

Fact Sheet N° 11

A global policy for Children and the Family TERMINATION OF PARENTAL RIGHTS AND CONSEQUENCES

The relation between child protection measures, termination of parental rights and adoption is a question frequently raised in a number of countries and which involves important ethical and legal issues. Despite its complexity and specificity, there remains, as far as we know, no specific literature on this very issue. Therefore, when addressing and discussing the nature and effects of child protection measures leading to the termination of parental responsibilities and adoption, the following issues have to be considered.

Nature of the measure: The termination of parental rights and responsibilities, as a child protection measure, is designed to protect the child's best interests whilst legally maintaining him or her as a member of his or her family of origin (son or daughter). As far as we know, in comparative law, it is a temporary and reviewable measure, whose ultimate objective is, as a priority, the reintegration of the child in his or her family of origin – although, after revision of the measure, it may end up in adoption. On the other hand, adoption is a permanent solution, a consequence of all efforts to reintegrate the child into the family of origin having failed, and which permanently modifies the child's legal filiation.

Consequences of the termination of parental responsibility: Termination of parental rights and responsibility is often due to incidents which warrant the child's temporary removal from parental care. However, preoccupation lies, in most countries, in the lack of availability of appropriate prevention and care solutions and the lack of attempts, once the child is placed, to monitor the family situation and

to reintegrate the child into his or her family, insofar as it is in his or her best interests. Termination of parental rights and responsibilities, in any case, should remain a measure of last resort, even if of a temporary nature. The main issue and concern, in some countries, is that when it becomes a common protection measure and when parents are deprived of their parental rights, the children are often too rapidly deemed adoptable. In relation to this, the Committee on the Rights of the Child often expressed its concern about the absence of due judicial process in many countries, including technical assessment of capacity of the parents or guardians, in cases involving termination of parental responsibility, as well as about the fact that the parents' poverty can be a legal ground for adoption. Also, all interested parties shall be given an opportunity to participate in the proceedings and make their views known (art.9 CRC). This condition is especially important for the child.

Consent to adoption: In this context, it is important to question whether the termination of parental rights and

responsibilities should result in the parents' deprivation of their right to consent to the child's adoption. As a matter of principle, adoption must only take place if the parents of origin have consented to it. However, there may be circumstances in which adoption without the consent of the parents may be contemplated or when the parents' right to consent to adoption may be denied, such as when the parents are dead, unknown or untraceable as well as when a forced adoption may be necessary in the best interests of the child (unreasonable denial to consent to adoption, declaration of abandonment, when all efforts to work with the parents and to reintegrate the child have failed or proved ineffective, etc). Decisions on a child's adoptability, however, are permanent decisions, which should not automatically result from a temporary measure such as the termination of parental responsibility. The question is whether a legal system considers that the right to consent to adoption stems from legal filiation or from parental responsibility. We would advocate in favour of the first solution.

From the experience learned through comparative law and practice, we would advocate in favour of a two-concept system for the legal handling of major family separations, involving serious danger for the child:

- A temporary and revisable child protection measure – the termination of parental responsibility, within a framework of preventative and curative measures aimed at helping the family to reintegrate the child;
- A filiation measure – the forced adoption, without the consent of the

parents in very limited and legally well-described circumstances.

The competent authorities should have to choose between these two types of measures in consideration of:

- (a) the temporary or permanent nature of the removal of the child from his or her family;
- (b) the plan made for the child's future: reintegration into the family of origin or adoption.

Child perspective: The best interest of the child shall be a primary consideration when such a difficult decision has to be taken. The child shall not be separated from his/her parents against his/her will "except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child" (art.9 CRC). Furthermore, children temporarily or permanently deprived of their family environment or in whose own best interests cannot be allowed to remain in that environment are entitled to special protection (art.20 CRC). Beside psycho emotional aspects, this protection also aims at the judicial status of these children which has to be secured. If parents are no longer legally responsible, the competent authorities have to take appropriate tutelary measures according to the possibilities of national law. This measure shall intervene simultaneously with the termination of parental rights decision, so as to avoid any period of non-protection.

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For more information:

- CRC General Discussion Day on Children without parental care (<http://www.ohchr.org/english/bodies/crc/docs/discussion/recommendations2005.pdf>)
- Implementation Handbook for the Convention of the rights of the Child, UNICEF, fully revised edition 2002
- ATD Fourth World, *How Poverty Separates Parents and Children: a Challenge to Human Rights*, 2004, 148 pp. http://www.atd-quartmonde.org/intern/docu_intern/howpov.pdf

We are interested in your opinion! To tell us your experiences, ask us your questions about the themes addressed in this file, or to send us your suggestions for changes, don't hesitate to write to us at irc-cir@iss-ssi.org. We also invite you to share this file with other interested persons in your country. Thanks in advance!

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