reports are covered by the AFL.

In addition to the follow up reports which are required by some countries of origin, the Danish CA collects information about the adoption proceedings through surveying the adopter once the adoption has been finalised, and where the adoption has been provided by an adoption agency.[86] This information is not centralised in a report per se.[87]

ISS/IRC recommends the systematic execution of such surveys be further used as one means of complying with CA supervision responsibilities under the 1993 Hague Convention. (see 1.2.5b).

[83] Danish CA communication to ISS/IRC – 15 February 2019
[84] Report provided by DIA at the meeting held in its Birkerød office, the 11 March 2019.
[85] Executive Order on Adoption, Arts. 42, 43, 77.
[86] The Adoption Consolidation Act, Art. 31(g).
[87] Danish CA communication to ISS/IRC – 15 February 2019

Post adoption support

All adoptive families may receive further counselling and support through PAS as required by international standards[88]. These are provided by the Danish CA[89], and undertaken by several psychologists across Denmark, who are mandated by the Danish CA.[90] Counselling is available to the family until the child turns 18 years of age, and is mainly state financed. Each family may receive up to twenty hours of counselling[91]. As part of Danish PAS, the Danish CA also offers "Children's groups" for older adopted children, free training for professionals who are in contact with adopted children (i.e. teachers, day care workers, etc.), and an established scheme for counselling of adoptees who have reached adulthood[92].

In addition to PAS services provided by the Danish CA, DIA likewise invests in counselling and support to adopters and adoptees from the time of the finalisation of the adoption. The PAS actually commences prior to the adoption and continues after it, through the counselling of families who have just commenced their life with the new child. With the reporting to the country of origin – it also extends to counselling young or adult adoptees, who are planning search of origins activities, to/in their country of origin or have other inquiries or doubts about their background[93]. Such services are covered by adoption fees and not funded separately by the State. In 2018, DIA received 458 requests from 367 families/adoptees, with great majority dealing with contact with birth families and travelling to the country of origin.[94] DIA notes that the demand for PAS has been increasing.

Search of Origins

As part of Danish PAS, and the 2014 governmental agreement on adoption reform, there is a recognition of international principles pertaining to the importance of a child's right to his or her identity. This includes an acknowledgement of the importance of the adoptee's ability to search for his or her origins if he or she so chooses, and the accessibility of such information. The governmental agreement states that in regards to choosing other countries to collaborate with in the context of ICA, the Danish CA shall ensure that the child has the ability to access information about his or her adoption proceedings in the country of origin.

In practice, the Danish CA provides psychological support (as previously discussed). DIA complements this, for example, through its work in countries of origin, collection of documents and by providing support for contact. This work is currently covered by general adoption fees received by DIA.

[88] The 1993 Hague Convention, art.9c
[89] An Introduction to the Danish legislation in the field of intercountry adoption, available in English upon request.
[90] See contribution of Ina Dulanjani Dygaard and the Danish National Social Appeals Boards on "Mandatory, continuous and accessible pre-adoption and post-adoption support in Denmark: strengthening the skills of adoptees, adopters, and the social environment of the adoptive families" in Jeannin, C. (Ed.) (2018). *Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (pages 141-143).
[91] *See* Information on the mandatory pre-adoption preparation course and the post adoption services provided in Denmark, pg. 6.
[92] Supra 7 (for more detailed information on PAS).
[93] Report provided by DIA at the meeting held in its Birkerød office, the 11 March 2019.
[94] Report provided by DIA at the meeting held in its Birkerød office, the 11 March 2019.

The ISS/IRC is aware that adoption associations also provide work in this area – although the extent of their involvement was beyond the mandate of this report.

Whilst DIA has the possibility to charge additional expenses for its work, further increasing the current fees could create barriers to accessing this fundamental right to identity. In the context of the Danish spirit of free medical and social support, ISS/IRC recommends that all PAS be financed by the State, in particular services related to search for origins. In addition, as part of the PAS, it is important to note the growing role that illicit adoptions and adoption breakdowns will likely have – therefore sufficient resources and clear identification of roles is necessary (see 2.2.10 and 2.2.11).

2.2.8 Fees

All services provided by the State, including the work described in the different phases above, are in principle covered by State funds – although a token fee is paid by PAPs for phase 2 (see 2.2.3).

In terms of adoption fees to be paid by PAPS, DIA notes that these are used to cover the general operating costs of the organisation and part of the supervision requirements. According to DIA the 2 million DKK paid by the State to comply with supervision is not adequate (see introduction).[95] The fees may only be used to cover costs directly associated with the operation of the agency's adoption assistance activities in Denmark and abroad, including expenses for child welfare work related to the adoption assistance activities.[96] According to the Executive order, an AAB may carry out regular adjustment of adoption fees, so long as adjustment is based on objective criteria approved by the Danish CA[97]. Adoption agency fees must be reported to the Danish CA and information about the amount and composition of the fee must be made available to the general public (see 1.3.5a)[98].

A notable improvement in the 2016 system is that the Danish CA has now started monitoring the patterns of payments by AAB. Further work in terms of monitoring PAPs fees would add to such improvements (see 1.3.5b). Likewise more supervision of fees, contributions and technical development is also necessary, which could be undertaken jointly by the Danish CA and DIA.

2.2.9 Sanction

The Minister of Social Affairs and the Interior may promulgate rules regarding the supervision of an adoption agency. As such AABs may not obtain undue financial or other gain in connection with adoption assistance nor may it receive disproportionate payments for work performed. If an adoption agency fails to comply with the provisions of The Adoption (Consolidation) Act, the National Social Appeals Board must issue a warning, or an

[95] Information received from DIA, 1 May 2019
[96] Executive Order on Adoption, Art. 58.
[97] Executive Order on Adoption, Art. 58.
[98] Executive Order on Adoption, Art. 58.

order, to the agency or amend the terms stipulated for the agency's activities[99]. In the case of material or repeated failure to comply with the provisions of the Act, the Minister of Social Affairs and the Interior may revoke the agency's authorization[100]. Anyone who fails to observe the provisions stipulated for agency authorisation may be punished by fine or imprisonment for up to four months[101].

To date the National Social Appeals Board has not yet had to impose any sanctions. In 2016, it has however imposed an order to regulate fees, so that the payment rates reflect the requirement that the fees paid when a matching proposal is accepted and when the child is brought to Denmark must as a minimum be 33% of the total fee. For the transfer of child back to Denmark, there should be as minimum 20 % of the total fee(in the Terms of Accreditation chapter 4.2). Given some of the recent illicit practices that have arisen, it may be important for the National Social Appeals Board to take a more active role of the necessity of using its authority with regard to sanctions (see 2.2.10).

2.2.10 Illicit practices

Like the great majority of the countries involved in ICA, Denmark has experienced, and will continue to experience, illicit practices related to adoptions. Illicit practices are known to be highly damaging for adoptees and their families, as well as necessitating cooperation internally and externally to find solutions. For example, cases concerning Ethiopia and India have had a huge impact in the media and the public opinion in most receiving States, stressing the dark side of ICA. For example in Denmark this media attention has resulted in the Danish CA increasing its monitoring of the cooperation program with Ethiopia. In 2013, the Danish CA closed DanAdopt's programme for a short period, although they did not close the programme entirely before 2016. The Danish CA waited for some time to see whether improvements to the system were being implemented as promised and finally concluded that regrettably this was not the case. In this context, when the cooperation with Ethiopia closed in 2016 a significant number of PAPs' applications had to be redirected to other countries – with extra fees and additional waiting times - generating frustrations and anger.

Currently, there is no clear procedure in place to address illicit practices – both those arising out of past and current practices. They are dealt with on case-by-case basis, which results in a lack of around responsibilities and confusion among potential victims. As these illicit practices will continue to surface, these should be addressed by the Danish authorities in a more systematic manner. The role of the actors involved in different sectors such as Justice, Foreign Affairs, private sector should be defined as well as the mechanisms to deal with these tragedies through the elaboration of a protocol (an example can be seen in Australia)[102].

[99] The Adoption Consolidation Act, Art. 31(i).
[100] The Adoption Consolidation Act, Art. (31(i).
[101] The Adoption Consolidation Act, Art. 34.
[102] Available at ISS/IRC. See also "*Promising practice: working group on preventing and addressing illicit practices in intercountry adoption by the Australian CA*" in Baglietto C, Cantwell N, Dambach M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva, Switzerland: International Social Service (p.141) where the Australian CA presents their protocol.

ISS/IRC recommends the Danish authorities to develop a protocol (with the support of ISS/IRC if needed) in order to clarify the roles of each actor as well as the procedure to be followed when illicit practices arise. This should include legal and political remedies, as well as mechanisms for providing psychosocial support. Long-term effects should be taken into consideration when determining the best solution for the child whose interests and rights were violated.

As part of any protocol, the possibility of sanctions for all actors, including PAPs, should be envisaged including the application of national standards as required by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography[103]. The application of such sanctions should depend on the extent of proven involvement in the illicit adoption practice.

ISS/IRC further recommends that resources be invested to counter the negative image of adoption so that a more balanced view is portrayed by the media. Such an initiative can also be helpful for adoptees who may feel stigmatised as a result of only negative media coverage. The role of adoption associations and adoptees would be critical in such an initiative[104].

2.2.11 Adoption breakdowns

Although the prevention of breakdowns is the main focus of all adoption actors in Denmark and in the country of origin, similar to the situation for illicit practices (see section 2.2.10), there is no clear procedure in place to address breakdowns occurring post matching, either in Denmark or in the country of origin. In practice a handful of breakdowns come to the notice of authorities each year. However, there may also be "hidden" cases where ostensibly the filiation has not legally been revoked, but where the relationship between the adoptive parents and the adoptee is challenging[105].

Whilst the specific role of DIA in this field is highlighted in their Terms for accreditation, it does not seem that the role of other actors such as the Danish CA is clear. According to the

[103] See article 3.1c(ii) and 3.5

[104] See "The media's treatment of adoption breakdowns by Céline Giraud and Julien Pierron" in Jeannin, C. (Ed.) (2018). *Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (p.48).

[105] See "*Collecting data on problematic adoptions: the experience of the Emilia-Romagna Region in Italy" by Monica Malaguti"* in Jeannin, C. (Ed.) (2018*). Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (pag.32). See also the definition of breakdowns proposed by the ISS/IRC in this publication: "*An intercountry adoption crisis or breakdown occurs when the adopters or the adoptee are faced with temporary, even irremediable, problems either before or after the adoption decision, which can result in an early or later severance of bonds. Apart from the visible breakdowns leading to the out of home care placement of the child, usually through an administrative or legal decision, certain breakdowns of intercountry adoption remain invisible because the competent authorities are not notified of the separation; or despite coexistence within the adoptive family no solid reassuring bond has been created. A broad definition of these terms which accord with the indicators that relate to the extent of the problems, and which are linked particularly with: the construction and consolidation of attachment bonds; the time scale; the nature of professional interventions; the division of responsibility; and any prognosis, would make it possible for the maximum number of crises to be visible when collecting statistics – consequently allowing for appropriate support. These data are of prime importance when designing procedures for adoption and support for families."*

Terms for Accreditation, DIA has a prevention role with respect to managing difficult situations with, and difficult reactions from, PAPs[106]. However, the details of this management responsibility are not elucidated further.

Breakdowns are currently dealt with on case-by-case basis, which results in a lack of clarity regarding delineation of responsibilities and confusion among affected parties. Recent cases of consecutive breakdowns have occurred, where PAPs changed their mind right after their first meeting with the child in the country of origin. These situations have absorbed significant resources from the Danish CA, DIA and the NBA as they to try to find the best solution for the child within an acceptable timeframe. The activities of Danish actors in such cases, are not currently supported by funding from the State, which is particularly challenging for DIA whose financial stability is already at risk.

It is clear that the lack of guidelines to deal with such sensitive cases have made these situations even more complex. The numerous challenges at legal and psychosocial levels are resource consuming for all the actors involved and highly damaging for the children who have experienced a new rejection/abandonment.

Based on the lessons learned from recent cases, ISS/IRC recommends the Danish authorities develop guidelines – an example can be taken from the Vietnamese circular on the protection of Vietnamese children adopted abroad.[107] Such guidelines should describe the role of each actor, the procedure to follow including a timeframe, as well as responsibility for the costs generated by these situations. A key principle in any such guidelines is the expedition of the case, given the potential damage to the child and eventual attachments that may be formed in temporary solutions. Cooperation amongst all actors involved in Denmark and in the country of origin plays a crucial role in finding the best solutions for the child. The guidelines should also outline the new matching procedures to be applied for the child and PAPs[108], including preparation of the child. In addition, for the former PAPs guidelines should also be in place surrounding the possibility for them to re-engage in a future adoption.

The ISS/IRC further recommends that statistics be collected in this regard, with consideration for using the model form contained in the adoption breakdown handbook[109]. The ISS/IRC suggests that DIA consider having a clause in their agreements with PAPS for such unforeseen circumstances, so that in appropriate cases they may be held accountable for the maintenance of the child and bear some responsibility for the breakdown. In cases where the adoption order has been finalised and adoptive parents have abandoned the child in the country of origin, the ISS/IRC recommends that the

[106] Chapter 2, 2.5 Terms for Accreditation applicable for DIA, Valid from 1 January 2016 to 31 December 2020

[107] See contribution of the Vietnamese CA on "Vietnamese legal measures for the prevention of intercountry adoption breakdowns" in Jeannin, C. (Ed.) (2018*). Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (p.63).

[108] See "*When a new psychic adoptability takes shape: supporting the child in a new adoption project after following an adoption breakdown by Gaëlle Grilo*" in Jeannin, C. (Ed.) (2018). *Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (p.191).

[109] See Appendix 2a in Jeannin, C. (Ed.) (2018). *Towards a greater capacity: Learning from intercountry adoption breakdowns*. Geneva: Switzerland. International Social Service (p.211).

Danish authorities consider the application of the principles of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and its protocol.

Section 3: Possible future ICA system

In light of the above context of decreasing ICA and the increasing need for PAS (see introduction), the Danish CA has requested that the ISS/IRC explore the feasibility of three models that would ensure sustainability of ICAs. It is important to preface the following examination of models by noting that the efficacy of the system will fundamentally depend on the political approach to ICAs of Danish authorities.

Danish authorities may take the view that all Danish citizens should have the opportunity to have a family, through ICA (political approach one). This view would entail the same spirit that governs the provision of broad public services such as education, health and social security – all fundamentally State funded and free for the beneficiaries. This spirit arguably is a primary reason as to why national adoptions are in principle for free for Danish citizens. Of course, the lack of fees can also be explained by the fact that Danish citizens themselves are providing a child protection service to the State, who is responsible for all children on their territory. In any case if the same spirit of equal access to services is applied to the realm of ICA, it would then follow that further budget should be allocated to ensure such access is a reality. Given the objectively high costs related to ICA fees, an obstacle remains for families with moderate and lower incomes to access such an opportunity to family.

Alternatively, Danish authorities may adopt the view that the facilitation of ICAs for all Danish citizens does not fall within their mandate (political approach two). ICAs - linked to child protection in another country – should not necessarily be promoted. Reasons could include, *inter alia*, the decreasing need for ICA, the challenging profiles of adoptable children, risks related to illicit adoptions and breakdowns – the latter all bearing arguably a superfluous burden on the State with respect to follow up support. Moreover, as the decision to parent a child habitually resident in another country is a decision belonging to the PAPs, questionably the associated costs should be borne by them. Danish authorities in this regard are only responsible for ensuring that effective systems are in place that provide the framework for ethical adoptions. If this approach is adopted, then investment in ICA with minimal safeguards is necessary. It can be argued in this system that many of the costs linked to ICAs should be covered by adoption fees.

In between political approaches one and two, is the view that the Danish authorities should provide equal access to ICAs, however with PAPS adoption fees covering to some extent the economic consequences of their decision to adopt (political approach three). The degree to which this model sways towards political approach one or two will, to a certain degree, depend on the amount of funding provided to additional services. It will depend on the role that the Danish CA wants to have, and has the capacity to have, according to its international obligations – particularly with respect to cooperation with the countries of origin.

International standards such as the 1993 Hague Convention do not dictate to the State which approach to adopt. The 1993 Hague Convention notes simply that the State should be in a position to ensure the facilitation of the number of ICAs – whatever they may be – are undertaken according to its principles therein. This includes, in terms of key principles, matters such as respect for the principle of subsidiarity, preparation/evaluation, adoptability of the child, matching, follow up support and access to origins.

In the framework of these three political approaches, the Danish authorities are considering three ICA models. The preference for each model will depend on the political approach that is adopted. For each model, there will be benefits, drawbacks and consequences, as identified earlier. In particular this will relate to the breadth of activities and what is required in terms of supervision (see 1.3). For example, there will be benefits, drawbacks and consequences in terms of education (see 1.3.3), general activities (see 1.3.4a) and economic activities (see 1.3.5a and 1.3.5b). This same structure will be therefore used to frame the analysis of the three models.

Model 1: AAB with funding from the State, but with an economy still primarily based on fees paid by PAPs	**Model 2: A model where the AAB and the State enters a Service Agreement and the AAB is primarily State funded**	**Model 3: A model where the Central Authority carries out all the functions without an AAB**
The system remains the same as is now, with DIA receiving specific funding for some of its activities. Adoption fees continue to be DIA's main source of income. Model 1 (see 3.1) will work well with political approach three which is a system that is in the middle of political approach one and two. This mirrors the view that the Danish authorities should provide equal access to ICAs to a certain extent, with PAPS adoption fees covering to a certain degree their decision to adopt.	DIA will be mostly State funded for its activities, with adoption fees playing much less of a role. There will be an increase in Danish CA supervision of its activities. Model 2 (see 3.2) will work well with political approach one where Danish authorities may take the view that all Danish citizens should have the opportunity to have a family, through ICA.	All activities centralised by Danish CA with the involvement of other State Actors. There is no AAB in this model. Model 3 (see 3.3) will work well with political approach two where the facilitation of ICAs for all Danish citizens does not fall within the direct mandate of the State. Therefore the State should not compensate PAPs fees. Model 3 is flexible and could be compatible with political approach one – depending on State investment into ICA. If such an approach is adopted, more investment to State actors is required to absorb the potential influx of Danish families having greater access to ICAs.

3.1 Model 1: AAB with funding from the State, but with an economy still primarily based on fees paid by PAPs

3.1.1 Brief description

Model 1 is the status quo – maintenance of the existing system with moderate adjustments. This model fits most closely with the middle ground between political approach one and political approach two mentioned above.

In this model the State will continue to cover Phases 1 to 4 and part of PAS (see 2.2.3), with DIA providing mostly the same services (see 1.3). DIA's operations will continue to be primarily funded by the PAPs fees. The States contributions to the DIA will however be extended to not only cover their supervision responsibilities (see 1.2.2 and 1.3) but also specific activities to be decided upon. These specific activities could include information sessions prior to phase 1 of the approval procedure as well as some participation in preparation (phase 2), PAS such as search for origins, archives of closed cases, domestic adoptions, breakdown's cases on a case-by-case basis, etc. Specific funding could also be provided for translation of new laws, when not available in English or Danish (e.g. as occurred with the translation of the Colombian laws which were over 300 pages).

3.1.2 Benefits

In terms of educational benefits – the training provided to PAPs would remain the same. It could be argued that if PAPs fees continue to cover part of the training provided by DIA and additional funds from the State were to be accorded, then there would be an incentive for DIA to provide multiple courses, given that their sustainability is significantly linked to fees. The advantage would be well-prepared PAPs for the adoption.

In terms of general benefits – there would be a continuity of improvements of the 2016 system in terms of robust approval procedure, collecting background information of the child and improved supervision of the activities of the DIA and cooperation with the countries of origin. In this model the expertise of DIA can be capitalised and long standing relationships with multiple partners in countries of origin can be preserved.

In model 1, the DIA would importantly maintain its independence as a non-government actor and therefore have a degree of liberty in terms of activities and cooperation agreements that it would like to initiate – as its main revenue is not based on State funding. In countries where the CA substantially or wholly funds the activities of the AAB, the CA has the power to dictate which activities, including case management, should be processed. The ISS/IRC is of the view that AABs should have the possibility to have their views considered, and in certain cases, decisions respected. For example, DIA had the autonomy to decide it would stop its activities in Viet Nam, admittedly through encouragement of the Danish CA.

In terms of economic benefits – the increased financial investment by the State would be limited to specific services such as search for origins, archiving, and perhaps part of general information sessions before phase one. If a variable budget were provided to cover breakdowns, that is on case-by-case basis, this would alleviate the massive utilisation of current resources. Assuming adequate funds are provided in this model to cover specific activities, there would be less risk of loss in staff within DIA. If dedicated funding is provided to DIA for adoption breakdowns and illicit practices, this will improve their capacity to deal with such cases and result in less of a burden on the State to act in such cases. For PAPs, the economic benefit would be slightly decreased fees, creating a moderately improved opportunity for families with less means, to adopt internationally.

3.1.3 Drawbacks

In terms of educational drawbacks – there is a risk that DIA may not have the necessary resources to dedicate to providing preparation guidance. Given that their resources are already limited, with much being absorbed by accreditation responsibilities, little is perhaps left for other initiatives. With less investment in preparation, this could endanger the quality of adoptions and lead to adoption breakdowns – with ensuing costs on the State.

In terms of general drawbacks – the sustainability of system depends on the numbers of ICAs undertaken, which can create a conflict of interest and a pressure to process more ICAs than are ethical and needed. Equally with model 2, this may have the unintended consequence that, as the only AAB, DIA can exercise undue influence on political decisions – arguably, understandable in the sense that its viability depends on certain political choices. It can also lead to a perceived necessity to continue receiving contributions and involvement in development aid projects, in order to be sure to receive an adequate number of proposals from the country of origin.

In terms of economic drawbacks - given current trends in ICAs numbers (see introduction) decreasing, if adoption fees continue to be the main source of income, DIA believes they will not be able to continue with the task of mediating ICA in the future.[110] If adequate funds are not provided in this model, this would mean that there would be a loss of staff within DIA, necessarily involving a loss of their expertise, resulting at least in the short to medium term - a decrease in quality of service provision. As an outcome, this may mean that the number of cooperation programs may continue to decrease. An example of this is seen in Peru, which gives less viable options for PAPs and has resulted in the loss of longstanding relationships with authorities in partner countries. The potential "institutional" loss of knowledge of countries of origin will be difficult to regain. There may even be, in the long run, the risk that DIA may need to stop its activities altogether.

[110] Information received from DIA, 1 May 2019

3.1.4 Impact on CA's current activities (supervision AAB, cooperation with CA and economic relationship)

Within this model, depending on the additional DIA activities that are funded, there would be a moderate increase in supervision by the Danish CA – in terms of services provided and financial activities. There would be no impact on the cooperation with the countries of origin as DIA would continue to be the main interface, at least in the short term.

However, if in the medium to long term there are fewer resources to maintain the number of cooperation programs, this will have an overall impact on the relationships with countries of origin.

If the general budget dedicated to ICA remains the same – even if there is a moderate increase in investment to DIA – this may also mean that less State resources will be available to fund the other adoption actors, such as Danish Central Authority, NBA and AFL.

If DIA operational activities are eventually no longer viable (most likely in model 1), then the Danish CA should have a back-up plan to be able to absorb the work of DIA in the short and mid-term. This could include having plans to transition to model 3 in an efficient manner where the interests of children and PAPs are not jeopardised.

3.1.5 Transitional considerations should model 1 be chosen

Should model 1 be selected, this would necessitate a slight transition from the current system in place.

In terms of education considerations – if the specific country knowledge of DIA were to be included in phase 2 preparation of PAPs (currently led by the Danish CA), then existing training would need to be adapted. It is our view necessary that the Danish CA retains the lead of phase 2 to ensure the continuity of phases 2 and 4 (see 2.2.3)[111].

As to general considerations – as there would be a moderate increase in State financing of DIA, there is likely to be an augmentation of supervision by the Danish CA of how this money is spent. However in practice, DIA believes that the supervision is already so comprehensive that it is difficult to imagine what additional supervision could be required. Therefore additional work between the Danish CA and DIA to accommodate supervision in a collaborative manner would be necessary.

Depending on the extent of PAS that could be delegated to DIA, it will be necessary that they gain additional expertise, especially at a psychological level. The ISS/IRC is of the view that if all PAS is transferred to DIA, the high level expertise of the psychologists currently providing PAS at the Danish CA will be lost.

[111] See ISS/IRC monthly review n° 188 of January 2015.

If the number of cooperation programs with countries of origins, does in fact, diminish – it may be the case that there may be too few countries to undertake ICA in a sustainable manner. The Danish Authorities should be prepared for any potential backlash from Danish citizens in this regard.

In terms of economic considerations – given that the trend for State funding for ICA has been on the decrease (see introduction), it may be the case that the increased funding diverted to DIA may slightly affect the funding provided to the Danish CA and other adoption actors, if there is a fixed budget.

As to specific activities that could result in increased funding to DIA, ISS/IRC is of the view that the PAS undertaken by AFL should continue as is. As the AFL remains a neutral body in the drafting of such reports and has qualified social workers based across Denmark, it seems that this current system works well. If this task were to be delegated to DIA, there could be a conflict of interest to draft reports that are more positive, to ensure the continuation of ICAs – as their sustainability would still primarily be based on adoption fees and carrying out of continuous flow of adoptions.

Likewise, whilst it was suggested by DIA that it could possibly be financed to cover the work of the NBA in terms of processing national adoption cases, ISS/IRC is of the view that the current system appears to be quite efficient. Given costs are seemingly low based on a case by case basis[112] with access to a high quality multi-disciplinary team (see 1.2.4), aside from the financial advantages to DIA, there appear to be no other reasons to change the system.

Another consideration under this model will be a clear decision about other permitted funding sources for DIA – such as independent foundations and cooperation programs not linked with adoptions and based in non-partner countries.

3.2 Model 2: A model where the AAB and the State enters a Service Agreement and the AAB is primarily State funded

3.2.1 Brief description

Model 2 is inspired by the Icelandic model where DIA would be mainly State funded. This model aims to ensure the sustainability of an ICA system without being dependent on the numbers of ICAs undertaken. This model fits most closely with political approach one mentioned above. As a result, the adoption fees would be significantly reduced and there would be less barriers for families with moderate to lower incomes to access ICAs. This is the preferred model if the State wants to wholly ensure the sustainability of its only AAB and avoid the risks linked to independent adoptions[113]. Under this model there would even be an opportunity to have another AAB if adequate funds were provided.

[112] Meeting with the chairman and the Secretary of the NBA, 12 March 2019
[113] See conclusions and recommendations n°22 and 23 of the Special commission of 2010.

At this point it should be noted that this model promotes a system where only children that are truly adoptable are adopted through ICAs. It creates less pressure to start as many cooperation programs with as many countries of origin as possible, even when adequate safeguards are not in place, to ensure the sustainability of a AAB – a problem that is more apparent in model 1.

Model 2 as applied to ICA, would reflect to a greater degree the approach adopted for domestic adoptions (see 2.1) – with the main difference being the work of DIA to cover the international aspects of the procedure.

It should be noted that a number of other States are moving towards model 2, such as the Belgium Francophone model where there has been a continual upwards trend in financial support to its AABs.[114] By way of example, the following table shows the increase in euros in terms of subsidies.

2005	2006	2007	2008	2009	2010	2011	2012
143.000	533.912	705.000	730.944	745.566	929.220	929.220	947.803

This model works well in Belgium Francophone as over many years the CA has invested in its close collaboration with its AABs with regular joint missions and meetings. In practice, there is a smooth transfer of information between the CA and AAB at each stage of the procedure and there is a level of trust between the two[115].

To this end, DIA believes that model 2 is the best professional foundation for adoptions in Denmark, as there would be greater equality between domestic adoptions and ICA.

3.2.2 Benefits

In terms of educational benefits – ideally there would be more time to improve the quality of the training and support provided to PAPs, as actual DIA staff would be maintained. Resources would be freed up to upskill current staff in issues such as management of breakdowns and the evolving needs of adoptable children.

In terms of general benefits – as in model 1, there would be a continuation of the improvements of the 2016 system with robust approval procedure, collecting background information on the child, and improved supervision of the activities of the DIA and cooperation with the countries of origin. As in model 1, the expertise of DIA can continue to be capitalised on and long standing relationships with multiple partners in countries of origin can be preserved. Thus, it ensures the maintenance of a number of cooperation programs.

[114] Activity Report 2016-2017 available at: http://www.adoptions.be/index.php?eID=tx_nawsecuredl&u=0&g=0&hash=ae77cc3c64f5e7f9f10cd33fa3e7a30999438eb8&file=fileadmin/sites/saac/upload/saac_super_editor/saac_editor/documents/Rapports_d_activites/Rapport_d_activites_2016-2017.pdf

[115] See ISS/IRC monthly review n°216 of October-November 2017.

Model 2 has the great advantage of being immune to changes in the country of origin's approach to ICAs, such as moratoriums and definitive suspensions. The same can be said when a receiving country adopts a similar approach to a country of origin, due to the (potential) high risks involved. Under the current system, should such cases arise PAPs are in a vulnerable position, and there is a high potential for emotional damage to the child and PAPs where matching has already occurred[116]. In particular, in such cases PAPs bear the risk of losing fees already paid to initiate proceedings in such countries. Whereas in model 2, given that the fees are limited, costs which are absorbed by PAPs (and even DIA) are likely to be more manageable.

In this model, DIA would arguably have more resources to be able to adequately respond to breakdowns and illicit adoption practices. For example, the work of *Adoptionscentrum* in Sweden in responding to breakdowns and illicit adoption practices provides a helpful example and is illustrative of the important role that an AAB can have in such cases[117].

In terms of economic benefits, as adoption fees, would in principle be quite moderate, this model would be in line with the Danish spirit of equality for all citizens. This means that ICA would no longer be reserved for the most well off in the country, but also open to families with more modest means. This system wholly ensures the financial sustainability of DIA without being reliant on ICA numbers. This creates in principle a more ethical system, assuming that the Danish authorities do not themselves feel the necessity to exert pressure to undertake ICAs to ensure the cost-effectiveness of their greater investment in the system.

3.2.3 Drawbacks

In terms of educational drawbacks – as the services are no longer based on fees received, there may be the risk that DIA provides less services – in terms of quantity and quality. That is, an expectation of being paid in any event could result in DIA becoming lax in their service provision and quality could suffer. This risk can easily be averted through a cooperation agreement with the Danish CA, outlining precise details of minimum services to be provided.

In terms of general drawbacks – as in model 1, the sustainability of model 2 to a certain degree, (albeit much less than in model 1) depends on the numbers of ICAs undertaken. Thus, this again risks the creation of a conflict of interests and potential pressure process more ICAs than are ethical. It can also lead to a felt necessity to continue contributions and development aid projects, in order to be sure to receive an adequate number of proposals

[116] See Chapter 3 on psychosocial considerations in Baglietto C, Cantwell N, Dambach M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva, Switzerland: International Social Service (p.46 and following).
[117] See *Promising practice: how accredited adoption bodies in Sweden and Finland can assist in illicit adoption cases by Birgitta Löwstedt and Suvi Korenius* in Baglietto C, Cantwell N, Dambach M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva, Switzerland: International Social Service (p.89); "*Perspectives of a Swedish adoption accredited body: the cooperation experiences of Adoptionscentrum by Anna Taxell"* in Jeannin, C. (Ed.) (2018). *Towards a greater capacity: Learning from intercountry adoption breakdowns. Geneva: Switzerland.* International Social Service (p.88).

from the country of origin. To avoid this drawback, institutional cooperation could be envisaged via a neutral organisation such as HCCH, ISS and UNICEF.

Unlike model 1, the DIA would likely lose some of its independence as a non-government actor and therefore its liberty in terms of activities and cooperation agreements that it would like to initiate – as its main revenue is now based on State funding. This drawback should be balanced with the benefit that DIA's presence would be strengthened if it acts with the Danish CA.

As in model 1, however to a much greater degree, given the size of State funding, there would be much more supervision of DIA's activities. This would drain resources of both the Danish CA and DIA, the latter already feeling the burden of this supervision.

In terms of economic drawbacks – as in model 1, if adequate funds are not provided for model 2 (e.g. slightly more than 50%) this could mean that there would be a loss of staff within DIA (and consequently a loss of their expertise) resulting, at least in the short to medium term, in a decrease in quality of service provision. As a result, this may mean that the number of cooperation programs may continue to decrease as in the case of Peru stated above. The potential "institutional" loss of knowledge of countries of origin will be difficult to regain. There may even be in the long run the risk that DIA may need to stop its activities altogether.

Assuming that significant funds are invested into model 2, this could be quite an expensive investment of State resources, starting with a significant amount being provided to DIA. Further, as adoption fees would, in principle, be quite moderate this could have the inadvertent drawback that many more Danish families could initiate ICA proceedings. This would then necessitate greater involvement and costs of actors at all levels, including Danish CA, NBA and AFL.

As a result of making ICA more accessible to the wider public, an unintended consequence may arise whereby frustrations are created among PAPs who are already on long waiting lists and facing a potential impossibility of really being able to adopt (given the global trends of children being declared adoptable - see introduction). There may also be PAPs who are not satisfied as they have paid fees, to be compared with newer PAPS who have not paid any fees. A plan needs to be in place to respond such a possibility (see 3.3.3).

3.2.4 Impact on CA's current activities (supervision AAB, cooperation with CA and economic relationship)

Model 2 would involve a significantly greater level of supervision on the behalf of the Danish CA, on how State funds have been used than model 1. If this model is selected, ISS/IRC recommends that a specific cooperation agreement which identifies specific activities undertaken by DIA be established to avoid the risk that there is less motivation for DIA to maintain a certain quality and panorama of services.

Likewise, if DIA operational activities are eventually no longer viable (less likely in model 2 than in model 1) then the Danish CA should have a back-up plan to be able to absorb the work of DIA in the short and mid-term. This could include having plans to transition to model 3 in an efficient manner where the interests of children and PAPs are not jeopardised.

3.2.5 Transitional considerations should model 2 be chosen

Should model 2 be selected, this would necessitate the following transition from the current system in place.

For educational considerations – the same as in model 1 apply.

In terms of general considerations – as there would be a significant increase in State financing of DIA, there is likely to be an augmentation of supervision by the Danish CA of how this money is spent. However, as mentioned for model 1, in practice there are challenges involved in ensuring that DIA understands what this additional supervision could entail and its necessity. Therefore, model 2 would require even more work than is envisaged in model 1, between the Danish CA and DIA to facilitate such supervision in a collaborative manner.

Depending on the extent of additional services (including PAS) that could be delegated to DIA, it will be necessary that the AAB gain additional expertise. Upscaling of professional capacity would need to be factored in.

If the number of cooperation programs with countries of origins, does in fact, diminish – there is a slight risk that that there may be too few countries to undertake ICA in a sustainable manner. Therefore, work with the public and PAPs will be needed in this regard to ensure that their expectations are realistic.

In terms of economic considerations – given that the trend for State funding for ICA has been on the decrease (see introduction), it may be the case that by increasing and diverting funds to the DIA, there may be a slight affect on the funding provided to the Danish CA and other adoption actors.

In the short run, whilst such a policy is being considered, PAPs in ICA may be reluctant to be placed on waiting lists, with a view to possibly saving themselves of the burden of paying ICA fees – similar to model 3. This could mean that national PAP waiting lists could become much longer. As an adverse consequence, DIA could receive even less applications and this could (over the short term) put their financial sustainability at great risk. During this phase, DIA could risk its financial sustainability as there would be limited income during the transition period. A temporary plan to avert this situation should be prepared.

3.3 Model 3: A model where the AAB and the State enters a Service Agreement and the AAB is wholly State funded

3.3.1 Brief description

Model 3 consists of transferring all the responsibilities and services linked to ICA to the State, leading to the closure of DIA and the repartition of its activities amongst state actors. Model 3 would be 1993 Hague Convention compliant if the Central Adoption Authority is able to meet all its obligations without recourse to an AAB (see 1.3).

Depending on the level of State investment into this model, model 3 is arguably the most flexible with regard to political approaches one and two detailed above. If approach one is adopted, then greater investment in State actors is required to enable them to respond to the potential influx of Danish families having greater access to ICAs. If approach two is taken, then investment in up skilling the capacity among State actors to provide the minimum services is required to replace the functions carried out by DIA.

This approach would reflect the approach in Australia where ICAs are not proactively promoted and the CAs carries out all necessary functions without delegation to an AAB. It is noted, that to a certain extent Australia's political approach is linked to its difficult history related to national adoptions and discrimination against single mothers in the sixties and seventies – creating an adverse view of adoption in general[118]. Even now, the Australian government is bearing the consequences and costs of such a history, necessitating significant resources on their part to remedy the past. This model works well in Australia as through its Embassies it has close relationships with the countries of origin it works with, and it has chosen to limit the number of countries of origin it works with to less than ten. For cases that fall outside the agreed countries of origin, the Australian government relies on information provided by independent sources such as ISS to facilitate any 'ad hoc' adoptions. The costs of adoption are mostly absorbed by the PAPs in Australia, including for the equivalent of phases 1 to 4 – which in Denmark is all mostly State funded. Likewise, all the adoption fees that are currently paid by Danish PAPs in ICA, are covered by Australian PAPs.

3.3.2 Benefits

In terms of educational benefits – the Danish CA would be able to have complete ownership of this process and therefore supervision/guidance of DIA would not be necessary, leading to resource savings.

In terms of general benefits – there would be a continuity of improvements of the 2016 system in terms of robust approval procedure for PAPs. There would be an equality for all Danish citizens in terms of access to ICAs, consistent with the spirit of the Danish social

[118] See *Promising practice: Australia's national apology for forced adoptions by Damon Martin and Delphine Stadler* in Baglietto C, Cantwell N, Dambach M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva, Switzerland: International Social Service (p.35).

system. If cooperation with the country of origin is directly undertaken by the Danish CA there would no longer be the need to supervise DIA in terms of reaccreditation, which according to both the Danish CA and DIA, is today quite a heavy burden.

Should Danish authorities decide to eliminate adoption fees to create consistency with domestic adoptions, then the system would be completely independent of the numbers of ICA. All the benefits of model 2 would be part of this new system.

In terms of economic benefits, given that there would no need to supervise the activities of DIA, the funds currently dedicated to this activity (5.2 million DKK to the Danish CA, 2 million DKK to DIA) could be redirected to addressing the drawbacks identified in this model (see 3.3.3). In terms of contributions and development aid, these would now be centralised and governed by the Danish CA. In principle, the Danish CA would have the opportunity to ensure that such activities are compliant with the 1993 Hague Convention, and put a stop to any activities that are contrary (see 1.3.5b).

3.3.3 Drawbacks

In terms of educational drawbacks – the specific country knowledge (see 1.3.4a) that DIA holds and can bring to preparation courses, would be lost. This risk could be averted if the Danish CA engages DIA staff as independent consultants, or perhaps even as staff.

In terms of general drawbacks – if Danish authorities decide that adoption fees are to be maintained, the limitations identified in models 1 and 2 could surface in model 3. This would be because the sustainability of model 3 would, to a certain degree, depend on the numbers of ICAs undertaken. As noted previously, this can create a conflict of interest and a pressure to process more ICAs than are ethical. Should a State actor such as is the Danish CA, be confronted with such a conflict of interest it may compromise the ethical working standards that have been in existence to date. For example, as in models 1 and 2, this could lead to a felt necessity to continue facilitating contributions and development aid projects, in order to be sure to receive an adequate number of proposals from the country of origin.

In the eyes of ISS/IRC a weighty disadvantage of model 3 is that the DIA's in-country expertise would be lost. The institutional knowledge that DIA has gained since 1964 would be largely lost and extremely difficult to replace in terms of quality and quantity. It would be arguably challenging for the Danish CA to maintain the quality of work in the 12 countries that the DIA currently is present in. This is likely to be the case in the mid-term and long-term, and impossible in the short-term. As a consequence some of the advantages of the 2016 changes to the system may be lost, such as the capacity to collect background information on the child, and cooperation with countries of origin.

In model 3 the expertise of DIA would no longer be capitalised upon and long standing relationships with multiple partners in countries of origin would not be preserved. DIA staff would lose employment and their existing support to adoptive families would be lost. This human cost is not negligible.

There is also the risk that the countries of origin who have established relationships with DIA may be reluctant to work directly with the Danish CA at least initially. Whilst this is not a certainty, it is a risk to be given due consideration. To some extent the degree of risk will depend on whether the Danish CA already has a strong/existing relationship with personnel within the Central Authorities of countries of origin. As stated before such relationships take time to build trust and to understand communication channels so that they are efficient. Such a risk will be much lower if the country of origin itself is also « new » and therefore does not have an existing relationship with DIA. To help understand the possibility of such a risk, lessons could be drawn from Sweden about whether challenges were faced with CA's relocation from Stockholm to the region resulting in a change in staff (see 3.4.4). The applicability of such lessons would however be limited by the fact, that there is not a change in authority per se, whereas in Denmark, the change would be from an AAB to a CA. In any case this risk would admittedly be mitigated once the CO becomes familiar with the ethical and approachable nature of the Danish CA.

Another temporary drawback, if Danish authorities decide to eliminate or reduce fees, could be created for PAPs already registered in the ICA waiting list. These persons will have already paid high fees, compared to any subsequent PAPs who later join the list. There could be claims of discrimination and injustice, including reclamations for the fees already paid. At the same time, ISS/IRC recalls that there is no right to a child and there are no international standards prioritising the needs of PAPs. It is for this reason that the ISS/IRC favours the current domestic adoption system of matching prioritising the needs of the child – where the NBA will look for the most suitable family instead of relying upon a chronological list of PAPs (see 1.1.2).

In terms of economic drawbacks, there will be an increase in the costs to State actors due to them taking on a greater role in the adoption process as a means of absorbing DIA's activities. Due to the increased nature of their tasks in this context, significant budget will need to be allocated to meet the State's responsibilities under the 1993 Hague Convention. The question remains whether such an increased budget allocation is feasible, given current trends towards reducing support to State actors (as seen for example in the closure of AFL offices in certain regions). Questions should be asked as to whether the 7.2 million DKK saved in supervision costs would adequately cover this model, or whether additional funds would be needed.

As in models 1 and 2, there could also be *transitional* issues where the ICA waiting list will be significantly reduced and PAPs will transfer to the domestic adoption list. This transfer will occur with the hope that a decision to reduce ICA fees will eventually be in their favour. If the ICA waiting list has very few PAPs, this could jeopardise cooperation agreements with countries of origin as there may not be sufficient Danish families to meet the proposals of adoptable children[119].

[119] Meeting with Lisbeth Bisgaard, Head of Office, and Thomas Bugge, Deputy Head of Office, Joint Council, 12 March 2019

Likewise as in model 2, if ICA fees are reduced significantly by the Danish authorities, the number of ICA PAPs will likely significantly increase, generating more public expenditures for the state actors involved. To meet such a demand, the Danish CA and AFL will have an increased workload with respect to preparation in phases 1 to 4; and the Danish CA will have a higher workload in terms of facilitation, supervision and maintenance of cooperation programs. In practice this could be a heavy burden for actors such as AFL, whose resources are quite limited as seen in the long waiting lists for evaluation, currently at around six months. As in model 2, there could be the inadvertent consequence that ICA PAPs feel frustrated that despite the improved possibility to adopt, the reality of ICA trends makes it quasi-impossible to adopt.

3.4.4 Impact on CA's current activities (supervision AAB, cooperation with CA and economic relationship)

It is arguable that model 3 would have the greatest impact on the Danish CA's current activities. If the Australian model were selected, the Danish CA would have primary responsibility for covering the activities of DIA. Whilst there would no longer be supervision activities of DIA's activities, the Danish CA would have to build relationships with the countries of origin to be able to ensure that "all their questions" related to the general child protection framework and individual cases, could be answered. This period of establishing relationships and having an understanding of individual countries will take significant time.

ISS/IRC recommends in this regard, that the Danish CA contact the Swedish CA to see if any lessons can be learned from the delocalisation from Stockholm to the north of the country. As a result of this move, there were was huge staff turnover and it would be important to understand the impact, if any, of such a significant turnover of the workforce on the existing cooperation agreements between Sweden and other counties of origin.

3.4.5 Transitional considerations should model 3 be chosen

During the transition period to model 3, ISS/IRC strongly recommends that a plan of action, including a capacity development plan, be developed. The capacity development plan should include the key skills that the different State actors will need to maintain an ethical adoption system that is compliant with the 1993 Hague Convention. This plan should be developed with the input of all actors and ideally with input from experts such as HCCH and ISS.

The plan should also include key milestones and budgetary considerations. There should be adequate time allocated for DIA to handover their knowledge to the Danish CA – at least 12 months. This should include joint missions to all the countries of origin where there are cooperation agreements, as well as perhaps a national meeting with key actors in Denmark and externally to explain the plan of action. Whilst it may take at least six months for the Danish CA to be operational, based on a gradual process of cooperation with countries of origin, much more time will be needed to build collaborative and trustworthy relationship akin to those that DIA currently has.

Some of the drawbacks mentioned above (section 3.4.3) could to some extent be alleviated through upskilling Embassies in the countries of origin or working with the representatives of like-minded receiving States, such as those that are part of the Nordic Adoption Council. It would be expected that a sufficient budget would be needed to ensure that Embassies have the capacity to carry out some of these tasks. The HCCH and ISS/IRC if deemed helpful, could also play a role in upskilling the different actors including Embassies. To mitigate the budgetary costs linked to such capacity building efforts, ISS/IRC strongly recommends the pooling of resources with other like-minded receiving countries.

Annexes

1. List of Danish adoption actors interviewed

Danish Central Adoption Authority (National Social Appeals Board, Division of Family Affairs:

Several remote as well as face-to-face interviews took place with the following professionals:

- Karina Haahr-Pedersen, Head of Section
- Thomas Colerick, Head of Section
- Sidsel Lund Nielsen, Head of Section
- Karin Rønnow Søndergaard, Special Advisor

Danish International Adoption- DIA

One remote as well as one face-to-face interviews took place with following professionals:

Management's Team:

- Jeannette Larsen, Executive Director
- Elisabeth Diana Rolvung Aarup, Deputy Director

Adoption Coordinators:

- Debby van Hamburg Pedersen, Adoption Coordinator and Social Worker
- Tina Jill Brandt-Olsen, Adoption Coordinator and Translator
- Andrea Haugsted Jedrzejowska, Attorney

Administration and Finance Assistants

- Annette Kristoffersen
- Malene Agri

National Board of Adoption

One face-to-face interview took place with the two following members of the Board:

- Thomas Lohse, Chairman
- Line Boysen, Secretary for the Board

Agency of Family Law (previously named Regional State Administration)/Joint Council

One remote as well as one face-to-face interviews took place with following professionals:

- Lisbeth Bisgaard, Head of Office
- Thomas Bugge, Deputy Head of Office