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EDITORIAL

In the spirit of article 29 of THC-1993, any contact between prospective adoptive parents (PAPs) and the child's parents or carer, should be prohibited until the matching decision

This article establishes minimum standards: they can surely be improved by good practices in both receiving countries and countries of origin.

According to article 29 of *The Hague Convention of 1993 on the Protection of Children and Co-operation in respect of Intercountry Adoption* (THC-1993), no contact between foreign prospective adoptive parents (PAPs) and the child's parents or any other person who has the care of the child may take place before making sure that some requirements established in the Convention have been respected. These include, in particular, the verification (1) that the child is adoptable, (2) that no domestic measure was preferable for the child and (3) that the consents required have been obtained (art. 4. a, b, c). Furthermore, (4) it is also compulsory that the eligibility and suitability of PAPs be determined before any contact (art. 5. a).

One of the main objectives of article 29 is to guarantee the free consent of the biological parents. It is of utmost importance that the PAPs do not have the opportunity to induce this decision, in particular by payment or compensation (art. 4.c. THC-1993). Another objective is to oblige PAPs to respect THC-1993 adoption system, first allowing their eligibility and suitability to be assessed and secondly, by processing through the Central and competent Authorities of receiving countries and countries of origin (arts. 14-17), and preferably through an adoption accredited body (see Editorials 70 & 71).

Direct adoptions in the light of article 29 and of children's rights

"Direct adoptions" are the ones which are directly arranged between the child's birth parents or carers and PAPs, without the intervention of a professional third party in the matching process. According to the Explanatory Report to THC-1993 (n° 498) "article 29 sanctions, as a rule, the prohibition of contacts in general terms, therefore including not only "direct, unsupervised" contacts, but also "indirect" or "supervised" contacts (supposedly: visits, postal mail, phone calls, emailing).

Direct adoptions violate therefore article 29 if they are organised before the four above described requirements are assessed by a THC-1993 authority or body.

Furthermore, even if the arrangement between the PAPs and the child's parents or carer takes place after the legal assessment of the THC-1993 requirements, direct adoptions can be considered as *non compatible with the spirit of THC-1993,* which supposes the intervention of

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authorities and professional bodies throughout the whole adoption process.

Moreover, "direct" adoption can be considered as *counter to the United Nations Convention on the Rights of the Child (CRC)* since it makes the child an object of agreement between individuals - living furthermore frequently in unbalanced economical and psychosocial situations - whereas the CRC considers the child to be the subject of a right to professional protection measures under the States' responsability (arts. 20-21 CRC).

Direct adoption is also frequently a source of abuse, of trafficking of children and of serious violations of the rights of the child, and is at risk, as such, to fall *under the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography* (see Monthly Reviews 49, 54, 63 and 5/2005).

Some psychologists also insist on the long-term dangers for the development both of the child and of the adoption relationship, of allowing the adoptive parents to "choose" the child.

All these *risks can be avoided by the intervention of an adoption accredited body* (AAB) which supervises and guides the adoption process. Such a body should be composed of a multidisciplinary team (social assistants, psychologists, doctors, etc.) capable to follow the adoption process in a comprehensive manner (for a general comment on the role and the necessity of AABs, see Editorials of Monthly Reviews 70 & 71).

A minimum standard

In the same way that THC-1993 taken as a whole, article 29 establishes *a minimum guarantee* that must always be respected. However, in its letter, the prohibition contained in this provision is *limited in time,* as contacts are supposedly not prohibited after all the mentioned requirements of article 4 and 5 are met. The principle of the best interest of the child suggests however that *a broader interpretation, more in line with the spirit of article 29 and with the general structure of THC-1993, be promoted* by the relevant authorities in all countries, which is already the case in a lot of them.

A coherent interpretation with the whole THC-1993

The authorities of receiving countries and of countries of origin should guarantee that PAPs go through the Central Authorities of both concerned countries, in order that professional and interdisciplinary teams (based on psychological, medical, social and legal reports concerning the child and the PAPs) select the most adequate family for each child (matching) and then submit this selection to the PAPs for their approval. This interpretation is the one most in conformity with the structure described by articles 14 to 17 of THC-1993 and the only one which guarantees that the objectives of article 29 be really reached.

So no contact between PAPs and the child's parents or carer should then logically take place before the matching is carried out. Any pre-identification or selection of the child by PAPs should in principle be avoided. In order not to influence the matching process and not to harm unduly the child by a first bonding with people who could afterwards not be matched with him/her, it is recommended that the first travel of the PAPs to the country of origin and their first contact with the child should take place only after the decision of matching and the approval of it by the PAPs is done (with all reserve of the professional verification of the child's attachment during the probatory period).

Exceptions to the article 29 prohibition

Article 29 contains two exceptions to the prohibition.

(1) Contacts are not forbidden in case of *"adoptions within a family"* (not further defined by THC-1993 nor the Explanatory Report: see n° 502). In these situations PAPs and birth parents usually already know each other (see Editorial 3/2005).

(2) In addition, *the competent authority of the State of origin may also establish conditions authorising the contact.* The interpretation of this last exception is also an issue of discussion. According to the Explanatory Report to THC-1993 (n° 503), the idea of this exception "is to grant flexibility and permit the setting of those conditions by the State of origin, either in general terms, by the legislator, or on a case-by-case basis, i.e. by the administrative or judicial authority, taking into account the particularities of each situation". *In our sense, the case by case basis for possible exceptions to article 29 should be preferred*. Indeed if the exception is implemented so broadly that it becomes a general rule, article 29 risks loosing its meaning.

In order to be effectively implemented and monitored, *the exceptions in individual cases should, moreover, be decided in the framework of a close cooperation between Central Authorities of countries of origin and receiving*

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countries. This special authorization of contact should not permit a matching done by the PAPs and the child's parents or carer: even if the child is already known by the PAPs, the adequacy of the PAPs' project with the child's best interest has to be checked by a professional team, after the assessment of every requirement, among others the subsidiarity principle.

The non discrimination principle between adoptions based or non-based on THC-1993

The non discrimination principle which figures in the CRC (art. 2) encourages all countries to offer, as far as possible, the same level of guarantees to non Hague as to Hague adopted children. A recommendation (n° 56) of the last Special Commission of The Hague Conference on the Practical Operation of THC-1993 concluded in the same sense (see Editorial 2/2005).

As article 29 is one key guarantee of the respect of children's rights promoted by THC-1993, States parties, either receiving or of origin, should act in a way compatible with article 29 both in Hague and in non Hague adoptions.

Article 29 of THC-1993 is certainly justified by fear of abuses and children's rights violations. But it is also based on the advantages, for all the concerned parties (children and families), that the intervention of a professional third party represents. Although always privileging the respect of a case by case approach of the situation of each child, the implementation of article 29 *until matching* can thus be considered, in the vast majority of non relative inter-country adoptions, as the most logical interpretation and the practice the most in conformity with the best interest of the children.

All the previous Editorials can be found at www.iss-ssi.org/Resource_Centre/Tronc_DI/editoriatronc_di.html. More about THC-1993 and its Explanatory Report: http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=69.

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