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EDITORIAL

« Simple adoption » versus « full adoption »: A national choice with international repercussions

A State giving preference to simple adoption or to full adoption is certainly linked to its cultural concept of the family and thus raises ethical questions when it comes to recognising intercountry adoptions.

Given that domestic and intercountry adoptions have assumed such proportions and are increasingly scrutinised by the international community, legislators and adoption professionals frequently question the legal and social consequences of the two main types of adoption: simple adoption and full adoption. If debates are kept fuelled, it is due, in particular, to the fact that the distinction between simple and full adoption is characterised by a lack of coherence both, in its defining criteria and when it comes to possible conversions into national law.

Definitions and criteria

The criteria for defining simple and full adoption vary according to cultural origins, the socio-political context and the concept of the family in each country under review. This diversity frequently gives rise to complications amongst jurisdictions over the effects and the recognition of these adoptions.

Simple adoption and full adoption can be differentiated in accordance with several criteria, of which the two main ones upheld by current doctrine are, either the analysis of the severance or the maintenance of the ties of legal filiation with the family of origin, or the possibility of revocability or irrevocability of the adoption order.

The first criterion (founded upon the ties of legal filiation) is based, on the one hand, on the full integration of the child in the extended adoptive family and the severance of ties with the family of origin in the context of full adoption. On the other hand, simple adoption maintains

the legal bond with the family of origin and establishes only a limited adoptive parental relationship between the adopters and the adoptee.

A second way of differentiating between the two types of adoption is to envisage the adoption order from the perspective of its potential revocability: if it is irrevocable, then the adoption is considered full. Otherwise, if it is revocable, it will be considered simple. This is mainly the approach taken by French law.

The IRC, for its part, gives preference to using the first criterion based on the ties of legal filiation with the family of origin. Indeed, an analysis of comparative law shows the existence of systems in which two types of adoption coexist, the one severing the ties with the family of origin and the other maintaining them, but both being revocable. The criterion of revocability does not, therefore, make it possible in this case to distinguish between full and simple adoption.

National legislation only rarely mentions explicitly if adoption, as conceived in the country, falls under simple or full adoption; thus, the recognition of one type of adoption is often based upon a case-by-case interpretation of the texts in force.

Interests of simple or full adoption

Full adoption has often aroused the interest of national legislators thanks to its key role in family integration. Since the child is totally and exclusively integrated in the extended adoptive family, this type of adoption offers greater legal and humane safety. Despite criticisms and

worries about the effects of severance, sometimes considered too final, full adoption has become the rule.

Simple adoption, on the other hand, *allows for the coexistence of two parallel lines of filiation*. It establishes a tie of legal filiation between adopters and adoptees while maintaining the existence of legal ties to the family of origin. This possibility may attract those who cannot imagine a total breach between the parents of origin and the child, but it might also keep away those who would prefer to know that the child is fully integrated in a new family environment, and those who would wish to see the adopted child recognised as a biological child. These arguments would explain the growing preference for full adoption as the general rule, with the possibility of limiting simple adoption to more exceptional and complex cases.

Recognition and conversion of inter-country adoption

If the distinction between simple and full adoption is already difficult under national law, recognising these when facing intercountry adoptions is all the more complex.

In practice, it is common to convert a simple adoption of the country of origin into a full adoption in the receiving country. The conversion in itself raises no issues, since it is provided for in the 1993 Hague Convention on intercountry adoption (articles 23-27). Nonetheless, *the conditions of conversion and, sometimes, their lack of implementation, are sources of ethical problems*. In fact, the Convention requires that « where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect if the law of the receiving

State so permits and if the consents (...) have been given or are given for the purpose of such an adoption. » (article 27).

That means that the *parents or guardians* who have given their initial consent to a simple adoption *must also give it to a full adoption and its effects*. It would therefore be necessary to consult, once again, the people concerned so as to ensure that they henceforth consent to a complete and permanent severance of the ties of legal filiation between the child and the family of origin. Nonetheless, given the practical difficulties, these conditions of conversion are unfortunately only rarely complied with.

The distinction between simple and full adoption raises questions that go beyond the simple definition of the concept, and which raise important ethical issues that must be taken into account at the time of any conversion of a foreign adoption. If these conditions are such that they can only be implemented with difficulty, the conversion of simple adoptions into full adoptions should only be limited to some very specific circumstances, for example, when the parents are unable to give their consent or are unknown.

The ISS/IRC team

In the wake of numerous requests received by the ISS/IRC team, the latter has published a comparative table of simple and full adoption in most States. It is available in the chapter reserved for Central Authorities of the receiving States which financially support the ISS/IRC, Central Authorities of the States of origin, the Permanent Bureau of The Hague Conference on Private International Law, the Committee on the Rights of the Child, as well as the ISS Branches and Affiliated Bureaux: www.iss-ssi.org/Resource_Centre/Resource_Center_EN/Country_Data/country_data.html.

The ISS/IRC team would be grateful for any information that readers of the Review could provide about simple and full adoption in their country.