

Summary

Simple adoption of foster children

A study into the possibility of introducing simple adoption of foster children by foster parents from a legal and behavioral perspective for the Scientific research and documentation center (WODC) of the Dutch ministry of justice and security.

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1. CONTEXT AND AIM OF THE STUDY

Children who can no longer grow up with their original parents are placed in a foster family or institution either on a voluntary basis or on the basis of a court order. The parents retain parental authority in the event of a voluntary placement or placement within the framework of a supervision order (OTS). However, it may also be that the parents no longer have parental authority over the child, because the judge has made an order that terminates their parental authority. If the parents' parental authority is terminated, the judge will have to attribute either a youth care institution (hereafter GI – which is short for *gecertificeerde instelling*) or a natural person with guardianship over the child. In most cases, guardianship will be attributed to a GI, meaning that the decision-making authority lies with this institution (GI). However, the judge may also attribute guardianship to the foster parents (foster parent guardianship) which means they will have the decision-making authority. Furthermore, it is also possible for foster parents to adopt their foster child, though this rarely happens. In case of adoption the foster parents will become the child's new legal parents and will automatically be attributed with the decision-making authority with regard to the child (parental authority). The legal ties with the child's original parents and their family are severed. This means that the child loses legal ties with his biological siblings, grandparents and wider family as well as their original parents. The foster parents and their family become the adopted foster child's new legal family.

The Government Committee on the reassessment of parenthood (hereafter: the Committee) proposed in their report *Child and parents in the 21st Century* the introduction of a form of adoption that would leave the legal ties with the original parents intact, contrary to the current form of adoption that severs these ties. The Committee refers to this new form of adoption as 'simple adoption' (*eenvoudige adoptie*).¹ The Committee states that the advantage of simple adoption for the child would be that its factual situation would be optimally protected by forging legal ties with the foster parents who are actually raising the child without severing the legal ties with the child's original parent(s).² The Committee briefly touches upon the legal consequences of this form of adoption for the original parents, the foster parents and the child, with regard to parental authority, child maintenance, inheritance rights, name and nationality. Furthermore, the Committee states that simple adoption would in principle require the consent of all parties involved, but suggests it might also take place without the consent of the original parent(s).³

According to the Committee's proposal the legal parental ties with the original parent(s) will remain intact while new legal parental ties will be forged with the foster parents. The result may be that the child has more than two legal parents. The legal consequences of simple adoption would be the same as those of regular legal parental ties. This would mean that both the original parents and the adoptive parents would have a child maintenance obligation until the child turns 21, and in case of need on the part of the child, also after the child turns 21. Furthermore, the child would inherit from both the original parents and their families and the adoptive parents and their families. In case the child is not yet a Dutch national, it will acquire the Dutch nationality upon adoption if one of the adoptive parents is a Dutch national. The Committee notes that simple adoption may also have consequences for the child's family name, but does not propose any rules. Moreover, the Committee leaves the decisions about who will be attributed with parental authority with the judge.

This study has come about as a result of the minister of justice's promise of 22 March 2018 to have research done into the question whether simple adoption will meet the needs and interests of long-term foster parents and children.⁴

An inventory is made of the advantages and disadvantages of simple adoption in the context of foster care in Dutch family law. In order to gain insight into experiences with simple adoption elsewhere, a brief comparative exploration is done. This study concerns simple adoption as proposed by the Committee,

¹ Staatscommissie Herijking Ouderschap, *Kind en Ouders in de 21^{ste} eeuw*, p. 435 (hereafter: Rapport).

² Rapport, p. 436.

³ Rapport, p. 437.

⁴ Brief aan Tweede Kamer, 22 maart 2018, *Kamerstukken II 333836* nr. 24.

meaning a form of adoption where the legal ties with the original family remain intact and at the same time the child acquires legal ties with the foster parents and their family.

This study aims to answer the following research question:

To what extent will the introduction of simple adoption, as proposed by the Government Committee on the reassessment of parenthood, meet the needs and interests of foster parents who have been looking after a foster child for a lengthy period of time and the foster children concerned, and what would be the advantages and disadvantages of introducing simple adoption in Dutch law?

On the basis of this research question, the following sub questions have been formulated:

1. What options do foster parents have to forge legal bonds with a foster child that has been in their long-term care and which institutions need to be involved?
2. What are the advantages and disadvantages of these options?
3. What are the advantages and disadvantages of the introduction of simple adoption as proposed by the Committee and what are the consequences for the institutions involved (legally, practically and financially)?
4. How is simple or multi-parent adoption regulated in France and California and how does it work in practice?
5. Which advantages and disadvantages of simple adoption can be distilled from the discussions in Québec and Australia and what can the Dutch legislator learn from these discussions?
6. What are the interests and rights of children in the context of simple adoption?
7. Is there a need among foster parents and children for simple adoption and if so under what conditions should it be made possible?
8. Would foster parents who do not currently opt for foster parent guardianship or full adoption, consider simple adoption?
9. Should the introduction of simple adoption be considered given the problems and needs of foster parents and children, the rights and interests of the children involved and the advantages and disadvantages of simple adoption? If so under which conditions?

This study concerns a form of adoption where the child's legal ties with the original family remain intact and at the same time the child acquires legal ties with the foster parents and their family. This does not answer the question as to who will obtain the decision-making authority over the child, this can remain with the original parents, be awarded to the GI or to the adoptive parents. As a result of a simple adoption a child may have legal ties with more than two parents and their families. This means that a child may for instance have four parents and four sets of grandparents. Furthermore, simple adoption ensures that the legal ties with the original siblings remain intact while at the same time forging legal ties with the children of the foster parents.

We decided to use the term *simple adoption*, because that is what the Committee does, but whether this is the most appropriate term is subject to discussion.

2. METHODS AND STRUCTURE OF THE STUDY

The study covers only simple adoption by foster parents and does not cover simple adoption by others, such as intentional multiparent families or reconstituted families. The study consists of four parts: an introductory part (Part I), a legal part (Part II), an empirical part (Part III) and a concluding part (Part IV). We used a multi-disciplinary *mixed method design*, combining a number of different research methods.

For the legal study (Part II) we used three methods:

- a) desk research into relevant legislation, policy, legal literature and case law in the Dutch context; b) interviews with a small number of professionals; c) an explorative study of four foreign jurisdictions.

The desk research was in first instance used to map out the legal domain. Subsequently, a small number of legal and non-legal professionals were interviewed, primarily to gather information for the design of the questionnaire. The secondary aim of these interviews was to combine them with the results of the expert meeting which was held towards the end of the study. For the comparative exploration, use was mainly made of desk research. The central question of this comparative exploration was what the Dutch legislator can learn from other jurisdictions. A quick scan of jurisdictions that have some form of simple or multi-parent adoption or discussed the introduction of either, led to the selection of the following four jurisdictions: Australia, California, France and Québec.

The empirical study (Part III) primarily aimed to answer the question whether there is a need among foster parents and foster children for the introduction of simple adoption. A number of methods were used. First of all, an overview was made of relevant scientific literature, which was subsequently used for the design of the online and interview questionnaires, and a number of professionals were interviewed ($N = 5$), as was mentioned earlier, to ensure the relevance of the questionnaires. Subsequently, the questionnaires were put online and foster parents and foster children were interviewed. In the questionnaires and the interviews, participants were asked whether simple adoption would meet their needs and interests and if so, what they regarded as the advantages and disadvantages and under what conditions they would consider simple adoption. Three foster parents who had adopted their foster child were interviewed. Towards the end of the study these questions were also discussed with a number of experts ($N = 4$) during an expert meeting. Given the complexity and the short time span of this study, we decided not to interview original parents whose child is living in a foster family.

In the conclusion (Part IV) the results from the previous three parts are brought together and the research question is answered. Furthermore, an overview of issues that are of importance should the legislator decide to introduce simple adoption is included.

3. RESULTS

3.1 RESULTS FROM THE LEGAL STUDY

3.1.1 Adoption in the context of foster care in 2019 (questions 1, 2 and 3)

When it is clear that a child cannot grow up with its original parents, the question may be raised whether the parents' parental authority should be terminated (an order to terminate parental authority). After the termination of parental authority, guardianship over the child may be attributed to the GI or the foster parents. If guardianship is attributed to the GI, the GI will make important decisions about the child and the foster parents will need the approval of the GI for decisions like the choice of school, holidays abroad, the application for a passport and medical treatments. If guardianship belongs to the foster parents, they can make these decisions themselves. In most cases guardianship is attributed to the GI and not to the foster parents in the Netherlands.

Foster parents who care for a child for a prolonged period of time, have two possibilities to forge legal ties with their foster child. They can obtain foster parent guardianship or they can adopt the child. For both measures the termination of parental authority of the original parents is a prerequisite. There are a number of important differences between these two measures. Foster parent guardianship means the foster parents will obtain guardianship over the child, but the child remains legally part of its original family. This means that once the foster child reaches the age of majority (18), guardianship ends by operation of law and the legal ties with the foster parents end. Legal ties with the original family do however remain. With (full) adoption by the foster parents all legal ties with the original family are severed, but lifelong legal ties between the child and the foster parents and their family are established. Moreover, the adoptive parents gain parental authority over the child as a result of the (full) adoption. There are other relevant differences. Although with foster parent guardianship the foster parents are responsible for the upbringing and care for the child, they can continue to ask for some form of foster care support and they retain the right to a foster care allowance. However, they become responsible for maintaining and facilitating contact between the foster child and its

original parents and also for arranging the care that the foster child needs. In the case of (full) adoption of the foster child, the foster parents (adoptive parents) become completely responsible for the child, because both foster care allowance and foster care support cease to be available.

The number of children that are adopted is very limited and (full) adoption of foster children by their foster parents barely occurs in the Netherlands. Adoption is only possible subject to strict conditions, partially because the legal ties between the child and the original parents are severed. For example, the adoption must be in the interest of the child and it must be clear that the child has nothing more to expect from the original parents in their capacity as parents. There are also conditions concerning the child, the original parents and adoptive parents and their age, moreover, the adoptive parents may not be the child's grandparents. The (legal) consequence of adoption is that the adopted child is given the same position with regards to the foster parents and their family as their own (biological) children. Because of this, a maintenance obligation arises, the child can inherit, the child can assume the family name and nationality of the adoptive parents and the adoptive parents obtain parental authority. If there is contact between the child and the original parents at the time of the adoption order, the court may make a contact order. This means the child does in fact retain contact with the original parents. For a short period of time after the child becomes an adult, it has the option to revoke the adoption.

3.1.2 Simple adoption in other jurisdictions (questions 4 and 5)

In order to see what the Dutch legislator can learn from experiences in other jurisdictions with simple adoption in foster care, research was done into simple adoption in California, Australia, France and Quebec. From this research we can conclude that there is not that much that the Dutch legislator can learn from the practice of simple adoption in the context of foster care in these jurisdictions. Both France and California do have a form of simple adoption, but it does not really play a role in the context of foster care. Simple adoption within the context of foster care is/was however key to proposals for adoption policy in Quebec and Australia. Be that as it may, the proposal in Quebec was not turned into law, but it has not become really clear to us why. Instead, a new law was passed that makes it easier for adopted children to obtain information about their original parents. In Australia it was not the government, but the academics who put forward the proposal for simple adoption in the state of New South Wales. The proposal has not yet been fully elaborated, but is already controversial. Recent empirical research from New South Wales shows that simple adoption has advantages as opposed to the existing possibilities of long-term foster care and full adoption. It is not possible to predict whether the results from this research will impact public opinion in Australia.

It is clear that in Australia, Quebec and France a discussion is taking place, or has taken place, on the desirability of simple adoption in the context of foster care as an alternative to long-term foster care, but that this has not yet led to changes in the laws of the aforementioned jurisdictions. This does, however, not mean that simple adoption in these jurisdictions is not worth looking into, since some elements of simple adoption, such as the rules on the revocation of simple adoption in France, may be of interest to the Dutch legislator.

3.2 RESULTS FROM THE EMPIRICAL STUDY

3.2.1 Questionnaire (questions 6,7,8)

To study whether the introduction of simple adoption is seen as desirable by foster parents and children, questionnaires were drawn up and sent out to foster parents. In addition, in-depth interviews were held with a smaller group of foster parents and foster children from different regions and ages. The focus was on full-time foster families who had been caring for a foster child for at least a year or did so in the past five years. Through these methods we tried to map out the advantages and disadvantages of simple adoption and to flesh out the practical, legal and financial conditions for simple adoption, from the perspective of the foster parents and children.

For the dissemination of the questionnaire, we reached out to the 27 foster care organisations in the Netherlands, of whom 17 took part in the research by sending a link to a digital questionnaire to their foster parents. The questionnaire was answered by 615 full-time foster parents, who had been caring for a foster child for at least a year ($N=603$) or did so in the past 5 years ($N=12$). From the results we concluded that a

small majority of foster parents are not aware of the possibility of adopting their foster child. In total 560 foster parents said that that possibility had never been discussed with them and that they never asked about it themselves. A large majority of foster parents is unsure whether they should adopt their foster child or do not believe it to be either possible or desirable. There is no consensus whether simple adoption should be introduced. A small majority prefers simple adoption to full adoption, but others are not sure or are altogether opposed to the adoption of foster children. Most foster parents do however see advantages in simple adoption, as opposed to full adoption. The advantage chosen most often was that the original ties with the biological parent(s) remains intact, while at the same time the foster child feels part of the foster family. The disadvantage chosen most often was that if the foster child were to have 3 or 4 parents, a rise in conflicts could be expected.

When asked under what conditions simple adoption should be made possible, a majority of foster parents answered that they believe the foster child should have a strong voice in the choice for simple adoption. In addition, they said support should remain available after adoption for both the foster child and parents and that a good relationship between the original parent(s) and the foster parents is a prerequisite for a successful simple adoption. Furthermore, a majority believes that foster care allowance should continue after simple adoption, that the residence of the child should always be with the foster parents and that the child should be able to choose its family name. A small majority also believes that simple adoption should be made possible even if the biological parents do not agree, as long as this is in the child's best interest. There is no consensus on how long a foster child must be in the care of the foster parents, before simple adoption should be possible, or on how old the child must be to have a say in this. A small majority believes that the adoption of adult foster children should be possible, but most do not believe that grandparents should be able to adopt their grandchildren.

3.2.2 Interviews with foster children and foster parents (questions 6, 7 and 8)

In order to gain more depth in the knowledge gained from the online questionnaires and in order to discover what foster children think of simple adoption, a number of in-depth interviews were held with 13 foster parents and 8 foster children of varying ages. Recruitment of these participants took place through the questionnaire, by allowing foster parents to submit their contact details and indicate that they wanted to be interviewed or that they, as well as their foster child (of 12 years or older), wanted to be interviewed. In total, 52 foster parents were willing to be interviewed and 32 foster parent/foster child couples were willing to be interviewed. From this group, a selection based on region, age, and type of foster family was made in order to attain as much as possible representativity. Furthermore, three foster parents who had adopted their long-term foster child were approached through the contacts of the researchers, in order to discover what full adoption meant for the foster family and the foster child, as well as to find out how foster parents who have experience with full adoption look at the possibility of simple adoption.

Because of the diversity of backgrounds, the differences in situation and the small number of interviews, no clear answer can be derived from these interviews. The opinions are divided. Foster parents who are in favour of simple adoption believe that it should only be possible with a number of prerequisites, such as the continuance of foster care support, and foster care allowance. Furthermore, some foster parents said that they think the difference between simple adoption and foster parent guardianship is not always clear enough and that they wonder whether this form of adoption has any additional value. Foster parents who oppose simple adoption are sometimes fundamentally against the adoption of foster children or say that this is a complicated and unclear intermediate form or that they believe simple adoption is not suitable for their own situation. The most prevalent counterargument from the foster parents is that an intermediary in the form of a social worker would no longer be available after adoption and that this may complicate the communication with the original parents. From the interviews with the foster children we can conclude that some foster children are in favour of simple adoption, because they think it is a good solution for foster children who still have a good relationship with their original parents, but also want legal family ties with their foster family. Foster children opposed to simple adoption say that they are afraid it would place foster children between their original parents and the foster parents and that this would be too complicated for them. A few foster children said they found it too difficult to look beyond their own situation and therefore could not say how this would affect other foster children. The points that the foster children found most important was that want to have a

say in decisions made about them and that they wanted to be part of their foster family. There is no consensus for which groups simple adoption should be made available. A small majority of foster parents and most of the foster children think it should be possible for adults (ex)foster children as well and several foster parents indicate it is a good thing there is an end to foster care.

There is no consensus on the minimal duration of care before simple adoption should be possible. Some foster parents think a year is too short, while other foster parents think there should not be a minimum duration of care, but instead it should depend on the perspective of the child, the developmental age and the circumstances. The foster children also say that it should very much depend on the circumstances and the development of the child. Some foster children also state that they feel that if children have been through a lot, they know much better what they want and are often underestimated in that respect. Other foster children say that a child needs time discover what they want and that there should not be too much decision-making stress. Most foster parents and children do however agree that the opinion and interest of the foster child should always be the most important factor in the decision for simple adoption. The views on whether the original parents' consent is also always required are less coherent. Some foster parents and children think that all parties' consent is required for simple adoption, yet others believe that as long as both the foster child and the foster parents really want simple adoption, the view of the original parent(s) is not so important.

3.2.3 Expert meeting and interviews with professionals (question 3)

There is no clear answer as to whether the professionals who were interviewed (N=5) or who attended the expert meeting (N=4) are in favour of the introduction of simple adoption. The opinions are divided. According to some we should look at other alternatives to bolster the position of foster parents and thus the situation of the foster child in their long-term foster care. Others believe simple adoption should be a possibility in the situations where this is the best solution. Aside from this, the interviews with professionals tell us that they believe the advantages and disadvantages of simple adoption are strongly dependent on the conditions for and consequences of simple adoption. The legal, practical, financial and other consequences of simple adoption for all involved will depend on these choices. An important advantage of simple adoption to full adoption is that the legal ties with the original parents and their family are maintained, so the child's original identity is protected and it remains connected with the original family, while at the same time new ties are established with the foster parents and their family. This can also be a disadvantage however, since having three or four legal parents can be complicated because the parents will have to cooperate closely. This can lead to conflicts, especially if the foster parents and the original parents find it hard to communicate with each other. An important advantage of simple adoption to full adoption is that it brings security and stability to the child and the (legal) ties are maintained when the child becomes an adult. Disadvantages of simple adoption to long-term foster care are mostly dependent on the decisions made on the (legal) consequences thereof. The professionals primarily mentioned the end of foster care allowance and foster care support. It is however possible to make certain (policy) decisions that will eliminate or lessen these disadvantages. If simple adoption were to be introduced, the professionals pointed to a number of other issues that need further elaboration: the education of foster care workers, the development of a decision matrix, the provision of aftercare/support and provision of financial assistance (foster care allowance, costs of the adoption process). On the matter of legal consequences, there should be more attention for child maintenance obligations, custody/guardianship, consequences for inheritance rights, the surname(s) of the foster child, the question whether adoption by grandparents should be a possibility, the possibility to adopt adults and the revocation of adoption. The professionals believe that foster parents must consent to simple adoption and that the child must be heard, but there is no consensus on whether the consent of the original parents should be a requirement and what the minimal age should be for the child to be included in the decision-making process. There is also no consensus on the how long the child must have been in the care of its current foster parents before simple adoption should be possible. Furthermore, the professionals said that decisions will need to be made about the simple adoption procedure (applicant(s), appropriate court, advisory persons/organs) and that other consequences of simple adoption like nationality and migration rights should be considered in depth. Lastly, if simple adoption were to be introduced, not only foster parents, but also others - like step-parents- might want to use this form of adoption to legally protect their family.

Moreover, if a foster child can have more than two legal parents through simple adoption, this begs the question whether this should not also be made possible for other children.

4. CONCLUSION

4.1 CONSIDERING THE INTRODUCTION OF SIMPLE ADOPTION (question 9)

On the basis of this research we cannot provide a clear yes or no to the question whether simple adoption should be made possible. That does not come as a complete surprise, since there is great diversity among foster families and children and the maintenance of a connection with the original parent(s) and their family may be an advantage and a disadvantage of simple adoption at the same time. On the one hand, foster parents and professionals are concerned about possible conflicts between the original parents and the adoptive parents - the child could be caught between them - and on the other hand some regard the maintenance of legal ties with the original family as beneficial to the child.

Furthermore, a number of foster parents indicate that they cannot manage without the foster care allowance and some form of support with maintaining contact with the child's original parents. What is very clear from the interviews with the foster children is that they want to have a say in decisions made about their future.

Simple adoption can be regarded as a hybrid between the current options of foster parent guardianship (which gives the foster parents decision-making authority, but leaves the child's legal ties with the original family intact) and full adoption (which integrates the child fully in the adoptive family and severs legal ties with the child's original family). Simple adoption would leave the legal ties with the original family intact, but would also integrate the child fully in the adoptive family; the foster parents will obtain decision-making authority. When the child turns 18, it will remain part both of the original family and the adoptive family.

In this context it is interesting to point to the government's intention to introduce a form of partial parental authority, which may also be relevant for foster parents. In practice this would leave guardianship with the GI while the foster parents may be attributed with certain elements of guardianship, so they can make a number of decisions without having to consult with the GI. This hybrid between full guardianship with the GI and full foster parent guardianship may solve a number of the problems encountered by foster parents. If simple adoption would also become possible, there will be a variety of options to choose from for children who cannot grow up with their original parents.

In the end a decisions about the best long term option for a child that cannot grow up with its original parents is a decisions that must fit the needs and interests of the individual child concerned; it is a decisions in which issues such as continuity, the child's right to identity and the child's participation in the decision making process should play a pivotal role. Simple adoption may not be suitable for all foster children, which was also not the intention of the Committee's proposal, just like full adoption is not a good fit for every foster child. But broadening the long-term care options available for children who cannot grow up with their own parents, may contributed to decisions that better fit the needs of the individual child.

4.2 ANSWER TO THE MAIN RESEARCH QUESTION

The main question of this research is:

To what extend will the introduction of simple adoption, as proposed by the Government Committee on the reassessment of parenthood, meet the needs and interests of foster parents who have been looking after a foster child for a lengthy period of time and the foster children concerned, and what would be the advantages and disadvantages of introducing simple adoption in Dutch law?

The introduction of simple adoption will meet the needs and interests of a specific group of long-term foster parents and children. A number of foster parents would prefer simple adoption over full adoption for the foster child for whom they filled in the questionnaire, but other foster parents are not sure or cannot or do not want to adopt their foster child. A small number of foster parents indicate they think simple adoption has

no advantages over full adoption, but a majority of the foster parents do think simple adoption has advantages over full adoption. The advantage of simple adoption chosen most often by foster parents is the fact that the child knows it is part of the foster family, but will also remain part of the original family. Around a third of the foster parents indicate that simple adoption has no disadvantages. The most often cited disadvantage is the fact that having three or four parents could lead to conflicts. It is interesting to note that a small majority of foster parents, the majority of foster children and most of the professionals think that simple adoption would also be a good solution for foster children who are 18plus. Whether simple adoption meets the needs of foster parents and children also depends on the legal consequences and conditions. This concerns for instance facilitating contact with the child and the original parents if required or the continuance of foster care allowance after adoption. The most important condition for both foster parents and foster children is that the child is actively involved in the decision-making process. Both groups agree that foster children should be able to indicate whether or not they want to opt for simple adoption. That may be one of the most important outcomes of this study, apart from the fact that there is no consensus about the answer to the question whether simple adoption should be introduced.

From a children's rights perspective, it seems that simple adoption may meet the rights and interests of foster children because on the one hand it offers continuity: the child's future is firmly rooted in the foster family and when the child turns 18 legal ties with the foster family remain intact. On the other hand, the identity of the foster child is safeguarded because the child's legal ties with the original family are not severed. If this, however results in conflict between the parents, simple adoption may not necessarily be in the child's interest.

From the perspective of the law the most obvious disadvantage is increased complexity, since different forms of foster parenthood and adoption will co-exist, in particular if partial guardianship also becomes a possibility. On the other hand, this complexity will leave more room for decision making that fits the needs of the individual child.

Introducing simple adoption is worth considering because it meets the needs and interests of a group of foster parents and children. It will depend on the conditions and consequences whether simple adoption will also meet these needs and interests in practice and be a useful instrument in providing children who cannot grow up with their own parents with a stable home in another family.

Finally, in all arguments that may play a role in the decision whether or not to introduce simple adoption, the perspective of the foster child must play a pivotal role. Their wish to be involved in decisions made about their future, should be permanently integrated in the decision-making process.