

ADOPTION

Prel. Doc. No 1

Doc. préel. No 1

July / juillet 2014



**20 YEARS, 20 QUESTIONS: A QUESTIONNAIRE ON THE IMPACT OF THE
HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND
CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION
ON LAWS AND PRACTICES RELATING TO INTERCOUNTRY ADOPTION
AND THE PROTECTION OF CHILDREN**

drawn up by the Permanent Bureau

* * *

**20 ANS, 20 QUESTIONS : QUESTIONNAIRE RELATIF À L'IMPACT DE LA
CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION DES ENFANTS ET
LA COOPÉRATION EN MATIÈRE D'ADOPTION INTERNATIONALE
SUR LE DROIT ET LA PRATIQUE EN MATIÈRE D'ADOPTION INTERNATIONALE ET DE
PROTECTION DES ENFANTS**

établi par le Bureau Permanent

*Preliminary Document No 1 of July 2014 for the attention of the
Special Commission of June 2015 on the practical operation of the
Hague Convention of 29 May 1993 on Protection of Children and
Co-operation in Respect of Intercountry Adoption*

*Document préliminaire No 1 de juillet 2014 à l'intention de la
Commission spéciale de juin 2015 sur le fonctionnement pratique de la
Convention de La Haye du 29 mai 1993 sur la protection des enfants et
la coopération en matière d'adoption internationale*

INTRODUCTION

The Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Convention¹ will commence with a special day on “20 years of the 1993 Hague Convention” (the Convention was concluded on 29 May 1993 and entered into force on 1 May 1995).

This special day will be an opportunity to reflect upon and discuss the implementation and operation of the Convention over the 20 years it has been in force and to analyse what its impact has been on laws and practices relating to intercountry adoption, as well as child protection systems more generally. It will provide an occasion to assess the improvements which the Convention has brought about, as well as the challenges which remain concerning its implementation and operation.

The responses to this Questionnaire will assist the Permanent Bureau with preparing the discussions for this special day. They will form the basis for the Preliminary Document on this topic, to be drawn up by the Permanent Bureau. This Preliminary Document will outline key questions for States for discussion during the special day.

Please send your response to this Questionnaire to secretariat@hcch.net, for the attention of Laura Martínez-Mora (Principal Legal Officer) and Hannah Baker (Senior Legal Officer) **by no later than 10 October 2014**. The Permanent Bureau will place responses online on the Hague Conference website (< www.hcch.net >) unless expressly requested not to do so.

Please note: if information provided in your State’s Country Profile for the 1993 Hague Convention (sent to States for completion at the same time as this Questionnaire) assists with your answer to any question herein, please cross-refer to your Country Profile. There is no need to repeat information.

Thank you for your kind co-operation as the Permanent Bureau prepares for this next Special Commission meeting.

¹ Full title: *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, “1993 Hague Intercountry Adoption Convention”, “1993 Hague Convention”, “1993 Convention” or simply “the Convention”).

NAME OF STATE: Bulgaria

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:²
01.09.2002**

Information for follow-up purposes

Name and title of contact person: Milena Parvanova, Director; Petya Todorova, Head of office

Name of Authority / Office: Ministry of Justice

Department of International Legal Child Protection and Intercountry Adoptions

Telephone number: +359 (2) 923 7396; +359 (2) 923 7334

E-mail address: M_Parvanova@juctise.government.bg;

P_Todorova@juctise.government.bg

A. THE IMPACT OF THE 1993 HAGUE CONVENTION ON LAWS AND PRACTICES RELATING TO INTERCOUNTRY ADOPTION IN YOUR STATE

1. Was the legislation in your State concerning intercountry adoption revised, or was new legislation enacted, as a result of, or in preparation for, implementation of the 1993 Convention? If so, please describe the main changes in practice which the revision / new legislation brought about.

The legislation of the adoption has been revised in consequence of the ratification of the Convention. Amendments were made in the Family Code of the Republic of Bulgaria and subordinate legislation was adopted in this respect. The entry of adoptions and adoptive parents in special registers was introduced as a condition for the admission of complete adoptions with the amendments. An exception to this rule was anticipated at the adoption of a child of a spouse and the adoption of a grandchild by a grandfather and a grandmother. The registers in connection with the intercountry adoption are kept by the Ministry of Justice. A specialized body was incorporated - Intercountry Adoption Council. Powers of the Minister of Justice and of the Ministry of Justice in the sphere of intercountry adoption were defined. The jurisdiction of the adoptions was changed, Sofia City Court being the only competent Court for intercountry adoptions and two-instance proceedings were introduced. Possibility for mediation at intercountry adoptions by accredited bodies - non-profit legal entities, which have obtained authorization for mediation by the Minister of Justice, was regulated. Established cases of initiated procedures for intercountry adoptions were also legislatively settled.

2. What changes, if any, did your State make to the identity and functions of the authorities and bodies involved in intercountry adoption as a result of the 1993 Convention requirements (e.g., the creation / designation of new authorities / adoption bodies, different assignment of tasks)? How, if at all, have these changes affected intercountry adoption procedures in your State?

The implementation of the activity for intercountry adoptions was assigned to the Ministry of Justice in cooperation with the relevant Bulgarian and foreign competent authorities and accredited bodies. An Intercountry Adoption Council to the Ministry of Justice was created - an interdepartmental standing body.

3. (a) Please indicate the number of intercountry adoptions which took place from and / or to³ your State:

² This information is available on the "Status Table" for the 1993 Hague Intercountry Adoption Convention, accessible via the "Intercountry Adoption Section" of the Hague Conference website, < www.hcch.net >.

³ Depending upon whether your State is a State of origin, receiving State or both.

- (i) in the three years prior to the entry into force of the 1993 Convention in your State

Number of intercountry adoptions *from* your State (State of origin): There is no complete information about the number of the intercountry adoptions from Bulgaria prior to the entry of the Convention into force. The approximate number of the adoptions during the two years preceding the entry into force is about 1900.

Number of intercountry adoptions *to* your State (receiving State):

- (ii) in the three years following the entry into force of the 1993 Convention in your State

Number of intercountry adoptions *from* your State (State of origin): The approximate number is about 900.

Number of intercountry adoptions *to* your State (receiving State):

If precise figures are not available, please provide an estimate, indicating clearly that it is an estimate.

- (b) Taking into account the figures provided in Question 3(a) above, please comment upon whether implementation of the 1993 Convention in your State has had an impact on the number of intercountry adoptions undertaken from and / or to your State. If so, please indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of intercountry adoptions undertaken (e.g., implementation of the Convention's principle of subsidiarity,⁴ increase / decrease in the number of States with which your State partners on intercountry adoption).

After the entry of the Convention into force and the bringing of the domestic legislation in line with the principles set forth by this international act reduction of the number of the intercountry adoptions as compared to the adoptions admitted prior to that is observed. The main reasons for that are the completely changed procedure and guaranteeing the subsidiary nature of the intercountry adoption.

4. In your State, has implementation of the 1993 Convention had an impact on:

- (a) The costs⁵ of intercountry adoption, including the transparency of these costs? If so, please provide details;

The legislation in the sphere of intercountry adoption after the ratification of the Convention anticipates the signing of a contract between the adoptive parents and the accredited body in Bulgaria, which regulates the services to be provided on the part of the body and the needed expenditures and costs.

and / or

- (b) Contributions, co-operation projects and donations,⁶ including their transparency? If so, please provide details.

The participation in projects related to the protection of children in Bulgaria and the provision of donations in conformity with the Bulgarian legislation in the sphere of intercountry adoption are not required and are not bound to the implementation of an adoption of a child from Bulgaria.

5. How, if at all, has implementation of the 1993 Convention in your State affected the average *time* which it takes to complete an intercountry adoption?

Please specify the causes of any change in timeframes, including whether these changes are attributable to a particular aspect of the intercountry adoption procedure and, if so, whether this aspect of the procedure takes place in your State or in other States.

The enactment of the Convention resulted in the extension of the time period for the implementation of an adoption procedure, with a view to the newly introduced administrative stage, preceding the judicial proceedings. The legislation stipulates a number of deadlines in the various stages of the intercountry adoption procedure aimed at the placement of time framework of the procedure.

6. How, if at all, has implementation of the 1993 Convention in your State affected the processing of *non*-Convention intercountry adoptions (*i.e.*, intercountry adoptions to which the 1993 Convention does not apply)?

At intercountry adoption which is conducted beyond the framework of the Convention, the same statutorily adopted procedure and conditions are applied as at the adoption made under the Convention. It should be noted that intercountry adoption by adoptive parents

⁴ See Art. 4 b) of the Convention and the *Guide to Good Practice No 1 on the implementation and operation of the 1993 Hague Intercountry Adoption Convention* at Chapter 2.1.1, available on the specialised "Intercountry Adoption Section" of the Hague Conference website < www.hcch.net >.

⁵ For a definition of the term "costs", please see the harmonised *Terminology on the financial aspects of intercountry adoption*, available on the Hague Conference website < www.hcch.net > under "Intercountry Adoption Section" then "Expert Group on the Financial Aspects of Intercountry Adoption".

⁶ For definitions of the terms "contributions", "co-operation projects" and "donations", please see the harmonised *Terminology on the financial aspects of intercountry adoption (ibid)*.

with habitual residence in a State, which is not a Party under the Convention, may be performed solely through an accredited body in Bulgaria, which has obtained authorization for mediation for the relevant State. No intercountry adoption of a child from Bulgaria may be performed by adoptive parents with habitual residence in a State, which shall not recognize the decision of the Bulgarian Court for the admission of the adoption.

State of origin questions

7. (a) Have the main reasons for children becoming adoptable (whether domestically or intercountry) changed following implementation of the 1993 Convention in your State? If so, please identify those changes.

The range of adoptable children domestically or internationally has been expanded with the legislative changes which followed the ratification of the Convention, adoption of children without the consent of their parents has been anticipated in certain cases.

- (b) Has the general profile of children in need of *intercountry* adoption in your State changed following implementation of the 1993 Convention? If so, please specify the main reasons for any change.

After the implementation of the Convention, the profile of children available for intercountry adoption gradually changed, in view of the subsidiarity principle and the increase of the number of the adoption procedures in the country. The number of children at older age and/or with specifics in their health status and development is predominant up to date.

- (c) Has implementation of the 1993 Convention changed the following aspects of the intercountry adoption procedure in your State?

(i) The establishment of the child's adoptability including, where appropriate, how consents are obtained from the birth parents / family / child and how consideration is given to the child's wishes and opinions: The changes made are related both to the conditions for provision of consent from the birth parents for the adoption of their child - an obligation for counselling the two birth parents prior to the provision of their consent and prohibition for provision of consent by the birth mother prior to the expiration of a certain fixed time period from the birth of the child was established, and possibility for the adoption of a child without the consent of the birth parents in certain cases stipulated by the law, was introduced. Adoptable children are liable to hearing when they come to the age of 10 and children aged 14 and over provide their consent for the adoption.

(ii) The information provided to, and the counselling and preparation of, an adoptable child: The information, counselling and the preparation of an adoptable child are made by the social worker in charge of the case, who, in event of need may also attract other appropriate specialists.

(iii) The provision of information concerning the child to prospective adoptive parents ("PAPs") (*i.e.*, under the 1993 Convention, the preparation of the report on the child): The Ministry of Justice keeps a register of intercountry adoptable children. After matching of appropriate adoptive parents with a specific child by the Intercountry Adoption Council, the Minister of Justice signs a Certificate pursuant to Art. 17 of the Convention for the initiation of the adoption procedure. A report on the child pursuant to Art. 16 of the Convention and his/her photo in full size are attached to the Certificate which are sent to the adoptive parents/accredited body and to the Central Authority of the receiving State.

(iv) The matching of the child and PAPs: After the implementation of the Convention, the Bulgarian legislation does not allow a direct contact between a child and adoptive parents and the selection of a child. A special interdepartmental authority was created to the Ministry of Justice - Intercountry Adoption Council, whose main function is matching of appropriate adoptive parents with an already entered into the Register intercountry adoptable children.

(v) The entrustment of the child to the PAPs: The Bulgarian legislation does not allow for the entrustment of the child to the prospective adoptive parents prior to the completion of the adoption procedure by a decision of the Bulgarian Court.

- (vi) The making of the final adoption decision: The final intercountry adoption decision is made solely by Sofia City Court.
- (vii) The transfer of the child to the receiving State: On the grounds of an effective decision for the admission of an adoption by the Bulgarian Court, the adoptive parents may take the adoptee with the cooperation of the accredited body in Bulgaria .
- (viii) The post-adoption services provided (*e.g.*, when and how an adoptee may access information concerning his / her origins): A requirement is introduced for the exercise of post-adoption monitoring and support of the adoptee for two years after the admission of the adoption. Special court proceedings are anticipated for the provision of information about the origin of the adoptee.
- (ix) Other, please specify: No.

Receiving State questions

8. (a) How, if at all, has your State's counselling, selection and preparation of PAPs wishing to adopt *intercountry* changed following: (i) implementation of the 1993 Convention in your State; and / or (ii) if applicable, the changed profile of children in need of intercountry adoption in the States of origin with which your State partners?
- (i)
 - (ii)
- (b) Has implementation of the 1993 Convention changed the following aspects of the intercountry adoption procedure in your State?
- (i) How PAPs apply for intercountry adoption:
 - (ii) The provision of information concerning the PAPs to the State of origin (*i.e.*, under the 1993 Convention, the preparation of the report on the PAPs):
 - (iii) The procedure to accept a proposed match:
 - (iv) The migration procedures for the child:
 - (v) The post-adoption services provided:
 - (vi) Other, please specify: .

B. THE IMPACT OF THE 1993 HAGUE CONVENTION ON CO-OPERATION BETWEEN CONTRACTING STATES

9. Has implementation of the 1993 Convention had any influence on the choice of States with which your State "partners" in intercountry adoption (*e.g.*, due to the fact that your State has limited the number of States with which it partners or has ended co-operation with *non-Contracting States*)? If so, have these changes affected intercountry adoption procedures in your State?

No actions were taken for the restriction of the States it cooperates with in the sphere of intercountry adoption or for the ending of the cooperation with non-Contracting States.

10. In your State's experience:

- (a) What are the most significant changes to co-operation between Contracting States brought about by the 1993 Convention? Have any of these changes led to the safeguards of the Convention being more effectively respected (see Art. 1 *b*)? If so, please provide examples.

According to our experience, the most significant changes to cooperation between the States are the guarantees for observation of the rights of the adoptees and their protection.

- (b) What are the most significant *challenges* which remain concerning co-operation between Contracting States to the 1993 Convention?

According to our experience as a State of origin, the main challenge in the cooperation between Contracting States is the orientation of the profile of the adoptive parents with regard to the changed profile of the intercountry adoptable children (children at an older age and/or with specifics in their health status and development, big sibling groups).

C. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE PREVENTION OF THE ABDUCTION, SALE OF AND TRAFFIC IN CHILDREN AND OTHER ILLICIT PRACTICES⁷

11. In general, has implementation of the 1993 Convention led to more effective prevention of the abduction, sale of, or traffic in children and other illicit practices within / from / to your State in the context of intercountry adoption?

If so, please provide specific examples of measures which have been introduced in your State as a result of the 1993 Convention and their effect.

The legislative changes after the implementation of the Convention as a whole increased the effectiveness of the actions against abduction, traffic and in particular sale of children within the context of intercountry adoption.

12. In particular, *prior to* implementation of the 1993 Convention, did your State experience, whether in your State or in other States with which your State co-operated, any of the following problems in the intercountry adoption context:

- (a) Improper payments to family members, intermediaries, officials or others;
- (b) Other improper inducements of the consent of birth parents / family to adoption;
- (c) Fraud, such as misrepresentation of identity or false promises (*e.g.*, misrepresenting to birth parents the reason for a child's removal from his / her home);
- (d) Forgery / falsification of documents;
- (e) Abduction of children for the purposes of intercountry adoption;
- (f) Abuse of guardianship orders (*e.g.*, using such orders to remove children from a State of origin to circumvent intercountry adoption procedures);
- (g) Bypassing the matching system of a State of origin (*i.e.*, undertaking matching independently in the State of origin, without the involvement of the appropriate authorities);

⁷ "Illicit practices" in this Questionnaire refers to situations where a child is adopted without respect for the rights of the child or for the safeguards now contained within the 1993 Hague Convention. "Such situations may arise where an individual or body has, directly or indirectly, misrepresented information to the biological parents, falsified documents about the child's origins, engaged in the abduction, sale or trafficking of a child for the purpose of intercountry adoption, or otherwise used fraudulent methods to facilitate an adoption, regardless of the benefit obtained (financial gain or other)" (from p. 1 of the *Discussion Paper: Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases*, available on the "Intercountry Adoption Section" of the Hague Conference website < www.hcch.net >).

(h) Any other illicit practices?

If so, in your State's experience, has implementation of the 1993 Convention in your State *or in other States* had an impact upon the incidence and / or nature of these problems?

The implementation of the Convention as a whole resulted in reducing the number of similar problems.

D. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE RECOGNITION OF INTERCOUNTRY ADOPTIONS IN YOUR STATE

13. In your State's experience:

(a) Has the automatic recognition of adoptions made in accordance with the Convention (see Art. 1 *c*) and Chapter V) led to significant improvements for children adopted intercountry and their families?

Yes.

(b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? The requirement by some receiving States of additional documents further to the Certificate pursuant to Art. 23 of the Convention.

In particular, please specify whether either (i) your State, or (ii) any other Contracting State with which your State co-operates, requires an *additional* procedure (*e.g.*, a registration procedure or court proceeding) to be completed in order to recognise an adoption made in accordance with the Convention.

Bulgarian legislation does not anticipate explicitly an additional procedure for the recognition of an adoption made in compliance with the Convention.

E. THE IMPACT OF THE 1993 HAGUE CONVENTION ON *DOMESTIC* ADOPTION AND *OTHER* MEASURES OF ALTERNATIVE CARE FOR CHILDREN IN YOUR STATE

Domestic adoption

14. (a) Please provide precise figures regarding the number of *domestic* adoptions which took place in your State: (i) in the three years prior to the entry into force of the 1993 Convention in your State; and (ii) in the three years following this date. If precise figures are not available, please provide an estimate, indicating clearly that it is an estimate.

(i) There are no data.

(ii) There are no data about the number of domestic adoptions during the first year after the entry of the Convention into force. The number of the domestic adoptions during the next two years is 1255.

(b) Taking into account the figures provided in Question 14(a) above, please comment upon whether implementation of the 1993 Convention has had an impact on the number of domestic adoptions undertaken in your State. If so, please indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of domestic adoptions undertaken (*e.g.*, implementation of the Convention's principle of

subsidiarity⁸ including promotion of domestic adoption, or a decrease in the number of intercountry adoptions has caused PAPs to turn to domestic adoption).

See answer 7b.

- (c) Has implementation of the 1993 Convention had an impact on domestic adoption *procedures* in your State? If so, please explain how the 1993 Convention brought about these changes.

See answer 7b.

⁸ See Art. 4 *b*) of the Convention.

Other measures of alternative care for children

15. (a) Is there any evidence that implementation of the 1993 Convention has had an impact on the *number* of children: (i) living in institutions; or (ii) living in alternative permanent family care (other than adoption) in your State?

(i) Rather there is no direct link.

(ii) Rather there is no direct link.

If so, please set out that evidence and indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of children living in these situations (*e.g.*, the promotion of family preservation or reunification measures;⁹ in-State alternative permanent family care promotion in revised / new legislation in preference to institutionalisation).

- (b) How, if at all, has implementation of the 1993 Convention changed the *quality* of other alternative permanent family care measures available in your State for children who are deprived of parental care or at risk of being so deprived?

Rather no.

16. How, if at all, has implementation of the 1993 Convention affected your State's approach to developing and implementing measures of family preservation and / or reunification?

Rather no.

F. VIEWS ON THE IMPROVEMENTS BROUGHT ABOUT BY THE 1993 HAGUE CONVENTION AND THE CHALLENGES WHICH REMAIN

In your State

17. In your State's view:

- (a) What are the most significant *improvements* in intercountry adoption and / or child protection more generally in your State which have resulted from implementation of the 1993 Convention?

Higher degree of protection of the rights and the interests of the children for predominant upbringing in the family or in the State of origin.

- (b) Has implementation of the 1993 Convention had any *adverse effect(s)* on intercountry adoption and / or child protection more generally in your State?

No.

- (c) What are the most significant *challenges* which remain in your State in relation to the proper implementation and operation of the 1993 Convention?

There are certain difficulties in following and applying the principles and the procedures under the Convention for intercountry adoption of a child, with habitual residence in Bulgaria by Bulgarian citizens with habitual residence abroad.

⁹ *I.e.*, implementation of the 1993 Convention's principle of subsidiarity (Art. 4 *b*) of the Convention).

Globally

18. In your State's view, *at a global level*:

- (a) What are the most significant *improvements* in intercountry adoption and / or child protection more generally which have taken place as a result of the entry into force of the 1993 Convention and its implementation in an increasing number of Contracting States over the last 20 years?

Increasing number of Contracting States guarantees children's rights in intercountry adoption

- (b) Has the entry into force of the 1993 Convention and its implementation in an increasing number of Contracting States over the last 20 years had *any adverse effect(s)* on intercountry adoption and / or child protection more generally?

No.

- (c) What are the most significant *challenges* which remain today in relation to the implementation and operation of the 1993 Convention? Have these challenges changed / evolved over the past 20 years?

See answer 10 b.

G. MONITORING AND REVIEWING THE IMPLEMENTATION AND OPERATION OF THE 1993 HAGUE CONVENTION

19. In your State's view, are the current mechanisms used to monitor and review the implementation and operation of the 1993 Convention satisfactory (*e.g.*, periodic Special Commission meetings, the development of tools to promote consistent interpretation and good practices)? Would your State consider any additional monitoring and / or review mechanisms useful?

Yes.

20. (a) Has your State benefitted from the services or assistance of the Permanent Bureau of the Hague Conference in relation to implementation and / or operation of the 1993 Convention? If so, please explain what service or assistance was provided and how it benefitted your State.

There is no such information available up to date.

(b) Resources permitting, what *additional* services or assistance could the Permanent Bureau provide to facilitate the proper implementation and operation of the 1993 Convention?

The development of Guides to Good Practices in various aspects of the Convention is exceptionally useful for its good application and effective functioning.

If your State has any other comments concerning "20 years of the 1993 Hague Convention", please provide them in the space below:

No.