



Raad voor
Strafrechtstoepassing
en Jeugdbescherming

Summary

Advisory report: The best interests of the child in multi-parent families

Council for the Administration of Criminal Justice and Protection of Juveniles

At present, a maximum of two people can be legal parents of a child and only two people can have parental responsibility in the Netherlands. In 2016, the State Committee on Reviewing Parenthood (hereinafter: the State Committee) recommended that legal multi-parenthood and parental responsibility as well as parental responsibility for more than two carers (meaning that more than two parents care for and raise a child) be made legally possible under certain conditions, both before conception and after birth, in the latter case through a transitional regulation. These plans were met with criticism from various directions because they did not sufficiently take into account the best interests of children.

The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming*; hereinafter referred to as 'the RSJ') has issued an advisory report on how to safeguard the best interests of children in a regulation for legal multi-parenthood and parental responsibility, or parental responsibility for more than two carers. The main focus is how to safeguard the best interests of minor children when parents disagree on important decisions in the child's life.

Method

This advisory report covers two specific forms of legal multi-parenthood, where more than two adults care for and raise a child together: 1) intentional multi-parenthood and 2) multi-parenthood in newly formed families after parental separation. For this report, interviews were conducted with eleven professionals from eight different organisations and three focus groups were organised to engage in discussions with experienced parents and children from intentional multi-parent families and newly formed families after parental separation.

Vision of the RSJ

Current situation of multi-parent families

Firstly, it has been established that the family situation of children from intentional multi-parent families is very different from that of children from newly formed families after parental separation. The history and dynamics of multi-parent families are different, and



this has consequences for the answer to the question whether a regulation for both groups is in the best interests of the child.

The RSJ believes that giving intentional multi-parent families the possibility to apply for legal multi-parenthood and parental responsibility is in the best interests of children. The current legal situation regarding legal parenthood and parental responsibility does not correspond to the daily lives of parents and children in intentional multi-parent families and in practice this creates legal and socio-emotional barriers. In addition, granting legal multi-parenthood prolongs the lifelong legal parent-child relationship between parents and children, which implies safeguards for e.g. the right to inherit and the care relationship between parents and children and vice versa. Having legal multi-parenthood, including parental responsibility from birth, grants legal equality and legal certainty to children and parents from intentional multi-parent families.

Regarding a regulation for newly formed families after parental separation, the RSJ finds applying for parental responsibility for more than two carers a more logical choice than choosing for the establishment of a legal parent-child relationship with a step-parent through legal multi-parenthood. However, given the diversity of step-families, it is difficult to indicate the extent to which there is a need for a regulation for parental responsibility for more than two carers within this target group. Whether such a regulation is in the best interests of a child should be verified by the court on a case-by-case basis, with the court taking into consideration that granting parental responsibility to more than two carers should not raise the prospect of increased conflict. The RSJ believes that there can be situations where parental responsibility for a step-parent is in the best interests of a child, for example when one of the legal parents lives abroad or is seriously ill for an extended period of time.

Differences between legal multi-parenthood, parental responsibility for more than two carers and multi-parental responsibility

It makes a difference whether there is a situation where there will only be a regulation for legal multi-parenthood, a situation where there will only be a regulation for parental responsibility for more than two carers or a situation where there will be a regulation for both legal multi-parenthood and multi-parental responsibility. The difference between these situations lies in the associated legal implications.

Legal multi-parenthood creates a legal relationship between the child and the parents involved and creates a lifelong bond between the child, the parents and the families of both parents. Such a legal parent-child relationship has consequences for, among other things, the surname/surnames the child can have, the right to inherit, the child maintenance regulations and the contact rights. Multi-parental responsibility and parental responsibility for more than two carers give the multi-parents involved the power to make important decisions concerning the child. Multi-parental responsibility and parental responsibility for more than two carers cease to exist once the child reaches the age of 18 and create only a temporary legal relationship between parent and child.



Requirements best interests of the child

The RSJ concludes that a number of requirements for the best interests of the child must be taken into account in regulations for legal multi-parenthood, multi-parental responsibility and parental responsibility for more than two carers;

- It is important that, prior to the application for legal multi-parenthood and parental responsibility or parental responsibility for more than two carers, the multi-parents discuss the details of parenthood and parenting under the guidance of a professional (such as a counsellor). This may be before conception in the case of intentional multi-parenthood or at some point in a child's life, after parental separation.
- The RSJ believes that a care and upbringing covenant should be drawn up on the basis of this guided conversation, in which the main agreements are laid down. Such a covenant assumes that parents have made well-defined agreements and have thought about how they will deal with major decisions and disagreements. The multi-parenthood agreement of which this covenant forms part should explain how the parents reached agreements together and describe the process they went through.
- The multi-parenthood agreement, including the care and upbringing covenant, must be submitted to the court for review before conception and the application cannot be granted by the court if the parents fail to submit a care and upbringing covenant.
- The parenting agreements made at any given point in time are not set in stone and will require adjustment as the child gets older. It is therefore important that multi-parents periodically discuss the agreements together and make any necessary adjustments. If three or four parents with parental responsibility disagree about a decision to be made, they can fall back on the agreements made earlier and seek help from the professional under whose guidance these agreements were made, such as a counsellor.
- It is in the best interests of children not to be separated from siblings. If multi-parents separate, continued contact between the child and the other children in the family, such as half-brothers and half-sisters and step-brothers and step-sisters, should be ensured.
- With a view to implementing these safeguards in the best possible way, the RSJ believes that professionals need to gain knowledge about multi-parent families. This involves knowledge of both the applicable laws and regulations and their implications for their work on the one hand and the dynamics and parenting in these families on the other.
- In proceedings for granting legal multi-parenthood and parental responsibility after conception and birth, a guardian ad litem with a social/psychological background should be appointed to express the opinion of the child who is legally competent or at least eight years old. In this context, it is explicitly not the task of the guardian ad litem to weigh up interests themselves.
- In decisions on the termination of multi-parental responsibility and parental responsibility for more than two carers, a guardian ad litem with a



social/psychological background should be appointed to identify the best interests of the child.

Transitional regulation

A transitional regulation covers applications for legal multi-parenthood and parental responsibility in case the child has already been born into an intentional multi-parent family. If parents do not submit the application for legal multi-parenthood and parental responsibility before conception, but at a later point in time, such as during pregnancy or after the birth of the child, it should still be possible to apply for legal multi-parenthood and parental responsibility. This could be done through a transitional regulation of unlimited duration, a weak adoption procedure as proposed by the State Committee or another way of obtaining legal (multi-)parenthood and parental responsibility. The RSJ believes that the transitional regulation should also be open to parents and adult children from intentional multi-parent families who wish to apply for multi-parenthood. In line with the proposals of the State Committee, the RSJ believes it to be appropriate that for every child who is legally competent or at least eight years old it should be established whether they object to the request. The RSJ recommends appointing a guardian ad litem to investigate the possibility of an objection expressed by the child. The conditions for safeguarding the best interests of children under the transitional regulation are the same as those under the regulation for children from intentional multi-parent families and children in newly formed families after parental separation.

Monitoring child well-being

The RSJ believes that when researching the well-being of children, a distinction should be made between the different groups affected by the future regulation, namely children from intentional multi-parent families and children from newly formed families after parental separation and after their birth. It is also recommended to add a control group with children from two-parent families, and both objective and subjective indicators should be included. In addition, the research should explicitly focus on the perspective of children.

Recommendations

Based on the vision set out above, the RSJ makes the following recommendations:

1. Introduce a regulation for granting legal multi-parenthood and parental responsibility to intentional multi-parent families through a joint application to the court prior to conception.
2. Introduce a regulation for granting parental responsibility to more than two carers in newly formed families after parental separation in the exceptional case where the best interests of the child requires so, through a joint application to the court.
3. Introduce a transitional regulation for granting legal multi-parenthood and multi-parental responsibility for both minor and adult children (already) born into intentional multi-parent families, through a joint application to the court.



4. When the application to the court concerns a child already born, there should be no objection on the part of the child who is legally competent or at least eight years of age.
5. Persons applying for legal multi-parenthood, multi-parental responsibility or parental responsibility for more than two carers should jointly draft a care and upbringing covenant (under the guidance of an expert counsellor) and attach it to the application to the court.
6. Appoint a guardian ad litem with a social/psychological background when deciding on granting legal multi-parenthood, multi-parental responsibility or parental responsibility for more than two carers after conception or birth involving a child who is legally competent or is at least eight years old, to determine whether the child has any objection to the application being granted.
7. Appoint a guardian ad litem with a social/psychological background when making a decision on the termination of multi-parental responsibility or parental responsibility for more than two carers, to identify the best interests of the child.
8. Ensure that siblings from multi-parent families are not separated when multi-parents separate, provided it is in the child's best interests. Contact between step-siblings from newly formed families after parental separation should at least be allowed to continue.
9. Ensure that professionals who work or are involved with children and families are educated about new laws and regulations on legal multi-parenthood, multi-parental responsibility or parental responsibility for more than two carers and the implications for their daily practice.
10. If the introduction of regulations for legal multi-parenthood, multi-parental responsibility or parental responsibility for more than two carers is accompanied by research to monitor the well-being of children from multi-parent families and to identify any bottlenecks in the laws and regulations, it should be carried out according to applicable scientific and ethical standards. The research should explicitly focus on the perspective of children.

The advisory report is available on [the website](#) of the Council for the Administration of Criminal Justice and Protection of Juveniles.

