



OPINION 134

ADOPTION

INCREASING TRANSPARENCY IN
PROCEDURES TO PROMOTE OBJECTIVITY
AND QUALITY OF CHOICE



NATIONAL CONSULTATIVE ETHICS COMMITTEE FOR HEALTH AND LIFE SCIENCES

OPINION
134

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CHOICE**

Opinion adopted unanimously by the members present on 23 January
2020.

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SUMMARY

The Minister for Solidarity and Health and the Secretary of State for Child Protection have asked the CCNE for an opinion on the definition of adoption plans and the criteria for matching a ward of the State with an adoptive family. They wished to consult the CCNE, firstly on the framework and practices for preparing and supporting prospective adoptive parents, particularly with regard to formalising their adoption plan, and secondly on the elements, principles or criteria that should guide the guardian and family council in the process of matching a ward of the State with an adoptive family.

The questioning thus focuses on the need to "ensure that the child's best interests take precedence in all decisions concerning them", by preventing any discrimination between adoptive families at the two distinct stages of the adoption process: the approval of prospective adoptive parents; and the matching, which consists of giving the adopted child the approved family that best suits their needs.

To prevent any risk of discrimination, particularly at the matching stage, a legal definition of the criteria could guarantee the objectivity of the choices made. Lack of transparency entails the risk of implicit criteria, which vary from one department to another and may be based on prejudices about the respective educational capacities of the various types of family unit. A lack of transparency also fosters suspicions about the adoption process.

But while the objective of transparency is fundamental for the CCNE, it does not believe that it can be achieved by formalising criteria in advance. Only objective criteria that are general in scope and can be applied indiscriminately to all case files, essentially a maximum age difference between the adopted child and the member(s) of the adopting family, can be usefully predefined.

As soon as we move away from objective criteria and tackle subjective criteria, we are exposed to two pitfalls: limiting ourselves to an impractical enumeration of the desired qualities of prospective adoptive parents (for example: personal and family psychological balance, educational capacity), or on the contrary setting out operational rules, but which are too precise and restrictive when this enumeration is accompanied by indicators.

The uniform application of operational criteria is not compatible with the imperative of searching for the best possible adoptive family on a case-by-case basis. This search must be based on the in-depth knowledge that the guardian and the departmental

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services have acquired of the child, whose material and educational needs they have determined by drawing up a life plan.

Any criteria used to choose between families applying for adoption are necessarily selective. If pre-established, the hierarchy it creates a priori between applicants on the basis of their respective situations creates inequalities of opportunity between approved families that can be denounced as discrimination.

The difficulty of pre-determining criteria cannot be overstated. Parenthood is also a function of a parent's first encounter with their child, whether adopted or not. It is the child that induces parenthood, not the other way round, meaning that parenting skills are very complicated to predict. We must guard against the risk of a predictive approach becoming prescriptive and normative. The assessment that needs to be made of educational capacities in the selection of parents must first and foremost be preventive, based on a dialectic between risk factors and resources, opening up the possibility of a positive encounter between the adoptive parents and the child.

Recommendations

In order to achieve the requisite transparency in the selection process, we need to acquire better knowledge of current practice so that we can identify any differences in treatment between the various types of family and analyse the causes (recommendation 1). In addition to preventing the risk of discrimination, improved analytical skills would make it possible to highlight disparities in practices. It would therefore make it easier for the State to exercise its responsibilities in implementing public policy. It would also enable a better statistical assessment of the factors leading to adoption failure, and would therefore help to reduce the number of such cases.

In addition to this need for transparency, which is a priority for the CCNE, it is necessary to improve information and support for prospective adoptive parents (recommendation 2) and to give them the opportunity to receive follow-up monitoring and support (recommendation 3), in order to help them overcome any difficulties they may encounter.

Awareness-raising and training initiatives should be carried out for the various parties involved to enable them to acquire sufficient understanding of the conditions determining the objectivity of their decisions or opinions: members of family councils (recommendation 4), staff of departmental services and prefectural social cohesion services (recommendation 5), social investigators and psychologists, who could be assisted in their work with prospective adoptive parents by updated guidelines (recommendation 8).

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To contribute to the same objective of preventing any deviation, approval commissions and family councils should explicitly state the reasons for their decisions (recommendation 7).

A concerted decision provides better guarantees of objectivity than a decision taken by one person alone. Internal organisational measures should encourage a plurality of viewpoints at the pre-selection stage of case files submitted to the deliberative bodies (recommendation 9). To the same end, cooperation between the departmental services and those of the guardian should be encouraged (recommendation 10).

Finally, cooperation, or even closer collaboration, should also be encouraged between the 'adoption' services of neighbouring departments, especially those with the smallest populations, to enable the staff in these services to work in sufficiently large units with a sufficient number of children available for adoption (recommendation 6).

INTRODUCTION

On 11 June 2019², the Minister for Solidarity and Health and the Secretary of State for Child Protection have asked the CCNE for an opinion on the definition of the adoption plan and the criteria for matching a ward of the State with an adoptive family (appendix 3).

They referred to Article L. 225-1 of the French Social Action and Family Code, according to which wards of the State must be the subject of "*a life plan defined by the guardian in agreement with the family council, which may be adoption, if this is in the child's best interests*", and emphasised that no criteria are laid down in the regulations to guide the guardian and the family council in this task.

They referred to the Seine-Maritime departmental council's 'adoption' service being accused of possibly discriminating against homosexual couples applying for adoption, prompting a referral to the General Inspectorate for Social Affairs (IGAS), which submitted a report on 15 March 2019.

The Minister and the Secretary of State wished to consult the CCNE, firstly on the framework and practices for preparing and supporting prospective adoptive parents, particularly with regard to formalising their adoption plan, and secondly on the elements, principles or criteria that should guide the guardian and family council in the process of matching a ward of the State with an adoptive family. Attention was drawn to the importance of preventing adoption failures and the imperative of ensuring that the child's fundamental needs are taken into account.

The questioning thus focuses on the need to "ensure that the child's best interests take precedence in all decisions concerning them", while preventing discrimination between adoptive families at the two distinct stages of the adoption process:

- Approval of prospective adoptive parents,
- Matching, which consists of giving the adopted child the approved family that best suits their needs.

This is an ethical issue: any discrimination, in addition to being against the law, undermines the idea of justice and the objectivity of choices. In effect, it leads to families being excluded on the basis of prejudices about their composition or way of life, rather than on the basis of an in-depth assessment of their educational capacities.

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The IGAS report states that the two-step selection process for adoptive parents, first for approval and then for matching, entails such risks of discrimination if criteria that are not provided for by law are applied in such a way as to systematically exclude certain candidate profiles. In this respect, although the profile of prospective adoptive parents has changed since same-sex marriage was allowed, the number of applications for same-sex adoption remains low: 3.3% of applications, in addition to 10% from single people, according to the IGAS report, which, in statistical terms alone, could make it difficult to highlight any discrimination against same-sex couples, given that the number of adoptions has fallen.

The CCNE's inquiry comes at a time when the number of adoptions is falling, mainly due to a sharp reduction in intercountry adoptions, which accounted for the vast majority of children available for adoption, but which in 2018 were barely equal to the number of adoptions of wards of the State, i.e. around 700 a year. The number of intercountry adoptions declined again sharply in 2019. The number of approved applicants has also fallen, but not to the same extent. There is therefore a major imbalance between the number of approved applicants and the number of children available for adoption.

This opinion is limited to an examination of the aspects of the adoption process that may give rise to fears, founded or unfounded, of discrimination in the process of selecting adoptive parents. However, it must be stressed that any improvement in this process is also likely to reduce the risk of adoption failure. This is of the utmost importance, since it is vital to remember that, when it comes to adoption, it is the child who must be put at the heart of our concerns: the primary objective is to give the child a family offering the most favourable conditions for their development. The CCNE has done little research on this subject until now, and it cannot therefore refer to previous opinions, on which it would build¹.

FINDINGS

¹ For a more comprehensive study of adoption, in addition to the IGAS report mentioned above, two other recent reports should be mentioned:

- "*Vers une éthique de l'adoption – Donner une famille à un enfant*" [Towards an ethics of adoption - Giving a child a family], a report submitted in October 2019 by Monique Limon, MP and Corinne Imbert, senator, pursuant to a letter of assignment from the Prime Minister aimed at taking stock of the law of 14 March 2016 and identifying the main guidelines for securing and strengthening the use of adoption as a child protection tool when this corresponds to the interests of the child concerned;
- The report was submitted in November 2019 by the National Council for Child Welfare (CNPE), which was consulted by the Ministry for Solidarity and Health on the same issues as the CCNE.

1. The current method of selection: process and possible causes of discrimination

At the approval stage

At this stage, there may be two main causes of discrimination. It may result from dissuasive information or insufficient support for prospective adoptive parents (A); it may also result from the survey conducted on prospective adoptive parents (B).

A/ The importance of the support provided by departmental advisory services in enabling prospective adoptive parents to complete their parenting plan must be emphasised. Information helps them to better understand the difficulties of adoption and support gives them the means to overcome them. Discrimination can therefore result from dissuasive information or insufficient support, for example to the detriment of single people and same-sex couples.

Support is also important to enable families to refine their adoption plans, in which they set out their motivations and their perceptions of the child to be adopted, thus revealing the limits of their tolerance of the differences that might exist between them and the child they are likely to adopt (age, geographical and ethnic origins, disabilities, behavioural problems, etc.). These limits are legitimate if they indicate the threshold beyond which prospective adoptive parents no longer feel able to meet the educational obligations resulting from an adoption. They are no longer legitimate and may even become discriminatory if they express the rejection of children who do not correspond to an idealised dream profile.

Support is also important to help parents develop their plans and carry out the work needed to put them on a more realistic footing, and to prepare them for the difficulties of real life.

Finally, support is essential to ensure follow-up. Several years may elapse between the approval and the adoption, if the latter takes place, during which time the family changes, which may have an impact on the continuation or development of the adoption plan.

B/ The decision on approval is taken on the basis of two separate reports: one, drawn up by a social worker, assesses the material living conditions and parental skills of the applicants, the other, drawn up by a psychologist, assesses their ability to meet and connect with an adoptable child within the framework of their parenting plan and the degree of maturity of their educational plan. The necessarily subjective perceptions that these two investigators have of the family and of the child's interests are likely to

have a strong influence on the content of their reports and therefore, firstly, on the opinion that the committee responsible for advising the chair of the departmental council, which is authorised to decide on approval, must give and, secondly, on the family council's decision at the matching stage. The psychologist is a member of the department if this role exists. Otherwise, the psychologist is a professional hired on a sessional basis, who is not necessarily trained in the specific issues involved in adoption...

At the matching stage

At this stage, the only legal criterion for selection is the best interests of the child. This must be assessed on a case-by-case basis, according to the particular needs of each adoptable child and the life plan that has been chosen for them. Matching cannot therefore be decided on the basis of the length of time having elapsed since the prospective parents were approved, a criterion which is certainly objective but which would run counter to this requirement for a case-by-case assessment². The time elapsed since approval can only be used as a criterion for deciding between two solutions that appear equally satisfactory. In practice, in ways that vary from department to department, the child welfare services submit a list of prospective adoptive parents to the Prefect, who is responsible for the guardianship of wards of the State in their department, highlighting those they consider offer the best guarantees. The family council makes its choice on the basis of this pre-selection³.

Some children appear better suited to adoption. Abandoned at birth, immediately taken in and cared for as wards of the State, they may be adopted while still young, or even very young⁴, to the point of giving the impression that they have not suffered any trauma as a result of their abandonment.

Other children are said to have "special needs". They account for almost half of all wards of the state (48% at 31 December 2017). Depending on the case, they may have been removed from or abandoned by their natural family at a later age, they may

² Added to this is the unreliability of the approval, which is not considered sufficient proof of the educational capacity of the prospective adoptive parents to make it a decisive criterion for matching (see point 2. on the limitations of the current selection method).

³ The composition of the bodies involved in the adoption process and the procedure they follow are governed by Articles L. 224-1 to L. 225-14 and Articles R. 224-1 to R. 225-53 of the French Social Action and Family Code.

In particular, with regard to their composition:

- for the Prefect, who exercises guardianship over wards of the State: Art. L.224-1
- for the approval commission: L. 225-2, R. 225-9
- for the family council: L. 224-2, L. 224-3, R. 224-1 to R. 224-6

⁴ In 2017, 7 out of 10 children placed for adoption were less than a year old when they were admitted as wards of the State.

have physical or mental disabilities or other health problems, they may have had a particularly difficult life, they may be much older or they have siblings from whom it is undesirable to separate them, but who are even more difficult to have adopted by the same family. A large proportion of these children with special needs do not find an adoptive family. The major risk they face is therefore not discrimination, but the risk of not finding an adoptive family, even when their life plan concludes that adoption would be the best option for them.

It should be noted, however, that if discrimination occurs in the matching of children born in secrecy, it necessarily has an effect on the whole process and therefore indirectly affects the adoption of children with special needs. As the IGAS pointed out in its aforementioned report, discrimination resulting in the preferential allocation of children presenting the fewest apparent problems to heterosexual families leads to a paradox: selection on a case-by-case basis, influenced by discriminatory opinions, leads to these most easily adoptable children being allocated to traditional families, and it is the children with special needs, despite the particular problems they give rise to, who will mainly be allocated to same-sex and single-parent families by the very people who consider that they offer fewer guarantees.

2. The limits of the current method of choosing adoptive parents

The letter of referral points out that there are no legal criteria to guide the way in which guardians and family councils assess the child's best interests.

The IGAS report (recommendation 2), as well as the above-mentioned recent parliamentary report (note 1), in its recommendation 8, call on the CCNE to specify the matching criteria.

These recommendations are based on the observation that the criteria have not been formalised, which creates a risk of discrimination by obscuring the way in which the choice between prospective adoptive parents is made. This choice necessarily draws on implicit criteria, which vary from one department to another, and which may be based on prejudices, whether conscious or not, concerning the respective educational capacities of the various types of family unit.

The difficulties caused by the opacity and heterogeneity of practices are not new.

The national approval database, created in 2013 to provide statistics that go beyond what the National Child Protection Observatory (ONPE) can provide, could have been a tool to overcome these difficulties. However, the implementation of this database,

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which was not created through legislation and has not been made compulsory, has given rise to difficulties, due in particular to its non-compliance with the GDPR⁵ and its incompatibility with the IT systems of some departments. Only a third of them have used it. Making it compulsory would require a legislative provision and a decree by the Council of State, following an opinion from the CNIL, to consolidate the collection of information and extend its functions, to enable better operational management of the monitoring of case files and their presentation to the family council.

A charter of ethics was drafted and distributed by the Ministry for Solidarity and Health in July 2019. It is intended for members of family councils, and has been made available to them for approval in order to formalise the commitment of all parties. However, although the charter states that decisions must be guided by the best interests of the child (article 1), its purpose concerns the ethics of the members of the family councils and not the criteria on which they base their decisions. It therefore does not draw attention to the biases that may alter the objectivity of these decisions. The charter merely reiterates the principle of equality and non-discrimination and adds that the rules of procedure and the decisions of the family councils may not include additional criteria to those provided for by law (article 4).

Despite this requirement, the IGAS found in its audit of one department that three criteria are widely used by professionals or decision-makers to establish matches: the presence of two parents, the age of the adoptive parents, and a comparable origin, so that family and social considerations do not hinder or complicate the bond between the adoptive parents and the child⁶.

The lack of formalisation of the criteria is highlighted above all at the matching stage. Decisions taken in this area are not subject to appeal and the reasons given are not always sufficient to ascertain exactly what guided the choice made of the family council.

The situation is different for decisions relating to approval. These can be challenged before the administrative courts. The difficulty of justifying the choices made, in the absence of explicit legal criteria, explains why the rate of cancellations of approval refusals reached a very high 90% in the early 2000s. This rate has fallen to 40%, but this result is partly the consequence of self-censorship, which limits the number of refusals. The result, for those who are regularly involved in the approval process, is that this criterion lacks reliability and cannot be considered as a sufficient criterion of the ability to welcome an adopted child.

⁵ General Data Protection Regulation

⁶ §97, p. 27; 4.3.3, p. 54 to 56, §214 et seq.

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Since the lack of formalised criteria creates a risk of discrimination resulting from the subjectivity of those involved, it is particularly important that they receive sound training on the issues and difficulties involved in adoption, as well as on the new realities of the family and on what increases or reduces the risk of adoption failure.

However, training is currently very unevenly provided within family councils. Furthermore, not all prefectures are able to allocate resources to their social cohesion departments that would guarantee sufficient specialisation and availability of the people working in these departments.

It is also desirable, as far as possible, for each decision to be taken not by a single person but by several people.

While a plurality of viewpoints before each decision is taken is obviously ensured within approval commissions and family councils, it can only produce its full effect if the diversity of these bodies is sufficient to meet the conditions for objective impartiality. Criticism is sometimes voiced on this subject, concerning the absence or inadequate representation of same-sex or single-parent family structures. Some have criticised the presence of family associations formed on the basis of shared values, which are grouped together within the Departmental Union of Family Associations (UDAF), even though the latter include associations representing a variety of interests.

In any case, this plurality of viewpoints is not ensured in the preparation of the social and psychological investigation reports, which necessarily have a decisive influence on the assessment of the merits of the applications.

A cross-disciplinary approach⁷ is sometimes used, although not as a rule, at the pre-selection stage of case files submitted to the family councils so that they can decide on a match. According to information provided to the CCNE, three case files are often selected for each adoption. Who selects them? According to what explicit or implicit criteria? Members of family councils have the right to look at case files that have not been presented to them, but because they are not sufficiently available, they very rarely exercise this right, which makes it impossible to prevent the risk of discrimination.^{8,9}

⁷ The director of the social cohesion department of the Hauts de Seine department told us that the full list of prospective adoptive parents, including an initial pre-selection, was drawn up by the department's adoption service and that a dialogue was then established to refine this pre-selection, with email exchanges enabling a record of this joint reflection to be kept.

⁸ There is a serious risk of discrimination if same-sex and single-parent families are less often selected at this stage. The age of the case file is an objective selection criterion, but we have seen that it can only be used to distinguish between families with equivalent guarantees.

⁹ The above-mentioned parliamentary report contains a critical commentary on the operation of family councils, p. 27:

POSSIBLE AVENUES FOR IMPROVEMENT

1. Promoting transparency

It is by working resolutely in this direction that we can hope to achieve the most significant improvement in the selection process.

Everyone agrees that the current lack of transparency encourages the risk of deviation. It also fosters suspicions about the way in which the procedure is carried out, and those involved are destabilised by repeated accusations that they have no means of refuting, even when they are unjustified.

However, it does not seem to the CCNE that this objective of transparency can be achieved by formalising criteria in advance. Only objective criteria that are general in scope and can be applied indiscriminately to all case files, essentially a maximum age difference between the adopted child and the member(s) of the adopting family, can be usefully predefined¹⁰. It is in fact generally accepted that too great an age gap exposes the adopted child to a reduced chance of having an adoptive parent able to meet all their needs as they approach the age of majority¹¹. But while such a criterion

"During our hearings, we heard a lot of criticism of family councils and the way they operate: they should be more independent in the way they operate and in their decision-making. However, in family councils:

- *Many members are not trained in adoption;*
- *Legal deadlines are not always respected;*
- *The rules of procedure are sometimes contrary to the law and are not always published;*
- *Minutes are signed by the guardian and not by the chair of the family council;*
- *The department sometimes refuses access to certain files to members of the family councils:*
- *According to the National Adoption Council (CNA), the composition of family councils remains opaque and religious associations appear to play a predominant role. Similarly, the CNA considers that today, in most cases, only one type of family is represented: married, heteroparental families. This lack of transparency leads to discrimination that is detrimental to adoption, particularly for single-parent and same-sex families applying for approval, even though the law on adoption has long recognised single-parent and same-sex families, and the legislature, the Constitutional Council and the two highest courts (Court of Cassation and Council of State) have held that no major principle or fundamental right prevents a child from having a single parent, or two parents of the same sex;*
- *The vagueness of the procedures and the way in which applications are handled when they reach the family council make it impossible to demonstrate the existence of discrimination against same-sex parent families;*
- *There is not always a child protection expert on the family council;*
- *There are no substitutes for the elected members of the family council."*

¹⁰ The age of the case file is also an objective criterion, but we have seen that it can only be used to distinguish between families with equivalent guarantees.

¹¹ The parliamentary report mentions a maximum age difference of 40 years.

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may justify the rejection of certain applications, it is not sufficiently discriminating to govern the selection that must be made, at the matching stage, between approved families.

As soon as we move away from objective criteria and tackle subjective criteria, we run the risk of falling into two pitfalls: limiting ourselves to an impractical enumeration of the desired qualities of prospective adoptive parents (personal and family psychological balance, educational capacity, empathy and the ability to understand and support a child with an experience and culture different from our own), or on the contrary laying down rules that are too precise and restrictive if the enumeration of these qualities is accompanied by indicators that make it possible to infer their existence.

In the first case, a list of what is expected of adopters is too imprecise to really guide choices.

In the second case, the uniform application of operational criteria appears incompatible with the imperative of searching for the best possible adoptive family on a case-by-case basis. This search must be based on the in-depth knowledge that the guardian and the departmental services have acquired of the child, whose material and educational needs they have determined by drawing up a life plan. Moreover, there is a serious risk of demotivating the members of the family councils, the voluntary nature of whose work must be remembered, if they are constrained by allocation rules that place too strict a limit on their freedom of judgement.

In addition, and above all, it must be emphasised that any criterion that makes it possible to make a real choice between families applying for adoption is, by its very definition, a selective criterion. If pre-established, the hierarchy it creates a priori between applicants on the basis of their respective situations creates inequalities of opportunity between approved families. These inequalities will inevitably be denounced as discrimination leading to the overly hasty exclusion of families whose excellent educational capacities would have been revealed by an in-depth personalised assessment.

The difficulty, not to say impossibility, of pre-determining criteria cannot be overstated. Parenthood is also a function of a parent's first encounter with their child, whether adopted or not. It is the child that induces parenthood, not the other way round, meaning that parenting skills are very complicated to predict. It is impossible to make a prediction without taking into account what the encounter with the child and the resulting interactions may produce. In this area, a part of the future cannot be predicted and move beyond a simplistic view of determinism, in particular that based on the observation that adoption is often the meeting of the two traumas of abandonment and infertility, which would lead to a pessimistic view of it. Fortunately, adoption has frequently

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led to the creation of many wonderful family stories that show us that nothing is ever predetermined. We must guard against the risk of a predictive approach becoming prescriptive and normative. The assessment that needs to be made of educational capacities in the selection of parents must first and foremost be preventive, based on a dialectic between risk factors and resources, opening up the possibility of a positive encounter between the adoptive parents and the child.

The objective of transparency cannot therefore be achieved by pre-determining matching criteria, at least at the current stage when it is impossible to analyse precisely the decisions taken. We need to acquire better knowledge of current practice so that we can identify any differences in treatment between the various types of family and analyse the reasons for them. In addition to preventing the risks of discrimination, this improved capacity for analysis could enable a better statistical assessment of the factors leading to adoption failure, and could therefore help to reduce the number of such failures, which are always tragic, both for the adoptees and for the adoptive families.

To give ourselves the means to constantly improve practices and the relevance of choices, and also to combat the risks of discrimination, we need to be able to analyse the decisions taken. This statistical analysis can reveal inequalities in treatment (lower percentage of approvals compared to the percentage of prospective adoptive parents, lower percentage of case files selected for review by family councils, lower percentage of matching decisions, etc.). It is therefore impossible to overemphasise the need to significantly improve the collection of relevant and consistent data at national level and the ability to analyse this data.

This is a delicate issue because the inequalities in treatment that we are seeking to analyse concern very sensitive personal data, in particular the sexual preferences of prospective adoptive parents. The CCNE is aware of the ban on storing such data in files containing individuals' personal details. However, the desire to improve the transparency of the adoption procedure does not presuppose the availability of personal data. What is important is not knowing what has been decided for any particular family but, more generally, verifying whether the decisions taken are fair to same-sex and single-parent families.

This essential concern to preserve the anonymity of sensitive personal data means that a better understanding of prospective adoptive parents could be achieved by unifying and enhancing the statistical potential offered by existing computer applications, to enable anonymised queries to be made on individuals' files based on items relating to civil status.

This improvement could be accompanied by various developments: an alert system for case files that have not been pre-selected for an extended period of time, opening up

the database to the guardian, allowing him or her to make queries about case files that have or have not been examined, etc. Each of these changes should be assessed in order to gradually improve the system.

This increased knowledge of personal situations will not only make it possible to check that decisions taken comply with the law and are not discriminatory, but it will also make it possible to improve national steering and to remedy the heterogeneity of practices, which is obviously impossible without the necessary tools to analyse them.

RECOMMENDATION 1

Expand and enhance the statistical system in order to provide the means for analysing practices and combating the risks of discrimination, as well as to improve national coordination and remedy the heterogeneity of practices.

2. Improve the information and support provided to prospective adoptive parents, and ensure that all those involved receive adequate training

2.1 Information and support for prospective adoptive parents

All the reports referred to above stress this fundamental point. All parenthood requires parents to work to free themselves from an ideal vision of the unborn child and adapt to the realities of life. However, while all parenthood exposes parents to vulnerabilities and risks, adoptive parenthood involves specific risks that stem from the problem of abandonment for the child, the reality of infertility for the adoptive parent(s), the child's experience prior to adoption, and possible differences in cultural and family references. The services that support families during the assessment of their application for approval are well aware of the unrealistic nature of certain expectations, which can lead to adoption plans that are overly restrictive (in order to match the vision of the ideal child as closely as possible) or, on the contrary, too broad (in order to meet a vision that is certainly generous but does not take into account all difficulties and constraints).

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Quality information and support are therefore often needed to help applicants adapt their adoption plans. This adaptation is all the more necessary when reality does not sit well with the wishes initially expressed. Most prospective adoptive parents want young, healthy children, whereas the children available for adoption are often older and have identified difficulties. Support, follow-up and training are therefore needed to bring these two situations as close together as possible. This is in the best interests of the child, as it is a means of ensuring that there are not too many children available for adoption unable to find an adoptive family. It is also a criterion that often makes it possible to consider that the adoption plan has reached a sufficient degree of maturity to authorise the approval of a family.

RECOMMENDATION 2

Improve the information and support provided to prospective adoptive parents to enable them to better assess the difficulties involved and to help them develop their adoption plans so that they are better aligned with the situation of the children available for adoption.

Adapting to reality is also clearly a way of reducing the risk of adoption failure. Taking this a step further, encouraging post-adoption support could also help families who encounter difficulties to overcome them more effectively. Families could be helped to choose the most appropriate follow-up structures, such as adoption guidance and counselling centres (COCA) or medical-educational centres (CMP).

However, while it is desirable that the possibility of such support be offered to those who would like it, it does not appear that it can be imposed, as this would then likely be seen as discrimination against adoptive families or as an unjustified intrusion.

RECOMMENDATION 3

Give adoptive families the option of receiving post-adoption support and facilitate their access to possible help to prevent or overcome any difficulties they may encounter.

2.2 Appropriate training for all parties involved

Specialised training should be provided first and foremost to those involved in the adoption process, who are not professionals but volunteers. The members of family councils are generally people who are aware of the issues involved in adoptive parenthood, but it is necessary, in order to ensure compliance with the law which prohibits all discrimination, to make sure that they have acquired sufficient awareness of the factors that determine the objectivity of their decisions. The charter issued to them last July ensures that they comply with ethical rules, but it does not enable them to measure the subjectivity involved in the way they form their opinions.

RECOMMENDATION 4

Each time family councils are renewed, provide training for new members to enable them to acquire sufficient awareness of the factors that determine the objectivity of their decisions.

Training is also an issue for staff at departmental councils and prefectural social cohesion services, as well as for psychologists who work on a sessional basis.

RECOMMENDATION 5

Provide staff from departmental councils and prefectural social cohesion services, as well as psychologists from outside these services who work on a sessional basis, with training to enable them to deepen their specific knowledge of adoption.

Their skills are based on genuine specialisation, which is difficult to achieve in the least populated departments, where the very small number of children available for adoption is difficult to reconcile with a high level of professionalism on the part of those involved. This observation could lead to the temptation to manage, if not the entire adoption procedure, then at least that of matching, at national rather than departmental level. However, in addition to the impossibility of reconciling this centralisation with respect for the powers attributed to the departmental councils by the decentralisation laws, it must above all be emphasised that it is necessary, in the interests of

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children available for adoption, for the place of decision to remain as close as possible to the services that have developed their life plan, that know them best and that can provide any useful details to the family council. This does not, however, prevent neighbouring departments from seeking cooperation, or even closer collaboration, in order to strengthen the services that deal with adoption. Any initiative in this direction should be encouraged¹². The adoption services of the Hauts de Seine and Yvelines departmental councils have come together in this way. It is true that this collaboration took place within the broader framework of a general desire on the part of the two departments to establish close ties, which could eventually lead to a merger.

RECOMMENDATION 6

Encourage cooperation, or even closer collaboration, between the adoption services of neighbouring departments, particularly those that are less populated, in order to enable the staff in these services to work in sufficiently large units with a sufficient number of children available for adoption.

3. Ensure that decisions and reports are adequately explained

3.1 Decisions of approval commissions and family councils

This is not a question of requiring accreditation commissions and family councils to provide justifications akin to those of the courts ruling in contentious matters, but simply of ensuring that they indicate the factors that guided their choice in a sufficiently explicit manner to demonstrate the objectivity of their decisions. This effort to clarify matters is a useful means of guarding against claims by third parties that the law has been breached. It also demonstrates a rigour that requires all parties to ensure that they have formed their opinion in an ethically acceptable manner and that they are able to justify it. No publication or notification is desirable, but the guardian may take a decision based on the opinion of the family council only if they feel that they have been properly informed of the reasons behind the proposal submitted to them.

¹² The above-mentioned report by the National Council For Child Welfare (CNPE) also emphasises this point.

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This effort is only useful if it is based on a personalised analysis of the situation, as any standard formula such as "*the application appears to be in the child's best interests*" is not very enlightening.

The analysis is not based on an assessment of the adoptive family but on the needs of the child. It is by taking the child's situation as the starting point that we can explain why a particular adoptive family seems best suited to their needs.

RECOMMENDATION 7

Require approval commissions and family councils to state the reasons for their choices in a sufficiently explicit manner as to demonstrate the objectivity of their decisions.

3.2 Social and psychological investigation reports

The social investigation report and the psychological report have a major impact on the opinions and decisions taken by the approval committees and family councils. It should first be noted that, for the latter, the reports will only be truly enlightening if they have been updated since the date of approval. The time that has elapsed since that date means that account must be taken of changes in the adoptive family's motivations and living conditions.

More generally, however, as mentioned in the previous section, an effort must be made to ensure that the opinions expressed are sufficiently well explained so as to enable an assessment of their objectivity. As these reports are drawn up for the purpose of examining applications for approval, it is not possible at this stage to start from the needs of a particular child. It is the qualities of the prospective adoptive family that are assessed.

The guidelines published in 2011 helped to carry out this assessment. However, this tool has shown its limitations and is already out of date. It would benefit from being updated.

It would also be useful to provide guidelines containing the various categories about which the social investigator or psychologist is required to provide information. Another set of guidelines could be used to update the initial report. In this way, it would be

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possible to avoid reports that are insufficiently explicit, particularly when the departmental council does not have a psychologist within its department and turns to external practitioners recruited on a sessional basis.

RECOMMENDATION 8

Update the guidelines relating to the information provided to prospective adoptive parents and their approval, and create guidelines containing the various categories about which the social investigators and psychologists are required to provide information, in order to obtain reports that are sufficiently explicit and drawn up on a standardised basis, both for the preparation of the initial report and for updating it when necessary.

4. Seek a plurality of viewpoints

As the subjectivity of those involved necessarily plays a major role in their conception of the family and of the child's best interests, it is certain that a plurality of viewpoints, which makes it possible to put each person's point of view into perspective, guarantees against the risks of deviation.

One phase of the adoption process draws particular attention in this area. This is the selection of the case files that will be presented to the family council for the matching of a given child available for adoption.

If a member of the departmental council pre-selects applications on their own, there is a risk that, even in perfect good faith, they may end up excluding certain families on the basis of implicit criteria that are contrary to the law and ethically questionable.

Making this selection during a departmental meeting is a good way of controlling the impact of this subjectivity.

RECOMMENDATION 9

As far as possible, standardise the practice of holding department meetings to pre-select case files to be presented to the family council with a view to matching, in order to ensure a plurality of viewpoints on this issue within the child welfare services.

However, in some departments where the services are too small, decision-making at a meeting appears infeasible.

In all cases, it would be advisable to ensure that cooperation between the departmental council services and the prefectural services representing the guardian makes it possible to ensure this plurality of viewpoints. Charters or memorandums of understanding could determine the way in which, on the basis of an exhaustive list of prospective adoptive parents and a pre-selection carried out by the department, a dialogue with the State services would clarify and refine the choices until a reasonable number of prospective adoptive parents are presented to the family council. Its members do not have sufficient time to carry out this work a posteriori, even if they have the right to be sent the case files that were eliminated from the shortlist presented to them. It is therefore necessary to ensure that this pre-selection is objective prior to the family council meeting, without prejudice to the family council's right of control¹³.

RECOMMENDATION 10

Encourage sufficient cooperation between the departmental services and those of the guardian to facilitate objectivity in the pre-selection of application case files.

¹³ The report by the National Council For Child Welfare (CNPE) recommends that all case files be systematically made available to the members of the family council one week before the meetings are held.

Having completed its investigation, the CCNE believes that there is an essential need, not to define criteria for choosing adoptive parents in advance, but to develop the means to analyse the decisions taken in this regard. Improving knowledge in this way would enable useful lessons to be learned in order to avoid discrimination and limit failures as much as possible.

The current inadequacy of the data required for this analysis results in a lack of transparency that feeds suspicions, whether well-founded or not.

It perpetuates a heterogeneity of practices that should be remedied, as it prevents the State from developing a global perspective. It should be sufficiently informed to be able to take the necessary action at national level to ensure sufficient coordination and to provide the necessary impetus to improve procedures concerning wards of the State, a highly vulnerable group for whom it is responsible.

This heterogeneity extends to the training of staff who work on a voluntary basis within family councils. This training is often provided by associations, and the importance of their involvement should be emphasised, as they play a very useful role in filling the gaps left by the public authorities. However, they cannot act with the same consistency in all departments, and it is up to the State and the departments to play their full role in this area, once training needs have been identified, through better knowledge of practices.

Improving the ability to analyse the decisions taken would also make it possible to define with greater precision the information needs of prospective adoptive parents and the training needs of the staff of the departmental councils and the decentralised State services grouped together in the prefectures.

This improvement in knowledge of practices, which is the subject of recommendation 1, is ultimately a prerequisite for all the proposals for improvement contained in the subsequent proposals.

LIST OF RECOMMENDATIONS

1. Expand and enhance the statistical system in order to provide the means for analysing practices and combating the risks of discrimination, as well as to improve national coordination and remedy the heterogeneity of practices.
2. Improve the information and support provided to prospective adoptive parents to enable them to better assess the difficulties involved and to help them develop their adoption plans so that they are better aligned with the situation of the children available for adoption.
3. Give adoptive families the option of receiving post-adoption support and facilitate their access to possible help to prevent or overcome any difficulties they may encounter.
4. Each time family councils are renewed, provide training for new members to enable them to acquire sufficient awareness of the factors that determine the objectivity of their decisions.
5. Provide staff from departmental councils and prefectural social cohesion services, as well as psychologists from outside these services who work on a sessional basis, with training to enable them to deepen their specific knowledge of adoption.
6. Encourage cooperation, or even closer collaboration, between the adoption services of neighbouring departments, particularly those that are less populated, in order to enable the staff in these services to work in sufficiently large units with a sufficient number of children available for adoption.
7. Require approval commissions and family councils to state the reasons for their choices in a sufficiently explicit manner as to demonstrate the objectivity of their decisions.
8. Update the guidelines relating to the information provided to prospective adoptive parents and their approval, and create a form containing the various sections that social investigators and psychologists are asked to fill in, in order to obtain reports that are sufficiently explicit and drawn up on a standardised basis, both for the preparation of the initial report and for updating it when necessary.
9. As far as possible, standardise the practice of holding department meetings to pre-select applications to be presented to the family council with a view to matching, in order to ensure a plurality of viewpoints on this issue within the child welfare services.
10. Encourage sufficient cooperation between the departmental services and those of the guardian to facilitate objectivity in the pre-selection of application case files.

APPENDICES

Appendix 1: Members of the working group

François Ansermet (rapporteur)

Christiane Basset

Marie-Germaine Bousser

Pierre Delmas-Goyon (rapporteur)

Claude Delpuech

Anne Durandy-Torre

Pierre-Henri Duée

Marion Muller-Colard

Laure Neliaz, Assistant to the Child and Adolescent Protection Office (DGCS) (external guest)

Appendix 2: People interviewed

Isabelle Saunier, President of UDAF Tarn, UNAF Board member

Alexandre Urwicz and Fabien Joly, President and Spokesperson, ADFH, Association des familles homoparentales (Association of homoparental families)

Emilie Barreau, Head of the Child Protection Office, Ministry of Solidarity and Health

Nathalie Parent and Anne Royale, President and Company Secretary of the "Enfance et familles d'adoption" association

Jeanne Delacourt, Departmental Director of Social Cohesion and Peggy Rogers, Head of Urban Policy and Equal Opportunities, Hauts de Seine Department

Sylvie Blaison, Head of the Foster Care, Adoption and Sponsorship Department, Children, Health and Family Division, Val d'Oise Department and Raphaëlle Cavalier, Head of the Adoption and Children's Rights Department, Children, Family and Youth Division, Nord Department

Céline Giraud, President of the association La Voix des Adoptés

Marie Dérain, General Secretary of the Conseil national de la protection de l'enfance (National Council for Child Welfare), Ministère des Solidarités et de la Santé (Ministry of Solidarity and Health)

Appendix 3: Referral



MINISTRY FOR SOLIDARITY AND HEALTH (MINISTÈRE DES SOLIDARITÉS ET DE LA SANTÉ)

The Minister
The Secretary of State

Paris, 11.6.2014

Memo
For the attention of Mr Jean-François Delfraissy Chair of
the National Consultative Ethics Committee

Subject: Request for an opinion from the National Consultative Ethics Committee on the definition of an adoption plan and the criteria for matching a ward of the State with an adoptive family.

The purpose of the status of ward of the State is to protect a child who has been deprived of his or her family for a long period of time by providing an alternative family environment. It relies on the departmental prefect - the child's guardian -, an ad hoc family council and the departmental council, responsible for the day-to-day welfare of the child. As such, it constitutes a child protection measure, in compliance with article 20 of the International Convention on the Rights of the Child.

As of 31 December 2016, 2,626 minors benefited from this protected status, admitted for the following reasons:

- a court decision declaring parental neglect or withdrawing parental authority in 46% of cases;
- the child was handed over by their parents to the child welfare authority in 44% of cases. In nearly 30% of cases, the child was handed over following a birth in which the birth mother's identity was requested to be kept secret;
- The impossibility of organising common-law guardianship for orphaned children in 10% of cases.

Under Article L. 225-1 of the French Social Action and Family Code, wards of the State must be the subject of "*a life plan defined by the guardian in agreement with the family council, which may be adoption, if this is in the child's best interests*". If adoption is in the child's best interests, the guardian, in agreement with the family council, must choose between simple and full adoption, depending on the child's needs and situation, and the wishes of the prospective adopters.

.../...

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No criteria are laid down in the regulations to guide the guardian and the family council in their task of choosing a family for a particular child. The only applicable principle is based on the very foundation of any child protection measure as defined in Article L. 11 2-4 of the CASF: *"The interests of the child, taking into account their fundamental physical, intellectual, social and emotional needs, as well as respect for their rights, must guide any decision concerning them"*,

In practice, wards are on average 8.1 years old and admitted at the age of 5.6. Their situations vary according to their life histories. Children admitted following a secret birth are most frequently placed for adoption with an approved family in the department in the year following their birth. Children admitted after a period of child protection are most often adopted later by their foster family. Finally, at 31 December 2016, 1,644 children had not been placed for adoption. On average, they are 11.1 years old and admitted at the age of 7.9. Almost half of them are available for adoption, but the family council is having difficulty finding an adoptive family, given the specific needs they have due to their state of health or disability, their age, or the fact that they belong to a sibling group.

At the same time, people wishing to adopt must obtain approval from their departmental council, the purpose of which is to assess whether *"the family, educational and psychological fostering conditions offered by the applicant correspond to the needs and interests of the adopted child"* (Art. R. 225-4 of the CASF). Approval is delivered following an assessment of the family situation, educational capacities and fostering conditions on the one hand, and the psychological context in which the project is being developed on the other. The approval decision is accompanied by a notice specifying the characteristics of the child or children likely to be taken in (number of children, age, other elements of the plan), taking into account the wishes of each prospective adoptive parent and the assessment of their situation.

Following the questioning of the adoption service of the Seine-Maritime departmental council regarding possible discriminatory treatment against homosexual couples applying to adopt, the General Inspectorate for Social Affairs, in a letter dated 12 July 2018, was commissioned to examine adoption procedures in the department concerned.

The report, which was submitted to us on 15 March, raises a number of ethical issues concerning, on the one hand, the definition of the adoption plan and, on the other hand, the criteria for matching a child who is a ward of the State with an adoptive family.

For example, the report questions the potentially discriminatory nature of the reservations expressed by some prospective adoptive parents, and included in their plans, regarding the profile of the child or children they are likely to adopt: geographical origin or physical appearance, state of health or disability, age, etc. The aim here is to prepare the matching process by identifying any limits in the adoption plans of the prospective adoptive parents, and by defining a profile of the child with whom they feel genuinely able to identify. The aim is to prevent adoption failures. Not addressing certain questions with prospective adoptive parents, or considering that certain answers would be forbidden, would inevitably lead to approved families being offered children they are not ready to take in, which would be detrimental not only to these families but also, and above all, to the children themselves. However, the reluctance of some families to take in children from a visibly different background to their own, or children with disabilities, raises an undeniable ethical question.

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When it comes to matching a child with an adoptive family, the report warns that some adoption professionals may resort to tacit criteria that seek to establish a certain semblance of biological parentage. The issues raised relate in particular to the different forms of parenthood, as well as questions of identity and the geographical, cultural or religious origin of the children.

It is for this reason that we are seeking the opinion of the National Consultative Ethics Committee on the framework and practices for preparing and supporting prospective adoptive parents, particularly with regard to formalising their adoption plans; and on the other hand on the elements, principles or criteria that should guide the guardian and the family council in the process of matching a ward of the State with an adoptive family, In doing so, we would particularly draw your attention to the importance of preventing adoption failures and, more broadly, to the imperative need to guarantee that the fundamental needs of the child are taken into account, in accordance with Article L. 112-3 of the French Social Action and Family Code, and to ensure that the child's best interests take precedence in all decisions affecting them, in accordance with Article 3 of the International Convention on the Rights of the Child.

We would be grateful if you could provide us with your opinion by 1 November 2019 at the latest.

[illegible signature]

Agnès Buzyn

[illegible signature]

Adrien Taquet



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NATIONAL CONSULTATIVE ETHICS COMMITTEE FOR HEALTH AND LIFE SCIENCES