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EDITORIAL

**The « paradox of time » in the adoption process**

*One of the difficulties of the adoption process consists of striking a balance between two apparently contradictory aims: on the one hand, the need to take the time to identify the best permanent solution for the child, and on the other hand, the child's need not to stay too long in the uncertainty of a provisional solution (institution or foster family).*

**T**ime in the adoption process, especially in checking the child's adoptability, plays a crucial role. None of the parties involved in adoption can be indifferent to it: the child, the parents of origin and the adoptive parents.

Several situations can be distinguished. Certain parents, despite all the support given by the State, are unable to provide care for their child and decide to put him/her up for adoption. In other cases, where adoption is considered the most suitable permanency planning for the child (see Editorial 7/2005), when parental consent is not available, (abandonment, neglect, etc.), it is a public authority that has to formalise the situation with a view to declaring the child's adoptability. The situation then varies depending upon whether or not an adoptive family from within the country can be found.

**Situations where the parents consent to adoption**

In cases where the parents of origin envisage putting their child up for adoption, they and the child must receive *psycho-social support* so as to evaluate the chances of preserving and strengthening their ties or, if necessary, of informing them of the consequences of adoption, and preparing them for separation with dignity. This support should begin even before the birth and continue during the adoption proceedings (even afterwards on a voluntary basis ).

The support is essential for guaranteeing the freedom and the enlightened nature of the decision. It presupposes the existence of a *legal time frame for reflection before consent is given*. In some countries there is, as an alternative or an add-on, a *time frame for mothers and fathers of origin to retract their consent*. In numerous countries' legislation, the time for reflection after the birth varies between 30 days and 3 months. The period for retracting consent is set at about one or two months. The existence of a time frame for reflection is important given the gravity of the adoption decision; in particular, it spares parents having to give their consent in the upheaval of the birth. On the other hand, the utility of an additional time frame of reflection for retraction of the consent given can be discussed, increasing sometimes the insecurity of the child's status.

Certain mothers of origin change their mind in the course of these time frames. The majority of them, on the contrary, especially when they have been supported during their pregnancy, wish to consent rapidly and definitively to the adoption of their child. They are largely motivated by their will to see the child benefit as soon as possible from the psychological and legal security of placement in an adoptive family, and their wish to start the « mourning » process for their child.

**Situations where there is no consent**

### **from the parents of origin**

In the cases of abandonment of a child with no indication of his/her identity or other legal formalities, *a period is needed during which the Authorities have to take active measures in search of the family of origin.* If the latter is found, the above-mentioned psycho-social support gets under way.

In other cases where adoption is considered the most suitable solution for a child whose parents do not consent, a legal or administrative Authority must decide in their stead since they have disappeared or fail to provide adequate care of their child (children left in an institution and very rarely visited ...) In the latter case, *a legal period is necessary to work with the parents and give them a chance to renew their contacts and/or improve their care of the child,* before pronouncing, eventually, the forced adoptability of the child. This time frame can vary from several months to one or even two years.

### **Time frame linked to the subsidiarity of inter-country adoption**

In accordance with the international conventions (see especially Editorials 2/2005 and 3/2005), inter-country adoption is subsidiary to domestic adoption. This principle presupposes too that *a time frame be respected in order to actively search, in the country of origin, for an adoptive family* that corresponds to the needs of the child. This period of time varies in practice from a few months to a year.

### **The consequences of the passage of time for the child**

On the other hand, we must remember that *the child's perception of time* (for whom a month can seem like an eternity...) *is different to that of an adult, and that its passing away brings about important consequences in terms of the child's development.*

During the different time frames already mentioned, the child is in principle placed in an institution or a foster family; besides the insecurity, he/she suffers, in numerous countries, the lack of stimuli that can significantly harm his/her development. *The length of the legal time frames must thus be discussed taking into consideration the best interest of the child. The physical and emotional living conditions of children in these temporary circumstances must, therefore, be followed upon by professionals,*

*and their duration cut back to what is strictly necessary.*

In certain countries, when the parents have given a non definitive consent (during the time frame for retracting consent), or under other circumstances where the child's adoptability is uncertain, it may turn out that the child is placed without hesitation in the home of the prospective adoptive parents in order to provide him/her as soon as possible with the benefits of a family life. The precariousness of this placement at this point in time is great since the child already starts to make bonds with his/her new family, while the decision concerning his/her adoptability is not yet final. Except for the long and complicated procedure of forced adoptability in the course of which the child may well begin to wilt away in an institution, such a solution, contrary to THC-1993 (arts. 16, 17 and 29) is, therefore, rather to be avoided.

### **« A reasonable time frame » versus rapidity**

Article 35 of THC-1993 calls upon « the competent authorities of the Contracting States to act expeditiously in the process of adoption ». According to the Explanatory Report of THC-1993 (n° 546), « the formulation of article 35 was judged to be 'too general and impersonal'. It was also observed that the file had to be examined carefully before a decision on the adoption, was taken and to accelerate the proceedings could be against the best interests of the child ».

We, thus, believe that the notion of « a reasonable period of time » would be more appropriate to take into account than that of « rapidity » as a necessary concern about the passage of time in a professional adoption procedure focussed on the interests of the child.

### **Conclusion**

The active and attentive management of time by all professional protagonists contributes, therefore, at the same time to an early supervision of the merits of the adoption envisaged, to the accompaniment of the children and the families, to the respect of the priority of assisting the family of origin and to the subsidiarity of inter-country adoption, and finally to the legal security of the pre-adoption placement.

It certainly entails *avoiding the unnecessary suffering of children in provisional situations,* particularly through *a systematic review of the circumstances of children with family difficulties* (see Editorial 7/2005), so that a decision may be

taken at the right moment. But, at the same time, it entails *refusing any false alarms* so as to leave each actor in adoption the chance to evolve personally and to guarantee the professionalism of the adoption process.

Finally, each professional will devote himself/herself tirelessly to the search for the balance between of a reasonable period of time that makes it possible to safeguard the rights of all and the professionalism of the procedure.

*The ISS/IRC Team*

For more concerning the applications extracted from national practices, see the section on «Rights of the child: Chile», in this Bulletin; in Bulletin 65: «Chile»; and in Bulletin 68-69: «The Philippines». Explanatory Report of THC-1993: <http://hcch.e-vision.nl/upload/exp133e.pdf>. The earlier Editorials are available on the website: [www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/editoriatronc\\_di.html](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/editoriatronc_di.html)