



Published by the International
Reference Center for the Rights of
Children Deprived of their Family

Monthly Review

N° 171 – APRIL 2013

EDITORIAL

The waiting: A recurrent issue in adoption, which is keen on solutions

As a major challenge in adoption, the ISS/IRC addresses the recurrent issue of the waiting period. Even though the latter is, in many respects, a synonym of frustration, doubts, disappointments, it also represents an opportunity for progression towards this important project, which is the building of a family.

Waiting is at the heart of adoption, the waiting of a child requiring a family on the one hand, the waiting among persons wishing to start a family on the other. An often long and difficult waiting period on both sides, sometimes made more complex by factors out of one's control, such as the lack of reliable information on the procedures and real times, political crises or natural disasters. How is it possible to help the persons involved in an adoption to comprehend the latter and to better live it? Given that, even though it raises frustrations, it also is an opportunity to allow each of the parties to grow their adoption project, by offering a greater chance of success to this new family story.

To better manage the waiting period thanks to a realistic speech

There is no doubt that one of the means to better live the waiting linked to the adoption is the expression of a realistic speech with the involved actors, from the beginning of the process. Thus, the authorities in charge of informing and preparing the prospective adoptive parents (PAPs) have a duty to present clearly the current situation of intercountry adoption, which generates increasingly longer waiting periods and increasingly more unpredictable projects. In particular, it is worth informing them on the extension of waiting times on the countries of origin's side (approximately over six years in China, three to four years in Thailand, two years in South Korea, etc) and to explain to them the reasons for these additional times. Indeed, the implementation of the principle of subsidiarity requires several steps in the country of origin, such as the search for the biological family, the obtaining of the consent to the adoption, the review of domestic applications, etc. Thus, it is essential for prospective adoptive parents to understand that, although this waiting period is difficult, it is also a guarantee that all possible child protection measures have been taken. This – collective and individual – awareness-raising is essential in preventing unnecessary waiting and frustration, which often result in inadequate practices and pressure on countries of origin. At a time when Europe debates the adoption by same-sex couples (see pp. 3 and 4), is this not the right time to remember, for example, that the probabilities for applications

TABLE OF CONTENTS

EDITORIAL

The waiting: A recurrent issue in adoption, which is keen on solutions **1**

ACTORS

Brazil and Ecuador **2**

BRIEF NEWS

Vietnam: Ongoing progress in intercountry adoption reforms but more time and space still needed **2**

Presentation of the Guidelines / Handbook to the African Committee on the Rights and Welfare of the Child in Ethiopia **3**

LEGISLATION

Europe: The ECtHR rules that it is discriminatory for same-sex couples in Austria not to have access to second-parent adoption **3**

Europe- Canada: The French Senate publishes a Comparative Law study on same-sex marriage and homoparenthood **4**

Russia: New legislation introduced requiring the compulsory training of prospective adoptive parents **5**

READERS' FORUM

Management of the prospective adoptive parents' waiting: The experience of a Belgian accredited adoption body **6**

FORTHCOMING CONFERENCES AND TRAININGS

Canada, France and United Kingdom **8**



32 Quai du Seujet ■ 1201 Geneva ■ Switzerland
irc-cir@iss-ssi.org ■ www.iss-ssi.org

by same-sex couples to succeed at international level are almost non-existent (see Monthly Review N° 02/2008)? The media are a key partner in overcoming this challenge. As children's rights advocates, it is our – civil society and governments – duty to inform them of this reality and to encourage them to disseminate it, as is already the case through some reports and press articles.

From an endured waiting to a constructive waiting

In parallel to this realistic speech, quality support for PAPs and the child are essential to better experience the waiting and to transform it into a constructive stage. It is about the latter being able to no longer position themselves in the waiting, but to become available for the child, who will need them. Thus, positive experiences may be seen, such as the waiting workshops implemented by the Belgian AAB *A la croisée des chemins* (see p. 6), which are focused on the needs of the children and are adapted to the requirements of countries of origin in constant change, as reflected in the recent Law of the Russian Federation on the preparation of PAPs (see p. 5). Thanks to the creation of a space in which PAPs may raise their emotions, accept their helplessness when faced with numerous intercountry adoption factors that are out of their control and let go, a door opens for these adoption projects to progress. Whatever the end result, the waiting represents an opportunity to prepare oneself for it. Should the project succeed, the better the care and support provided to PAPs during their waiting, the better the conditions upon the child's arrival at his new home.

The issue of the waiting remains therefore open and keen on new responses in accordance with the permanent developments of the child's needs and the conditions set by countries of origin. Whilst the ISS/IRC addressed, in the present editorial, the waiting from the prospective adoptive parents' perspective, it will address the children's waiting in a forthcoming Monthly Review. This issue, which had already been addressed from a psychological perspective by Fanny Cohen Herlem in our Monthly Review of February 2010, will now be examined through the experience of a country of origin.

The ISS/IRC team
April 2013

ACTORS

- **Brazil:** This country has updated the contact details of relevant persons within its Central Authority.
- **Ecuador:** This country has updated the contact details of its Central Authority.

Source: Hague Conference on Private International Law,
http://www.hcch.net/index_en.php?act=conventions.authorities&cid=69.

BRIEF NEWS

Vietnam: Ongoing progress in intercountry adoption reforms but more time and space still needed

During a technical meeting with stakeholders on 29 March 2013, ISS presented its qualitative report on root causes of abandonment and relinquishment in Vietnam – to be finalised middle of the year. ISS took the opportunity to meet with the Central Adoption Authority who explained its multiple efforts to implement the HC-1993, such as training of judiciary, social affairs and institution staff on the operations of adoption laws as well as the development of a guide for adoption actors on the entire adoption process (e.g. matching, humanitarian aid and the role of accredited bodies, etc). ISS commends such efforts, noting however, that without the finalisation of this guide as well as training on its contents, practices continue to be varied lacking uniformity among the provinces. In addition, more support is required to ensure the principle of subsidiarity is respected, so that the national adoption system is strengthened with the preparation courses for domestic PAPs as well as promotion of family reintegration programmes. **In this context, ISS encourages receiving countries to give Vietnam the "time and space" to fully establish the structures in needs to better guarantee the rights of the child.**

Source : Briefing notes from an ISS meeting with the Central Adoption Authority in Vietnam.



Presentation of the Guidelines/Handbook to the African Committee on the Rights and Welfare of the Child (ACERWC) in Addis Ababa, Ethiopia

ISS co-presented with Save the Children and SOS Children's Villages the Guidelines for the Alternative Care of Children as well as the implementation handbook, *Moving Forward*, at the ACERWC's 21st session in April. It was an excellent opportunity to raise the awareness of these African experts, many being acquainted with the text for the first time, with the hope that the ACERWC would start systematically including questions/recommendations on the Guidelines' issues (e.g. prevention of separation and focus on a range of quality alternative care options) when examining States. Being embedded in their mandate under the African Charter on the Rights and Welfare of the Child and anchored in the UNCRC, the ACERWC was very open to these recommendations, already starting with a reference to the Guidelines during this session. To follow up, a proposal is also being discussed about having a one-day session on the Guidelines at their next session in November. Moreover advocates on the ground are lobbying for the next African Day of the Child (16 June 2014) to be dedicated to family strengthening and preventing separation. **ISS looks forward to working more closely with the ACERWC and to providing any support that is possible.**

Source : ISS internal briefing notes, April 2013.

LEGISLATION

Europe: The ECtHR rules that it is discriminatory for same-sex couples in Austria not to have access to second-parent adoption

The European Court of Human Rights (ECtHR) has condemned Austria's recent ruling on second-parent adoption for same-sex couples.

A complaint was lodged with the ECtHR by two women in a stable same-sex relationship regarding an Austrian Court's refusal to grant one of the partners the right to adopt the son of the other partner without severing the mother's legal ties with the child.

On 19 February 2013, the ECtHR handed down its judgement in the case of *X and others v Austria*. The grounds of the complaint were that the Austrian Government had not provided convincing reasons for same-sex couples to be excluded from second parent adoption, which is open to unmarried heterosexual couples, on grounds of preservation of the traditional family or protection of the child's interests. The ECtHR ruled that the distinctions made by Austrian Law were discriminatory and violated Article 14 (prohibition of discrimination) in conjunction with Article 8 (the right to respect private and family life) of the European Convention on Human Rights (ECHR).

The Court stated that the ECHR did not oblige States to extend second parent adoption to unmarried different-sex couples; however, this is permitted by

Austrian legislation. The Court had to rule whether the refusal to grant this right to unmarried same-sex couples was a legitimate aim.

The Court concluded that there had been a breach of Article 14 in conjunction with Article 8 of the ECHR as the Austrian authorities relied on the legal aspects of the proposed adoption (under Austrian law, a same-sex couple cannot carry out a second-parent adoption) and did not fully consider whether the adoption was in the best interest of the child, as would have been the situation if the request had been presented by an unmarried heterosexual couple.

The Court based its decision on the fact that the difference in treatment suffered by those interested was based on the sexual orientation of the participants.

This ruling follows other judgements of the Court in similar matters. Notably, on 15 March 2012 (*Gas and Dubois v France*), the Court ruled that there was no breach, as under French Law second-parent adoption was prohibited to all unmarried couples irrespective



of the sexual orientation of the couple. In another ruling by the ECtHR on 22 January 2008 (*E.B. v. France*), it was considered discriminatory to reject the request of a single homosexual woman applying to adopt a child because of the lack of a father figure, as this was not considered an issue for single women

(see Monthly Review N° 02/2008). **Whatever the position adopted by the Court, it is essential that in each of its decisions, the Court looks beyond the legal arguments, and that the issue of what is best for the child and his relationship with his prospective family be placed at the centre of deliberations.**

Sources:

- Judgment *X and others v Austria*, 19 February 2013, <http://hudoc.echr.coe.int/web/services/content/pdf/001-116735?TID=oeotoanroe>;
- Judgment *Gas and Dubois v France*, 15 March 2012, <http://hudoc.echr.coe.int/web/services/content/pdf/001-109572?TID=cbutpnvnc>.

Europe- Canada: The French Senate publishes a Comparative Law study on same-sex marriage and homoparenthood

Published in November 2012, this study of the French Senate examines the laws of 10 States relating to same-sex marriage and addresses, among others, their provisions on the care of children, in particular through adoption.

The study of the French Senate analyses the laws of nine European States (Belgium, Denmark, Germany, Italy, The Netherlands, Portugal, Spain, Sweden and the United Kingdom) and one Northern American State, Canada (Quebec). The reason for excluding France from this study was that same-sex marriage was not possible when drafting the study and that adoption by unmarried couples was out of the question. It is worth mentioning that the study addresses the issues of adoption, resort to medically-assisted procreation (MAP) and surrogacy, at national level only.

Legal recognition of a couple made of two same-sex persons

The legislations of the 10 countries under consideration may be divided into two categories: seven countries recognise same-sex marriage as well as an alternative to the latter (The Netherlands in 2001, Belgium in 2003, Spain and Quebec in 2005, Sweden in 2009, Portugal in 2010 and Denmark in 2012). With regards to the other three, this type of marriage does not exist. Indeed, England and Germany only recognise some form of partnership,

and in Italy, there is neither marriage nor an alternative to marriage for same-sex couples.

Adoption, MAP and surrogacy

Among the seven States, which recognise the validity of same-sex marriage, six have opened adoption to all married couples (Belgium, Denmark, Spain and Quebec, as well as The Netherlands and Sweden under some circumstances); Portugal, on the other hand, rejects any form of adoption to same-sex spouses. These same six countries authorise MAP for couples made up of women. With regards to England, although it does not authorise same-sex marriage, it nonetheless allows couples of men and couples of women to resort to MAP. This study also addresses surrogacy, which, according to the study, is only allowed in England, The Netherlands and Belgium. It is notably sanctioned criminally in England and in The Netherlands if it is undertaken for payment.

The ISS/IRC supports the reading of this situation report, which provides tables of comparison between countries as well as position papers per country.

Source:

Senate, *Législation comparée - Mariage des personnes de même sexe et homoparentalite*, November 2012, available at: <http://www.senat.fr/lc/lc229/lc229.pdf>.



Russia: New legislation introduced requiring the compulsory training of prospective adoptive parents

On 1 September 2012, a new Federal Law N° 351/FZ¹ was introduced requiring prospective adoptive parents (PAPs) applying to adopt Russian children to undertake psychological and legal training in accordance with the requirements set by the Russian authorities.

From the 1 September, PAPs who have applied to the Russian courts to adopt a child must have satisfactorily completed a training programme, which meets the requirements set by the Russian authorities. This requirement does not apply to families, who have already adopted a child or stepchild. While a number of other countries also require this type of training, the Russian authorities have gone further by establishing their own criteria and offering PAPs in other countries the opportunity to be trained in Russia.

Training contents

Order N° 1681² – introduced by the Russian Ministry of Education and Sciences on 23 May 2011 – established the outline of the training programme for PAPs or guardians caring for children without parental care within their family in the context of various situations foreseen under the Russian Federation's family legislation. The programme covers 13 subjects, such as the development of children without parental care, the management of « difficult » behaviour in children, sex education of a child in care, and the fundamentals of the Russian legislation relating to the children in need of care, etc.

The Order clearly states in detail what is necessary for the applicants to successfully complete the training programme. At the completion of the course, the applicants must demonstrate, amongst other requirements, a clear understanding of the Russian child protection system, the educational requirements for adopters, as well as the causes, signs and consequences of emotional deprivation. The final test

for the PAPs is an interview, which they must pass in order to receive their completion certificate.

Training modules

The duration of the training required by the Russian authorities varies between 30 and 80 hours depending on the different regions of Russia³. According to the French Central Authority⁴, in the case of individual adoptions, PAPs have the choice of paying for programmes run by private organisations or attending the training in Russia with the help of an accredited translator. The second option is free. In the case of adoptions carried out through an authorised accredited adoption body in Russia, it is left to the organisation to complete the training that is already provided to the PAPs by their own Central Authority, in order to complete the entire programme as established by the regional Russian authorities.

The ISS/IRC welcomes the implementation of these new measures by the Russian Federation, as they strengthen the protection of children without family. The programme not only allows for the development and strengthening of the skills needed by families wishing to care for children but it also acts on a preventive level. Assuring adequate training for PAPs is indeed an effective way to prevent failed adoptions.

Sources:

¹ See: http://www.diplomatie.gouv.fr/fr/IMG/pdf/loi_federale_n_351-FZ_du_30_novembre_2011_cle45fc3b.pdf.

² See:

http://www.diplomatie.gouv.fr/fr/IMG/pdf/ARRETE_N_1681_DU_23_MAI_2011_formation_des_familles_cle4c248d.pdf.

³ Length of training depending on the region:

http://www.diplomatie.gouv.fr/fr/IMG/pdf/_La_duree_de_la_formation__cle4856e3.pdf.

⁴ Service de l'Adoption Internationale: <http://www.diplomatie.gouv.fr/fr/adoption-internationale-2605/actualites-21551/les-brevés/2012-21561/article/communique-adoption-en-federation-101534>.



READERS' FORUM

Management of the prospective adoptive parents' waiting: The experience of a Belgian accredited adoption body

The Director of the Belgian AAB A la croisée des chemins shares her lengthy and rich experience in the support provided to prospective adoptive parents during the waiting period.

1. What are the objectives of your service in the support provided to prospective adoptive parents (PAPs) during the waiting period?

The waiting times are increasingly becoming longer, and it is therefore more necessary than ever to offer prospective adoptive parents a friendly meeting-reflection space where they may raise their questions, worries, hopes and fears. This space may either be individual, and therefore upon request, or organised more systematically in groups. These meetings enable parents to feed their waiting with new information, to create bonds with other PAPs, to hear different experiences and to feel listened to and supported, and therefore less alone.

We support the PAPs in a better understanding of themselves, of their own method of attachment, of the way they manage their emotions and are able to express them into words... We also aim to develop parental sensitivity, which is so necessary to the creation of an attachment bond with the child. Furthermore, the fact of stopping and 'thinking the child' is already a manner of giving him a psychological place.

2. In what ways is this waiting both difficult and important?

The waiting period is **difficult** at several levels:

- ❖ The waiting is difficult when nothing progresses (slowness, paralysis in some countries),
- ❖ We constantly find ourselves event-driven. What we may have known yesterday may be disrupted in an hour by a natural disaster (Haiti), a conflict (Mali), political (Belarus, Russia...) or ideological (Morocco) changes. For a few years now, PAPs already have access to this information directly through the media; this renders the waiting more distressing. The Internet has become an unavoidable third party in our meetings. We must therefore compare these pieces of

Name and surname : Véronique Wauters
Place of residence and work: Brussels, Belgium
Profession: Social Worker and Family Therapist;
Director of the AAB *A la croisée des chemins*

information with the reality in the field, which is a confrontation that allows the PAPs to gain hindsight,

- ❖ Providing the right information, even if it is difficult to hear, offers trust and a better understanding of their own process,
- ❖ The matchings of children is often undertaken in a very random way by the authorities of a country, some will have to wait much longer than others without the possibility of providing objective reasons.

Furthermore, this time is **important** because:

- ❖ It allows PAPs to continue their own progression, to confront their 'dreamt' child with the 'real' child thanks to the account of former PAPs, to get closer to the child's culture of origin thanks to language courses and to the presence of professionals from the countries of origin on the team. The encounter, during the waiting period, of the psychologists in charge of the post-adoption follow-up creates a bond that will be positive once the child has arrived. We hope that this 'bonding' experience will be pre-emptive in the creation of the 'prospective attachment' with the child.

As the door remains open to parents, who have already adopted, the 'experience' feeds into the topic of the day and this provides density to the information. Some evenings are dedicated to the sensory experience of the child prior to the adoption, to the interaction between parents and children as well as between carers and children in institutions. Thanks to audio-visual support, we intend to develop parental sensitivity.

3. How do the waiting workshops take place?

We group the prospective adoptive parents by country, sometimes in sub-groups in accordance with the children's ages. We meet with the parents once a month in the evening for two and a half hours. Participation in the group is not mandatory, except for Russia, where a expected training is required.



Participation is free-of-charge for waiting parents, the doors remain open to those, who have already adopted, for a small amount.

As to how these meetings take place, the first quarter of an hour is dedicated to information relating to the countries (new information on the procedure, departures/arrivals, progress on the waiting lists). Experience has shown us that without this introduction, the couples were not very receptive to the next part of the programme. Then, we offer the opportunity to speak to those who leave and, in some sessions, those who have come back share their stories. Only then do we address the topic of the evening (the children's health, attachment and reliability of the bond, stress and emotional management, etc).

The Coordinator, who contributes with the context, and a member of the adoption team or a therapist from our post-adoption programme *L'Envol* – chosen in accordance with the day's topic, are present at each meeting.

4. What activities are offered to the PAPs through these workshops?

These workshops are charged and not obligatory; they offer numerous activities to the PAPs:

- ❖ Russian and Spanish language lessons,
- ❖ Workshops focusing on the enjoyment of playing, creation, non-violent communication...
- ❖ Twice a year, *L'Envol* offers either a conference, a presentation of a film or a play.

An inter-cultural party is organised once a year by a committee made up of waiting parents and offers cooking workshops and music or dancing groups.

5. How do you adapt to the requirements set by countries of origin?

Since the new Russian Law, for example, a preparation of 80 hours is required (see p. 5). Our service did not wait for this requirement in order to organise groups, and we have therefore not been taken by surprise. The topics foreseen in this Law have, quite the opposite, allowed us to discover subjects, which we had not thought of (stages in the child's development and characteristics of an adopted child's development, the sexual education of adopted children, etc). Furthermore, given its 'mandatory' character, we have divided the group in order not to have too many participants and have lengthened the meetings (from two hours to two and a half hours).

6. What is the impact of these waiting groups?

The last session of the year is dedicated to the assessment of the meetings, a questionnaire is given to the prospective adoptive parents, who have expressed high levels of satisfaction. At the time of the preparation for travelling, our team sees a considerable difference between the PAPs, who have been coming to the sessions on a regular basis, and those, who have been less involved. Our foreign partners have mentioned a better preparation of our PAPs. They are more in contact with different professionals and request help upon their arrival more easily.

Our experience has also allowed us to identify some difficulties. In particular, as everything is shared in the sessions, an unhappy couple may sometimes 'contaminate' the group. In 18 years of experience, we were no longer able to manage a group on two occasions, and we therefore suspended the meetings during several months and rather offered individual meetings.

Source:

For further information, see: <http://www.croiseedeschemins.be>.



FORTHCOMING CONFERENCES AND TRAININGS

- **Canada:** *Child and Youth Care World Conference – Connecting at the Crossroads*, organised by the Child and Youth Care Association of Newfoundland and Labrador, in cooperation with the International Child and Youth Care Network, St. Johns, Newfoundland and Labrador, 25-28 June 2013. For further information, see: <http://www.cycworld2013.net/>.
- **France:** *L'agrément en vue d'adoption – Aspects psychologiques de l'évaluation en vue d'apparement et d'accompagnement* [The suitability certificate with a view to adoption], COPES, Paris, 17 June 2013 (start of the 5-day course). For further information, see: <http://www.copes.fr/Annexes/Formations>.
- **United Kingdom:** **a)** *The 2nd International Family Law and Practice Conference 2013*, Centre for Family Law and Practice, London, 3-5 July 2013. For further information, see: <http://www.familylawclip.co.uk/articles/the-2nd-international-family-law-and-practice-conference-2013>; **b)** *Health matters – Hot topics in adoption and fostering*, BAAF, Birmingham, 24 June 2013; **c)** *Implementing adoption reform – A framework for child-centered adoption*, BAAF, London, 4 July 2013. For further information, see: <http://www.baaf.org.uk/training/conferences>.

As a reminder, this Monthly Review is distributed to a selected network of Authorities and professionals. It is not aimed at being posted on an internet website without the authorisation of the ISS/IRC.

The ISS/IRC would like to express its gratitude to the governments (including certain Federal States) of the following countries for their financial support in the realisation of this Monthly Review: Andorra, Australia, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Luxembourg, Monaco, New Zealand, the Netherlands, Norway, South Africa, Spain, Sweden and Switzerland.

