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

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

Monthly Review N° 7/2009 July 2009

EDITORIAL

How to strike a balance between the right to respect the private and family life and the protection of the child's interest in adoption?

The adoptee's rights and those of his biological parents on the one hand, as well as those of his adoptive parents on the other can sometimes lead to conflict. It then becomes a matter of seeking solutions that respect the needs and rights of all concerned parties with those of the child as a priority.

The right to respect the private and family life and the principle of the child's best interest are protected by the majority of international and regional legal instruments. They might, however, come into conflict in their adoptive relationships particularly because of their broad concept and the absence of a clear definition. As the article on p.3 shows, the legal system of the regional courts, such as the European Court of Human Rights can be a valuable guide for striking a balance between these sometimes divergent rights. The professionals in the field also have a major role to play in finding solutions that respond to the needs of all those involved in the adoption triangle (the child, the adopters, and the biological family).

The best interest of the child and the right to respect the biological family's private and family life.

It is now widely recognised that the search for origins is often fundamental for numerous adoptees and can become a key stage in their quest for an identity. Under these conditions a refusal of contact on the part of the family of origin can be very sensitive to handle and could prove to be destructive for the adoptee. However, by virtue of the right to respect the private and family life, these families have the right to not want to be found again or even contacted. For example some mothers or families have no wish to revive the past because of the surrounding taboo or the sharp suffering that the incident can revive. There are also cases where the mother has completely hidden the abandonment from her family and cannot divulge the secret, sometimes for her own security and that of her family

In these conditions how can we strike a balance between the rights of the different people involved? It is often a matter of dealing with the situation on a case by case basis and as far as possible with recourse to a professional multidisciplinary team, capable of striking a balance for all those involved.

A response adapted to every case.

In cases where the mother's safety and /or that of her family is in danger, a renewal of contact is naturally very difficult to consider. However in many other cases, it is possible to work with the family of origin in order to gradually change their mind-set and to reach a compromise.

When there is a categorical refusal other solutions can be envisaged, like for example, sending unidentified information to the adoptee about the conditions of his birth and of his abandonment, the context of his adoption etc. In more and more frequent cases, it is the biological family who are trying

to renew contacts with the adoptee. These cases raise, once again, the question of striking a balance of rights. Here too it is certainly the wishes of the child that must be decisive (in whether or not) to make contact. To neglect a refusal can create a brutal shock for the child and must be avoided. A training course is also recommended before contact is made.

Even more sensitive cases can crop up if the adoption was distorted by irregularities and when a few years later, the biological family asserts its rights to see or even take back the child (see article p.3). Here too it is a matter of understanding to what extent such a renewal of contact, or even a return to the family of origin, might respond to the child's best interest. Yet other alternatives may be envisaged, like a gradual reestablishment of ties by sending letters, organising visits etc. But in this type of environment, the view of the adoptive family is of course crucial with regards to the possibility of undertaking whatever steps might be necessary.

The interest of the child and his right to respect for the private life of the adoptive family.

The child's interest might also turn out to be contrary to that of his adoptive family. Follow-up reports required for long periods can be considered too intrusive. The adoptive family being legally responsible for the child in just the same way as a biological family, they can be reticent to being subject to a form of control until the child reaches majority. This reticence can be understandable, even if the follow-up itself has not been called into question.

The question of follow-up reports must also take into account everyone's interests. A reasonable length of time should be acceptable for the follow-up in countries of origin (between 2 and 4 years). This compromise would make it possible to ensure the child's sound integration in his new environment and should reassure the country of origin about the child's welfare, without the task being too heavy for the adoptive family (as well as the social services responsible for the reports).

The search for a fair balance

Whatever it may be, every case must be considered in its context and shouldn't be anticipated in a general manner. The needs of the child must be assessed for what they are according to his life style and with respect for international principles.

The ISS/IRC Team
July 2009