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EDITORIAL

In children's best interests, what is the maximum age difference to adopt?

The ISS/IRC study on the age of prospective adoptive parents has been brought up to date. A sizeable number of States impose a minimum age but few of them fix a maximum age.

The study on the legal required age conditions for prospective adoptive parents prepared in 2001 by the ISS/IRC has just been brought up to date thanks to information received from European Central Authorities. It is available on the website of the ISS at the following address: www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/AgePAPs.pdf. It will be kept up to date on a regular basis, depending upon new data or possible corrections that we receive.

That being the case, the file shows that most legislation in countries of origin and receiving countries imposes a minimum age (between 18 and 35 years of age) for prospective adoptive parents. After progressively falling during the 20th century, this age limit has become a compromise between the concern to identify, as far as possible, adoptive affiliation with biological affiliation and that of guaranteeing adopter maturity and stability. Moreover, several legal systems impose a minimum age difference between the adopter and the adoptee (between 14 and 21 years), with the aim of guaranteeing an age difference similar to what one would find in a biological family.

The interests of the adoptee are also the basis for the requirement of a maximum age limit for prospective adoptive parents, stipulated - much less frequently - by certain legislation (between 40 and 60). Furthermore, certain legal systems impose a maximum age difference between the adopter and the adoptee (between 40 and 50). Of course, the actual demographic evolution strives towards delaying the age of parenthood, including the age of biological parenthood. But according to Human Sciences specialists, adoption presupposes, in fact, specific adaptive capacities and psychological flexibility, which are presumed to decrease with age. Moreover, the child's development can suffer from too old a parental model or the early death of the adopters. Finally, the motivation of those who envisage adopting late in life need to be closely scrutinised because it might stem too widely from grounds such as the need for support or the fear of loneliness or death, through which the child could be "instrumentalised".

The need for a certain legislative flexibility

As far as a maximum age to adopt is concerned, a legislative flexibility may correspond to the best interests of certain children. Adoption by older but experienced parents, particularly within a large sibling group, can, for example, have advantages for the adoptee, and even represent his/her only chance for integration within a family, particularly if he/she is a child "with special needs" (older, sick or handicapped, siblings…).

Legal exceptions to these age ceilings could in any case be envisaged for the adoption of children with special needs, relative adoptions

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and adoption of a child by his/her foster family, on condition that the adoption by this older family specifically corresponds to the best interests of the child involved.

What is more, practice shows that certain legal provisions limiting the age of adopters encourage the adoption of children with special needs. We could quote in this regard the Italian law that imposes a maximum age difference of 45 years between the adopter and the adoptee. Thus, it encourages older adopters to adopt "older" children. In this context, the Lithuanian Central Authority has referred to its successful placement, notably in Italy; of children over 8 years of age (see Bulletin 3/2005).

Evaluation in the interests of each child

However, the current problem is that of older and older prospective adoptive parents (up to the age of 60 and above) wishing to adopt very young children. Paradoxically, legislation is more specific about minimal age limits for adopters, than it is about maximum conditions. Therefore, some serious thinking about the legislation could be usefully developed on this theme. Certification by law of a maximum age difference could, thus, be of considerable value, not just as a legal but also a symbolic reminder.

More fundamentally, if the age of applicants and their age difference with the child are important factors, they must figure in the overall package of elements to be taken into consideration in assessing, case by case, the suitability of prospective adoptive parents to adopt a certain category of children and within that, of a particular child, depending upon his/her specific needs. Even if a particular prospective adoptive parent's age does fall within the legal bracket he/she could still be considered, by the pluridisciplinary team of professionals in charge of his/her assessment, unsuitable to adopt a child of the age he/she has chosen: with the help of professionals he/she will have to revert, should the occasion arise, to reconsidering the request.

Whatever age or other characteristics of the prospective adoptive parents, the assessment of their request should, in point of fact, always be made in the best interests of the child. The law and the different parties which are the pluridisciplinary teams of Central Authorities and of other social organisms in the countries of origin and receiving countries haven't they, among their main functions, to respond in priority to the children's needs and interest to draw a frame, and if necessary, limits, to the desires of the prospective adoptive parents in the assessment of their suitability and in their matching decisions?

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