

**Intervention of Mrs Amparo Marzal Martinez,
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The responsibility of Spanish public administrations in international adoptions

Firstly, on the behalf of the Ministry of Labour and Social Affairs of the Spanish Government, I would like to congratulate the initiative of the *International Federation* and the *Fondation Terre des Hommes* which has produced a comparative study on the practices and legislation related to international adoptions in 6 receiving countries, with the participation of Spain.

Likewise, I would also like to thank you for the celebration of this Seminar with the European members of parliament, that will share our initiatives in this area for the joint reflection on the mechanisms that must be set off, while assuming our responsibility in international adoptions as public bodies, with the corresponding competences in adoption processes.

I hope and expect that the results of these debates are also included as complementary information in the Report presented today and that your opinions eventually serve to obtain a clear picture of the reality of the work being carried out by receiving countries.

Spain gladly takes part in this meeting, and it is my wish to tell you that we will take all your recommendations into consideration and we will forward them to all Spanish authorities competent on the matter.

We all perfectly know that during the last few years the number of international adoptions in Spain has grown impressively, as stated in the Report presented today, whereby Spain is one of the receiving countries that adopts the largest number of children from abroad. There has been a progressive growth until the year 2006, when we have started to see a downwards trend. In 2005, there were 5,423 adoptions, whereas the number dropped to 4,472 in 2006. We are yet to obtain the 2007 figures, but the information available points towards a decrease in the number of adoptions. There is a high number of countries who give children up for adoption (36 countries) and, in accordance with the number of children adopted throughout the year 2006, 52% of these countries were signatories of the Hague Convention on international adoptions. However, 47% of the countries giving up children for adoption have not signed the convention yet.

There are 40 accredited bodies in Spain (Entities Collaborating in International Adoptions or ECAIS) that work with 32 countries.

The system used to process adoptions in our country allows prospective adoptive parents to adopt children through two mechanisms:

- Accredited bodies
- public administrations (Autonomous Communities – Ministry of Labour and Social Affairs – competent organisation in the country of origin of the child)

As you already know, Spain is a State of autonomies (Federal State) and the autonomous governments have the corresponding competences related to the protection of children, which include international adoptions, by legal mandate. Therefore, the public bodies with competences in the adoption field of each Autonomous Community are recognised as Central

Authorities of the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. Our legislation bestows upon them the following functions, among other functions:

- information, preparation and assessment of the suitability of petitioners for the adoption of a child,
- processing the adoption applications, and
- Accreditation of accredited bodies.

Within the above mentioned framework of the Convention, the Ministry of Labour and Social Affairs is the Central Authority of Communication (art. 6.2 of the Convention).

International adoptions require a uniform and homogeneous approach as an adopting country, while respecting the framework of competencies of Autonomous Communities, as stated in the 1978 Spanish Constitution and the respective Statutes of Autonomy. It is not possible to give isolated and discordant answers to common realities and problems present in each Autonomous Community.

Now I will refer to all the efforts made with this objective.

Therefore, we are aware of the complexity of our competency distribution system, which has fulfilled a constant and solid effort in the harmonisation of stable forums for the coordination between autonomous communities and ministries, from the General Administration of the State and, in particular, from the Ministry of Labour and Social Affairs.

Important and solid agreements have been reached in the international adoption environment, within this framework of coordination and, in particular, in the **forums of the General Directors of Children's Affairs of the Autonomous Communities**, regularly called by the Ministry of Labour and Social Affairs, which have had a clear and specific impact on the processing of adoptions. For example:

- a series of basic certification criteria were established for accredited bodies, which were used as the base for the regulation of the development of applications in each Autonomous Community,
- in some countries, the adoption processes are prohibited due to the lack of processing guarantees (for example, Guatemala, Haiti, Democratic Republic of the Congo), or the processes are only allowed through accredited bodies in some countries (the case of Nepal before adoptions were stopped.....).

Following this line of internal coordination, a new forum was created in 2005 for the debate, study and coordination of international adoption matters, also within the scope of action of the Ministry of Labour and Social Affairs, called the **International Adoption Advisory Council**. This body not only represents the public administrations of the State (Ministry of Justice, Foreign Affairs and Cooperation and the Interior) but also the Autonomous Communities, Federations of accredited bodies and associations of families of adoptive parents and adopted people.

Another highly relevant fact in our country that has led to the consolidation of guarantees in adoption processes was the approval of the **new International Adoption Act** in December 2007. We can highlight the following articles:

- The potential limitation of the number of countries with which an adoption can be processed is established. Therefore, the legal circumstances for which a country will not be entitled to receive adoption applications will be: countries in war or suffering from natural disasters, countries where there is no specific authority that controls and guarantees the adoption and countries that do not offer the guarantees for the adoption of a child or do not have a series of adoption practices and processes that do not respect the ultimate interests of the child. Said potential limitation used to be applied in agreements between autonomous communities but was not established in the current legislation.
- In addition, processing adoptions in some countries only through accredited bodies is another option being considered. This will be enforced when there are other methods that can introduce risks due to the lack of guarantees. In the former legislation, the selection for the adoption application process – through public entities in both countries or private accredited bodies – would be in the hands of the prospective adoptive parents or depend on the country of origin of the children. The fact that it is now a part of our current legislation is another example of how the processing methods must be determined by the public responsibility, in order to select those that offer the best guarantees.

To make these two very important points of the Act effective, it will be newly aimed at the much needed coordination between autonomous communities, being subject to the decisions of the coordination body (Commission of General Directors of Children's Affairs) and the prior consultation to international adoption bodies (International Adoption Advisory Board). Likewise, the achievement of a clear decision making-process will mean that the information about the international adoption practices in different countries will be vital. With this purpose, until now, we have had the collaboration of our embassies and consulates abroad, as well as the technical information provided by the Centre of Reference of International Social Service and the central authorities of other European countries.

In this sense, the Act reiterated that public entities must encourage the implementation of measures to achieve the maximum degree of coordination and collaboration among them, while trying to homogenise procedures, deadlines and costs.

- New functions are endowed to public entities that have competencies in adoption matters. The assessment of suitability for adopting a child shall include "the conformity of the matching - child - family". This does not have to be solely applied to the signatories of the Hague Convention and adoptions processed through accredited bodies, which is a form of progress and an important challenge for public entities.
- As regards the number of accredited bodies that can work in each country, we are aware that there is a high number of accredited bodies in Spain and there is not always the adequate proportion when compared to the number of adoptions. Therefore, this Act shall establish a maximum number of private certified entities within the inter-autonomous coordination framework, in order to avoid the dangerous imbalance caused by such a high number of accredited bodies, and in accordance with the international adoption needs of the country.

- Likewise, the coordination tasks will be focused on the supervision and control of accredited bodies that are certified in more than one Autonomous Community and in the cases when an accredited bodies with offices in more than one Autonomous Community loses its certification.
- Within the coordination framework, the objective is to homogenise the suitability criteria of applicants for international adoption, as well as the criteria for certified accredited bodies.

We understand that - as I have tried to explain at the start of my intervention - the international adoption policy in Spain requires a high degree of coordination and consensus and we are working in this line.

As members of the Spanish public administrations, we are aware of the difficulties of such a complex and delicate process as an intercountry adoption and all of our efforts are aimed at overcoming such obstacles. This feeling is unanimously shared by all Spanish Autonomous Communities and the Government.

Brussels, February 26th, 2008