*The **Subsidiarity Principle** in Intercountry Adoption*

The subsidiarity principle according to the UN Convention on the Rights of the Child

Art. 21b of the United Nations Convention on the Rights of the Child states: *"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: (...) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin (...)"*

Article 21b, stipulates that intercountry adoption is only permissible if there is no local care available such as foster care, residential care, local adoption, kinship, or any other suitable manner of care. [1]

In any functional nation, there are almost no circumstances when local solutions cannot be found.

Thus, under the UN Convention on the Rights of the Child, intercountry adoptions are if at all, an extreme exception.

1 For an explanation of alternative care options see also Factsheet "Is Adoption a Child Protection Measure?"

The subsidiarity principle according to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

Preamble: *"(...) Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin, (...)"*; Article 4: *"An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin – (...) (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests. (...)"*

In contrast to the United Nations Convention on the Rights of the Child, the text of the Hague Adoption Convention introduces the concept of "permanency" and replaces "suitable manner of care" with "suitable family". It therefore does not recognize foster or institutional care as suitable for children, only permanent family-based solutions, which is adoption.

The subsidiarity principle under the Hague Adoption Convention can be summarized as this: If a child cannot be raised by his or her parents, the child should be placed for domestic adoption, if that domestic placement is not possible within a limited period, the child should be placed for intercountry adoption.

Comment

It is evident that the Hague Adoption Convention conflicts with the United Nations Convention on the Rights of the Child. In the hierarchy of laws, the United Nations Convention on the Rights of the Child is considered to be superior and the most important of all the human rights conventions. Thus, the Hague Adoption Convention, which is a private law convention, contradicts the meaning of Article 21b of the United Nations Convention on the Rights of the Child.

For further reading and references: http://database.againstchildtrafficking.org/node/42064