

Overview of Spanish Adoption Law

Although adoption in Spain is a lengthy process,¹ it has become increasingly popular in recent years. There are several reasons for this. Among other things, many Spanish opponents of abortion or of *in vitro* or other artificial fertilization techniques promote adoption as a preferable alternative. In addition, more and more celebrities are adopting foreign children. Finally, a new adoption law, which came into force in 1987, triggered renewed interest in the subject.² As in other developed jurisdictions, in Spain the granting of an adoption order results in the adopter(s) and the adopted child assuming the same legal relationship as if the child had been born to the adopter(s). Responsibility for making the legally relevant adoption orders is vested in the Spanish courts. Regional public entities competent for the protection of minors are responsible for handling the adoption procedure.

Intercountry adoption has also become increasingly popular in Spain over the last years. Among other things, this upward trend stems from a higher domestic demand for adoption on the one hand and an insufficient number of Spanish children to adopt on the other. Fully recognizing intercountry adoption, Spain ratified the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption in 1995. However, Spain has not ratified the European Convention on the Adoption of Children.

I. General Acts and Regulations Governing the Adoption Process in Spain

Domestically, the following acts and regulations govern the adoption process in Spain:

- Articles 172 to 180 of the Spanish Civil Code (“Código Civil”).³ Entitled “*On adoption and other forms of child protection*,” this chapter of the *Código Civil* regulates the substantive law applicable to an adoption in Spain, its characteristics and prerequisites, and the legal effects of an adoption order.
- Articles 779 to 781 of the Spanish Code of Civil Procedure.⁴ These provisions govern the judicial process leading to a valid adoption order.
- Articles 24 and 25 of the Organic Law 1/1996 for the Legal Protection of Minors.
- Other federal and regional provisions and regulations, which govern the responsibilities and activities of public entities dealing with adoption.⁵

¹ On average, it takes nine years from the initial application to entry of the final adoption order. See the website of the organization EUROADOPT, at <http://www.euroadopt.org> (last visited on 16 May 2004).

² See *EQUIPO JURÍDICO DVE*, *Todo Sobre la Adopción* (1992) at pp. 9-10.

³ The full text of the Spanish Civil Code (“*Código Civil*”) is available at http://noticias.juridicas.com/base_datos/Privado/cc.html (last visited on 12 May 2004). All translations of provisions of the Spanish Civil Code in this memorandum are unofficial own translations.

⁴ The full text of the Spanish Code of Civil Procedure (“*Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*”) is available at http://noticias.juridicas.com/base_datos/Privado/11-2000.html (last visited on 12 May 2004).

⁵ See *EQUIPO JURÍDICO DVE*, *supra* note 2, at p. 75.

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The Spanish legislature passed a new adoption law on November 11, 1987, amending the above-cited provisions of the Spanish Civil Code and Code of Civil Procedure. In 2000, the provisions of the Spanish Code of Civil Procedure were further amended by the new procedural code, the “*Ley de Enjuiciamiento Civil*”. These laws provided needed clarity on the Spanish adoption process.

From an international perspective, Spain ratified the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption (the “Hague Convention”), which came into force on November 1, 1995. The purpose of the convention was to establish safeguards to ensure that intercountry adoptions take into account the best interests of the child and provide for a system of cooperation amongst Contracting States to ensure that these safeguards are respected. Spain has not yet ratified the European Convention on the Adoption of Children.

II. Substantive Conditions for the Making of an Adoption Order

A. Who may be adopted?

Under Spanish adoption law, a “child” for the purposes of adoption is any person under 18 years of age who is not accountable for his or her own actions.⁶ Whereas, historically, Spanish adoption law also allowed for the adoption of adults, this is only allowed today in cases in which, at the time of the making of the adoption order, there already exists a relationship of hosting or cohabitation between the adoptee and the adopter(s) that commenced before the adoptee was 14 years old and continued without interruption until the minor became an adult.⁷

B. Who may adopt?

With regard to the conditions concerning the adopting persons, the relevant Spanish law sets forth requirements regarding, among other things, the civil status of the applicants, their age and other characteristics.

1. Civil status requirements

Under the Spanish Civil Code, an adoption order can be made on a joint basis in favor of married or unmarried couples living together.⁸ This is the only circumstance in which the law permits the joint adoption of a child by two people.⁹ Specifically, the Spanish adoption law does not permit adoption by homosexual couples, since homosexual couples cannot marry under Spanish law and cannot be considered as a *de facto* couple for the purposes of the Additional Provision 3 of the Law of 11 November 1987.¹⁰ Being homosexual does, however, not categorically exclude a sole applicant from adopting, but it is understood that the homosexuality

⁶ See Spanish Civil Code, at Article 175(2).

⁷ The reason for this restrictive regulation concerning the adoption of adults is the legislature’s willingness to prevent the pursuit of certain non-desirable objectives through adoption (such as tax evasion). See *EQUIPO JURÍDICO DVE*, *supra* note 2, at p. 54.

⁸ See Spanish Civil Code, at Article 175(4) first sentence (“Apart from the adoption by a married couple, nobody cannot be adopted by more than one adopter.”). See also Law of 11 November 1987, at Additional Provision 3, according to which unmarried couples living in a stable relationship shall be treated equally to married couples.

⁹ See Spanish Civil Code, at Article 175(4).

¹⁰ See *above* at footnote 8.

of the adopter may well be taken into consideration by the Spanish authorities when assessing the adopter's suitability to adopt.¹¹

A married person is entitled to adopt on a sole-adopter basis provided that the spouse's consent to the adoption is obtained, unless the couple is living apart and is separated by judgment or mutual agreement.¹² Finally, sole applicants, regardless of whether they fall within any of the above classes, may also adopt, so long as the Spanish adoption authorities are satisfied that it is desirable.¹³

2. Age requirements

Whereas the Spanish adoption law does not set forth any upper age limits, an adopting couple or an individual adopter must, as a general rule, be at least 25 years of age.¹⁴ However, where a married couple is adopting the child, only one spouse is required to have reached the age of 25.¹⁵ Adoption orders may not be made in favor of sole applicants under the age of 25, even if they are related to the child. In addition, the adopter must be at least 14 years older than the adoptee.¹⁶

3. Religious / racial / other requirements

In certain circumstances, adoption is not possible because of an existing relationship between the applicant and the adoptee. Specifically, Spanish law does not allow for the adoption of: a direct descendant (children, grand-children, etc.);¹⁷ a descendant in the second degree of the direct line or; a child by its guardian until the terms of its guardianship has been approved.¹⁸

Besides these limitations, Spanish adoption law does not set forth any racial, religious or ideological requirements.

C. Standard applied before making an adoption order

In any matter before a Spanish judge relating to the making of an adoption order, the welfare of the child is always the paramount consideration.¹⁹ The judge has to assess whether the proposed adoption serves the adoptee's social integration, the development of his personality and his emotional stability.²⁰ In making this assessment, the judge must take into consideration the wishes of the adoptee, provided that he or she is more than 12 years old as of the date of an

¹¹ See *EQUIPO JURÍDICO DVE*, *supra* note 2, at p. 59.

¹² See Spanish Civil Code, at Article 177(2). See *infra* at Part III.B.1.

¹³ See *EQUIPO JURÍDICO DVE*, *supra* note 2, at pp. 52-53.

¹⁴ See Spanish Civil Code, at Article 175(1) first sentence ("The adoption requires that the adopting person be 25 years of age."). This age limit has been subsequently reduced by various amendments of the Spanish Civil Code. See *EQUIPO JURÍDICO DVE*, *supra* note 2, at p. 52.

¹⁵ See Spanish Civil Code, at Article 175(1) second sentence.

¹⁶ See Spanish Civil Code, at Article 175(2) third sentence.

¹⁷ The reason for this prohibition is that there exists a biological and legal relationship which shall not be concealed by way of adoption. See *Equipo Jurídico DVE*, *supra* note 2, at p. 55.

¹⁸ See Spanish Civil Code, at Article 175(3).

¹⁹ See Spanish Civil Code, at Article 176(1).

²⁰ *EQUIPO JURÍDICO DVE*, *supra* note 2, at p. 75.

application for an adoption order²¹ or, if younger, has sufficient judgment to appreciate the proposed adoption.²²

III. Adoption Procedure

A. Who makes the adoption order?

In Spain, as in other developed jurisdictions, a judge grants the adoption order.²³ Before the entry of the adoption order, the public entities of the Autonomous Regions (“*Comunidades Autónomas*”) responsible for the protection of minors²⁴ handle the adoption procedure. Prospective adopters have to address their applications for an adoption order to these entities. Once an application to adopt is made, the prospective parents undergo detailed assessment by the relevant public entity. Only if the public entity is satisfied as to the applicants’ eligibility and suitability to adopt will it then proceed to make a recommendation in their favor. Without such a recommendation, the judge can generally not proceed with the prospective adopters’ application for an adoption order.²⁵

B. Consents required for making of adoption order

Adoption orders always require the consent of the adopter(s). The adoptee is also required to consent if he or she is more than 12 years old. Further, an adoption order may not be made without the consent of the child’s biological parents and the adopter’s spouse (provided that the couple is not legally or *de facto* separated).²⁶ The biological mother’s consent is valid only if it is given at least 30 days after the birth.²⁷

There are also certain formal requirements relating to such consents. The Spanish Civil Code (in conjunction with the relevant provisions of the Spanish Code of Civil Procedure) requires that any consent be notarized or declared before a judge or the competent adoption authority.²⁸ Moreover, there are certain circumstances in which consents normally required for an adoption order can be dispensed with. For example, under Article 175(2) of the Spanish Civil Code, the judge may dispense with the required consent if he is satisfied that the person whose consent is required cannot be found or if the biological parents have been deprived of their paternal authority.²⁹

²¹ See Spanish Civil Code, at Article 177(1).

²² See Spanish Civil Code, at Article 177(3).

²³ See Spanish Civil Code, at Article 176(1).

²⁴ In Spanish, these entities are called the “*Servicios de Protección de Menores*.” See the website of Spain’s Ministry of Justice, at www.justicia.es (last visited on 10 May 2004).

²⁵ There are some exceptions to this rule. For example, the entity’s recommendation is not necessary where the adoptee is a descendant in the third degree of the direct line or if (s)he is the adopter’s spouse’s child. See Article 176(2) third sentence of the Spanish Civil Code. For further information on the Spanish adoption procedure see the website of Spain’s Ministry of Justice, at www.justicia.es (last visited on 10 May 2004).

²⁶ See Spanish Civil Code, at Article 177(2).

²⁷ See Spanish Civil Code, at Article 177(2) fourth sentence.

²⁸ See Spanish Civil Code, at Article 177(2) first sentence.

²⁹ See Spanish Civil Code, at Article 177(2).

Finally, there is a category of individuals whose consent is not required in order to make the adoption order but who are entitled to be heard by the judge. That category includes the adoptee's parents (if their consent is not necessary to make the adoption order), the adoptee's guardian, the adoptee (if he or she is under the age of 12 and is deemed to have sufficient capacity to consent), and the relevant public entity competent for the protection of minors.³⁰

IV. Legal Effect of an Adoption

An adoption order is permanent and results in the adoptive parent(s) and the child assuming the same relationship as if the child had been born to the adoptive parent(s). Upon the making of the adoption order, the parents or guardians lose all parental rights over the child and are freed from all duties. The legal relationship of the child with his former family is largely extinguished.³¹ These rights and duties are transferred to the adoptive parents.³²

However, the ties between the adopted child and his biological family subsist inasmuch as they may constitute impediments to marriage.³³ Consequently, an adopted person cannot marry his biological sister or her biological brother. It bears emphasis that he cannot marry a sibling from his new family either, an impediment justified by the legislature's aim of considering the adopted child as a member of the new family with equal rights and obligations.³⁴

In general, an adoption order is irrevocable.³⁵ Its effects are legally binding even if the adoptee and the adopter(s) agree otherwise. Specifically, the biological parents are not entitled to withdraw their consent once the adoption order has been made. Only where the biological parents have not been able to participate in the adoption procedure according to Article 177 of the Spanish Civil Code may the judge invalidate the adoption order. However, such a declaration of invalidity can be problematic if, at the time the judgment is delivered, the "adopted" child has already been in the custody of its adoptive parents for a protracted period of time. Therefore, Article 180(2) requires that such an application has to be made within two years of the making of the adoption order and that the requested declaration of invalidity must not cause grave injury to the child.³⁶

V. Recognition of Foreign Adoptions

Intercountry adoption has become increasingly popular in Spain in recent years because of the high demand for adoptions on the one hand and the insufficient number of Spanish

³⁰ See Spanish Civil Code, at Article 177(3).

³¹ See Spanish Civil Code, at Article 178(1) ("The adoption leads to the extinguishment of the legal relationship between the adopted child and its former family."). There are some very limited exceptions to this rule set forth in Article 178(2) (e.g., where the adoptee is the child of the adopter's spouse).

³² *EQUIPO JURÍDICO DVE*, *supra* note 2, at p. 97 ("To sum up, the adopted child finds itself completely detached from his family and completely integrated within the family of the adopter.").

³³ See Spanish Civil Code, at Article 178(3).

³⁴ *EQUIPO JURÍDICO DVE*, *supra* note 2, at p. 97. Further exceptions to this general rule are enshrined in Article 178(2) of the Spanish Civil Code. For example, the legal relationship between the adopted child and his parent is not extinguished where the adoptee is the child of the adopter's spouse.

³⁵ See Spanish Civil Code, at Article 180(1).

³⁶ See Spanish Civil Code, at Article 180(2).

children to be adopted on the other. Regarding the recognition of foreign adoptions, it should be emphasized that the prospective adopters have to fulfill the same requirements as those set forth for domestic adoptions by the Spanish Civil Code.³⁷

As to the procedure, Spaniards or foreigners domiciled in Spain may choose between four different types of intercountry adoption procedures:

- Intercountry adoption through one of the Spanish public agencies specializing in such adoptions,³⁸
- Intercountry adoption through one of the so-called “Officially Recognized Entities for Intercountry Adoption” (“*Entidades de Colaboración en Adopciones Internacionales*”);³⁹
- Intercountry adoption through private independent facilitators or other intermediaries (this seems to be the most efficient procedure although it does not offer the same degree of control and supervision of the adoption process as the two previous possibilities); and
- Intercountry adoption through the initiative of groups or associations of parents (“parent-initiated adoptions”).⁴⁰

As far as international conventions are concerned, to date, Spain ratified only the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption in 1995.⁴¹ It has not ratified the European Convention on the Adoption of Children.

VI. Resources

For a comprehensive study of the Spanish adoption law, please see *EQUIPO JURÍDICO DVE, Todo sobre la adopción*, Barcelona (1992).

For further information on the Spanish adoption procedure, please see the website of Spain’s Ministry of Justice, at <http://www.justicia.es>.

For more information on intercountry adoption, please see the website of the adoption organization EUROADOPT, at <http://www.euroadopt.org/>.

³⁷ See *supra* at Part II.

³⁸ A list of the Spanish governmental agencies responsible for adoption is available at <http://www.euroadopt.org/> (last visited on 16 May 2004).

³⁹ A list of the most important “Officially Recognized Entities for Intercountry Adoption” is available at <http://www.euroadopt.org/espaniolas.htm> (last visited on 14 May 2004). See also Appendix 1.

⁴⁰ For details of these procedures see the website of the organization EUROADOPT, at <http://www.euroadopt.org/> (last visited on 16 May 2004).

⁴¹ The full text of the Hague Convention, including a complete overview of the status of signatures and ratifications, is available on the website of the Hague Conference on Private International Law, at <http://www.hcch.net/> (last visited on 12 May 2004).

For a list of the “Officially Recognized Entities for Intercountry Adoption”, please see Appendix 1 to this memorandum.

Officially Recognized Entities for Intercountry Adoption (ECAI)

(Source: website of the Spanish adoption organization EUROADOPT, at <http://www.euroadopt.org>. Note: This list is not exhaustive.)

ECAI	Country authorizing for mediation in the adoption procedure	Accredited for	Address	ZIP	Autonomous Region	Tel. (+34)	Fax (+34)	Internet and e-mail	Contact Person
InterAdop (Alternativa Familiar)	Rumania Russia China Peru Bolivia	Rumania China	Sol Oriente, 11, 6ºC 37001 Salamanca	37007	Castilla y León Galicia (1) Extremadura Madrid Canarias	902262524	923280511	www.adopcion.org	Carlos Nina Deheza
Meniños	Peru Bolivia Chile Ecuador Madagascar	Peru Bolivia Chile Ecuador	Lopez de Hoyos, 168.1ºD Madrid Plaza Maestro Mateo, 2 entre A Coruña	28002	Madrid	915191169	914137136	www.meninos.org	Angel Martinez Puente
				15004	Galicia	981269955	981256003		
ADIP (Asociación para la adopción internacional de Baleares)	Rumania	Rumania	Vía Alemania, 2 4º B Palma (Baleares)	07003	Baleares	971204014	971204014		Gloria Mendarozqueta Mendieta
AJUDA'M (Associació ajuda i foment de l'adopció internacional del menor)	Colombia Bulgaria	Colombia Bulgaria	San Blas 29-35.3º 1ª esc A Barcelona	08006	Cataluña	932098882	932018942		Isabel Fort
AAIM (Asociación de ayuda a la infancia del mundo)	Chile Ecuador El Salvador Nicaragua Philippines Dominican Republic Rumania	Chile Ecuador El Salvador Nicaragua Dominican Republic Rumania	Rambla de Cataluña, 33 entr. 1ª Barcelona	08007	Cataluña Aragón La Rioja	934872912	932151251		Amalia de Cara Calvano y Sílvia Muzelle i Valdivia
MADRID PUERTA ABIERTA	Hungary Rumania	Hungary Rumania	Cedros, 82, bajo Madrid	28029	Madrid	913152345			
ASOCIACIÓN NAVARRA NUEVO FUTURO (AMNF)	Chile Costa Rica Ecuador Peru Rumania Russia	Peru	Avda. Bayona, 30. 1ºD Pamplona	31011	Navarra	948198503	948198146		Ignacio Ventura Peréz
ASOCIACIÓN ADOPTA	Peru Guatemala Ukraine	Peru Ukraine	Paseo de Gracia, 69. 1º 2º Barcelona	08008	Cataluña	932151536 934872385	934875088		Montse Pintó Sala
ASOCIACIÓN PER A L'ADOPCIO SENSE FRONTERES (AASF).	India Philippines	India	Santa Eugenia, 68 Princiál 3º Gerona	17005	Cataluña	972236481	972236481		Sunl Dey Das Y Santiago Pérez Moratones
ASHRAM (Asociación humanitaria para la adopción internacional de menores)	India	India	Orense, 6 4º A1 Madrid	28020	Andalucía Aragón Castilla y León Castilla-Mancha Madrid País Vasco Valencia	955661481 976680777 983371301 925222764 915971761 943322341 963940528	915971760		Lourdes García Poggio

Other Independent Agencies

	Country authorizing for mediation in the adoption procedure	Accredited for	Address	ZIP	Autonomous Region	Tel. (+34)	Fax (+34)	Internet and e-mail	Contact Person
AYUDA A LA INFANCIA IBEROAMERICANA. ASOCIACIÓN ANDALUZA	Colombia Costa Rica Mexico Panama Poland Dominican Republic	Colombia Costa Rica Mexico Panama Dominican Republic	Avda. Reino Unido s/n Edificio Sevilla Sur. Planta 3º Los Bermejales Sevilla	41080	Andalucia	954231873	954231873		Gonzalo Martín-Vázquez Prats
PIAU	China	China	Salamanca, 27 Valencia	46005	Valencia	970254875	963865078		Mª Teresa Comins Qules
ADDIA	Colombia Mexico Brazil Bolivia Venezuela	Colombia Mexico Brazil Bolivia	Avda. Diagonal 372, 1.1. Desp A Barcelona	08009	Cataluña Aragón Balears Castilla La Mancha Castilla-León Madrid Navarra Valencia	932071100	933146505		Raimón Casanellas Bassels
ACI	China Guatemala	China	Salustiano Olózaba, 4 Madrid	28001	Madrid Andalucía Aragón Valencia	915783675	914312163		Blanca R. Asensio