

DPR 1 dicembre 1999, n. 492

Regolamento recante norme per la costituzione, l'organizzazione e il funzionamento della Commissione per le adozioni internazionali, a norma dell'articolo 7, commi 1 e 2, della legge 31 dicembre 1998, n. 476

TRADUZIONE NON UFFICIALE

DECREE OF THE PRESIDENT OF THE REPUBLIC

1 December 1999, No. 492

Regulation Containing the Provisions for the Establishment, the Organization and the Operating Procedures of the Commission for Intercountry Adoption, in accordance with Article 7, paragraph 1 and 2, of law 31 December 1998, No. 476.

THE PRESIDENT OF THE REPUBLIC

Seen article 87, paragraph 5, of the Constitution;

Seen article 17, paragraph 1, of law 23 August 1988, No. 400;

Seen law 31 December 1998, No. 476 of authorization to ratification and of enforcement of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption done at The Hague on 29 May 1993 and of amendment to law 4 May 1983, No. 184, regarding the adoption of foreign children;

Seen, in particular, article 7, paragraph 1 and 2, of the mentioned law No. 476 of 1998;

Heard the unified Conference referred to in article 8 of legislative decree 28 August 1997, No. 281;

Heard the Guarantor for the Protection of Personal Data;

Heard the opinion of the Council of State, expressed by the advisory section for normative acts in the meeting of 26 July 1999;

Seen the resolution of the Council of Ministers, adopted in the meeting of 4 August 1999;

Seen the observation note of the State Auditors' Court, section of control of the Acts of Government, No. 20/99 of 20 October 1999;

Seen the resolution of the Council of Ministers, adopted in the meeting of 19 November 1999;

On proposal of the Prime Minister and of the Minister for Social Solidarity, in agreement with the Ministers of Foreign Affairs, of the Interior, of Justice and of Health;

ENACTS

the following regulation:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

Object and Definitions

1. The present regulation, in accordance with Article 7, paragraph 1 and 2, of law 31 December 1998, No. 476, regulates the organization and the operating procedures of the Commission for Intercountry Adoption referred to in article 38 of law 4 May 1983, No. 184, as modified by the above-mentioned law No. 476 of 1998, together with the criteria and the procedures for the authorization of the bodies, referred to in Article 39-ter of the same law No. 184 of 1983.
2. For the purposes of the present regulation:
 - a) “law on adoption”, refers to the law 4 May 1983, No. 184, modified by law 31 December 1998, No. 476;
 - b) “Convention”, refers to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, done at The Hague, on 29 May 1993;
 - c) “Intercountry Adoption”, refers to the adoption of foreign children in conformity with the principles and according to the provisions of the Convention and of the law on adoption;
 - d) “Commission”, refers to the Commission for Intercountry Adoption constituted by article 38 of the law on adoption as Central Authority for Italy;
 - e) “Central Authorities”, refers to the authorities of the Foreign Countries taking care of intercountry adoption;
 - f) “Accredited Bodies”, refers to the bodies described at Article 39-ter of the law on adoption and the services for intercountry adoption created by article 39-bis, paragraph 2, of the same law by the regions and by the autonomous provinces of Trento and Bolzano;
 - g) “services”, refers to the services described by law 31 December 1998, No. 476.

CHAPTER II

ESTABLISHMENT AND ORGANIZATION OF THE COMMISSION FOR INTERCOUNTRY ADOPTION

ARTICLE 2

Functions and Tasks of the Commission

1. The Commission is the Italian Central Authority in accordance with Article 6 of the Convention. The Commission, established in accordance with Article 38 of the law on adoption, is located at the *Presidenza del Consiglio dei Ministri – Dipartimento per gli affari sociali*.
2. The Commission shall perform the functions and carry out the tasks assigned by the law on adoption and by the present regulation.

3. The Commission shall gather in an anonymous form, for statistical, study, information or research purposes the personal data of the adopted children or of the children placed with view to adoption, whose entrance was authorized, together with any other useful data referring to the phenomenon of intercountry adoption. Every year the Commission shall also gather from the juvenile courts, the regions and the accredited bodies data in an anonymous form, information and assessments on intercountry adoption.
4. The Commission shall refer to the National Centre Documentation and Analysis on Childhood, established in accordance with Article 3 of law 23 December 1997, No. 451, for the publication, in an anonymous form, of statistical data about intercountry adoption and information about its activities.
5. Acts and documents about the procedures for intercountry adoption acquired in accordance with Article 39, paragraph 1, sub-paragraph e) of the law on adoption are kept in the security secretariat established at the technical secretariat, in accordance with Article 6 of the present regulation.
6. Access to acts and documents shall be regulated by the general rules provided for in law 7 August 1990, No. 241 and in law 31 December 1996, No. 675 and following modifications.
7. The Commission may deal with the confidential data, described at paragraph 1 of Article 22 of law 31 December 1996, No. 675, received in accordance with the provisions of Chapter I, Title III of the law on adoption and of the present regulation, particularly for what concerns the racial and ethnic origin of the child, his/her family of origin and his/her adoptive parents, their religious, philosophical or other beliefs and their health. Apart from the limits explicitly referred to in the provisions of the above mentioned Chapter I, confidential data, in compliance with the institutional competence of the Commission, may be gathered, recorded, organized, kept, processed, selected, extracted, compared, used, interconnected, blocked, communicated, cancelled and destroyed. They may be disseminated in an anonymous form for statistical, study, information and research purposes.
8. The operations mentioned in paragraph 8 may also be carried out also in the treatment of the confidential data acquired by the Commission in order to perform tasks of inspection, supervision and control in accordance with Chapter I of Title III of the law on adoption and with Chapter III of the present regulation.

ARTICLE 3

Composition of the Commission

1. Members of the Commission shall be appointed by decree of the Prime Minister, on designation of the Ministers, for the representatives of the Ministries, referred to in Article 38 of the law on adoption, and of the unified Conference.
2. The President and the members hold office from the date of the decree of appointment.
3. Members shall cease to hold office:

- a) on resignation, which takes effect from the date of communication to the Prime Minister;
- b) due to incapacity to carry out their activity, due to a permanent impediment or to an impediment lasting more than six months; the incapacity is verified and declared by the Prime Minister.

ARTICLE 4

Operating Procedures

1. The Commission shall adopt by absolute majority of the members the regulation referred to in Article 38, paragraph 4, of the law on adoption.
2. The Commission shall be convened by the President in accordance with Article 5, or on the request of a member, who specifies his/her reasons and asks for the topic to be entered in the agenda.
3. The presence of the President of the Commission or of the Vice-President and of a total number of members not less than six is necessary for the validity of the resolutions of the Commission. Resolutions are adopted by majority of voters and the vote is always open. The President's vote prevails in case of equal number of votes.
4. An officer of the technical secretariat, referred to in Article 6, shall be appointed by the President to perform the function of secretary.
5. In order to carry out the functions mentioned in Article 2, the Commission may make provision to hear representations from persons operating in the field of intercountry adoption and of the protection of children.

ARTICLE 5

The President of the Commission

1. The President shall be appointed by decree of the Prime Minister, in accordance with Article 38, paragraph 2, sub-paragraph a), of the law on adoption and shall hold an off rôle position for all the period of his/her charge;
2. The President:
 - a) shall represent the Commission;
 - b) shall convene the meetings of the Commission, establish their agenda, designate the speakers and direct their proceedings;
 - c) shall appoint a Vice-President, who shall perform the functions of the President in case of his/her absence or impediment;
 - d) shall supervise the activity of the technical secretariat as referred to in Article 6;
 - e) may temporarily delegate single functions to the Vice-President or to one of the members;

- f) and for matters of great urgency, when there is not sufficient time to convene the Commission, he/she may take the measures falling within the competence of the Commission. If these measures are not ratified by the Commission in its next following meeting, they cease to be effective from the moment of their adoption.
- g) shall carry out the other tasks provided for in the present regulation.

ARTICLE 6

Technical Secretariat and Activities in Support of the Commission

1. In order to carry out the activities assigned by the law, the Commission shall have the support of its own technical secretariat.
2. The technical secretariat shall:
 - a) prepare the documentation for the meetings of the Commission;
 - b) arrange for the preliminary examination of the acts of the Commission;
 - c) provide for the translation of documents coming from abroad;
 - d) keep the acts and information about adoption procedures;
 - e) support the Commission in its activity of promotion, co-operation, information and education referred to in Article 39, paragraph 1, sub-paragraph f), g) and l) of the law on adoption;
 - f) look after of the relations with the offices of the relevant administrative departments and with the accredited bodies;
 - g) fulfil the tasks concerning the keeping of the Register and the supervision of accredited bodies;
 - h) look after relations with the offices of the other Central Authorities for intercountry adoption, and with the other diplomatic and consular delegations for the missions of the Commission to these delegations;
 - i) carry out research and analysis for proposals regarding bilateral agreements.
3. The technical secretariat shall be made up of permanent staff of the *Presidenza del Consiglio dei Ministri* and of other public departments on secondment or in off rôle position at the above-mentioned *Presidenza*, as provided in their own regulations. The composition of the technical secretariat is the following:
 - a) 4 executives;
 - b) 14 officers of area C (9 at grade C1; 3 at grade C2; 2 at grade C3);
 - c) 5 units of area B (3 at grade B2; 2 at grade B3).
4. The Commission may be supported by experts in accordance with Article 7, paragraph 6, of the legislative decree 3 February 1993, No. 29, and subsequent modifications, with a maximum one year and renewable appointment.
5. The *Presidenza del Consiglio dei Ministri – Dipartimento per gli affari sociali* shall carry out the administrative and accountancy functions regarding the management of the expenses and the purchase of goods and services for the operation of the Commission; in this context it fulfils the functions for the assignment, by individual contract, stating the purpose, the duration, the place and the recompense of appointments for the advisory services referred to in paragraph 4. In order to plan the administrative and accountancy activities of the Department, the Commission shall present an annual plan indicating the main activities to be carried out.

ARTICLE 7

Missions to the Diplomatic and Consular Representatives Abroad

1. The sending abroad of the members of the Commission or of the technical secretariat, in accordance with Article 7, paragraph 2, of law No. 476 of 1998, shall be authorized by the *Presidenza del Consiglio dei Ministri – Dipartimento per gli affari sociali*, on the request of the Commission.
2. The Commission may request to carry out the missions abroad in order to perform its institutional tasks, and particularly sends its members, and the members of the supporting staff, to take part in international meetings with the central authorities of the other States or in view of proposals for bilateral agreements.
3. The President and the other members of the Commission are entitled to the travel allowance provided for according to their status, and any case to not less than that given to the executives in charge at the *Presidenza del Consiglio dei Ministri*.

CHAPTER III

AUTHORIZATION TO THE BODIES

ARTICLE 8

Application for Authorization

1. Bodies wishing to obtain the authorization mentioned in Article 39-ter of the law on adoption shall apply to the Commission, endorsed by their legal representative, in accordance with a form prepared by the Commission itself, containing, among other things, the information about:
 - a) the possession of the requirements provided for in Article 39-ter of the law on adoption;
 - b) the list and the personal details of the persons directing and operating in the services of the body, together with their professional qualifications, their education, their specific competence, their experiences in the sector and their moral qualifications. The moral qualifications possessed are declared by the interested person, in accordance with the provisions in force, with reference to the absence against him/her of proceedings for the application of a measure of prevention, and to the fact of having never undergone preventive measures or been convicted, even if with non final judgement, for one of the crimes mentioned in Articles 380 and 381 of code of criminal procedure, with the exception of proceedings concluded with a decree excluding the crime or the responsibility of the interested person, and except for, in any case, the effects of rehabilitation;
 - c) the list and the personal details of the social, juridical and psychological professionals supporting the bodies, with the specification for each of them of his/her registration in the professional roll and of his/her specific competence in the field of assistance to adopters;
 - d) information regarding the diffusion across the Italian territory of the body, its head office and its eventual local offices, together with their opening times;

- e) the foreign countries or the geographical areas where the body wishes to act and the description of the structures of the body in each of them;
 - f) the geographical area of the Italian territory where the body wishes to operate for the Italian citizens residing there;
 - g) the operating procedures and the support to couples wishing to adopt, in order to give continuity to the supporting and accompanying activities during the adoptive procedures, including the ones agreed with the services;
 - h) for each country covered by the body, the cost requested to couples wishing to adopt a child.
2. Bodies shall also enclose with the application for authorization:
 - a) the declaration that the body does not have, and commits itself not to have, any ideological, religious, racial or other prejudice against the applicants for adoption;
 - b) a declaration containing the commitment to present every year to the Commission a report on the activity carried out, the final balance and further information supplied according to a form prepared by the Commission;
 - c) a copy of the memorandum of association, including its registered office in Italy and the pursuit of only non-profit objectives;
 3. Regions and autonomous provinces of Trento and Bolzano, in place of the documents mentioned at paragraph 1 and 2, shall quote the legislative acts and attach the administrative measures regarding the establishment and the rules of the services for intercountry adoption as referred to in article 39-bis of the law on adoption.

ARTICLE 9

Assessment of the Requirements

1. Within one hundred and twenty days from the receiving of the application for authorization referred to in article 8, the Commission shall decide on the correspondence of the requirements of the body with the ones referred to in article 39-ter of the law on adoption,. In case of particular procedural necessity, the times for authorization are extended by a further thirty days through a specific order communicated to the applying body for the acquisition of further information or for the rectification of irregularities.
2. With the authorization order the Commission:
 - a) shall state in which Countries or geographical areas the body is authorized to act;
 - b) may limit the authorization of the body to act for the people residing in one or more regions of Italy.

ARTICLE 10

Register of Accredited Bodies

1. Accredited bodies are registered in the Register referred to in article 39, paragraph 1, sub-paragraph c), of the law on adoption. The Register contains:
 - a) the name of the body, its registered office and its operating offices;

- b) the particulars of the memorandum of association;
 - c) the name and surname of the lawyer representing the body;
 - d) the date and the particulars of the authorization order.
2. The Commission also decides on the registration in the Register of modifications, suspensions and cancellations due to revocation of the authorizations. The Register, its modifications and the suspension and revocation orders are published on the *Gazzetta Ufficiale* of the Italian Republic.

ARTICLE 11

Operating Procedures of Accredited Bodies

1. An accredited body, besides performing the tasks set forth in the law on adoption shall:
 - a) keep a chronological register of the applications received for intercountry adoption;
 - b) keep the documentation about the persons wishing to adopt;
 - c) transmit to the Commission and to the competent juvenile court the documentation about the family wishing to adopt and the child proposed for adoption and supply the information on his/her situation of abandonment;
 - d) immediately communicate to the Commission any variation and modification about its data, activity and representatives abroad;
 - e) transmit to the Commission each year by 31 January a report on its activity, its final balance and further data according to a form prepared by the Commission;
 - f) notify to the Commission of any possible difficulty faced in carrying out the administrative and judicial procedures regarding adoptions abroad;
 - g) take part to the hearings required by the Commission;
 - h) report to the juvenile court and to the Commission the possible family situations that might be prejudicial to the child, also after adoption;
2. An accredited body shall obey the provisions about the treating of personal data.
3. An accredited body shall regularly disseminate, including through its own publications, the quantitative data about the activity carried out, the operating procedures, the costs of the activity and the expenses for adoption.

ARTICLE 12

Supervision on the Activity of the Bodies

1. The Commission shall provide for verifications at least every two years, in order to check the permanence of the requirements according to which the body is granted authorization to carry out its activity in Italy and in other Countries, and also to assess the fulfilment of the duties provided for in the law on adoption and in the present regulation. With this aim, the Commission may also decide for missions abroad of some of its members or of some members of the technical secretariat, in order to check the activity of the accredited body in its office abroad.

2. After the verifications mentioned at paragraph 1, the Commission, unless it decides to suspend or revoke the authorization, may provide for the modification of the territory where the body is entitled to act and ask for the adjustment of the operating procedures to the fixed requirements.
3. The Commission, also through meetings with the representatives of the bodies, shall promote the adoption of homogeneous methods and conditions of intervention, together with the definition of fair uniform parameters for the costs of procedures for adoption.

ARTICLE 13

Revocation and Suspension of Authorization

1. If the Commission verifies that the requirements needed for the authorization do not exist anymore or if the activity performed by the body is not in conformity with the principles and the provisions of the Convention, of the law on adoption and of the regulation, the Commission shall revoke the authorization, after hearing the interested body.
2. In less serious cases, the Commission may suspend the authorization for a certain period and fix a date within which the body must eliminate the irregularities. At the end of the period, in cases where the body has not provided to do so, the Commission shall revoke the authorization.
3. Orders of revocation and of suspension shall be adopted in observance of the provisions about administrative procedures and after notification of the facts and of the reasons for which the Commission intends to adopt such measures.

ARTICLE 14

Request of Re-examination

1. Interested bodies may present to the Commission, within thirty days from the communication of the measure, the request of re-examination, signed by the lawyer representing them, against:
 - a) the orders denying authorization to performing activities regarding the adoption of foreign children,
 - b) the measures of revocation and of suspension of authorization.
2. The interested parties may present a request for the re-examination against the resolutions of the Commission regarding the authorization to the entry visa and to the certification of conformity.
3. The Commission decides within thirty days from the presentation of the request of re-examination.

ARTICLE 15

Representation and Defence

1. Representation, defence and judicial assistance of the Commission shall pertain to the Government Lawyers according to royal decree 30 September 1933, No. 1611 and subsequent amendments and additions, bearing the Consolidation Act of the laws and of the norms on representation and judicial defence of the State and on the rules of the Government Lawyers.

CHAPTER IV

TRANSITIONAL, FINANCIAL AND FINAL PROVISIONS

ARTICLE 16

Publication of the Register of Accredited Bodies

1. Bodies wishing to carry out procedures regarding the adoption of foreign children on behalf of a third party shall apply for authorization within one month from the appointment of the Commission.
2. The Commission shall decide according to the procedures mentioned at Chapter III of the present regulation about the applications for authorization received from the bodies within the date indicated at paragraph 1 and provides for the publication on the *Gazzetta Ufficiale* of the Italian Republic of the register of accredited bodies.
3. The register of accredited bodies comes into force fifteen days after the date of its publication on the *Gazzetta Ufficiale* of the Italian Republic.

ARTICLE 17

Financial Provision

1. Costs arising from the present regulation for the activity of the Commission, except the ones for the staff of the technical secretariat, shall be borne under the heading of the basic requirement forecast 12.1.3.1 of the budget of the *Presidenza del Consiglio dei Ministri*, by application of article 9 of law 31 December 1998, No. 476.

ARTICLE 18

Foreign Children Received or Present on the Italian Territory in accordance with Article 33 of legislative decree No. 286 of 1998

1. The competences of the “*Comitato per i minori stranieri*” - Committee for Foreign Children – referred to in Article 33 of legislative decree 25 July 1988, No. 266, modified by legislative decree 13 April 1999, No. 113 and its decree of implementation are excepted. These competences concern the entry, the residence, the temporary reception and placement and the assisted return of the children

received within solidarity programmes or present for any reasons on Italian territory and without assistance and representation. The Commission shall provide for the communication to the Committee for Foreign Children of the names of children whose presence is notified on the Italian territory in accordance with article 33, paragraph 5 of the law on adoption.

ARTICLE 19

Entry into Force

1. The present regulation shall come into force on the fifteenth day from the date of its publication in the *Gazzetta Ufficiale* of the Italian Republic. Provisions shall take effect from the day after the entry into force of the Convention.
The present decree, provided with the seal of State, shall be included in the Official Collection of the Normative Acts of the Italian Republic. It is a duty, for those concerned, to observe the present regulation and to ensure that it is observed.

Rome, on 1 December 1999

CIAMPI

D' ALEMA, Prime Minister

TURCO, Minister for Social Solidarity

DINI, Minister for Foreign Affairs

RUSSO JERVOLINO, Minister of the Interior

DILIBERTO, Minister of Justice

BINDI, Minister of Health.