

## **Should race and religion be the impediments to intercountry adoption?**

Dr Katarzyna Bagan-Kurluta  
University of Białystok, Poland  
University of Białystok  
Department of Law  
Mickiewicza 1, 15- Białystok, Poland  
Home Address: Akademicka 34/12, 15-267 Białystok, Poland  
Tel: +48 662065222; Email: [kbkurluta@wp.pl](mailto:kbkurluta@wp.pl)

1. The beginnings of intercountry adoptions in the world are usually connected with the years following the end of World War I, but a phenomenon of a substantial rise in their number could be noted towards the end of World War II and connected with interest of American families in adopting orphans from Europe and Asia - countries where American soldiers were fighting during the war. The motivation to adopt a child from abroad was mostly sympathy and probably a conviction that the young victims of war needed help and protection.
2. Since then many years have passed by and intercountry adoption, being more and more popular, became an instrument used to accomplish various interests. Although the most important one should be the best interest of a child, the interest of a family (or even two families – biological family and an adoptive one) and the interest of a state (states) should be also mentioned.
3. Because of a suggested subsidiary character, intercountry adoption should be limited more than the national one – and it usually is. Some of its limitations should be treated as prerequisites/impediments, some as barriers or discouraging preferences. The question is: how should we treat differences in race or religion referring to the parties of adoption? Should the transracial or transreligious adoptions be prohibited, strongly advised not to apply for or just assessed taking into consideration the best interest of a child?
4. According to many national regulations the price for the permission to adopt is a promise or rather an obligation to inform a child about his origin and roots. Thinking about the racial or religious limitations of adoption one should consider that they can be applied if there are no children for adoption in a country (in this case one can ask what we need the limitations for?) or if there are a lot of children to be adopted (especially if there are not too many people of the same race or religion living in other countries one can also ask – what we need them for?).
5. To put a proper construction on the notion of subsidiarity in adoption means to accept that a child can be adopted abroad if there is no one willing to adopt him in a country of his origin. It is more reasonable to accept the concept that in subsidiary intercountry adoption the race and religion should be understood as preferences in the light of the best interest of a child standard. So, the main point in discussion about race and religion as limitations of adoption should be two standards: subsidiarity and the best interest of a child.