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### EDITORIAL

#### **Adoption and discrimination: Can applicants express all their wishes?**

*The issue of discrimination in adoption matters has been the subject of a significant judgment issued by the Italian High Court: the decision recalls that the matching is not on the basis of the selection of a child by the adoption applicants.*

**W**hat is the scope of the adoption applicants' choice in the adoption process? To what extent can (or must) their preferences, expressed during the assessment procedure, be taken into account when the matching takes place? When do they cease to be an argument in favour of the child's best interests and start to become discriminatory, when they are more or less an indication of the applicants' own limitations regarding their capacities to care for a child? The discrimination issue in adoption matters from the perspective of the adoption applicants has long been addressed (in particular, in relation to singles and homosexuals). This subject is now dealt with from a different point of view in this article, giving rise to interesting as well as difficult questions.

#### **To express a racial preference is discriminatory**

The Italian High Court questioned the suitability certificate granted to a Sicilian couple as their wishes were considered racist. The organisation *Amici dei Bambini* lodged an appeal against the competent Children's Court decision authorising a couple to adopt despite having clearly mentioned that they were not willing to care for *'children with dark skin or different from*

*those who are typically European (...)*'. According to the organisation, there was *'obvious racial discrimination'*.

#### **The adopters' wishes and the matching**

This decision is a renewed opportunity to recall the boundaries of the adoption applicants' freedom of choice. Their wishes may run counter to the fundamental principles of the matching process, which is a key stage in the adoption procedure. It is unanimously accepted that professional matching centres on reports of both the child and the adoption applicants. A final decision responding to the child's needs rather than on the applicant's selection of a child is then made. This simple principle is, however, complex to implement given that even though one must, of course, build the opinion on the needs and capacity of the child, it is also necessary that the matching sufficiently meets the parents' wishes, abilities and limitations.

In fact, the final decision rests on the adoption applicants, based on the child's report, which includes, among others, information on his physical appearance, background, ethnic group, etc. Furthermore, in some countries, the adoption applicants have the possibility to explicitly state their

wishes with regards to the child's ethnic group or skin colour.

### **The fundamental role of the evaluator**

One may reasonably ask whether it was not too harsh to condemn adoption applicants, who clearly expressed their expectations, with the intention – one may imagine – of ensuring a better integration of their child in the receiving country?

According to the ISS/IRC, the professional in charge of the matching has a fundamental role in deciding the boundaries of the wishes expressed by the adoption applicants. In collaboration with the applicants, the professional will decide the profile of the child they are suitable to care for. Thus, it is essential that the professional questions the applicants on their motives for not wishing to care for a child with a different physical appearance in order to determine whether this is appropriate in their specific situation. The adoption applicants should be able to justify their choice from the perspective of the child's best interests. In addition, the professional will have to consider such justifications in light of the applicants' environment, living surroundings, inherent qualities, etc.

However, it may occur that the professional himself expresses reservations in relation to the matching when the applicants' and the child's backgrounds are different. In Great Britain, for example, the practice of some adoption professionals, seeking the 'perfect match' (i.e. match the highest number of parents and children with close, or even similar, backgrounds), nowadays clashes with

the political willingness of the Department for Children. The Department would like to promote 'interracial' adoptions, with a view of reducing the large number of children with backgrounds that are different to those of adoption applicants and waiting to be adopted.<sup>1</sup>

### **Where does discrimination start?**

The decision of the Italian High Court has prompted the question regarding the boundaries between the wishes expressed by adoption applicants and discrimination: where does discrimination – in its unanimously-accepted meaning – begin (see, *inter alia*, art. 14 ECHR)? For example, do we need to consider that choosing the child's country of origin already constitutes discrimination? Is a preference for a boy rather than a girl discriminatory? The reply obviously depends on each individual situation and the applicants' deeper motives. Factors such as the preparation and assessment stages will have to provide the means to determine whether there is a genuine concern for the child's integration into his new environment, or whether it is a way of concealing racial prejudice. Undoubtedly, this is the message that the Italian judges wished to recall, beyond the obvious but necessary condemnation of a racist position.

<sup>1</sup><http://www.guardian.co.uk/society/2010/nov/02/inter-racial-adoption-children-social-workers>.

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