LEGISLATIVE LEGISLATIVE

LAW N9 1,136

ON ADOPTIONS

THE CONGRESS OF THE PARAGUAYAN NATION ENACTS AS **LAW**

CHAPTER 1
GENERAL PROVISIONS

Article 1.- Adoption is the legal institution for the protection of children and adolescents in the family and social sphere whereby, under the supervision of the state, the adoptee becomes part of the family or creates a family with the adopter, as a child, and ceases to belong to their biological family, except in the case of the adoption of the child of a spouse or cohabiting partner.

Article 2.- Adoption is granted as an exceptional measure of protection for the child and is established in accordance with the child's best interests.

Article 3.- Adoption is full, indivisible, and irrevocable, and confers upon the adoptee a filiation that replaces that of origin and grants them the same rights **and** obligations as biological children.

With adoption, the adoptee's ties to their family of origin cease, except for impediments to marriage arising from consanguinity. When the adoption takes place with respect to the child of a spouse or partner of the opposite sex, the ties cease only in relation to the other parent.

Article 4.- The lack or absence of material resources of the biological family of the child or adolescent shall in no case constitute sufficient grounds for the loss of the right to be raised by that family.

Article 5.- Adopted children have the right to:

1) know their origins, in accordance with the procedure established in this law, and
2) be registered with the surname(s) of the adoptive parents and retain at least one of their given names, with the adoptive parents being able to add new names.

at least one of their first names, with the adoptive parents being able to add new names.

Article 6.- Persons residing abroad may adopt, provided they meet the requirements of this law.

International adoption shall be granted on an exceptional basis and shall be subsidiary t . Priority shall be given to adoption by nationals or foreigners permanently residing in the country over foreigners and nationals residing abroad.

CHAPTER 11
THE SUBJECTS

Article 7.- Children and adolescents may be adopted if they are:

a) orphans of both parents;

b) children of unknown parents;

c) children of biological parents who have been declared adoptable;

d) children of one of the spouses or cohabitants who have given their consent in accordance with the procedure established in this law, and

e) who have been in the care or guardianship of the adopter for more than two years, with the prior consent of the biological parents or a judicial declaration of adoption, as applicable.

Article 8.- No one may be adopted by more than one person, except in the case of adoption by both spouses or two persons of different sexes who have been cohabiting for four years or more.

Article 9.- Children may be adopted until they reach the age of majority, except in cases where the process of declaring the state of adoption has been initiated before that age.

When two or more siblings are declared adopted, they may not be separated, except for justified reasons.

Article 10.- Persons of either sex may adopt, regardless of their marital status. Married couples, common-law couples and women shall have preference under equal conditions.

Spouses must have been married for at least three years and common-law couples must have lived together for at least four years.

Article 11 .- Adoptive parents must be:

a) be at least twenty-five years of age;

b) be no older than fifty years of age, unless they have lived with the adoptee for at least one year; and

c) an age difference with the person they intend to adopt of no less than twenty-five years and no more than fifty years. In the case of a couple, the difference shall be considered in relation to the younger adopter.

These age restrictions shall not apply when adopting the son or daughter of the other spouse with whom they have lived for more than four years or a relative up to the fourth degree of consanguinity.

Article 12.- Divorced persons and those who are legally separated separated persons may adopt jointly, provided that the period of cohabitation with the adoptee began before the divorce or legal separation decree and provided that they agree on the custody of the adoptee and a visitation regime.

Article 13.- Adoption may be granted to the adopter who, after unequivocally expressing their will, dies during the proceedings, before the ruling is pronounced, or to the surviving spouse, if any.

Article **14.-** Persons suffering from infectious or contagious diseases, psychotic disorders or mental deficiency may not adopt; nor may those who have been convicted or are on trial for crimes committed against a child.

Article 15.- The guardian may not adopt the ward while exercising guardianship and has not submitted a duly documented account of his or her administration, which has not been approved by the court.

Article 16.- If the adoptee has assets, the adopter shall be subject to the same rights and obligations as the biological parent with respect to the administration of those assets. When the adoptee reaches the **age of** majority**,** the adopter shall be obliged to render a documented account and compensate for any damage that his administration may have caused to the adoptee's estate.

CHAPTER 111
CONS**ENT**

Article 17.- Consent is the formal act by which persons give their agreement to the adoption before the competent judge.

Article 18.- Consent must be given by:

a) the biological parents when the adoptable child is the child of the adopter's spouse or partner;

b) the biological parents of the child who has been in the adoptive parent's care or guardianship for more than two years;

c) the child from the age of twelve, and

d) the adoptive parents.

Article 19.- From the age of twelve, the adolescent must give their consent to the adoption, after a period of cohabitation with the adopters.

In all cases, the judge shall take into account the child's opinion regarding the adoption. In the case of children under the age of twelve, the judge shall assess the child's opinion on the basis of their development and maturity.

Article 20.- The adopters must give their personal consent before the competent judge. Failure to comply with this requirement shall render the act null and void.

CHAPTER IV
MAINTAINING FAMILY TIES

Article 21.- Biological parents or relatives who express their desire to give the child or adolescent up for adoption before the competent judge must undergo a period during which the judge will take all necessary measures to maintain the family bond with the nuclear or extended family. To this end, the judge may resort to the institutions deemed appropriate.

This period shall last forty-five days, which may be extended at the discretion of the judge.
judge.

At the end of this period, the parents or relatives may personally confirm their initial decision. Once this confirmation has been made, the judge, after consulting with the prosecutor for minors and the child's defence lawyer, shall issue a reasoned ruling declaring the loss of parental authority and declaring the child eligible for adoption. The subsequent adoption proceedings shall be handled by the same judge.

This procedure shall not be required for adoption when the child is the child of the spouse or cohabiting partner, has been in foster care or guardianship for more than two years, or is a relative up to the fourth degree of consanguinity of the adopter or adopters.

Article 22.- Children whose parentage is unknown are considered to be children of unknown parents. Once the competent judge has been informed of the existence of a child whose parents are unknown, after consulting with the prosecutor for minors and the guardian ad litem, he or she shall order a thorough investigation to locate the parents or members of their biological family. This investigation shall last at least ninety days, which may be extended at the discretion of the judge.

If the parents or relatives are located, the period for maintaining family ties shall begin with them. If the established period expires without the biological parents or relatives being located, the judge shall proceed to declare the child eligible for adoption.

Article 23.- The declaration of adoptability shall be determined by the judge in all cases before the adoption proceedings commence.

The processes by which children are declared adoptable are independent of adoption proceedings.

A copy of the declaration of adoption status shall be sent to the Adoption Centre for its purposes.

Article 24.- Failure to comply with the provisions contained in this chapter shall result in the annulment of the adoption proceedings.

CHAPTER V
INTERNATIONAL **ADOPTION**

Article 25.- International adoption is understood to be that carried out by persons residing abroad in favour of children and adolescents domiciled in Paraguay.

International adoption shall only be permitted with countries that have ratified the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

Article 26.- Children adopted by persons not resident in Paraguay shall enjoy the same rights as those corresponding to adoption in the country of residence of the adopters. The adoptee shall have the right to enter and leave the country of international adoption permanently.

Article 27.- The adoption of a child may be granted to persons residing outside the country when the judge confirms the absence of national families to adopt him or her.

CHAPTER VI
ADOPTION CENTRE

Article 28.- An Adoption Centre shall be established, which shall be the central administrative authority for adoptions. It shall be autonomous in nature.

In order to carry out its functions, it shall have the cooperation of public authorities and other non-profit organisations duly accredited by it.

Article 29.- The functions of the Adoption Centre shall be:

1} to support the competent court, through the Technical Department, during the period of maintenance of the family relationship; to collaborate in investigations to identify children **and** their biological families, as well as in locating families of children of unknown parents;

2) to advise and duly inform the persons, institutions and authorities whose consent is required for the adoption about the legal consequences **and** requirements of adoption;

3) to ensure the monitoring of adoption processes;

4) receive requests for domestic adoptions from the courts, analyse them and issue the corresponding reports.

5) receive international adoption requests from the central authorities of other countries, analyse them and issue the corresponding detailed reports;

6) maintain an up-to-date register of children declared eligible for adoption;

7) assessing prospective adoptive parents to ensure that they are suitable, based on the requirements of this law.

8) gather, store and exchange information relating to the situation of the child and the prospective adoptive parents, to the extent necessary to ensure a successful adoption and prevent its failure;

9) accredit *and* supervise the shelters where children who will be placed in foster families are temporarily housed;

101 submit to the competent judge a duly substantiated adoption proposal for each child, which will serve as the basis for the adoption proceedings;

11 keep a register of national and international adoptions;

12) to follow up on adoptions. Within the country, this may be done with the collaboration of government *and* non-governmental institutions duly accredited for that purpose, *and* abroad, it must be done through the central authorities of the receiving countries *and* their accredited agencies;

13) take all necessary measures within its power to prevent undue financial gain in cases of adoption *and* to prevent the abduction, sale *and* trafficking of children;

14) liaise with the central authorities *and* accredited bodies of other countries, establishing permanent communication *and* providing relevant information on legislation, statistics *and* other specific *and* general matters;

151promote *and* assist national adoptions, providing pre-adoption and post-adoption counselling to adopters and adoptees;
and post-adoption counselling to adopters *and* adoptees;

16) promote foster homes *and* other suitable forms of care for children declared eligible for adoption;

171 make proposals for the modification or extension of laws with a view to ensuring the best protection for children *and* their families;

181) ensure compliance with international conventions *and* agreements ratified by Paraguay relating to adoption *and* the rights of the child; *and*

19) issue its internal regulations *and* organisational *and* functional structure for the proper fulfilment of its objectives *and* appoint its professional *and* administrative staff.

Article 30.- The Adoption Centre shall be headed by a Director General *and* a Board of Directors, advised by a multidisciplinary technical team. It shall also have a permanent secretariat appointed by the Board of Directors.

To be Director General, the following requirements must be met:

a) be Paraguayan;

b} be a university graduate with more than five years o f experience in child protection work, *and*

c} be of recognised professional competence.

The Board of Directors shall be composed of five members or representatives from the following entities:

a) the Director of the Adoption Centre;

b) a representative of the National System for Children and Adolescents;

c) a representative from the Secretariat for Women;

a representative of the Public Prosecutor's Office, and

e) a representative of non-governmental organisations.

To be eligible for membership of the Council, candidates must have at least three years' experience in child protection work.

Members of the Governing Council shall not receive any remuneration.

The Technical Department shall be composed of at least the following professionals:

two lawyers
two psychologists
one paediatrician
four social workers

Article 31.- For the appointment of the Director General of the Adoption Centre, interested parties shall submit up to three curricula vitae to the Attorney General's Office, which shall decide on the basis of proven merit and ability. Where there are candidates of equivalent merit, the Attorney General's Office may subject the candidates to a competitive examination.

The members of the Council shall be appointed by their respective institutions. Article

32.- The Governing Council of the Adoption Centre, advised by the Technical Department, in addition to being able to submit adoption proposals, shall rule on adoption proposals to be submitted to the competent courts.

CHAPTER VII
PROCEDURE

Article 33.- Applications applications for adoptions shall be submitted only at the headquarters of the Adoption Centre in the capital, through the central authorities of the adoptive parents' country. No application for international adoption that does not comply with the procedure established in this article.

Applications for domestic adoption shall be submitted to the court on duty, which shall forward them to the Adoption Centre for processing.

Article 34.- Adoption applications must be accompanied by documents and information on the personal circumstances, criminal record, family background, social circumstances and means of livelihood of the adopter or adopters.

Article 35.- The Adoption Centre shall be responsible for finding suitable national families for the adoption of each child declared eligible for adoption, and shall provide detailed written justification when no such families are found.

Article 36.- The Adoption Centre shall regulate the following aspects of the administrative procedure:

a) conditions and requirements for support during the period of maintaining family ties;

b) verification of the child's identity and life history;

c) locating their biological parents and relatives;

d) documents and reports that must be included in the adoptive parents' file and the file of children declared eligible for adoption; and

e) the conditions under which the procedure to be used in relation to the children **and** the adoptive parents must be carried out, prior to the presentation of the adoption proposal to the judge.

Article 37.- The judge's declaration of adoption of the child or adolescent must be communicated to the Adoption Centre, accompanied by all relevant documentation and information. Upon receipt of this communication, the Adoption Centre shall take the necessary measures to select potential adoptive parents.

Article 38.- The guardianship courts of the domicile of the child or adolescent shall have jurisdiction to resolve adoption proceedings.

Article 39.- The parties to the adoption process are:

a) the child;
b) the child's guardian;
c) the adopter(s);
d) the prosecutor for minors, and
e) biological parents in cases of adoption by their spouse or common-law partner.

Article 40.- The judge shall initiate the adoption proceedings with the adopters' claim, accompanied by the adoption proposal from the Adoption Centre, and shall refer the case to the juvenile prosecutor and the child's advocate. Once the proposal has been accepted, the judge shall
shall schedule a hearing with the adoptive parents for the purpose of hearing them. At the same time, the judge shall ascertain:

a) the identity of the adopters;

b) that the adoptive parents are suitable and have met the required suitability requirements;

c) that the adoptive parents have had access to all known information about the child they are going to adopt and any other information relating to their identity and personal history;

d) that they have received pre-consent counselling on the implications and responsibilities of adoption, and

e) that the adoptive parents are sufficiently informed about the monitoring they will be subject to in the three years following the adoption.

The judge may, at the request of a party or on his own initiative, order any investigations he deems appropriate.

Article 41. The judge shall schedule a hearing for the child in the process of adoption for the purpose of hearing him or her. The judge shall ascertain:

a) the identity of the child, and may order further evidence or testimony when there is any doubt;

b) that the child has undergone the period of maintenance of family ties;

c) that the information about his or her identity, origin, personal history, and that of his or her ancestors is correctly described and detailed, as far as possible, in physical, medical, **and** psychological terms;

d) that his or her opinion has been **and** is being taken into account in accordance with his or her maturity; and

e) that their consent, when they are over twelve years of age, has been given after adequate counselling, free from pressure and compensation of any kind.

Article **42.-** The judge shall ensure that the persons whose consent is required have given it under the conditions established by this law.

Article 43.- Once the adoption proposal has been evaluated and if there is no further information to be gathered, the judge shall order the provisional custody of the prospective adoptee for a period of not less than thirty days with the prospective adopters, except in cases where the adoptee is the child of the spouse or partner, or has been under the custody or guardianship of the adopter for more than two years.

Article 44.- During the provisional custody period, the Technical Department of the Adoption Centre shall monitor and evaluate the adaptation process and submit a report to the judge. If the report is favourable, the cohabitation period shall be terminated.

If the report is unfavourable, the judge shall immediately decide whether to revoke the provisional custody and shall communicate his decision to the Adoption Centre, which shall place the child provisionally in a shelter.

Article 45.- The judge shall refer the proceedings to the prosecutor and the child's defence counsel, who shall issue their ruling within a peremptory period of three days. Once the file has been returned, the judge shall call for a ruling if there is no further evidence to be produced.

Article 46.- If there is evidence to be produced, the case shall be opened for evidence for a peremptory period of ten days, within which the elements of judgment presented by the interested parties or ordered ex officio by the court shall be added. Once this period has expired, the judge shall call for the case file for sentencing, which shall be issued within three days.

Article 47.- In the same judgment granting the adoption, the judge shall establish the follow-up, which shall last three years and shall be carried out by the Adoption Centre.

In the case of international adoptions, the follow-up shall be carried out through the central authorities of the respective receiving countries.

The judge shall ensure in all cases that the adoption is not used for improper financial gain.

Article 48.- The ruling granting the adoption may be appealed before the Juvenile Appeals Chamber.

The deadline for appeal shall be three days.

Article 49.- Once the proceedings have been referred to the Juvenile Appeals Chamber, the file shall be sent to the juvenile prosecutor, the child's defence counsel and the adopter, in that order, who shall issue their rulings within three days.

Article 50.- Once these deadlines have expired, the chamber shall call for a ruling, which shall be issued within five days. This ruling shall be enforceable.

Article 51.- Adoption shall only be granted by final judgment, which may not be revoked once it becomes enforceable.

Article 52.- Once the final judgment has become enforceable, the adoption shall be registered as a birth, for which purpose an official letter shall be sent to the Civil Registry, to which a copy of the operative part of the final judgment shall be attached.

No copy of this original certificate with its marginal note may be issued except by court order, unless requested by the adoptee when he or she is over eighteen years of age or by the adoptive parents.

Article 53.- The adoption may be annulled at the request of the adoptee, the biological mother or father, through a specific trial before the guardianship court.

Article **54.-** The action for annulment must be brought within a maximum of three years from the date of registration of the adoption.

Article 55.- All documents and administrative or judicial proceedings related to the adoption process shall be confidential. A certified copy or transcript may only be issued at the request of the adoptive parents and the adoptee who has reached the age of majority.

The adoptee, however, may appear before the competent judge, through a representative or assisted by the child's guardian, to request the lifting of confidentiality and access to the information.

For the protection of the adoptee, the family of origin and the adoptive parents, access to the information may be accompanied by suitable personnel from the Adoption Centre.

TRANSITIONAL PROVISIONS •

Article 1.- Until the Code on Children and Adolescents is enacted, the Adoption Centre shall be budgetarily dependent on the Public Prosecutor's Office.

Article 2.- The defenders of absent persons shall perform the functions of child defenders until the latter are appointed by the Supreme Court of Justice.

Article 3.- International adoption proceedings initiated before the entry into force of Law **No.** 678/95, whose proceedings are pending resolution in the courts, are exempt from this law.

International adoption proceedings involving children who already have a close and proven emotional bond with the adoptive parents, established during a previous adoption proceeding that was annulled, are also exempt. New adoption proceedings must be initiated within ten days of the entry into force of this law.

Article 56.- Communicate to the Executive Branch.