



The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

PRESS RELEASE

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Law Reform Commission publishes *Consultation Paper on Aspects of Intercountry Adoption Law*

Wednesday 28th March 2007: The Law Reform Commission publishes its *Consultation Paper on Aspects of Intercountry Adoption Law* today. The Consultation Paper will be launched by the Attorney General, Mr Rory Brady SC, later today

Background

The Commission prepared this Consultation Paper in response to a request in November 2005 by the Attorney General under section 4(2)(c) of the *Law Reform Commission Act 1975* to consider the status and rights including citizenship rights of a child resident outside the State who has been the subject of an intercountry adoption order made in favour of an Irish citizen or citizens living abroad. The Commission was also asked to consider the most effective manner of securing the performance of the constitutional and legal duties of the adoptive parents in respect of such a child and the most effective manner of ensuring the fulfilment of the duties of the State in respect of such a child. The request from the Attorney General came against the immediate background of *Attorney General v Dowse* which concerned the adoption of Tristan Dowse in Indonesia, and which was recognised and registered in Ireland. This was an unusual intercountry or foreign adoption because the adoptive parents did not live in Ireland and the child never set foot here. Such intercountry adoptions of young children represent approximately 10% of all the intercountry adoptions recognised and registered by the Adoption Board in the Register of Foreign Adoptions. Around 75% of intercountry adoptions recognised and registered in Ireland involve adoptive parents who live in Ireland and have been assessed by the Health Service Executive and the Adoption Board before they travel abroad and adopt a child. The unusual circumstances of the *Dowse* case were relevant to the Commission's analysis of the questions raised by the Attorney General.

Rights of the Child

Once a foreign adoption is recognised and registered by the Adoption Board, the child is entitled to become an Irish citizen provided that at least one of the adoptive parents is an Irish citizen. This is what occurred in the *Dowse* case even though the adoptive parents and child were resident outside the State. The Commission's research shows that this approach is accepted by a growing number of countries and its provisional recommendation is that this should remain the law on this point. The Commission

also recommends that children such as Tristan Dowse should be treated comparably in terms of their other rights as any other child of Irish parents. The acquisition of Irish citizenship by Tristan Dowse provided the basis for the jurisdiction of the High Court of Ireland to make an array of orders concerning guardianship and maintenance to protect the child's best interests. In the Consultation Paper, the Commission highlights the practical difficulties of ensuring the legal and constitutional rights of an Irish citizen child who is resident in another jurisdiction and notes that the Constitution states that most rights are subject to a test of how "practicable" it is to protect them. The Commission provisionally recommends that if a situation like the *Dowse* case arises in future, the Attorney General, in his role as guardian of the public interest, and in conjunction with the diplomatic and consular services of the Government, is the most appropriate officer of the State to protect the rights of the child subject to relevant principles of international law. The Commission also takes this opportunity to reiterate a previous recommendation made in 1998 that the 1993 *Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption* be ratified and incorporated in Irish law. The Commission welcomes the Government's proposed legislation to do so.

Related Issues

During its research the Commission became aware of a number of issues in the context of adoption and it highlights these in the Consultation Paper. First, the Commission provisionally recommends that the Adoption Board should develop and maintain best practice guidelines for verifying the authenticity of adoption documentation presented in Ireland for the purposes of recognising a foreign or intercountry adoption. Second, there is a need for research on pre-adoption procedures and for more extensive analysis of the outcomes of intercountry adoptions in Ireland. The Commission notes that the Adoption Board has already commissioned that such research be undertaken. Third, the Commission reiterates a previous recommendation made in 1998 that post-adoption services including counselling are made available on an established basis for both domestic and intercountry adoptions.

The Commission usually publishes in two stages: first, a Consultation Paper and then a Report. A Consultation Paper is intended to form the basis for discussion and accordingly the recommendations, conclusions and suggestions are provisional. Submissions on the provisional recommendations contained in this Consultation Paper are welcome by **29 June 2007**.