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EDITORIAL

Adoption 'on holiday'

Stays abroad are often at the root of adoption procedures, which soon become particularly complex, since they fall outside any legal framework. Emotions often obscure the legal principles yet designed to protect children. The following is an overview of adoption on holiday…

Several cases recently submitted to the IRC have led us to address the delicate subject of spontaneously initiated adoptions, particularly during a stay abroad. With the theoretical basis offered here, we hope to open a debate that would enable us to gather the experiences and professional opinion of our readers.

Once upon a time……

The story often begins in the same way: during a stay in a developing country, a couple, or an individual, meets a child and it is "love at first sight". The adults approach the child, make contact with his/her family, are touched by their poverty, and gradually decide to adopt the child. If their project is successful, they either return to their country and request the recognition of the adoption granted abroad, or they initiate the process for the adoption of the child they have met.

This situation raises very delicate issues and, once again, makes light of the numerous misunderstandings, which still surround adoption. The fact that contact between the child and the prospective adoptive parents has occurred outside any professional framework, without any preparation either of the "prospective parents" or of the child, as well as without any professional matching, is particularly debatable and confronts social services with an unsolvable dilemma: should they endorse the adoptive relationship on the basis of the new affective ties that have been created, and whose sincerity raises no doubts? Or must the legal position be the paramount consideration in order to justify the child's return to his/her country of origin, with the attachment problems and the practical difficulties that this may involve? The answer obviously depends upon the particular case, but some principles must imperatively be respected.

Prohibition of direct adoption

According to article 29 of the 1993 Hague Convention on intercountry adoption, no contact between foreign prospective adoptive parents and the child's parents shall take place before it has been secured that the conditions required by the Convention have been complied with (adoptability, subsidiarity, suitability of the prospective adoptive parents). Although a direct adoption well and truly violates this provision, the fact that the child is already in the adoptive family obliges the services in charge of the case to consider the overall picture before making any final decision (see Editorial N° 6/2005).

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Consent

Whatever the circumstances surrounding the adoption project, it is of primary importance that the authorities in charge of such a case should have received guarantees confirming that the consent of the biological parents and even that of the child, if he is able to express it, have been clearly established. Even though this is not always easy to achieve, every effort must be made to ensure that the biological parents have clearly understood the meaning and the implications of adoption. Thus, it is not unusual to note that, even though the latter have well accepted that their child will leave for a foreign country so as to receive care and education, they often wrongly understand that he/she will no longer be their child, and that their ties with him/her will be permanently severed. This is particularly true in countries, which do not have a legal tradition of adoption, but which are familiar, on the other hand, with forms of temporary placement, within the extended family for example (see Editorial N° 7- 8/2006).

If the administrative or legal services of the country of origin concerned are not in a position to provide proof of the child's adoptability, the embassies, NGOs active in the field of child protection, or even ISS's international network may be called upon to contribute, in order to answer this question. If it should transpire that this condition has not been met, the adoption could neither be declared nor recognised, and measures for returning the child to his/her parents should be taken.

Understanding adoption

If one manages to confirm the consent, or when proof that the child's parents are unknown has been established, it will be a question of studying very carefully the surrounding circumstances of the project. Although the basic conditions for a child's placement must undoubtedly be met (accommodation, income, etc), the candidates' motives must also be paid careful attention. Adopting a child on the spur of emotion is not harmless, and without questioning the sincerity of such a burst of initiative, the absence of any preparation to adoption may often be at the root of a failure. Therefore, it will entail trying to proceed to some sort of *a posteriori* evaluation so as, on the one hand, to ensure the parents' educational abilities and, on the other hand, to provide them with tools, which will enable them to understand the meaning and implications of adoption. Once again, if this stage does not yield the necessary elements to ensure the child's welfare, it will be a matter of assessing if it is better for him/her to be entrusted to another family in the receiving country or to return him/her to his/her country of origin, subject to proper support and provision of care awaiting the child upon his/her return.

A difficult debate

These few thoughts are obviously not sufficient to deal with these very complex files. The daily practice of the ISS/IRC nonetheless illustrates that many professionals have to deal with this type of situation. It therefore seems to us that it would be useful if the experience gained by our readers could be exchanged with others so as to highlight a certain number of good practices. Thus, we would like to encourage you to send us your thoughts to our usual address (irc-cir@iss-ssi.org). We will compile them if we receive a sufficient amount of material…

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