

Ministerio de Justicia



**ACT 54/2007, OF DECEMBER 28<sup>TH</sup>,  
ON INTERCOUNTRY ADOPTION**

**2017**

**Edita**

Ministerio de Justicia  
Secretaría General Técnica

**NIPO:** 051-17-039-3

**ISBN:** 978-84-7787-470-6

**Traducción**

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**Maquetación**

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This is a translation of a text originally drafted in Spanish. It is an unofficial translation pursuant to the meaning of Section 1º) Article 6 of Royal Decree 2555/1977, of 27th August, approving the Regulation of the Office for the Interpretation of Languages of the Ministry of Foreign Affairs and Cooperation.

This translation coincides with the consolidated text extracted from the Official State Gazette which was last updated on July 29, 2015.

**ACT 54/2007, OF DECEMBER 28<sup>TH</sup>,  
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**LEY 54/2007, DE 28 DE DICIEMBRE,  
DE ADOPCIÓN INTERNACIONAL**

**Colección: Traducciones del Derecho Español**

Ministerio de Justicia. Publicaciones

Catálogo de Publicaciones

Catálogo de publicaciones de la Administración General del Estado

## **ACT 54/2007, OF DECEMBER 28<sup>TH</sup>, ON INTERCOUNTRY ADOPTION**

JUAN CARLOS I

KING OF SPAIN

To all whom this Act shall be seen and understood, be it known that:

The Spanish Parliament has approved this Act and I do enact the same as follows:

### **PREAMBLE**

#### **I**

The economic and demographic circumstances of certain countries where many children have not been able to find an appropriate environment for their development together with a decrease on the birth rate in Spain have given as a result a significantly increase in the number of foreign children adopted by Spaniards or residents over the last years. On said situation, new needs and social demands have arisen, which have been echoed by several public and private institutions. Said institutions have informed the Spanish Government about the need to adapt Spanish Law to the current social reality.

The increase of the adoptions formalised abroad also means a legal challenge of major proportions for the legislator. The legislator shall provide the corresponding regulatory instruments for the adoption to be formalised with the maximum guarantees and respecting the interests of the child to be adopted, enabling in this way the harmonious development of the child's personality in an appropriate family environment. All the aforementioned shall be exercised in accordance with the most scrupulous legal guarantees in benefit of all the parties involved in the intercountry adoption, especially and in first place, in benefit of the child adopted. The passing of the years have brought a sufficient perspective to appreciate the opportunity of an Act that put an end to the characteristic normative deviation of the previous legislation and that gathers a complete regulation of the Private International Law matters that should be present in any intercountry adoption process.

#### **II**

This Act combines the principles and values of our Constitution with the dispositions of the international instruments relating to adoption that are part of our Law. In particular, it is essential to illustrate in this new regulation the significance of the principles



provided in the United Nations Convention of 20 November 1989 on the Rights of the Child, the principles of the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children with special reference to Foster Placement and Intercountry Adoption (General Assembly Resolution 41/1985, of 3 December 1986) and the principles provided in the Hague Convention of 29 May on Protection of Children and Cooperation relating to Intercountry Adoption and immediately ratified by Spain by legal instrument of 30 June 1995.

The work of the Senate Commission on intercountry adoption is an example of great significance in Spain. The conclusions reached, which were developed with the contributions from the authorities and experts on the field, have drawn the line and way forward to be followed in the approach of this social phenomenon.

In accordance with the Constitution and the international legal instruments in force for Spain, this Act conceives intercountry adoption as a measure for protection of the children who cannot find a family in their country of origin. It establishes the necessary and adequate guarantees to ensure that the intercountry adoptions are formalised, over all, in best interests of the children and respecting their rights. Likewise, this Act intends to avoid and prevent child abduction, sale or trafficking, ensuring at the same time the non-discrimination of the child on grounds of birth, nationality, race, sex, impairment or illness, religion, language, culture, opinion or other personal, familiar or social circumstances.

In addition, this Act must be always interpreted in accordance with the principle of best interests of the children. Said principle shall prevail over other any legit interest that may arise during the intercountry adoption processes.

### III

The Act aims to implement a systematic, consistent and updated normative regulation that responds to the intercountry adoption phenomenon in Spain.

The articles are divided in three Parts. Under the heading «General Provisions», Part 1 establishes the scope of application and the intervention of the corresponding Public Entities in matters of protection of the children, giving especial consideration to the specification of the functions developed by the Collaborating Entities in intercountry adoption.

Therefore, Chapter 1 establishes the scope of application of the regulation. The aim of this Act is the implementation of guarantees for the adoptions, always taking as reference the best interests of the children. In addition, it provides the principles of intercountry adoption which are in accordance with the Convention of 20 November 1989 on the Right of the Child and the Hague Convention of 29 May 1993 on Protection of Children and Cooperation relating to Intercountry Adoption. This Chapter finalised determining the circumstances that prevent adoption from being formalised to ensure that adoptions are only formalised when the minimum guarantees exist.

Chapter 2 considers the intervention of the Public Child Protection Authorities in the adoption process and their mediation role which shall be only performed by the Collaborating Entities that have been previously accredited by the corresponding

Spanish Public Authority and by the corresponding authority from the country of origin of the children.

The mediation role, which has been exclusively conferred to said Collaborating Entities, have imposed to the legislator the task to configure a legal framework which combines the comprehensive provision of the services entrusted to said entities with the basic mechanism for their accreditation and control. Said mechanism shall be exercise by the Public Entities.

In the framework related to the accreditation, monitoring and control of the Collaborating Entities, other issues are presented such as the possibility of formalising cooperation agreements among said entities before special circumstances, the possible coordination among the Public Child Protection Authorities, the number of Collaborating Intercountry Adoption Entities on particular countries, the suspension or withdrawal of the accreditation of the Public Entities in the Autonomous Community, the nature of the relationship between the Collaborating Entities and their representatives in the country of origin of the children as well as their responsibilities towards the acts their representatives performed during their mediation role.

On the other hand, Chapter 3 regulates the suitability of the adopters based on the meaning of its concept, the establishment of the matters and aspects that said suitability should refer and the establishment of its expiration date.

In addition, this Chapter imposed to the adopters a number of post-adoption responsibilities and recognised the right of the adoptees to know their biological origins. Being the Legislator aware of the importance of this matter from the perspective of the free development of the personality of the adoptees, the exercise of this right has been combined with the necessary safeguards to protect the privacy of those affected. Therefore, two fundamental limitations are established: on the one hand, the entitlement of said right is limited to the adoptee, being of legal age or being underage and represented of his or her parents; on the other hand, the necessary advise and intervention of the competent Public Entities to ease the access to the information required.

The Chapter ends with a specific precept for the protection of the personal data in accordance with the report of the Spanish Data Protection Agency.

The second part of the Act regulates the Private International Law regulation relating to intercountry adoption. Therefore, three distinct chapters composed Part 2.

Firstly, it is offered a complete regulation about the jurisdiction of the Spanish authorities to constitute, modify, convert or revoke an intercountry adoption order. Inspired by the principle of «minimum connection», a Spanish authority shall not proceed to constitute, modify, convert or revoke an intercountry adoption order if the case is not slightly connected to Spain. In this sense, it is avoided the introduction of exorbitant discussions about Spanish Legislation which could give as a result the formalisation of legal adoptions in Spain but ineffective and non-existent in other counties, specifically in the country of origin of the child.



Secondly, the Act regulates the applicable legislation for the Spanish authorities to formalise an intercountry adoption, as well as to modify, convert and revoke the same. In order to achieve a better organisation, Chapter titled «Applicable Law» distinguishes between two assumptions. If the adoptee has his or her usual residence in Spain or it shall be acquired shortly, Spanish Law shall be applied for formalising the adoption. However, if the adoptee neither lives in Spain nor is going to be brought to Spain to establish his or her social life, the adoption should be regulated in accordance with law of the country which integrates the adoptee. In both cases, this Act includes the necessary safeguards. For the second case it grants a wider margin of discretion to allow other different state law to be exceptionally applied and ensures the international validity of the adoption constituted in Spain.

Thirdly, this Part provides an exhaustive regulation of the legal effects in Spain of the adoptions formalised before the competent foreign authorities. These dispositions are of particular importance as nowadays the number of adoptions formalised abroad by citizens residing in Spain is significantly higher than the adoptions formalised in Spain. In this respect, the Act starts from the necessary respect for the legal framework which is composed by the international Treaties and Conventions and other international regulations that shall be applied for Spain and which are necessary for setting the legal effects in Spain of the adoptions constituted abroad.

In the light of the foregoing, the Act establishes a system for the recognition in Spain of the adoptions formalised by foreign authorities in the absence of the application of an international regulation. Said system revolves around a fundamental element: the adoption shall only be recognised in Spain if the same has been legally formalised in the country of origin and if, in addition, the same fulfils the specific requirements of the legal framework or requirements focused on the interests of the adoptee. Therefore, it is avoid that an adoption which has not been legally formalised abroad could have legal effects in Spain and that the adoptions formalised without respecting the minimum levels of justice, with particular attention to the interests of the child, could have any effect in Spain.

For this purpose, the Spanish authorities and, in particular, the Registrar of the Civil Registry, shall control, in any case, that the adoption has been formalised by the competent foreign authority, that said authority respected their own Private International Law and therefore, formalised a legal adoption for said country. The Registrar shall verify that the adoption formalised abroad, depending on the Law applied for its formalisation, takes the same substantial effects that the adoption regulated by Spanish Law. In addition, the Registrar shall verify the suitability of the adopters for adopting and, in the case the adoptee is Spanish, shall verify that the public entity corresponding to the last residence of the adoptee in Spain has expressed its consent. In addition, the Registrar shall verify that the document presented in Spain together with the formalisation of the adoption before a foreign authority comply with the formal requirements to verify its authenticity.

The Act also includes a regulation that did not exist in our Positive Law previously in relation to the effects in Spain of a simple adoption formalised by a foreign authority. In addition, it includes the possibility for converting said simple adoption into a full



adoption with full effects by establishing the requirements that each step shall fulfil in order for the competent Spanish authority to agree with said conversion.

The articles of this Act finalise with Chapter 3, which regulates the private-law system of the intercountry foster placement cases and other measures for the protection of the children.

#### IV

The Act is completed with the amendment of certain articles of the Civil Code. Firstly, the amendment of Article 9.5 of the Civil Code pursuant to Part 2 of this Act, which now simply refers to Intercountry Adoption Act.

On the other hand, the link between the adoption and the protection of the children is used to address the reform of Articles 154, 172, 180 and 268 of the Civil Code. Besides having reworded these precepts, the amendment offers a response to the requirements of the Committee on the Rights of the Child, which has expressed its concern about the possibility that the authority conferred to the parents and legal tutors to moderately reprehend the child could infringe Article 19 of the Committee of 20 November 1989 on the Rights of the Child.

These amendments shall be applied subsidiary over the Law in accordance with the own regulation of the Autonomous Communities in this respect, if any.

## **TITLE I**

### **General Provisions**

#### **SECTION I**

##### **Scope of Application**

**Article 1.** *Purpose and scope of application.*

**1.** This Act regulates the intervention of the General State Administration, the Public Entities and the accredited organisations in intercountry adoption, the capacity and requirements that the adopters should fulfil as well as the regulations of Private International Law relating to adoption and other international measures for the protection of the children in the cases a foreign element exists.

**2.** Pursuant to Part 1 of this Act, intercountry adoption is understood as the adoption where the child, who resides abroad, is considered as adoptable by the competent foreign authority and who is being brought to Spain by the adopters, who resides in Spain, either after the formalisation of the adoption at the country of origin or for formalising the adoption in Spain.

**Article 2.** *Aim of this Act*

**1.** This Act establishes the legal framework and the basic instruments to guarantee that all the intercountry adoptions are formalised considering the best interests of the child.

**2.** This Act aims to safeguard the rights of the children who are going to be adopted, considering also the rights of the adopters and other persons involved in the intercountry adoption process.

**Article 3.** *Guiding Principles*

The regulation provided in this Act, as well as the remaining provisions of the Spanish legal system relating to adoption and other measures for the protection of the children, shall respect the main guiding principles of the Committee of 20 November 1989 on the Rights of the Child, of the Hague Convention of 29 May 1993 on Protection of the Child and Cooperation relating to Intercountry Adoption, of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation relating to Parental Responsibility and measures for the Protection of the Child, the Europe Convention of 27 November 2008 on Adoption of Children signed in Strasbourg and the Europe Council Regulation (EC) No. 2201/2003 of 27 November 2003 on Jurisdiction, Recognition and Enforcement of Judgements in Matrimonial and Parental Responsibilities matters.

The State, when possible, shall include the standards and safeguards provided in said instruments and in the bilateral agreements or Conventions relating to adoption and International Protection of Children signed with non-contracting States or when obliged by the same.

**Article 4. Foreign Policy**

**1.** The General State Administration, together with the Public Entities, shall determine the initiation of the adoption process with each country of origin of the children as well as its suspension or paralysation.

**2.** The adoption offers of foreign national children or of those who reside in other country shall not be initiated under the following circumstances:

- a) When the country in where the adoptee resides is immersed in armed conflict or have suffered a natural disaster.
- b) If in the country does not exist a specific authority that controls and safeguards the adoption and that addresses to the Spanish authorities the placement proposal with information about the suitability of the children together with the remaining information requested in paragraph e) of Article 5.1.
- c) When the country does not offer the appropriate guarantees for the adoption and the practise and process of the same do not respect the interests of the children or do not fulfil the international ethical and legal principles provided in Article 3.

**3.** The General State Administration, in collaboration with the Public Entities, shall determine on each moment which countries are immersed in any of the circumstances aforementioned for deciding if an adoption process can be initiated or suspended in said countries.

**4.** The processing of those adoptions relating to foreign children who have been brought to Spain through humanitarian programmes for short-term stays due to holidays, studies or medical treatment requires that said short-term stays have finalised and that in their country of origin said children have been considered suitable for being adopted.

**5.** The General State Administration, in collaboration with the Public Entities, shall establish the number of intercountry adoption files that will be annually addressed to each country of origin of the children, taking into account the average of the adoptions formalized over the last two years and the number of files which are pending of the assignation of a child.

For said purpose, it cannot be processed with each country a number of files higher than three times the average of the adoptions formalised on said period except if the amendments of the legislation, practices and policies relating to adoption of the country of origin justified the same.

In the case that an adoption proceeding is initiated with a new country, the number of files shall be settled based on the information available about the expectations of adoption with said country.



The distribution of the maximum number of files among the Autonomous Communities and accredited bodies shall be fixed by agreement with the Public Entities.

A maximum number for the adoption processes relating to children with special needs is not established, except if circumstances justified so.

The provisions of this Chapter shall be enforced pursuant to the criteria and proceedings provided in the corresponding regulations.

6. The General State Administration shall gather information from the accredited organisations, if any, before initiating, suspending or paralysing the adoption process with each country of origin of the children. Also, the information can be gathered from third countries which have initiated, suspended or paralysed adoption processes with the corresponding country as well as from the Permanent Bureau of the Hague Conference on Private International Law.

## SECTION II

### Public Entities and accredited organisations.

**Article 5.** *Intervention by the Public Entities.*

1. In relation to intercountry adoption, the Public Entities are responsible for:

- a) Organizing and providing information about the legislation and the necessary requirements and processes in Spain and in the country of origin of the adoptees, safeguarding that said information is as complete, accurate and updated as possible as well as of free access for the accredited bodies and those families interested in the same.
- b) Providing the families with the necessary information during the whole process in order for them to understand and be prepared for the implications of intercountry adoption by preparing said families for the appropriate exercise of their parental responsibilities once the adoption is formalised. Public Entities may delegate said responsibility to accredited bodies, institutions or entities duly authorised.
- c) Receiving the adoption offers and, in any case, processing the same either directly or through accredited bodies.
- d) Issuing, in any case, the certificates of suitability, after preparing, either directly or through the institutions or entities duly authorised, the psychosocial report of the applicants as well as issuing the corresponding monitoring agreement at the request of the country of origin of the adoptee.
- e) Receiving the documentation relating to the child allocated from the competent authorities of the country of origin. Said documentation shall include information about his or her identity, suitability for being adopted, social and familiar environment, medical records and specific needs. In addition, it shall include information relating to the consent of the persons, institutions and authorities required by the legislation of the country of origin.
- f) Verifying that the characteristics of the children allocated by the competent country of origin authority comply with the characteristics of the psychosocial report annexed to the Certificate of Suitability.

- g) Offering, during the intercountry adoption process, technical assistance to the children and applicants, giving particular attention to the persons who are going to adopt or have adopted children with special characteristics or needs. The adopters shall have the collaboration of the Foreign Service while abroad.
- h) Drafting the monitoring reports required by the country of origin of the child. The drafting of said reports may be entrusted to the accredited or authorised entities.
- i) Establishing persons qualified for post-adoption assistance and intervention for searching the origins in order to assist the adoptees and adopters correctly. This task could be entrusted to the accredited or authorised entities.
- j) Reporting the General State Administration about the accreditation of the entities as well as controlling, inspecting and preparing the monitoring rules of those entities which headquarters are located in its territorial jurisdiction for the mediation activities performed in its territory.

2. Relating to intercountry adoptions, the Public Entities shall promote measures to achieve the maximum coordination and collaboration among them. Specially, the Public Entities shall ensure the standardisation of the procedures, periods and costs.

3. The Public Entities shall provide the General State Administration with statistical information about the proceedings of intercountry adoption files.

#### **Article 6. *Intervention in Intercountry Adoption.***

1. Intervention in intercountry adoption is understood as every activity which purpose is to intervene by bringing the applicants into contact with the authorities, organisations and institutions of the country of origin or the country of residence of the child who could be adopted as well as to offer assistance for the adoption to be formalised.

2. The intervention in intercountry adoption shall be executed directly by the Public Entities together with the central authorities of countries of origin which have ratified the Hague Convention of 29 May 1993 on Protection of Children and Cooperation relating to Intercountry Adoption. This intervention shall be performed whenever any individual, legal entity or organisation that has not been duly accredited intervenes in the administrative process.

Organisations duly accredited may perform said intervention.

Neither other individual nor entity may intervene in intercountry adoption.

Nevertheless, the General State Administration, in collaboration with the Public Entities, may establish that the adoption from a certain State shall only be processed by the organisations accredited and authorised by the authorities of both States.

3. The duties to be performed by the accredited organisations to intervene are as follows:

- a) To inform the applicants about intercountry adoption.
- b) To advise, instruct and support the applicants about the meaning and implications of adoption, the relevant cultural aspects and the processes that shall be performed in Spain and in the country of origin of the children.



c) To intervene in the processing of the adoption files before the competent Spanish and foreign authorities.

d) To intervene in the processing and exercise of the corresponding procedures for fulfilling the post-adoptive responsibilities provided in the legislation of the country of origin of the child for the adopter. Said responsibilities shall be entrusted in accordance with the terms established by the Spanish Public entity where the applicants reside.

**4.** The accredited organisation shall intervene in accordance with the terms and conditions provided by this Act and the regulations of the Autonomous Communities.

**5.** The accredited organisations may establish cooperation agreements among them in order to solve unexpected events or for a better compliance of their purposes.

**6.** Intercountry adoptions shall never produce economic benefits other than the ones strictly needed to cover the necessary costs of the intervention. The General State Administration and the Public Entities shall approve said costs.

**Article 7. Accreditation, Monitoring and Control of the accredited organisations.**

**1.** The accreditation for intercountry adoption shall only be granted to those non-profit organisations registered in the corresponding registry and which purpose on its articles of association is the protection of children. In addition, said organisation shall have the necessary material resources and multidisciplinary teams within national territory in order to perform the duties entrusted. Said organisations shall be managed and administrated by qualified persons by their moral integrity, education and experience in the intercountry adoption field.

**2.** In accordance with the terms and procedure established by Law, the General State Administration shall be responsible for the accreditation of the aforementioned organisations after receiving the corresponding report of the Public Entity in which territory the headquarter of said organisation is established. In addition, the General State Administration shall control and monitor said organisation regarding their intervention activities performed in the country of origin of the children.

The General State Administration shall have a specific Public National Registry of the accredited organisations. The operation of said registry shall be object of further regulations.

**3.** The control, inspection and monitoring of said organisation regarding their activities that shall be developed in territory of each Autonomous Community correspond to the competent Public Entity of said Autonomous Community and shall be performed in accordance with its legislation.

The competent Public Entities shall ensure the maximum standardisation of the basic requirements for said control, inspection and monitoring.

**4.** The accredited organisations shall appoint the person who shall act as their representative and the representative of the families before the authority of the country of origin of the child. The professionals employed by an accredited organisation in the countries of origin of the children shall be considered as personnel attached to said

organisation. Therefore, the organisation shall be responsible for the acts of said professional while they are exercising the intervention. Having previously informed the Public Entities, the General State Administration shall assess said professional.

**5.** If the foreign country to be authorised determines a limited number of accredited organisations, the General State Administration, in collaboration with the Public Entities and the authorities of the corresponding country, shall determine which organisations shall be accredited to act in said country.

If any of the countries of origin of the children to be adopted establish a limited number of files that may be processed by each accredited organisation and one of said organisations, which has been assigned a number of files, has not any file to be processed in said country, the corresponding organisation may process the files which are being processed by other accredited organisations previous consent of the applicants and previous authorisation from General State Administration in collaboration with the Public Entities.

**6.** The General State Administration, in collaboration with the Autonomous Communities, may determine a maximum number of accredited organisations to intervene in a certain country depending on the need of intercountry adoptions in said country as well as the adoptions formalised or other issues about the possibilities of intercountry adoption expected in the same.

**7.** The State Administration, on its own initiative or on a proposal of the Public Entities established in their territory, may suspend or withdraw the accreditation, through proceedings in the presence of both parties, from those organisations that have failed on the performance of the duties for grating said accreditation or have infringed Law with their actions. The suspension and withdrawal of the accreditation may have general effects in all the authorised countries or in certain countries only. In these cases, it may be determined, if necessary, the termination of the files pending from said organisation which accreditation has been withdrawn.

**8.** The General State Administration and the Public Entities shall be coordinated for monitoring and controlling the accredited organisations.

**9.** The accredited organisations shall provide the General State Administration with statistical information about the processing of intercountry adoption files.

**10.** The General State Administration shall performed the responsibilities provided in sections 2, 4, 5, 6, 7, 8 of this Article in accordance with the terms and procedure provided by Law.

**Article 8.** *Relationship between the applicants and the accredited organisations.*

**1.** The applicants may render the intervention services of any of the organisation accredited by the General State Administration.

**2.** The organisation and the applicants shall sign a contract related exclusively to the intervention services that the organisation assumes for processing the adoption offer.

The basic sample contact shall be ratified by the General State Administration and the Public Entities and pursuant to the legal form provided in Law.



3. In order to exercise the responsibilities provided in Articles 5.1.j) and 7.2, the General State Administration and the Public Entities shall registry the claims and events on the intercountry adoption processes. The operation of said registry shall be object of further regulations.

4. The accredited organisations shall elaborate a single registry for the adoption procedures composed by the applicants who have signed the contract regardless of the Autonomous Community in where they reside.

**Article 9.** *Communication between the competent Spanish authorities and the competent foreign authorities.*

The communication between the competent Spanish authorities and the competent foreign authorities shall be coordinated pursuant to the Hague Convention of 29 on Protection of Children and Cooperation relating to Intercountry Adoption although said countries have not signed the same.

### SECTION III

#### Capacity and requirements for Intercountry Adoption

**Article 10.** *Suitability of the adopters.*

1. Suitability is understood as the appropriate capacity, aptitude and motivation to exercise the parental responsibility having in mind the needs of the adoptee and to assume the special features, consequences and responsibilities that adoption entails.

2. For this purpose, the declaration of said suitability shall require a psychosocial assessment about the personal, familiar and relational situation of the applicants, their capacity to establish stable and secure bonds, their educational skills and their aptitude to look for the child depending on his or her specific circumstances as well as any other useful elements relating to the intercountry adoption singularity. Likewise, during said assessment, the children of the applicants shall be heard in accordance with Article 9 of the Organic Act 1/1996 of 15 January on Legal Protection of the Children, partially amending the Civil Code and Civil Procedure Act.

The Public Entities shall be coordinated to standardise the criteria for assessing the suitability.

3. The declaration of suitability and the psychosocial reports related to the same shall expire in three years from the issuing date by the Public Entity, providing that there are not any fundamental modifications in the personal and familiar situation of the applicants who have been assessed. The psychosocial assessment is subjected to the conditions and limitations, if any, provided in the autonomous legislation applicable for each case.

4. The Public Entities shall approve the applicants as suitable taking into account the psychosocial assessment mentioned on section 2. Said assessment is subjected to the conditions, requirements and limitations provided in the corresponding legislation.



5. The applicants shall be assessed and approved as suitable, if proceeds, for both national and intercountry adoption processes in the case their application is compatible for both cases.

**Article 11.** *Pre-adoptive and post-adoptive responsibilities of the adopters.*

1. The applicants shall attend to information and training sessions organised by the Public Entity or the accredited organisation. The applicants must attend to said sessions before applying for the declaration of suitability.

2. Within the period stipulated, the adopters shall provide the Public Entity, accredited organisation or authorised entity with the information, documentation and interviews needed to elaborate the corresponding post-adoption reports required by the Public Entity or the competent authority of the country of origin. The non-cooperation entails for the adopters administrative penalties provided in the autonomous legislation and they may be considered unsuitable for a future adoption process.

3. The adopters shall meet the deadlines established for the post-adoptive procedures established by the legislation of the country of origin of the child. For this purpose, they shall be assisted and advised by the Public Entity and the accredited organisation.

**Article 12.** *Right to know the biological origins.*

The adoptees, after reaching the legal age or being underage and represented by their parents, shall be entitled to the right to know the information of their origins possessed by the Public Entities. Said information is subjected to the limitations that may result from the legislation of the country of origin of the children. This right shall be exercised following the advice, help and intervention of the specialized services of the Public Entity, accredited organisations or authorised entities for said purpose.

The corresponding Public Entities shall keep the information they may have relating to the child's origins, in particular, the information relating to the parents identity as well as the medical history of the child and his or her family.

The accredited organisations that had intervened in the adoption process shall inform the Public Entities about the data which may have relating to the child origins.

**Article 13.** *Personal Data Protection.*

1. The processing and transfer of the data complying with the previsions provided in this Act shall be subjected to Organic Act 15/1999 of 13 December on Personal Data Protection.

2. The data obtained by the Public Entities or accredited organisation shall only be used for the purposes provided in Articles 5 and 6.3 of this Act.

3. The international data transfer to the foreign adoption authorities shall only be exercised in the cases foreseen in this Act, the Hague Convention of 29 May 1993 on Protection of Children and Cooperation relating to Intercountry Adoption and other international legislation.

**TITLE II**  
**Regulations on Private International Law**  
**relating to Intercountry Adoption**

**SECTION I**

**Jurisdiction for the formalisation of intercountry adoption**

**Article 14.** *International Jurisdiction to formalise the intercountry adoption.*

**1.** In general, the Spanish Courts have jurisdiction to formalise an adoption on the following cases:

- a) When the adoptee is Spanish or he or she resides in Spain.
- b) When the adopter is Spanish or he or she resides in Spain

**2.** In any case, the Spanish nationality and residence in Spain shall be considered when presenting the application for an adoption before the Public Entity.

**Article 15.** *International Jurisdiction to revoke or convert a simple adoption into a full adoption in cases of intercountry adoption.*

**1.** The Spanish Courts shall have jurisdiction to revoke an adoption order on the following cases:

- a) When the adoptee is Spanish or he or she resides in Spain when the application is presented.
- b) When the adopting parent is Spanish or he or she resides in Spain when the application is presented.
- c) When the adoption has been formalised by a Spanish authority.

**2.** If the Law applied to the adoption foresees the possibility of a simple adoption, the Spanish Courts shall have jurisdiction to convert the simple adoption into a full adoption in the cases aforementioned.

**3.** For the purposes of this Act, simple adoption is understood as the adoption formalised by a foreign authority and which effects do not fundamentally correspond to the adoption effects foreseen in Spanish legislation.

**Article 16.** *Subject-matter and territorial jurisdiction of the judicial authorities.*

**1.** The appointment of the judicial authority which has subject-matter and territorial jurisdiction to formalise the intercountry adoption shall be performed in accordance with regulations provided by non-contentious jurisdiction.

2. In the case the territorial jurisdiction cannot be determined in accordance with the preceding paragraph, the adopters shall decide the judicial body which shall have the same.

**Article 17.** *Jurisdiction of the Consulates to formalise intercountry adoptions.*

1. In accordance with the International treaties and other applicable international regulations and always that the Local State or its legislation allows it, the Consuls may formalise adoptions if the adopter is Spanish, the adoptee resides in the consular district and the previous proposal of the Public Entity shall not be necessary in accordance with the items 1, 2 and 4 of Article 176.02 if the Civil Code. The nationality of the adopter and the residence of the adoptee shall be determined when the adoption file is initiated.

2. The processing and resolution of the adoption file shall be pursuant to non-contentious jurisdiction.

## SECTION II

### Applicable Law to adoption

**Article 18.** *Applicable Law to the formalisation of an adoption.*

The formalisation of an adoption by the competent Spanish authority is governed by Spanish Law on the following cases:

- a) When the residence of the adoptee is located in Spain when the adoption is formalised.
- b) When the adoptee has been or is going to be brought to Spain in order to reside in Spain.

**Article 19.** *Capacity of the adopter and necessary consents.*

1. The capacity of the adopter and the necessary consents of the persons who intervene in the adoption shall be governed by the personal law of the adoptee and not by Spanish substantive Law on the following cases:

- a) If the residence of the adoptee is located abroad when the adoption is formalised.
- b) If the adoptee does not acquire the Spanish nationality by virtue of the adoption although he or she resides in Spain.

2. The application of the personal law of the adoptee provided in the first paragraph of this Article shall only be executed when the competent Spanish authority considers that its application eases the validity of the adoption in the country where the adoptee is national.

3. The application of the personal law of the adoptee provided in the first paragraph of this Article shall not be executed if the adoptees are stateless or have unknown nationality.



**4.** In the case of children whose personal law prohibits or does not consider adoption, the formalisation of the adoption shall be refused except if the child is neglected and under the guardianship of a Public Entity.

**Article 20.** *Consents, interviews and authorisations.*

Without prejudice to Article 18, the competent Spanish authority to formalise the adoption may also request the consents, interviews or authorisations required by the personal law or the law of the country where the adopter or adoptee reside on the following cases:

- a) When said consents, interviews and authorisations affect the interests of the adoptee. Particularly, it is understood that the same affects the «interests of the adoptee», if the consideration of the foreign laws, in accordance with the judicial criteria, ease the validity of the adoption in other countries linked with the same and only to such extent.
- b) When said consents, interviews and authorisations are requested by the adopter or Public Prosecutor.

**Article 21.** *Applicable Law to the formalisation of an adoption.*

(Deleted)

**Article 22.** *Applicable Law to convert and revoke an adoption.*

The applicable Law to convert a simple adoption and revoking an adoption shall be the Law applied of its formalisation.

**Article 23.** *Spanish International Public Policy.*

A foreign law shall not be applied in any case when the same is in flagrant contradiction with the Spanish International Public Policy. In said case, the best interests of the child shall be taken into account as well the substantial bonds of the case with Spain. Spanish substantive Law shall govern those adoption aspects that cannot be governed by a foreign Decree as the same is contrary to the Spanish International Public Policy.

**Article 24.** *International Cooperation of the authorities.*

When the foreign authority which is going to formalise the adoption, being the adoptee Spanish and residing in Spain, requests information about the adoptee to the Spanish authorities, the Consul shall gather said information from the authorities located at the last place of residence of the adoptee in Spain. The consul may also provide said authorities with the information possessed by the Consulate or the information obtained by other means.

### SECTION III

#### Effects in Spain of the adoption formalised by foreign authorities

**Article 25.** *International Regulations.*

The adoption formalised by foreign authorities shall be recognised in Spain in accordance with the International Treaties and Conventions and other international regulations in force for Spain, and specifically, in accordance with the regulations

provided in the Hague Convention of 29 May 1993 on Protection of Children and Cooperation relating to Intercountry Adoption. In any case, said regulations shall prevail over the regulations provided in this Act.

**Article 26.** *Requirements to validate in Spain the adoptions formalised by foreign authorities in the absence of international regulations.*

**1.** In the absence of International Treaties and Conventions and other international regulations in force for Spain that may be applied, the adoption formalised by foreign authorities shall be recognised in Spain as adoption if the same comply with the following requirements:

1.º The adoption must have been formalised by the competent foreign authority. The foreign authority shall be considered competent if the adoption has several bonds with the foreign State of which authorities have formalised the same. In any case, it shall be assumed that said authorities are considered competent by mutually applying the jurisdiction regulations provided in Article 14 of this Act.

2.º The adoption does not infringe public policy.

For this purposes, it shall be considered that adoptions infringe the public order when during their formalisation the best interests of the child have not been respected. In particular, when the corresponding consents and interviews have been ignored, have not been free and informed or have been performed through payment or compensation.

**2.** If the adopter or adoptee is Spanish, the adoption formalised by a foreign country shall have the same legal effects that corresponds, fundamentally, with the effects of an adoption governed by Spanish Law.

The legal name of the institution shall be irrelevant in foreign Law.

In particular, the Spanish authorities shall control that the adoption formalised by a foreign country shall lapsed the fundamental legal bonds between the adoptee and his or her previous family, having same filiation effects than the effects of the bonds of natural filiation and making the adoption irrevocable by the adopters.

If the foreign Law allows that the adopters can revoke an adoption formalised under its control, it is a prerequisite for bringing the child to Spain that the adopter renounce to exercise said right. The renounce shall be formalised through Public Deed or by appearing before the Registrar of the Civil Registry.

**3.** If the adopter is Spanish and resides in Spain, the competent Spanish Public Entity shall declare the adopter suitable prior formalisation of the adoption through the competent foreign body. The declaration of suitability shall not be requested in the cases that the adoption has been formalised in Spain and the same had not been previously requested.

**4.** If the adoptee is Spanish when formalising the adoption before the competent foreign authority, it shall be necessary the consent of the Public Entity corresponding to the last place of residence of the adoptee in Spain.



5. The document through which the adoption is formalised by the foreign authority shall gather the formal requirements for its validation such as the legalisation or apostille and translation of the same into Spanish. The aforementioned requirements shall not be requested for those documents exempted from the same by virtue of other regulations in force.

**Article 27.** *Verification of the validity of the adoption formalised by a foreign authority.*

The Spanish authority requested to verify the adoption formalised by a foreign country, and in particular, the Registrar of the Civil Registry in which the registration of the adoption formalised by a foreign country is requested for its recognition in Spain, shall control, incidentally, the validity of said adoption in Spain in accordance with the regulations provided in the Hague Convention of 29 May of 1993 on Protection of Children and Cooperation relating to Intercountry Adoption. For said purpose, a Certificate of Compliance shall be presented in accordance with Article 23 of said Convention as well as the declaration that no circumstance for the no recognition of said adoption exists in accordance with Article 24 of said Convention.

In the case the children are from countries which have not signed the aforementioned Convention, the Registrar of the Civil Registry shall performed an incidental control verifying if the adoption gathers the requirements for its recognition in accordance with Articles 5.1.e), 5.1.f) and 26.

**Article 28.** *Requirements to validate in Spain the foreign decision about conversion and revocation of an adoption.*

The decisions from a foreign public authority responsible for converting and revoking an adoption shall have legal effects in Spain in accordance with the requirements provided in Article 26 of this Act.

**Article 29.** *Registration of the adoption in the Civil Registry.*

When the intercountry adoption has been formalised abroad and the adopters resides in Spain, they shall request the registration of the child's birth as well as the adoption in accordance with the regulation provided in the Civil Code in order for the adoption to be recognised in Spain.

**Article 30.** *Simple adoption formalised by a foreign authority.*

1. The simple adoption formalised by a foreign authority shall have effects in Spain as a simple adoption in the case the same complies with the law provided in Article 9.4 of the Civil Code.

2. The law provided in Article 9.4 of the Civil Code shall establish the existence, validity and effects of said adoptions as well as the attribution of the parental authority.

3. The simple adoption shall not be registered as adoption in the Civil Registry and shall not entail the acquisition of the Spanish nationality in accordance with Article 19 of the Civil Code.

4. The simple adoption formalised by the competent foreign authority may be converted into an adoption regulated by Spanish Law, through a non-contentious proceeding file,

when the same gather the requirements for said purpose. The law applied for the formalisation of the adoption shall govern the conversion of said adoption.

The prior proposal of the competent Public Entity shall not be necessary for requesting a court file.

In any case, for converting a simple adoption into a full adoption, the competent Judge shall examine that the following circumstances coincide:

- a) The persons, institutions and authorities which consent is necessary for the adoption, must have been duly advised and informed about the consequences of their consent, about the adoption effects and specifically, about the expiration of the legal bonds between the child and his or her original family.
- b) Said persons must have given their free consent in due legal form. Said consent must have been given in written.
- c) The consents must have not been obtained through payment or compensation of any kind and the same must have not been revoked.
- d) The consent of the mother, if necessary, must have been given once the child is born.
- e) Having into account the age and maturity of the child, he or she must have been advised and informed about the adoption effects and must have given his or her consent, if required.
- f) Having into account the age and maturity of the child, he or she must have been heard.
- g) When the consent of the child is necessary, it shall be examined if the adoptee gave his or her consent freely, in duly form and in accordance with the legal requirements. That consent must have not been obtained through payment or compensation of any kind.

**Article 31. *International Public Policy.***

The recognition of a foreign simple adoption shall not be approved if the same is contrary to Spanish International Public Policy. For this purpose, the best interests of the child shall be considered.

### **TITLE III**

## **Other measures for the protection of the children**

### **SECTION I**

#### **Jurisdiction and Applicable Law**

**Article 32.** *Jurisdiction to introduce measures for the protection of the children.*

The jurisdiction to introduce other measures for the protection of the children shall be governed by the criteria provided in the International Treaties and Conventions and other international regulations in force for Spain. In particular, the regulations provided in the European Commission Regulation (CE) No. 2201/2003 of 27 November 2003 on Jurisdiction, Recognition and Enforcement of Judgements in Matrimonial and Parental Responsibilities matters and by the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Execution and Cooperation relating to Parental Responsibility and measures for the Protection of Children.

**Article 33.** *Applicable Law to other measures for the protection of the children.*

The applicable law that shall be applied to the measures for protection of the children remaining shall be determined in accordance with the international Treaties and Conventions and other international regulations in force for Spain. In particular, the regulations provided in the Hague Convention of 19 October of 1996 on Jurisdiction, Applicable Law, Recognition, Execution and Cooperation relating to Parental Responsibility and measures for the Protection of Children.

### **SECTION II**

#### **Effects of the foreign decisions in respect of protection of the children.**

**Article 34.** *Legal effects in Spain of the decisions agreed by the foreign authorities relating to measures for the protection of children that do not entail filiation bonds.*

**1.** The measures for the protection of the children established by a foreign authority which do not determine a filiation bond in accordance with the corresponding law for said purpose, shall be considered as foster placement or guardianship, where appropriate, both regulated by Spanish Law on the following cases:

One. The substantial effects of the foreign measures must be equivalent to foster placement or guardianship (where appropriate) effects provided in Spanish Law.



Two. The measures for the protection must have been agreed by the competent judicial or administrative authority. The authority, which established the measure for the protection, shall be considered competent if the case is related with the foreign State from which the authorities that have constituted said measure are.

However, in the case the measures established do not present the corresponding connections such as family background or connections of similar kind with the country of origin of which authority has established said protection, the authority shall be considered to do not have international jurisdiction for the case.

Three. The effects of the measures for the protection established shall not be contrary to the Spanish Public Policy and shall safeguard the best interests of the child.

Four. The document on which the measures are established before a foreign authority shall gather the formal requirements for its validation such as the legalisation or apostille and translation into Spanish. The aforementioned requirements shall not be requested for those documents exempted from the same by virtue of other regulations in force.

2. The Spanish Public authority requested to validate a measure established by a foreign authority and, specifically, the Registrar of the Civil Registry requested to register said measure for its recognition in Spain, shall incidentally control the validity of said measure in Spain in accordance with this Article.

#### **Supplementary provision. Public Entities for the protection of the children.**

(Repealed)

#### **Repealing Provision. Organic Act on Legal Protection of the children.**

Article 25 of the Organic Act 1/1996 of 15 January on Legal Protection of the Children, partially amending the Civil Code and the Civil Procedure Act is repealed.

#### **Final Provision One. Amendment of certain Articles of the Civil Code.**

First. Section 5 of Article 9 is reworded as follows:

«Intercountry adoption shall be governed by the regulations provided in Intercountry Adoption Act. Likewise, the adoption formalised by foreign authorities shall have effects in Spain in accordance with the dispositions provided in said Intercountry Adoption Act».

Second. Article 154 is reworded as follows:

«Non emancipated children shall be under parental authority.

Parental authority shall be exercised in benefit of the children in accordance with their personality and respecting their physical and psychological integrity.

Said authority entails the following responsibilities and faculties:

1. To look after them, to have them in their company, feed and educate them as well as providing them with comprehensive personal development.
2. To represent them and administrate their assets.

If the children have sufficient judgement, they must be always heard before taking any decision that may affect them.

The parents, exercising their parental authority, can request assistance from the authority».

Third. Amendment of the sections 3 and 6. Sections 7 and 8 are included in Article 172, which are as follows:

«3. Custody assumed at the request of the parents or guardians or as a result of guardianship assumed by Law shall be performed through foster placement or residential care. Foster Placement shall be exercised by the person or persons determined by the Public Entity. Residential care shall be exercised by the Director of the centre where the child has been taken.

Within two months, the parents or guardians of the child may challenge the administrative decision on foster placement when they consider that the form of care decided is not the most convenient for the child or if there are other persons within the family circle more suitable to those designated.

6. The decisions that acknowledge the existence of neglect and declare the assumption of the guardianship by Law shall be appealed before the civil jurisdiction within the period and subjected to the requirements provided in Civil Procedure Act without the need to file a prior administration claim.

7. Within two years from the notification of the administrative decision that declares the existence of neglect, the parents who still have the parental authority but the same has been suspended in accordance with the provisions provided in Article 1 of this Act shall be entitled to request the termination of said suspension and the revocation of the declaration of the existence of neglect if, as a result of a change in the circumstances which motivated said declaration, they are able to assume the parental authority again.

Likewise, they shall be entitled to challenge any decision adopted in relation to the protection of the child within the same period.

Having expired said period, their right to request or challenge the decisions or measures adopted for the protection of the child shall lapse. However, they may provide the Public Entity or Public Prosecutor with information about any change in the circumstances that motivated the declaration of the neglect.

8. The Public Entity, ex officio or at the request of the Public Prosecutor or an interested person or entity may revoke at any case the declaration of neglect and decide the return of the child with his or her family in the case the child is not integrated in a stable manner in other family or, if it is understood that it is in his or her best interests. The Public Prosecutor shall notify said decision.

Fourth. A new section is added to Article 180 which rewording is as follows:

«5<sup>th</sup>. The adoptees, after reaching the legal age or being underage and represented by their parents, shall be entitled to know any data related to their biological origins. The Spanish Public Entities for the protection of the children, prior notice of the persons affected, shall provide the applicants, through their special services, with advice and assistance requested in order to give effect to said right».

Fifth. Article 268 is reworded as follows:

«The guardians shall exercise their charge in accordance with the personality of their wards and respecting their physical and psychological integrity.

They may request, when needed, the assistance of the authority to exercise their guardianship».

#### **Final Provision Two. Amendment of certain articles of Civil Procedure Act 1/2000 of 7 January**

First. A new article is added to Article 141 bis of Civil Procedure Act, which is as follows:

##### **«Article 141 bis.**

In the cases foreseen on the two foregoing articles, in order to protect the best interests of the child and preserve his or her privacy, it shall be omitted, when necessary, any personal data, picture, name and surname, address or any other data or circumstance that allows the direct or indirect identification of the child from any noncertified copies, statements or certifications issued by Court Officer notwithstanding the media in which the same are issued».

Second. A new final paragraph is added to Article 164 of Civil Procedure Act, which is as follows:

##### **«Article 164.**

In the communication and publication mentioned in the previous paragraphs, it shall be omitted any personal data, name and surname, address or any other data or circumstance that allows the direct or indirect identification of the child in order to protect his or her best interest and preserve his or her privacy».

Third. Article 779 is reworded as follows:

##### **«Article 779. Preferential Proceedings. Jurisdiction.**

The proceedings that conduct the challenge to the administrative decisions related to protection of the children shall receive preferential treatment.

The Court which has jurisdiction to hear the proceeding shall be the First Instance Court corresponding to the address of the protecting entity. In its absence of the same or in the cases provided in Articles 179 and 180 of Civil Code, the Court which has jurisdiction to hear the case shall be the Court which corresponds to the address of the adopters».

Fourth. Section 1 of Article 780 is reworded as follows:

«1. A prior claim through the administrative appeals shall not be necessary to challenge the administrative decisions relating to the protection of the children before a Civil Court.



The challenge to the administrative resolution that declares the existence of neglect shall be presented within three months after its notification, and within two months, the challenge to the remaining administrative decisions related to the protection of the children».

Fifth. First section of Article 781 is reworded as follows:

«1. The parents who claim that their consent is needed for the adoption shall appear before the Court that is hearing the file and request so. The Court, after suspending the file, shall determine the period considered to present the claim. Said period shall not be more than 20 days. Once the claim is presented, the same shall be processed in accordance with Article 753 of this Act».

#### **Final Provision Three. Classification and Function of Employees of Judiciary Law.**

The first section of Article 25 of Classification and Function of Employees of Judiciary Act 38/1988 of 28 December is reworded as follows:

«The Ministry of Justice, in accordance with the attachment governed by its internal regulation, may have ten positions for Judges and Magistrates, ten for Public Prosecutors, ten for Court Officers, and two for Coroners.»

#### **Final Provision Four. Civil Registry Law.**

Amendment of Section 2 of Article 63 of Civil Registry Law of 8 June 1957, which rewording is as follows:

«2. In order to decide about the application presented by the interested person, the competent authorities to process and decide on applications for acquisition of Spanish nationality by residence shall gather, on its own motion, all the necessary reports from the competent Public Administration to verify if the applicants comply with the conditions requested in Article 22 of the Civil Code. The consent of said applicants is not necessary».

#### **Final Provision Five. Regulatory Authorisation**

1. Articles 5, 6, 7, 10, 11 and Final Provision Once are enacted pursuant to the exclusively jurisdiction of the State on Civil Law recognised on Article 149.1.8<sup>th</sup> of Spanish Constitution, notwithstanding the conservation, modification and development by the Autonomous Communities of the civil, regional or special rights, if any, and the regulations approved by the same in exercise of their jurisdiction in this matter.

2. Article 12 is enacted pursuant to Article 149.1.1 of Spanish Constitution. The remaining articles of this Act are enacted pursuant to the exclusively jurisdiction of the state relating to international relationships, administration of justice and civil legislation provided in Article 149.1.3, 149.1.5 and 149.1.8 of Spanish Constitution.

**Final provision Six. Entry into force.**

1. The present Act shall enter into force the following day after its publication in the Spanish Official Gazette.
2. The Government is authorised to approve the corresponding regulations for the application of this Act.

Therefore,

I order all the Spaniards, private citizens and authorities to abide and enforce this Act.

Madrid, 28 December 2017

JUAN CARLOS R.

The President of the Government  
MR. JOSÉ LUIS RODRÍGUEZ ZAPATERO

