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ADOPTION AS A MODE OF COMMITTING CHILD TRAFFICKING

Illegal adoptions violate numerous child rights norms and principles, including the best interests of the child, the principle of subsidiarity and the prohibition of improper financial gain.¹ Specific supply and demand conditions prevail in the adoption market. On the demand side are solvent parents awaiting adoption, who often want to have a child in this way because of their infertility and are thus willing to make a high price / sacrifice. On the supply side, we can distinguish two groups. One group is made up of parents who, for various reasons, are unable to raise their child. They give up all their materials for their child without consideration. The other group is made up of parents who, although not free, are willing to hand over their already born child above a certain price.² Whenever illegal procedures are used during an international adoption, the child's identity is likely to be compromised. In the case of child trafficking, for example, children lose their knowledge of their fraud, ethnic roots and medical history forever.³

Key words: Child trafficking; Adoption.

*“Adoption is not about finding children for families,
it's about finding families for children.” (Joyce Maguire Pavao).*

1. INTRODUCTION

International conventions clearly enshrine the child's right to be brought up by his or her parents and to be afforded special subsidiary protection in the form of

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¹ <https://www.ohchr.org/EN/Issues/Children/Pages/Illegaladoptions.aspx> 2021.04.22.

² L. Szilvási, “Az örökbefogadásról, másképpen. Reflexiók az örökbefogadásról szóló sajtóvita kapcsán”, *Esély* 2/1997, 75–85.

³ UNICEF, Intercountry adoption, <https://www.unicef-irc.org/publications/pdf/digest4e.pdf>, last visited 23 April 2021.

family, family placement, domestic adoption or, in the event of failure, international adoption if the child cannot be left in the blood family. The primary purpose of adoption is to establish a kinship between the adopter, his relatives and the adopted child in order to bring up the adopted child in the family of a child who does not have blood parents or whose parents are unable to raise the child properly.⁴

The Hungarian public treats adoption primarily as a private matter, which is often surrounded by secrecy on a personal level, and at the social level by the taboo and the omission of certain details, such as the suspicion of possible child trafficking.⁵

Illegal adoptions result from crimes such as child abduction, child trafficking, forgery of adoption documents, and any illegal activity or practice, such as the lack of proper consent of biological parents, improper financial gain from intermediaries, and related corruption. These adoptions violate numerous child rights norms and principles, including the best interests of the child, the principle of subsidiarity and the prohibition of improper financial gain. These principles are violated if the purpose of the adoption is to find a child for the adoptive parents and not a family for the child.⁶

The general explanation for illegal adoption is the existence of a child market, as the system of international adoption includes the needs of prospective parents, the offering of children deprived of their families, intermediaries such as adoption agencies, and consideration given or received for adoption.⁷

2. SOCIAL DIFFERENCES

The difference in social status between the biological and the adoptive parent, which characterizes the majority of adoptions, appears not only in international examples⁸ but also in domestic practice⁹. We can speak of a social class difference in relation to adoption when the specific life path of an appropriately disadvantaged, uneducated adopter who is less able to assert his or her rights and that of a typically educated, middle-class adopter meets in relation to an ad-

⁴ E. Katonáné Pehr, *Örökbefogadás*, in: A. Jakab, B. Fekete, *Internetes Jogtudományi Enciklopédia* <http://ijoten.hu/szocikk/orokbefogadas>, last visited 16 March 2022.

⁵ L. Szilvási, 75–85.

⁶ United Nations, *Illegal adoptions* <https://www.ohchr.org/EN/Issues/Children/Pages/Illegaladoptions.aspx>, last visited 22 April 2021.

⁷ B. Slot, “Adoptie en welvaart; een analyse van vraag en aanbod van adoptiekinderen”, *Justitiële Verkenningen* 7/2008, 11–24. See: I. de Witte: *Illegal adoption as child trafficking* <https://www.againstchildtrafficking.org/wp-content/uploads/Illegal-Adoption-as-Child-Trafficking-Iara-de-Witte.pdf>, last visited, 23 April 2021.

⁸ C. W. Gailey, *Blue-Ribbon Babies and Labors of Love: Race, Class, and Gender in U.S. Adoption Practice*, Houston 2010, 199. and O. Keresztes-Takács, *Az örökbefogadó családok szociálpszichológiai és interkulturális aspektusa*, PhD dissertation, Budapest 2019, 153.

⁹ L. Szilvási, 75–85. and O. Keresztes-Takács, 153.

optable child.¹⁰ In such cases, inequalities stem from class differences in society, systemic preference for typically middle-class expectant couples, and the “exploitation” of biological mothers.¹¹ In many cases, the system-based distinction between the adopter and the adoptee continues to be fed.¹²

The difference in the social situation of parents awaiting adoption and those who can be adopted is a kind of structural injustice. With the spread of the Internet, private adoptions - or when the adopter and the person intending to adopt get to know each other first and only then involve an intermediary organization (Ptk. 4:125.§) - pose a greater danger, as market logic can prevail more easily. On one side is the adoptive parent who wants / is forced to get rid of the pregnancy that is a burden on her, and on the other side is the parent who is ready for adoption. Concerns about child trafficking arise in the case of private adoption, given its less regulated framework.¹³

The situation described above raises the issue of structural discrimination, according to which adoption exploits lower status women in favor of middle-class, infertile families.¹⁴

3. INTERNATIONAL ADOPTION

Intercountry adoption can be considered as an alternative means of caring for a child if there is no possibility of the child being cared for in the country of origin. At the same time, it provides an opportunity for people who are childless against their will to fulfill their desire to start a family.¹⁵

International adoption can be a frustrating and complicated emotional process for many families trying to adopt children from anywhere in the world. Its necessity and correctness divide public opinion.¹⁶

In order to prevent child trafficking in Hungary, the adoption of a child abroad - with the exception of adoption by relatives or the parent’s spouse - can only be permitted in the case of an adopted foster child, provided that the child was not adopted domestically because of measures taken to adopt it, they did not lead to results. The national register - in a very short time - makes it possible to determine whether there is a person intending to adopt a particular child in Hun-

¹⁰ *Ibid.*, 153.

¹¹ L. Szilvási, 75–85. and O. Keresztes-Takács, 153.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ M. Neményi, J. Takács, “Az örökbefogadás és diszkrimináció”, *Esély* 2/2015, 69–96. and O. Keresztes-Takács, 153.

¹⁵ A. P. Van der Linden, “Adoptie in het kennelijk belang van het kind?”, *Justitiële Verkenningen* 7/2008, 11–24. and I. de Witte.

¹⁶ L. Marschalkó, “Nemzetközi örökbefogadás és a gyermek legjobb érdeke”, *Iustum Aequum Salutare* 4/2013, 221–239.

gary. In most cases, children of older age or health problems are adopted abroad, and it is not uncommon for three or sometimes four siblings to be adopted.¹⁷

For some, intercountry adoption alone is more or less a form of child trafficking, as it involves moving children from poorer regions to richer countries in order to meet the demand for children in richer societies. The fact that those who want to adopt a child are motivated by sexual exploitation rather than sexual exploitation does not seem to be a sufficient difference for those who are most ideologically opposed to intercountry adoption.¹⁸

Those who trade in children need a steady supply to meet demand.

1. If the practice of international adoption is used only as a last resort, as suggested by some critics, a complete cessation of the practice will mean a greater supply of vulnerable children to traffickers than would otherwise be available.
2. Therefore, a decrease in the number of intercountry adoptions, in the absence of other measures, makes more children vulnerable and could therefore lead to a potential increase in child trafficking.¹⁹

Currently, international adoption is actually driven by the desires of the prospective adoptive parents rather than the best interests of the child, as the demand for children exceeds availability. When the demand for children exceeds the supply, the likelihood of illegal activity increases.²⁰

4. PROHIBITION OF PROFIT-MAKING

The prohibition of profiteering is a fundamental principle in both domestic and international adoption.

Under the Convention on the Rights of the Child, States Parties should take appropriate measures to ensure that, in the event of an adoption abroad, the placement of the child does not result in any unjust enrichment for the persons involved.²¹ It is important, however, that this ban should also apply to intercountry adoption.

¹⁷ J. Deli, Cs. Lantai, “Változások az örökbefogadás területén”, *Kapocs* 3/2014, 42–47.

¹⁸ D. M. Smolin, “Intercountry Adoption as Child Trafficking”, *Valparaiso University Law Review* 2/2004, 281–325.

¹⁹ E. Ward, Intercountry Adoption and Human Trafficking https://www.pravo.unizg.hr/_download/repository/Elisabeth_Ward.pdf, last visited 23 April 2021.

²⁰ Parliamentary Assembly of the Council of Europe, International adoption, Recommendation 1443 (2000). B. Slot, 11–24. The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, Guide to Good Practice, Hague 2008, 164. See also: I. de Witte.

²¹ Gyermekjogi Egyezmény (Convention on the Rights of the Child) Article 21. d) and L. Vékás, P. Gárdos, *Nagykommentár a Polgári Törvénykönyvről szóló 2013. évi V. törvényhez*, Budapest 2021, 2884.

The Hungarian Civil Code 4:130. § prohibits the acquisition of profit, according to which “Adoption shall not be authorized if it is likely to result in any financial advantage for the parties, other persons or organizations involved in the adoption process, in excess of their justified expenses.”²² It is important to note, however, that it cannot be ruled out that certain costs incurred will not be reimbursed, so that the guardianship authority may consider that the costs in question can be considered justified or in excess.²³

According to the law, adoption cannot be mediated by a doctor, midwife or nurse and cannot accept money for it. A mother cannot receive money for her child. If the authorities become aware that an unlawful property advantage is being provided, the adoption will not be allowed.²⁴

However, in addition to the civil law prohibition of profit, the criminal *ultima ratio* occurs in favor of adoption for money or other consideration.

The sale of children shall mean any act or transaction whereby a child is transferred from one person or group of persons to another for remuneration or other consideration.²⁵ According to this, a child, regardless of how it is recruited, removed, handed over, concealed or taken over, is considered a victim of trafficking in human beings if it is committed for the purpose of exploitation.²⁶ Directive 2011/36/EU of the European Parliament and of the Council defines the concept of criminal exploitation in relation to trafficking in human beings, which “The expression ‘exploitation of criminal activities’ should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.”²⁷

²² A Polgári Törvénykönyvről szóló 2013. évi V. törvény (Hungarian Civil Code) 4:130 §.

²³ L. Vékás, P. Gárdos, 2884.

²⁴ Mennyibe kerül?, <https://orokbe.hu/2014/05/17/mennyibe-kerul/>, last visited 18 April 2021.

²⁵ A gyermekek eladásáról, a gyermekprostitúcióról és a gyermekpornográfiáról szóló, a Gyermekek jogairól szóló egyezményhez fűzött Fakultatív Jegyzőkönyv megerősítéséről és kihirdetéséről szóló 2009. évi CLXI. törvény.

²⁶ Council of Europe Convention on action against trafficking in human beings, <https://rm.coe.int/16805d41ee>, last visited 23 January 2022.

²⁷ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

5. THE ECONOMY OF ADOPTION

The adoption market is characterized by specific supply and demand conditions. On the demand side are solvent parents awaiting adoption, who often want to have a child in this way because of their infertility and are thus willing to make a high price / sacrifice, with different strengths in their income situation and desire for a child. Parents who live in better financial conditions are also willing to give up a significant price for a healthy baby. The supply side can be divided into two groups. One group is made up of parents who, for various reasons, are unable to raise their child, they give up their child without any consideration. The other group is made up of parents who, although not free, are willing to hand over their unborn child above a certain price, these parents may be so vulnerable financially or otherwise that they hope to improve their living conditions from adoption or for the child. from the amount received.²⁸

The general driver of illegal adoption is the existence of a children’s market, as the system of international adoption includes the needs of prospective parents, the offering of children deprived of their families, intermediaries such as adoption agencies, and the consideration given or received for adoption.²⁹

If the market is left alone, solvent adoptive parents will be more and more willing to pay. As soon as the opportunity arises for someone to adopt a child for consideration, there will also be parents who, although not free, already give up their child for a certain amount of financial consideration. Demand pressure, in turn, leads to additional supply and at the same time increases the number of children that can be adopted. The higher the demand, and the higher the price associated with it, the more distressed parents will consider adoption as a source of income. On the other hand, the logic of the market combines those who intend to adopt and children who can be adopted in a special way; the more one can pay, the “better quality” (e.g. age) a child will have.³⁰

With regard to child trafficking based on adoption, the fact that a mediator is needed for parents without children to find a child cannot be neglected.

The mediator must be aware of the children to be adopted and be aware of the legal possibilities for adoption. Both the parents who want to adopt and the adoptive parents are vulnerable, as it is up to the mediator how quickly the adopters get a child and the adopters commit a socially convicted act.³¹ This situation of vulnerability opens up new forms of abuse.

²⁸ L. Szilvási, 75–85.

²⁹ B. Slot, 11–24, and I. de Witte.

³⁰ L. Szilvási, 75–85.

³¹ *Ibid.*

6. SUMMARY

Child trafficking is often based on the collusion of individuals (typically unknown to each other) as a criminal network, and may include hospital staff, doctors and midwives, registrars, lawyers, and visa officers. This long chain of corruption can also extend to host countries, where intermediaries are available to accommodate child victims of trafficking. A report from 1994 highlighted the secret market that had intensified international adoption in many former communist countries.³²

Unfortunately, it is becoming more common for an adopted child who did not actually need a “substitute” family, these children could have been raised with their own blood parents, relatives, if the family in difficulty had received adequate financial support from the state, and if the adopters the amount of money offered would not have influenced the parents’ decision. The situation outlined generates abuses and crimes, in many cases child traffickers venture to the point where the child is already conceived for money and the mother relinquishes it irrevocably before the child is born. Vulnerable mothers do not refuse their livelihood money, and as “demand” increases, so does the number of abuses and other crimes linked to child trafficking: forgery of documents, bribery of authorities, and economic and political influence over governments.³³

Currently, international adoption is actually driven by the desires of the prospective adoptive parents rather than the best interests of the child, as the demand for children exceeds availability.³⁴ When the demand for children exceeds the supply, the likelihood of illegal activity increases.³⁵

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УСВОЈЕЊЕ КАО НАЧИН ЧИЊЕЊА КРИВИЧНОГ ДЈЕЛА ТРГОВИНЕ ДЈЕЦОМ

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Кључне ријечи: *Трговина дјецом; Усвојење.*