

22438 LAW 54/2007, dated 28 December, concerning International Adoption.

JUAN CARLOS I

KING OF SPAIN

To all to whom the present shall come.
The General Courts have approved and I hereby sanction the following law.

STATEMENT OF CAUSES

I

The number of foreign minors adopted by Spanish people or residents in Spain has increased significantly due to the economic and demographic circumstances of certain countries, where many children have not been able to find an appropriate environment for their development, and due to the decrease of the birth rate in Spain in recent years. New needs and social demands arise in such a situation and both public and private institutions have informed the Government about the need to adjust laws to this current social reality.

The increase in adoptions constituted abroad implies at the same time a legal challenge of large proportions for the legislator, who should provide the suitable instruments for regulation so that adoptions take place with maximum guarantees and respect for the rights of the children to be adopted, enabling the harmonic development of the child's personality in the context of a suitable and propitious family environment. All this should take place in the setting of the most scrupulous legal safety which always leads to the benefit of all participants in the international adoption, and above all for the benefit of the child adopted. Over the years enough perspective has been provided to appreciate the opportunity for a Law to put an end to the normative dispersion characteristic of previous legislation and a complete regulation of questions concerning Private International Rights

essentially present in all international adoption procedures has therefore been put together.

II

The present Law combines the principles and values of our Constitution together with the dispositions of international instruments in the field of adoption which are part of our legal order. It is especially important to manifest the relevance in this new order of the principles contained in the United Nations Convention on the Rights of the Child, dated 20 November 1989, in the United Nations Declaration about the social and legal principles applicable to the protection and welfare of children considered above all from the point of view of practices of adoption and family placement in the field of national and international adoption (General Assembly Resolution 41/1985, dated 3 December 1986), in the Agreement concerning child protection and co-operation in the field of international adoption, signed in The Hague and dated 29 May 1993, ratified in Spain by the Instrument dated 30 June 1995.

The work done in the Senate Commission about international adoption has been a reference of great importance for Spain, whose conclusions, drawn up with authorities and experts in the topic, have marked a way to follow for the approach of this social phenomenon.

In the application of the Constitution and the current international legal instruments in force for Spain, this new rule conceives international adoption as a protective measure for minors who cannot find a family in their countries of origin and establishes some needed and suitable guarantees to ensure international adoptions are carried out protecting above all the child's best interests and respecting his/her rights. Furthermore, the goal is to avoid and prevent the kidnapping, sale and trafficking of children, ensuring at the same time that all discrimination as a result of birth, nationality, race, sex, deficiency or disease, religion, language, culture, opinion or any other personal, familiar or social circumstance is avoided.

We should add that the present Law should always be interpreted according to the principle of the minors' best interests, which should prevail over any other legitimate interest which could concur in the procedure of international adoption.

III

The purpose of the Law is a systematic normative regulation, coherent and updated to enable a response to the phenomenon of international adoption in Spain.

The series of clauses is divided into three Sections. Under the chapter «General Dispositions», Section I defines the field of application and the intervention of competent Public Entities in the field of protection of minors with special emphasis on the specification of functions developed by the Collaborating Entities in international adoption.

In Chapter I the field of application of the regulation is established, which is the goal of this Law for the establishment of adoption guarantees, always taking as a guide the minor's best interest, and the principles informing about international adoption in concordance with the Convention of the Rights of the Child dated 20 November 1989 and the Hague Convention dated 29 May 1993 concerning the protection of children's rights and co-operation in the field of international adoption are described. This Chapter is closed by the determination of the circumstances that impede adoption, with the intention of procuring that adoptions take place exclusively when there are minimum guarantees.

In Chapter II the intervention of the Public Entities for the protection of minors in the adoption procedure is described together with the intermediary functions that can only be carried out by Collaborating Entities previously accredited by the competent Spanish Public Entity and by the corresponding authority in the minor's country of origin.

The intermediary function exclusively attributed to the Collaborating Entities has imposed on the legislator the task of configuring a legal setting to combine the integral service that has been entrusted with some basic devices for its accreditation and supervision, which should be exercised by the competent Public Entities.

Within this setting of accreditation, follow up and supervision of the Collaborating Entities, another series of questions are

approached, such as the possibility of formalising co-operation agreements among entities faced with special situations, the possibility of establishing co-ordination among competent Public Entities for the protection of minors, the decision about the number of Collaborating Entities in international adoption in certain countries, cases of accreditation suspension or withdrawal from accredited Collaborating Entities in various regions, the specific character of the relation of the Collaborating Entities with their representatives in the minor's country of origin and the responsibility of these for the acts they carry out in their intermediary functions.

Chapter III regulates the adoptive parents' suitability based on the definition of the concept, the determination of the questions and aspects to which it should refer and the establishment of its maximum period of validity.

In this Chapter a series of post-adoption obligations are also imposed on the adoptive parents and the right of the adopted child to know his/her biological origins is recognised. The legislator being conscious of the importance of this question from the point of view of the free development of the personality of adopted people, the exercise of this right has been combined with the necessary caution in order to protect affected people's privacy. In this way two fundamental limitations are established: On the one hand, the restricted legitimisation of the adopted child once he/she comes of age, or previously if he/she is represented by his/her parents and, on the other hand, the assessment and necessary intervention by the competent Public Entities to facilitate access to the required information.

The Chapter finishes with a precept specifically used for the protection of private data, in accordance with the Spanish Data Protection Agency report.

The second part of the Law regulates Private International Law related to international adoption. Section II thus has three very well differentiated parts.

In the first place, it provides a complete regulation of the competence of the Spanish authorities for the constitution, modification, conversion and annulment of international adoption. Inspired in the principle of «minimum connection», a Spanish authority should not proceed to the constitution, modification or

annulment of an international adoption if the case is not minimally connected with Spain. In this way the penetration into Spanish legislation of foreign courts of justice, courts of justice that could approve the constitution of valid adoptions in Spain but ineffective or non-existent in other countries, especially in the minor's country of origin, is avoided.

Secondly, the Law regulates the legislation applicable to the constitution of international adoption by Spanish authorities, as well as to the conversion, modification and annulment of the same. With the purpose of achieving a better classification system, the Chapter related to «Law applicable to the adoption» distinguishes two different cases. When the adopted child usually resides in Spain or is intending to do so in the near future, Spanish law is applied to the constitution of the adoption. Nevertheless, when the adopted child does not usually reside in Spain, and is not going to be transferred to Spain to establish the social centre of his/her life in Spain, the adoption shall be ruled by the law of the country in whose society he/she is going to be integrated. In both cases, the Law incorporates the necessary caution and gives the second one a wider judicial discretionary margin to give way to other different state laws and provide the maximum international validity of the adoption constituted in Spain.

In the third place, it contains an exhaustive regulation of the legal effects that can take effect in Spain of adoptions constituted before competent foreign authorities. These dispositions are especially significant as the number of adoptions constituted in foreign countries by citizens resident in Spain is at present clearly higher than the number of adoptions constituted in Spain. At this point, the Law starts with the necessary respect for the legal network, composed of the Treaties and International Agreements and other international rules of application for Spain which are applicable to specify the legal effects that adoptions constituted abroad have in Spain.

Based on the above, the Law establishes a system for Spain to recognise adoptions constituted by foreign authorities in the absence of an applicable international regulation. The system is based on a fundamental idea: adoption shall only be recognised in Spain if it has been duly constituted in the State of origin and also if it satisfies certain demands of legal regularity or is

based on the adopted child's interest. Adoptions which have not been duly constituted in a foreign country cannot therefore extend their legal effects into Spain and adoptions constituted without sufficient respect for the minimum levels of justice, with special interest to the minor, cannot therefore have any effects in Spain.

To such effect Spanish authorities and especially the people in charge of Registry Offices should check in all cases that adoption has been constituted by a competent foreign authority, that such authority has respected its own Private International Law regulations and constituted therefore a valid adoption in the country. They should also check that the adoption constituted in a foreign country, according to the law applied to its constitution, has the same substantial effects as adoption regulated by Spanish legislation, that the adoptive parents have been declared suitable to adopt and that in case of Spanish adopted children, consent has been issued by the corresponding Public Entity in the last place of residence of the adopted child and finally that the document presented in Spain which contains the actual adoption constituted before a foreign authority, is backed up by sufficient authentic formal guarantees.

The Law also incorporates a regulation, non-existent up to now in our positive Law, concerning the effects in Spain of simple adoption constituted by a foreign authority, as well as the possibility of its conversion into a full adoption, establishing the factors that should concur in each case for the competent Spanish authority to agree to the transformation.

Section III is the last section of the Law, in which the international cases of legal-private family acceptance rules are regulated together with other measures for the protection of minors.

IV

The Law is completed with the modification of certain clauses of Civil Law. In the first place, the one which imposes the content of Section II of the Law in Clause 9.5 of Civil Law, which now merely fulfils a function of remission to the international adoption Law.

The evident link that joins adoption to the protection of minors is then used to approach the reform of the articles 154, 172, 180 and 268 of Civil Law. Apart from improving the way these

precepts are drawn up, a response is thus given to the Committee on the Rights of the Child's requirements, which has shown its concern about the possibility that the faculty for moderated correction faculty that up to now has been recognised for parents and guardians might contravene Clause 19 of the Convention on the Rights of the Child dated 20 November 1989.

These reforms shall be applied in addition to the law of each region, should it possess such a law.

SECTION I

General dispositions

CHAPTER I

Scope of Application

Clause 1. *Scope of Application.*

1. The present Law regulates the competence of the Spanish legal and consular authorities and the determination of the applicable law to international adoptions as well as validity in Spain of adoptions constituted by foreign authorities.

2. «International adoption» is understood as legal filiation ties presented by a foreign element derived from the nationality or the usual place of residence of the adoptive parents or adopted children.

Clause 2. *Aim and purpose of the Law.*

1. The present Law establishes the legal setting and the basic instruments to guarantee that all international adoptions shall take place in the minor's best interests.

2. The purpose of this Law is to protect the rights of minors to be adopted, taking into account the applicant adoptive parent's rights and those of the other people involved in the international adoption procedure.

Clause 3. *Information principles for international adoption.*

The international adoption of minors shall respect the principles inspired by the Convention of the Rights of the Child dated 20 November 1989 and the Hague Convention dated 29 May 1993, concerning the protection of

children's rights and co-operation in the field of international adoption.

For this purpose, the competent Public Entity, as far as possible, shall include the Hague Convention standards and safeguards dated 29 May 1993, in the agreements related to international adoptions underwritten with States which do not form part of the same.

Clause 4. Circumstances that impede or limit adoption.

1. Adoption applications for minors from other countries or resident in other States shall not be processed under the following circumstances:

a) When the country or the usual place of residence of the adopted minor is at war or immersed in a natural disaster.

b) If there is no specific authority to supervise and guarantee adoption in the country.

c) When in the country there are no adequate guarantees for adoption and the practices and procedures of the adoption do not respect the minor's interests or do not fulfil the ethical and international legal principles referred to in Clause 3.

2. The Spanish Public Entities for the protection of minors shall be entitled to declare that in regards to a certain State, international adoption applications shall only be processed through accredited Collaborating Entities or authorised by the authorities of both States, when it is confirmed that other ways of proceeding present evident risks due to a lack of adequate guarantees.

3. The procedure of adoption applications for those foreign minors who have been fostered in temporary stay humanitarian programmes during periods on holidays, studies or medical treatment, shall require that such fostering has come to an end according to the conditions for which it was constituted and that in their countries of origin it forms part of duly regulated adoption programmes.

4. Regarding the decision to adopt by the competent Public Entity in each region in the cases foreseen in chapters 1 and 2 of this clause, the corresponding regional co-ordination shall be procured, and such decision can be submitted to the previous consideration of the corresponding institutional co-ordination entity of the Public Authorities concerning international adoption, as well as the International Adoption Advisory Council.

5. The international adoption intermediary function can only take place through

the Public Entities for the Protection of Minors, duly authorised Collaborating Entities and the corresponding authority of the minors' country of origin. No other person or entity shall be able to intervene in intermediary functions for international adoptions.

6. In international adoptions financial profits shall never be produced other than the strictly essential ones to cover the necessary expenses.

CHAPTER II

Public and Collaborating Entities in International Adoption

Clause 5. Intervention of Public Entities for the Protection of Minors.

In the field of international adoption the following points correspond to the competent Public Entities for the protection of minors:

a) Organising and providing information about the legislation, requirements and procedures necessary in Spain and in the minors' countries of origin, making sure that the information is as complete, truthful and updated as possible and of free access for those who wish to consult it.

b) Providing the families the previous necessary information to enable them to understand and accept the implications of international adoption, getting them ready for the suitable exercise of their parental functions, once they are constituted. They shall be able to delegate this function onto duly authorised institutions or entities.

c) The reception and procedure of applications, in all cases, directly or through duly accredited Collaborating Entities in international adoption.

d) The issuing, in all cases, of suitability certificates, previously drawn up, either directly or through duly authorised institutions or entities, the adoption applicants psychosocial report and when the adopted child's country of origin so demands it, the issuing of the follow-up commitment.

e) Receiving the minor's assignment with information about his/her identity, his/her adoptability, his/her social and family environment, medical history and his/her specific needs; as well as the information related to the granting of consent from people, institutions and authorities required under the legislation of the country of origin.

f) Providing conformity regarding the suitability of the assigned child's characteristics according to the competent entity in the country of origin as compared to the psychosocial report that accompanies the suitability certificate. They shall offer technical support for the adopted children and the adoptive parents throughout the international adoption procedure, paying special attention to the people who have adopted minors with special characteristics or needs. During the adoptive parents' stay abroad they are entitled to the External Service collaboration for this purpose.

g) The follow up reports required by the minor's country of origin, which can be entrusted to entities such as the ones foreseen in Clause 6 of this Law or other non-profit organisations.

h) The establishment of qualified post-adoption support resources for suitable attention for the adopted children and adoptive parents in their specific problems.

i) The accreditation, supervision, inspection and drawing up of directives for the Collaboration Entities in international adoption carrying out intermediary functions in their territorial environment.

In their interventions in the field of international adoption the competent Public Entities shall promote measures to achieve maximum co-ordination and collaboration among themselves. In particular, they shall achieve unified procedures, periods and costs.

Clause 6. *Mediation in international adoption.*

1. Mediation in international adoption is understood as all activity which has the purpose of intervening by placing the applicants to be adoptive parents in contact with the authorities, organisations and institutions of the country of origin or residence of the minor liable to be adopted and provide sufficient assistance for the adoption to take place.

2. The functions of accredited entities for mediation shall be the following:

a) Information and assessment for those interested in the field of international adoption.

b) Intervention in the procedure of adoption reports before the competent authorities, both Spanish and foreign.

c) Assessment and support for the applicants to be adoptive parents in the necessary procedures to be carried out in Spain and in the minors' countries of origin.

d) Intervening in the procedures and carrying out the corresponding arrangements they have been entrusted with to fulfil the established post-adoption obligations for the adoptive parents under the legislation of the minor's country of origin under the terms stipulated by the Public Entity for the Protection of Minors that has accredited it.

3. The Collaborating Entities in international adoption shall intervene under the terms and conditions established in this Law and under regional rules.

4. Collaborating Entities in international adoption shall be entitled to establish co-operation agreements among themselves to resolve unexpected situations or for a better fulfilment of their purposes

Clause 7. *The accreditation, follow-up and supervision of Collaborating Entities in international adoption.*

1. Only non-profit organisations inscribed in the corresponding registry whose purpose as expressed in their statutes is the protection of minors, which have the material means and necessary multidisciplinary equipment for the development of the functions entrusted to them and are managed and administered by morally integral and qualified persons, due to their training and experience in the field of international adoption, shall be accredited as Collaborating Entities in international adoption.

The competent Public Entities shall provide the maximum possible unity in the basic requirements for accreditation.

2. There shall be a specific public register of accredited Collaborating Entities in international adoption.

3. If the foreign country for which the accreditation of Collaborating Entities in international adoption is foreseen fixes a limit to the number of them, a suitable co-ordination between Spanish competent Public Entities shall be established in order to accredit the corresponding number.

4. A maximum number of Spanish Collaborating Entities in international adoption can be established, by the suitable co-ordination of all the Public Entities for accrediting intermediaries in a specific country, according to the international adoption needs in that country, the adoptions constituted or other matters concerning the prevision of possibilities of international adoption in the same.

5. Public Entities shall be entitled to suspend or withdraw, by means of a negative report, the accreditation granted to those entities accredited for mediation and which cease to fulfil the conditions that motivated such granting or whose intervention contravenes legal order. Such suspension or withdrawal can be applied with a general nature or only for a specific country.

In case of suspension or withdrawal of a Collaborating Entity in International Adoption's accreditation by a competent regional Public Entity, this latter shall provide the most relevant information contained in the negative report to the Public Entities of other regions where it is also accredited, so that they can initiate the investigation they consider appropriate.

6. Collaborating Entities in international adoption shall designate a person who will act as the Entity and the families' representative before the authority in the minor's country of origin. The professionals employed by Collaborating Entities in international adoption in the minors' countries of origin shall be considered as Entity personnel and they shall be responsible for the actions of these professionals in the exercise of their intermediary functions. These professionals shall be evaluated by the competent entity for the accreditation of Collaborating Entities.

7. The accreditation, follow-up and supervision of Collaborating Entities in international adoption shall correspond to the regions competent in the field, which act in their territorial field according to applicable regional regulations.

8. For the follow-up and supervision of the Collaborating Entities in international adoption, a suitable interregional co-ordination shall be established for those interested in more than one region.

Clause 8. Relation of the applicants to be adoptive parents and the Collaborating Entities in international adoption.

1. The Collaborating Entity in international adoption and the applicants to be adoptive parents shall sign a contract exclusively for the intermediary functions that the first one shall assume with regards to the adoption application procedures. The basic contract has to be previously approved by the competent Public Entity.

2. For the exclusive exercise of the competencies established in clause 5.i) of this Law, the competent Public Entities shall create a

register of claims received from the people who use the services of accredited Collaborating Entities in international adoption.

Clause 9. Communication between competent Spanish authorities and competent authorities from other States.

Communication between competent Spanish authorities and competent authorities from other States shall be co-ordinated according to what is stipulated in the Agreement related to the protection of children and to co-operation in the field of international adoption, signed in the Hague on 29 May 1993, and ratified by Spain by Instrument dated 30 June 1995, if the foreign authorities correspond to States which belong to the Hague Agreement or to other existing international treaties and agreements in the field of international adoption.

With regards to other States, an attempt shall be made to follow the same procedure.

CHAPTER III

Capacity and requirements for international adoption

Clause 10. Suitability of the adoptive parents.

1. Suitability is understood as the capacity and appropriate motivation to adopt, to exercise patria potestas, assuming the peculiarities, consequences and responsibilities involved in an international adoption.

2. For such purpose, the suitability declaration shall require a psycho-social evaluation about the personal circumstances, family and relationship of the adoptive parents, their capacity to establish solid and secure ties, their educational skills and their aptitude for taking care of a minor according to his/her unique circumstances, as well as any other useful element related to the uniqueness of an international adoption.

Competent Public Entities shall provide the necessary co-ordination in order to unify suitability evaluation criteria.

3. Suitability declaration and the related psycho-social reports shall last for a maximum period of three years from the date when the competent Spanish entity issues them, provided there are no significant modifications in the adoptive parents personal and family situation

which led to such declaration, subject nevertheless to the conditions and limitations established in the applicable regional legislation (if it exists) in each case.

4. The declaration of the adoptive parents' suitability corresponds to the competent Public Entities for the protection of minors in suitability reports, subject to the conditions, requirements and limitations established in the corresponding legislation.

5. In the suitability declaration procedure all kinds of discrimination due to disability or any other circumstance are forbidden.

Clause 11. *Post-adoption obligations of the adoptive parents.*

1. Adoptive parents should provide in the stipulated time the information, documentation and interviews that the competent Spanish Public Entity for the protection of minors or the Collaborating Entity authorised by it, might request for issuing the post-adoption follow-up reports required by the Public Entity for the protection of minors in Spain or by the competent authority in the country of origin.

2. Adoptive parents should fulfil within the given time the post-adoption procedures established by the laws of the country of origin of the adopted minor, receiving for this purpose the necessary support and assessment from the Public Entities for the protection of minors and Collaborating Entities in international adoption.

Clause 12. *Right to know the biological origin.*

Once the adopted children come of age or while they are still minors represented by their parents, they have the right to know the data about their origins in the possession of the Spanish Public Entities, without prejudice to the limitations which may derive from the legislation of the countries the minors come from. This right shall be effective with the assessment, help and mediation of the specialised services of the Public Entity for the protection of minors or authorised organisations for such purpose.

The competent Public Entities shall ensure the preservation of information they have regarding the child's origin, in particular the information concerning his/her parents' identity, as well as the medical records of the child and his/her family.

The collaborating Entities which have mediated in the adoption should inform the Public Entities of the data they possess concerning the origins of the minor.

Clause 13. *Protection of personal data.*

1. The treatment and transference of data derived from the fulfilment of provisions in this Law shall be subject to what is stipulated in Organic Law 15/1999, dated 13 December, concerning the Protection of Personal Data.

2. Data obtained by Public Entities and Collaborating Entities in international adoption shall only be handled for purposes related to the development of the functions described for each case in sections 5 and 6.2 of the present Law.

3. International data transfers to foreign adoption authorities shall take place exclusively in cases specifically foreseen in this Law and in the Hague Convention concerning the Protection of Children and co-operation in the field of international adoption dated 29 May 1993.

SECTION II

Private International Law concerning international adoption

CHAPTER I

Competence for the constitution of international adoption

Clause 14. *International legal competence for the constitution of adoption in international cases.*

1. Spanish courts shall in general be competent for the constitution of adoption in the following cases:

a) If the adopted child is Spanish or resident in Spain.

b) If the adoptive parent is Spanish or resident in Spain.

2. Spanish nationality and residence shall be decided on when the application for adoption is presented to the competent public entity.

Clause 15. *International legal competence for the modification, revision, annulment or conversion into full adoption of an adoption in international cases.*

1. Spanish courts shall in general be competent for the constitution of adoption in the following cases:

a) If the adopted child is Spanish or resident in Spain at the time of application.

b) If the adoptive parent is Spanish or resident in Spain at the time of application.

c) If the adoption is constituted by a Spanish authority.

2. If the law applied to the adoption foresees the possibility of a simple adoption, Spanish courts shall be competent to convert a simple adoption into a full adoption in the above-mentioned cases.

3. Spanish courts shall be competent for the modification or revision of an adoption in the same cases mentioned in the first section and also when the adoption is constituted by a foreign authority, providing it has been admitted in Spain.

4. For the purposes of what is established in this Law, simple adoption is understood as that constituted by a competent foreign authority whose effects do not substantially correspond to those under Spanish legislation.

Clause 16. *Objective and territorial competence of the jurisdictional entity.*

1. The selection of a specific objectively and territorially competent jurisdictional entity for the constitution of international adoption shall be made according to the rules of voluntary jurisdiction.

2. If territorial competence cannot be decided on according to the above paragraph, it shall correspond to the legal entity selected by the adoptive parents.

Clause 17. *Competence of consuls in the constitution of international adoptions.*

Provided the receiving State is not opposed and it is not forbidden under its legislation, in conformance with international Treaties and other applicable international rules, consuls can constitute adoptions, if the adoptive parent is Spanish and the adopted child lives in the corresponding consular area. The nationality of the adoptive parent and the place of residence of the adopted child shall be determined when the administrative report for adoption is opened.

CHAPTER II

Law applicable to adoption

SECTION 1. ADOPTION UNDER SPANISH LAW

Clause 18. *Law applicable to the constitution of the adoption.*

1. An adoption constituted by a competent Spanish authority is subject to material Spanish law in the following cases:

a) If the adopted child is resident in Spain when the adoption is constituted.

b) If the adopted child has been or is going to be transferred to Spain in order to take up residence in Spain.

Clause 19. *Capacity of adopted child and necessary consent.*

1. The capacity of the adopted child and the necessary consent of all the parties involved in the adoption shall be subject to the national law of the adopted child and not by Spanish law in the following cases:

a) If the adopted child resides outside Spain at the time of the constitution of the adoption.

b) If the adopted child does not acquire Spanish nationality by virtue of the adoption, even if he/she resides in Spain.

2. The application of the national law of the adopted child referred to in the first paragraph of this Clause shall only proceed when the competent Spanish authority esteems that the validity of the adoption is thereby made easier in the adopted child's native country.

3. The national law of the adopted child referred to in the first paragraph of this Clause shall not be applied in the case of stateless adopted children or those with undetermined nationality.

Clause 20. *Consent, audience and authorisation.*

Notwithstanding Clause 18, the competent Spanish authority for the constitution of the adoption may demand, furthermore, the consent, audience or authorisation required by the national law of the country where the adopted child lives, providing the following circumstances are evident:

a) The demand of such consent, audience or authorisation must be in the interest of the adopted child. It is understood that the «interest of the adopted child», in particular, is when foreign laws facilitate, according to judicial criteria, the validity of the adoption in other countries related to the case and only in to the extent that this is so.

b) The demand of such consent, audience or authorisation is made by the adoptive parent or by the Office of the Attorney General.

SECTION 2. ADOPTION UNDER FOREIGN LAW

Clause 21. *Applicable law to the constitution of adoption.*

1. When the adopted child does not reside in Spain and has not or will not been transferred to Spain in order to establish his/her residence in Spain, the constitution of the adoption shall be subject to:

a) The law of the country to which the adopted child has been or will be transferred in order to establish his/her residence in the country.

b) In the absence of the above criteria, the law of the country where the adopted child resides.

2. The competent Spanish authority for the constitution of the adoption may take into account the requirements of capacity of the adopted child and the necessary consent of all the people involved in the adoption, foreseen in the national law of the adopted child if the said authority considers that observing such requirements facilitates the validity of the adoption in the adopted child's country.

3. The Spanish authority is also entitled to take into account the consent, audience or authorisation required under the national law or under the law of the country where the adoptive parent or the adopted child resides if the said authority considers that observing such requirements facilitates the validity of the adoption in other countries related to the case.

SECTION 3. COMMON DISPOSITIONS

Clause 22. *Law applicable to the conversion, annulment and revision of the adoption.*

The above criteria concerning the determination of the law applicable to the constitution of the adoption shall also be applicable to specify the law applicable to the conversion, annulment and revision of the adoption.

Clause 23. *Spanish international public order.*

Under no circumstances shall a foreign law be applied if it is clearly contrary to Spanish international public order. The superior interest of the minor and the substantial links of the case to Spain shall prevail. Aspects of the adoption which cannot be subject to foreign law due to its being contrary to Spanish international public order shall be subject to Spanish substantive law.

Clause 24. *Proposal previous to adoption.*

The public entity in the last place the adoptive parent resided at in Spain shall be competent to formulate the proposal previous to adoption. If the adoptive parent has not resided in Spain in the last two years, no previous proposal shall be necessary, although the consul shall obtain sufficient reports to evaluate suitability from the authorities at the place of residence.

CHAPTER III Effects in Spain of adoption constituted by foreign authorities

Clause 25. *International rules.*

Adoption constituted by foreign authorities shall be recognised in Spain according to what is established in international Treaties and Agreements and other rules of international origin which are in force in Spain, and in particular, according to the Convention La Hague dated 29 May 1993, concerning the protection of children and co-operation in international adoption. Such rules shall prevail in all cases over the rules contained in this law.

Clause 26. *Requirements for the validity in Spain of adoptions constituted by foreign authorities in the absence of international rules.*

1. In the absence of international Treaties and Agreements and other rules of international origin in force for Spain and which are applicable, adoption constituted by foreign authorities shall be recognised in Spain as adoption if the following requirements are met:

1. It has been constituted by a competent foreign authority. The adoption must have been constituted by a foreign public authority, be it judicial or not. A foreign authority which constituted an adoption is considered as internationally competent if the courts of justice in its own Law have been respected.

Notwithstanding the above law, if the adoption does not have reasonable connections to family antecedents or other similar orders in the country whose authority constituted the adoption, the foreign authority shall not be considered to have international competence.

2°. The adoption should be constituted under the state law or laws designated by the rules of conflict of the country on which the foreign authority which constituted the adoption depends.

If the Spanish authority verifies that no declaration of will has been made or that the necessary consent required by the foreign law regulating the constitution of the adoption has not been given, this requirement can be completed in Spain before the competent Spanish authorities according to the criteria contained in this Law, or before any competent foreign authority.

2. If the adoptive father or adopted child are Spanish, the adoption constituted by a foreign authority must give rise to the corresponding legal effects, in a substantial way, to the effects of adoption regulated by Spanish law.

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

The Spanish authorities shall in particular check that the adoption constituted by a foreign authority shall lead to the extinction of substantial legal ties between the adopted child and his/her previous family, that it shall produce the same ties of filiation as natural filiation and shall be irrevocable for the adoptive parents.

If the foreign law permits that the adoption constituted under it can be revoked by the adoptive parent, it shall be an essential condition, before the child is brought to Spain, to renounce his/her right to revoke the adoption. This renunciation must be formalised in a public deed or at the Civil Registry.

3. If the adoptive parent is Spanish and resides in Spain, the competent Spanish public entity must declare his/her suitability before the adoption is constituted by the competent foreign entity. Such a declaration of suitability shall not be required if the adoption was constituted in Spain and it was not demanded.

4. If the adopted child was Spanish at the time the adoption was constituted before the competent foreign authority, consent shall be required from the corresponding public entity in the last place of residence of the adopted child in Spain.

5. The document in which the adoption constituted before the foreign authority is legalised should fulfil the formal requirements of authenticity consisting of the apostille and translation into official Spanish. Documents exempt from legalisation or translation due to other rules in force are excepted from this rule.

Clause 27. Checking the validity of an adoption constituted by a foreign authority.

The Spanish public authority before which the question of the validity of an adoption constituted by a foreign authority is raised, especially the Head of the Registry Office in

which the adoption constituted in another country is inscribed, shall check the validity of the adoption in conformance with the rules contained in this Law.

Clause 28. Requirements for the validity in Spain of foreign decisions concerning the conversion, modification or annulment of an adoption.

The decisions of the foreign public authority by virtue of which the conversion, modification or annulment of an adoption are established shall be legally effective in Spain in conformance with the requirements of Clause 26 of this Law.

Clause 29. Inscribing the adoption at the Registry Office.

When an international adoption is constituted in another country and the adoptive parents live in Spain they can apply to inscribe the birth of the child and the adoption note according to the rules contained in clauses 12 and 16.3 of Civil Registry Law.

Clause 30. Simple adoption legally constituted by a foreign authority.

1. Simple adoption constituted by a foreign authority shall be effective in Spain as simple adoption if it conforms to the national adopted children law in conformance with Clause 9.4 of Civil Law.

2. The national law for simple adoptions shall determine the existence, validity and effects of such adoptions and the assignment of patria potestas.

3. Simple adoptions cannot be registered at the Spanish Registry Office as adoptions and shall not confer Spanish nationality in conformance with Clause 19 of Civil Law.

4. Simple adoptions constituted by a competent foreign authority can be transformed into adoptions under Spanish Law when the necessary requirements are met. Conversion shall be subject to the specific law in conformance with the dispositions of this Law. Simple adoption shall be considered as fostering. In order to request the corresponding legal report no previous proposal from the competent public entity shall be necessary. In all cases, for the conversion of a simple adoption into a full one, the competent Spanish authority should examine the concurrence of the following conditions:

a) The people, institutions and authorities whose consent is required for the adoption should have been duly assessed and informed of the consequences of their consent, the effects of the adoption and in particular of the extinction of legal ties between the child and his/her natural family.

b) Such people should have given their consent freely and legally and such consent should be in writing.

c) Consent should not be given in exchange for payment or any other kind of compensation and such consent should not have been revoked.

d) The mother's consent, when required, should have been given after the birth of the child.

e) Depending on the age and maturity of the child, he/she should have been duly assessed and informed about the effects of adoption and when required, have given his/her consent.

f) Depending on the age and maturity of the child, his/her opinion should be taken into account.

g) When the child's consent is necessary for the adoption, he/she should have given this freely and the required legal format and such consent should not be given in exchange for payment or any other kind of compensation.

Clause 31. *International public order.*

Under no circumstances shall a foreign decision concerning simple adoption be admitted if it leads to effects which are manifestly contrary to international Spanish public order. The minor's best interest shall prevail in such cases.

SECTION III

Other steps to protect minors

CHAPTER I

Competence and applicable law

Clause 32. *Competence for the constitution of other steps to protect minors.*

Competence for the constitution of other steps to protect minors shall be subject to the criteria in international Treaties and Agreements and other rules of international origin in force in Spain. If there are none, the provisions of Clause 22.3 in Organic Law 6/1985, dated 1 July, concerning legal power, shall be observed.

Clause 33. *Law applicable to other steps for the protection of minors.*

The law applicable to other steps for the protection of minors shall be determined in conformance with international Treaties and Agreements and other rules of international origin in force in Spain. If there are none, the provisions in Clause 9.6 of Civil Law shall be observed.

CHAPTER II

Effects of foreign decisions concerning the protection of minors.

Clause 34. *Legal effects in Spain of decisions concerning institutions for the protection of minors which do not produce ties of filiation agreed by foreign authorities.*

1. Institutions for the protection of minors constituted by foreign authorities and which according to their law of constitution do not determine filiation ties shall have recourse to fostering or guardianship, regulated by Spanish Law, if the following requirements are met:

1. The substantial effects of the foreign institution should be equivalent to a foster family, or guardianship as foreseen by Spanish law.

2. The protection institutions should have been agreed by a competent foreign authority, whether judicial or administrative. The foreign authority that constituted the protection shall be considered as internationally competent if the if the courts of justice in its own Law have been respected. Notwithstanding the above-mentioned rule, if the protection institution does not present reasonable connections of origin, related to family antecedents or other similar orders, with the country whose authority has constituted the institution then the foreign authority shall be considered to be lacking international competence.

3. The foreign protection institution should be constituted in conformance with the state law or laws designated by the rules of conflict of the country in which the foreign authority agreed the institution.

4. The document in which the institution constituted before the foreign authority is legalised should fulfil the formal requirements of authenticity consisting of the apostille and translation into official Spanish. Documents

exempt from legalisation or translation due to other rules in force are excepted from this rule.

2. Under no circumstances shall a foreign decision concerning these institutions be admitted if it leads to effects which are manifestly contrary to international Spanish public order.

Single additional disposition. *Public Entities for the protection of minors.*

The public entities for the protection of minors mentioned in this Law are those designated by the regional governments and cities of Ceuta and Melilla, in accordance with their respective organisation rules.

Single derogatory disposition. *Organic Law for the Legal Protection of Minors.*

Clause 25 of Organic Law 1/ 1996, dated 15 January, concerning the legal protection of minors and the partial modification of Civil Law and Civil Trial Law is hereby abolished.

First final disposition. *Modification of certain clauses in Civil Law.*

One. Paragraph 5 of Clause 9 is now drawn up in the following terms:

«International adoption shall be subject to the rules contained in the Law of International Adoption. Adoptions constituted by foreign authorities shall likewise be binding in Spain in accordance with the dispositions of the above-mentioned Law of International Adoption».

Two. Clause 154 is now drawn up in the following terms:

«Non-emancipated children are under parental authority. Patria potestas shall always be exercised for the benefit of the children, according to their personality and respecting their physical and psychological integrity.

This potestas includes the following rights and obligations:

1°. To take care of them, be in their company, feed them, bring them up and give them an integral training.

2°. To represent them and administer their possessions. If the children are old enough to discern they should always be consulted before decisions which affect them are taken. In the exercise of their

potestas parents shall be entitled to have recourse to authority».

Three. Paragraphs 3 and 6 have been modified and two new paragraphs, seven and eight, have been included in Clause 172, which is now drawn up as follows:

«3. Guardianship taken on by request of parents or guardians or as legal guardianship shall be realised through fostering or residential fostering. Family fostering shall be carried out by the person or persons determined by the public entity. Residential fostering shall be exercised by the Director of the foster home where the minor is.

The parents or guardians of the minor have a period of two months to appeal the administrative resolution for fostering if they consider that the agreed form is not the best for the minor or if there are people within the family who are more suitable than those designated.

6. Resolutions concerning neglect and guardianship by law can be appealed before civil jurisdiction in the time and manner determined in the Civil Procedure Law, with no need for previous administrative appeal.

7. For a period of two years after the notification of the administrative resolution declaring neglect, parents who still have patria potestas although suspended in accordance with paragraph 1 of this clause, are entitled to request an end to such suspension and for the declaration of neglect to be abolished, if the circumstances which gave rise to it have changed and they believe they are once again in a position to assume patria potestas.

During the same period of time they are also entitled to appeal decisions taken which affect the protection of the minor. Once this period of time has passed, they lose their right to request or appeal decisions or steps taken for the protection of the minor. Notwithstanding, they are entitled to provide the public entity or Home Office with information concerning any change in the circumstances which gave rise to the declaration of neglect.

8. The public entity, either by appointment of the court or at the request of the Home Office or person or

entity involved, can at any time abolish the declaration of neglect and send the child back home if he/she is not fully integrated with another family or if they decide it is the best thing for the child. The Home Office shall be informed of such a decision».

Four. A new paragraph has been added to Clause 180, which is now drawn up in the following terms:

«5. When adopted people come of age or while they are still minors and represented by their parents, shall be entitled to know the details of their biological origin. Spanish public entities for the protection of minors shall provide the assessment and help required by applicants to make this right effective, previously informing the people affected».

Five. Clause 268 is now drawn up in the following terms:

«Guardians shall exercise their responsibility according to the personality of their ward, respecting their physical and psychological integrity. They are entitled to have recourse to the authorities when necessary for the exercise of their guardianship».

Second final disposition. *Modifications to certain clauses in Law 1/2000, dated 7 January, concerning Civil Procedures*

One. A new Clause 141 b has been added to Civil Procedure Law with the following text:

«141 b. In the cases foreseen in the two above clauses, all personal data, photographs, names and surnames, address or any other detail or circumstance which could directly or indirectly lead to identification shall be omitted from simple copies, statements and certificates issued by Deputy Clerks».

Two. A new paragraph has been added at the end of Clause 164 in Civil Procedure Law with the following text:

«Clause 164. In all cases of communication referred to in the above paragraphs, all personal data, names and surnames, address or any other detail or

circumstance which could directly or indirectly lead to identification shall be omitted in the best interest of the minor and to preserve his/her right to privacy».

Three. Clause 779 is now drawn up in the following terms:

«Clause 779. *Preferential nature of procedure. Competence.*

Procedures for appeals against administrative resolutions concerning the protection of minors shall be preferential. The Court of First Instance of the place of residence of the protecting entity shall be competent to know the same and in its absence, or under clauses 179 and 180 of Civil Law, competence shall correspond to the court of the place of residence of the adoptive parent».

Four. Paragraph 1 of Clause 780 is now drawn up in the following terms:

«1. No previous administrative appeal to administrative resolutions concerning the protection of minors shall be necessary before civil courts. Appeals against declarations of neglect of a minor can be made during a period of three months from the date of notification, and during a period of two months against other administrative resolutions concerning the protection of minors».

Five. The first section of Clause 781 is now drawn up in the following terms:

«1. Parents who wish the need of their consent to the adoption to be recognised can go to the court which is working with the corresponding report and manifest this wish. The court, suspending the report, will provide a period of time considered suitable to present this appeal, no more than twenty days. Once the appeal is presented, it shall be dealt with according to Clause 753 of this Law».

Third final disposition. *Law of territorial limits and number of courts.*

The first point in Clause 25 of Law 38/1988, dated 28 December, concerning territorial limits and number of courts, is now drawn up as follows:

«In the Ministry of Justice, with the areas determined by its Organic Rules, there can be up to ten courts with judges or magistrates, ten by attorneys, ten by

deputy clerks and two by forensic doctors».

Fourth final disposition. *Registry Office Law*.

Paragraph 2 of Clause of the Registry Office Law dated 8 June 1957 shall be drawn up as follows:

«2. The competent authorities for processing and resolving applications for nationality due to residence, with the exclusive goal of resolving the application presented by the applicant, shall legally gather from the competent public authorities as many reports as may be necessary to verify that the applicants fulfil the conditions expressed in Clause 22 of Civil Law. Applicants' consent to this is not needed».

Fifth final disposition. *Competence*.

1. Clauses 5, 6, 7, 8, 10, 11 and the first final disposition are drawn up under the exclusive competence of the State in matters of civil legislation recognised by EU Clause 149.1.8.a, without prejudice to the conservation, modification and development of regional civil rights, whether regional or special, wherever they might exist, and rules approved in the exercise of their competencies in this matter.

2. Clause 12 is drawn up under Clause 149.1.1.a of the Spanish Constitution. The other clauses in this law are drawn up under the exclusive competencies of the State concerning international relations, the administration of justice and civil legislation recognised under Clause 149.1.3.a, 5.a and 8.a of the Spanish Constitution.

Sixth final disposition. *Entry into force*.

1. This law shall come into force the day after it is published in the Official State Bulletin.

2. The Government is hereby authorised to approve all the necessary statutory rules to apply this law.

And therefore,
I hereby order all Spaniards, both private citizens and authorities, to keep and maintain this law.

Madrid, 28 December 2007.

HRH JUAN CARLOS

The President of the Government
JOSÉ LUIS RODRÍGUEZ ZAPATERO