EVOLUTION OF LEGISLATION ON ADOPTION OF CHILDREN IN THE RUSSIAN FEDERATION

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Abstract: This article discusses the development of legislation on adoption of children in the Russian Federation. Results were obtained from the analysis, in the historical and modern aspects, of the legislation on adoption of children that allows us identify the problems associated with the regulations on the children-orphans adoption in the family.

The results of the court statistics demonstrated that almost every second child adopted by Russian citizens is returned to authorized guardianship bodies. However, adoption of children by foreign citizens or non-resident persons shall be allowed only in the cases of absolute impossibility in granting adoption to permanent residents of the Russian Federation or to the children's relatives.

The article formulates the improvement tendencies in the adoption legislation of the children: creating a system for an open adoption, simplifying adoption establishment procedures, improving mechanisms in legal, organizational, and psychological support of Russian citizens intending to adopt children.

The results will be useful for those who are interested in the process of adoption, lawyers, representatives of the guardianship, and family members.

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Introduction

Regulatory issues concerning children adoption have existed throughout all historical stages and are common to all legal systems. This is related to the complexity of adoption institutions, internal policy of a particular government at a certain stage of its development, level of legislative technique development, generalized experience of law enforcement, and changes in geopolitical situations around the world.

In 1918, in Russia, the abolition of adoption led to an increased number of homeless children. Also, there were many accounts of children being adopted to families without proper legal registration and attempts to use insufficient legal institutions to consolidate the relations were taken. Code of law on civil status, marriage, family, and guardianship of 1918 [Civil Procedure Code] (Kodeks, 1918) introduced the Institute of Guardianship, but still did not recognize adoption. However, in 1927, the Institute of Adoption was restored. Soon afterward, the Russian legislation would allow adoption, although significant changes have been made at different stages.

The placement of children, without parental care, to an adoption family is governed by international instruments and national legislation. According to Article 20 of the Convention, "Concerning the Rights of a child," it is determined that "a child, whose family environment is temporarily or permanently disabled or there is no opportunity to live in that environment on his own best interests, shall be entitled to special protection and assistance provided by the state" (Konventsiya, 1993).

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Family Code of the Russian Federation [Family Code] (Kodeks, 1996), in contrast to pre-existing Code on Marriage and Family of the RSFSR, establishes judicial procedure of adoption. Consideration for cases of children adoption is implemented by the court under a special procedure.

Adoption procedure is implemented in accordance with Chapter 29 of the Civil Procedure Code (Kodeks, 1918) and chapter 19 of the Family Code (Kodeks, 1996) and other legal acts.

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Clarification of certain issues concerning the adoption (including the adoption of Russian children by foreigners) is approved by the Supreme Court in Resolution (2006) "Concerning implementation of legislation in cases on adoption" on April 20, 2006.

Article 124 of the Family Code (as amended in 1998) states that the adoption is a major form of adoption in case of an absence in parental care.

Adoption of siblings by different persons is not permitted, except for some cases in which the adoption is coincides with the children's benefits.

Adoption of children by foreign citizens or non-residents shall only be allowed in cases where it is not possible to transfer these children to the family care of Russian citizens residing within the territory of the Russian Federation or to their relatives.

Nowadays, children can be put up for adoption to Russian citizens, permanently residing outside the territory of the Russian Federation, foreign citizens, or non-residents who are not their relatives. Such adoption is possible 12 months after the absence of parental care and the children's information has been submitted into the federal data bank. Previously, this period was three months, then it was changed to six.

In order to protect the rights and interests of orphans, the law dictates that cases on adoption of children are considered by the court with the obligatory participation of adoptive parents, guardianship authorities, and prosecutor.

Since 1998, intermediary activities on adoption of children have been prohibited. Intermediary activity is any delegatory activity made by any person for the purpose of selecting and placing children for adoption on behalf of another person wishing to adopt children. Though some activities are not considered as intermediary, but it is the responsibility of the guardianship bodies and executive authorities to fulfill their duties concerning identifying and placement children without parental care. Another exception is the activity of specially authorized foreign bodies or organizations on adoption of children conducted outside of the Russian Federation territory by international treaty of the Russian Federation or on the principle of reciprocity.

Since January 1, 2013, the transfer of children from the Russian Federation for adoption by citizens of the United States of America has been prohibited, as well as the implementation of activities by the organizations for the purpose of selection and transfer of the Russian children thereof.

The prohibition was approved by Article 4 of the Federal Law (2012) "concerning measures against persons involved in violations of fundamental human rights and freedom, rights and freedoms of citizens of the Russian Federation," which terminated the Agreement between the U.S. and Russia on cooperation in the field of children adoption, signed in Washington on July 13th, 2011.

There were some significant changes in Article 127 of the Family Code for "Persons entitled to be adoptive parents." The legislator considers that adoptive parents can be adults of both gender, except for those under the following conditions:

- persons who are found by the court to be incompetent or have limited competency;
- spouses, one of which is found by the court to be incompetent or have limited competency;
- persons deprived of their parental rights by the court or have limited parental rights;
- persons discharged from the duties of a guardian for improper fulfillment of their statutory duties;
- ex-adoptive parents in the case where the adoption was annulled by the court through their own fault;
- persons who for health reasons cannot adopt the child.

List of exceptions in recent years is also supplemented by:

- persons who at the time of adoption do not have adequate income provided to adopted child with minimum income established in the region of the Russian Federation;
- persons who have no permanent residence;
- persons who have or had a criminal record, or are (were) prosecuted for crimes against life and health, freedom, honor and dignity, sexual inviolability and sexual freedom, against family and children, public health and morals, and public safety;
- persons who have outstanding convictions for serious crime;
- persons who are not successfully examined for psychological, educational, legal training (except for close relatives of the child, as well as individuals who act as guardian);
- persons in domestic alliance recognized as marriage with persons of the same sex in accordance with the laws of the government in which such kind of marriage is allowed.

Moreover, earlier if the persons were also living in accommodation that did not meet sanitary and technical regulations and standards, they could not act as adoptive parents. Later on in 2013, such legislative restrictions were abolished.

Article 128 of the Family Code gives more flexible determination for the age difference between unmarried adopter and adopted child. This difference should normally be no less than 16 years. For reasons approved as valid by the court, the age difference can be reduced.

As a result of adoption, adoptive parents factually and legally acquire the status of the child's parents. According to the Russian legislation, parents cannot voluntarily refuse their parental rights in the case where they are unable to or do not wish to fulfill their obligation to properly adopt the child. On the contrary, adoptive parents may apply to court for abolition of the adoption for the reasons prescribed by law (Article 141, paragraph 2 of the Family Code). Such cases also include circumstances when there is no good family environment that is necessary for normal development and education of the child, in particular there is a lack of understanding because of personal qualities of adoptive parent or adopted child, resulting in an absence of respect and trust relation between members of the adoptive family. As pointed out by Tatarintseva (2013), such interpretation of the relationship between the adoptee and the adopter entails a number of negative consequences not only for the child who loses a full social status, but also undermines the prestige of the whole social parenthood. According to the court statistics, in the period of 2010 to the first half of 2012, 1,313 out of 2,016 children adopted by Russian citizens were returned back to the care of the guardianship bodies.

The creation of an open adoption should become a legal basis for the preparation of a child for adoption, which is listed in the National Strategy for Children 2012-2017 (Ukaz, 2012), as one of the major measures in order to protect the rights and interests of orphans and children left without parental care.

While adoption can be roughly classified into a number of varieties, some researchers suggest a differentiated approach to their regulation, so that there is an opportunity for implementation of the administrative procedure for the adoption, e.g. by a decision of the local government. If the child already had his/her own family but is raised by a potential adopter, an adoption would grant statutory force to the actual relationship. However, in some cases, the introduction of an administrative procedure for the adoption should not preclude judicial review of the question of adoption in the case of the difficulty in making a decision on the administrative field.

Government Decree №118 "Concerning Amendments to Certain Acts of the Russian Federation on adoption of orphans and children without parental care" (Postanovleniye, 2013) is aimed at improving

the mechanisms of legal, organizational, psychological, and pedagogical support for Russian citizens intending to adopt children. Now guardianship authorities are obligated to inform citizens, through the official website and mass media, about the possibility of adopting children without parental care.

Conclusion

The number of documents required by citizens intending to assume parental care is reducing and its validity in some cases is increasing. These measures should help to create conditions for increasing the number adoption for children without parental care by the families of Russian citizens.

Finally, it is evident today that there is a necessity for establishing the social support mechanism for families living under difficult circumstances. Ultimately, every child is entitled to live and to be raised with the care of a family.

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