International Social Service
Service Social International
Servicio Social Internacional
General Secretariat • Secrétariat général • Secretariado General

International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC)

Monthly Review n° 4/2006
April 2006

EDITORIAL

POST-ADOPTION (III / 1): The search for origins

First part: Theoretical issues

This editorial is the third of a series devoted to the post-adoption period. In the previous two editorials, we presented the issue of professional support in the first moments of the adoptee's life together with his/her new family, and addressed the question of follow-up reports required by the States of origin. Given the complexity of the search for origins, it will be addressed in two parts: the first one presents the theoretical aspects of the issue whilst the last editorial will be dedicated to the implementation of this specific aspect of adoption.

Every human being may feel the need to know his/her origins in order to build his/her identity and to grow in the best possible conditions. In general, the term 'search for origins' covers the series of steps which an adopted person takes in order to revive his/her pre-adoptive past. The adopted child does not only wish to know the identity of his/her mother and father of origin, but also (and sometimes only) wishes to obtain *general information (sometimes unidentifiable)* about his/her background and socio-economic community until his/her entry into his/her adoptive family.

Although access to this information is increasingly being recognised by practitioners as *an indispensable psychological need for some children* in building their identity, the question of the existence of a right to know the identity of one's parents of origin remains open.

A right to know one's origins?

In accordance with the interpretation of The Hague Conference and of UNICEF[1], the right of a child to know his/her parents and to be cared for by them, as enshrined in article 7.1 of the Convention on the Rights of the Child (CRC), implies, on the one hand, the right to information about his/her origins, and, on the other hand, the need for authorities to preserve this information and to enable the child's access thereto. The 1993 Hague Convention on intercountry adoption (HC-1993) provides that competent authorities shall preserve the information they hold on the origins of a child and that they ensure that the child has access to this information, under appropriate guidance, "in so far as is permitted by the law of that State" (art. 30.2). In these circumstances, the HC-1993 guarantees the child's access to his/her adoption file (which includes the information stipulated in art. 16 HC-1993). However, it relies on domestic laws to regulate access to

[1] Presentations at the European Seminar on Post Adoption, Istituto degli Innocenti, Florence, January 2006.

32, Quai du Seujet - 1201 Geneva – Switzerland -Tel.: +41 22 906 77 00 – Fax: +41 22 906 77 01
Web page: www.iss-ssi.org - E-mail address: irc-cir@iss-ssi.org

information relating to the biological parents' identity.

To date, thus, the right to know one's origins is not explicitly formalised in these international conventions. Its existence is still the subject of debates fueled amongst specialists and the responses provided vary in accordance with the legal tradition of the countries.

Thus, some countries recognise a *right of absolute veto* of the parents – essentially to the mother, on the disclosure of their identity (anonymous birth or a similar system), whereas others explicitly provide the adoptee with a right to information on the identity of his/her biological parents.

Il is also noted that in a number of countries, the right of veto of blood parents is not, or no longer, recognised. In this respect, a current study of the Innocenti Research Centre, relating to the implementation of the CRC, notes that an increasing number of countries (particularly in Latin America) are inclined to develop strategies which would enable the preservation of the child's story. In practice, these States have established support and guidance services for parents in difficulty, which are available throughout the pregnancy, as well as a systematic procedure which guarantees the *discretion of the adoption in relation to third parties* (without keeping it secret from the adoptee).

The search for origins within the framework of an international adoption also raises specific questions of international private law, depending on whether the receiving States or the States of origin apply one or the other of the responses mentioned above.

To conclude on this first part, there appears to be, on the one hand, a trend in the doctrine (and the case-law, to a certain extent) to recognise a real right to know one's origins. On the other hand, however, the social, legal and family concepts of the actors involved may be so different – as is often the case in questions relating to the privacy of the persons concerned – that a single response appears to be premature at this stage. The examples presented in the next editorial will, however, provide some ideas which, according to the level of their implementation, should allow the preservation of the rights of everyone.

The ISS/IRC team.

Previous editorials are available at: http://www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_edi.html.

You can also consult
Documentation Reviews nº 3, 5 and 11,
which provide a bibliography on this subject.

32, Quai du Seujet - 1201 Geneva – Switzerland -Tel.: +41 22 906 77 00 – Fax: +41 22 906 77 01
Web page: www.iss-ssi.org - E-mail address: irc-cir@iss-ssi.org