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EDITORIAL

ADOPTION AND HOMOSEXUALITY: Observations and considerations

Following the recent judgment of the European Court of Human Rights, which declared the refusal to grant a certificate of eligibility, based – even partially – on the applicant’s sexual orientation to be discriminatory, this editorial reviews the very thorny issue of adoption by homosexuals.

The judgment of the European Court of Human Rights of 22 January of this year (see article on this issue in *Procedure*, p. 7) intensively reopens the debate on the issue of adoption and homosexuality. Indeed, given that the Court's jurisdiction extends to the 47 States, which have ratified the European Convention on Human Rights, this ruling will certainly create jurisprudence well beyond France. Thus, the legislation of countries, which formally stipulate that adoption is prohibited for homosexual applicants, finds itself in opposition to the decision of the Court, and could be challenged by those who would be its victims.

This first consequence already threatens to raise many debates, particularly in countries with a strong conservative tradition, whether it entails countries of origin or receiving countries.

Single homosexual applicants

The issue of adoption and homosexuality is a delicate one to address and raises numerous passions. In order to discuss it, it is important to, first, clearly define its boundaries.

For several years, numerous receiving countries have chosen to evade the problem by considering homosexual adoption applicants as single persons. Authorisations have been granted to applicants hiding their private life or by services responsible for their assessment, and which turned a blind eye on this reality, considering that, individually, the applicants had the skills required to care for a child.

Even though the educational skills of the assessed applicants should not be questioned, a

certain degree of uneasiness still persists. The assessment of an applicant must be a transparent process, which commits the responsibility of social services and the State, which they represent. If one expects a maximum of information and guarantees on the child from countries of origin, reciprocity also requires that the social assessments of the applicants be comprehensive and compliant with the reality of the situation.

On this point, the judgment of the European Court risks leading towards systematically hiding the sexual orientation of single applicants (or those described as such), with a risk of considering an unfavourable decision as discriminatory.

Homosexual couples

The development of Civil Law has subsequently enabled homosexual couples to formalise their relationship, either by marriage or through a similar institution (e.g. PACS in France). As the couple becomes 'legitimate', the issue of joint adoption arises.

Currently Germany, Iceland, the Netherlands, Denmark, the United Kingdom, Norway, Sweden, Belgium, Spain, Quebec, and some U.S. States authorise adoptions by homosexual couples. However, conditions vary from one country to another, and some of them, such as the Netherlands, only grant this possibility in domestic adoption.

Domestic or intercountry adoption?

Authorising adoption by same-sex couples at domestic level is one issue, considering it for intercountry adoption is another one. Firstly, the possibility of adopting the child of one's spouse certainly constitutes the recognition of a fact, and a welcomed protection for the child concerned. When a relationship is stable and the child develops happily with both his mothers or both his fathers, it is normal that the one who is not the biological parent may benefit from a minimum set of rights, in order for him to fulfil his role in daily life (the child's schooling, hospitalisation of the spouse, etc). Indeed, there exist numerous situations in which children are brought up by a same-sex couple (e.g. the partner's child, artificial insemination).

As far as wider domestic adoption is concerned, the waiting lists of national citizens make it extremely difficult for same-sex couples to access adoptable children.

On the other hand, the entry of homosexual couples into the intercountry adoption 'market' is already considered 'an empty box' by some actors in the countries in which it is authorised. Indeed, one must emphasise that countries of origin also have their say in this debate (upon the requirements that they are duly informed of the situation of the adoption applicant). Many of them set very strict conditions as to the suitability of prospective adoptive parents to adopt – whether, for example, it is in relation to their age or to the presence of biological children. Today, no country of origin, with the exception of South Africa upon some requirements, accepts domestic and intercountry adoptions by homosexual couples. Thus, it follows that, even though a receiving country may authorise homosexual couples to adopt abroad, the latter may find themselves confronted with a quasi impossibility to proceed with the process, due to a lack of countries open to their profile.

And the child?

The rare studies carried out to date only offer partial observations, which, in addition, must be handled with care, given that assumptions – favourable or not – may considerably influence the results. 'In any case, these studies eventually tend to indicate that children with 'homoparents' do not suffer from major problems more than others. However, we still do not have information about the adults they will become, and, as stated by the Psychoanalyst Claude

Halmos, on their potential suffering 'in being a man or a woman'. It may therefore be necessary to bring ourselves, during still a number of years, to not be able to rely on further 'evidence' on which to build a conviction than this'.

The Courts, for their part, are more than reluctant, when arises the reality of couple life with someone of the same sex. In this context, French jurisprudence had refused the possibility to adopt to a homosexual man, believing that the difference of sexes was necessary for the healthy development of a child. The European Court of Human Rights had justified this very same refusal on the grounds that there were uncertainties as to the development of a child, who would thus be deprived of the double maternal and paternal reference, but rejected arguments relating to a violation of articles 14 (non-discrimination) and 8 ECHR (the right to respect for private and family life). The latest ruling of the Court therefore constitutes a considerable change in its appreciation of adoption and homosexuality. However, it is regrettable that this exclusively legal judgment (based solely upon the question of discrimination), has not been based more extensively on the child. This debate remains essentially focused on Western social development, and only offers limited space to the child himself (except in cases of adoption involving the spouse's child, as mentioned above). However, simple questions remain: does adoption by a same-sex couple not constitute an additional source of differentiation for the child, who must already assume his status as adoptee, his difference in colour, his integration, etc? Until what age can a child 'accept' a family model without a father or a mother? Are our societies genuinely ready to fully accept these family models and not to stigmatise the children?

Social and family evolution is a slow and complex process: even though homosexual communities are beginning to suffer less from the multiple forms of discrimination, which have affected them for a long time, the implications raised by the formalisation of their relationship and the adoptive filiation arising from it, tend to suggest that some more time will be necessary to integrate this new family model.

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