

Session of Rome – 1973
Centenary Session

The Effects of Adoption in Private International Law

(Seventh Commission, Rapporteur : Mr. Rodolfo de Nova)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Whereas most legal systems now provide for adoption as a legal act by which one person is treated - for some or all purposes - as the legitimate child of another person or of a married couple, of whom he, or she, is not the legitimate child,

And whereas adoptions of an international character are becoming more and more frequent, and there being no uniformity of substantive rules in the matter, troublesome conflicts of law may, and do in fact, arise,

Taking due account of the work done by the Hague Conference on Private International Law to solve these difficulties by establishing, in 1965, the Convention on jurisdiction, applicable law and recognition of decrees relating to adoptions,

Realizing, however, that the Hague Convention does not deal with the question of the law applicable to the effects of adoption,

Being convinced that further efforts should be made to develop choice-of-law rules relating at least to the principal effects of adoption and aiming at generalized acceptance,

Adopts this Resolution :

Article 1

a) In principle, the personal law of the adopter governs both the relations between the adopted person and the adopter, or the members of his, or her, family, and also the relations between the adopted person and his, or her, parent or parents of origin or the members of their family.

b) However, the rules on parental consent and on the power to dispense with such consent of the law governing at the time of adoption the relations between the adopted person and his, or her, family of origin must be satisfied. If they are not, the relations between the adopted person and his, or her, parent or parents of origin or the members of their family shall continue to be governed, in principle, by the law governing them independently of the adoption.

Article 2

If the adoption is effected by a married couple, the governing law under Article 1a) is the law that governs, or would govern, the relations between the adopters and the legitimate children of their marriage.

Article 3

A change after the adoption in the connecting factors operative according to Article 1a) and Article 2 involves a change in the applicable law.

However, in principle, the relations between the adopted person and his, or her, parent or parents of origin or the members of their family at the time of adoption are not affected by a change in any connecting factor.

Article 4

The preceding Articles cover, in particular, care and custody of the child, duties of maintenance and education, and parental power.

Article 5

Whether rights and liabilities, such as rights of succession, rights and liabilities in tort or contract, or social security or tax benefits, or criminal liability, are connected to, or affected by, an adoption depends on the law governing the particular issue.

The law referred to in the previous paragraph may refuse to give effect to an adoption which is not sufficiently similar, on the whole, to the adoption which it provides.

Article 6

The application of a law declared applicable by the previous Articles may be refused only where such application would be manifestly incompatible with public policy, especially in situations in which the paramountcy of the welfare of an adopted minor is in question.

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(14 September 1973)

RECOMMENDATION

The Institute of International Law,

Being of the opinion that a difference in nationality between the adopted person and the adopter or adopters may be an obstacle to unity within the adoptive family,

Makes the following Recommendation :

The competent authorities of each State should develop rules, procedures and practices leading to the prompt extension to an adopted minor of the nationality of his, or her, adopter or adopters.

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(14 September 1973)