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Problems of adoption privacy ensuring in considering of civil case on adoption (adrogation) of a child in the courts of the Republic of Kazakhstan

This article discusses the main provisions on the adoption privacy in the consideration of a civil case on the adoption of a child in the courts of the Republic of Kazakhstan and the problems of its ensuring. The adoption (adrogation) privacy is considered as the most important category regarding the rights and legitimate interests of the child as independent participator involved in the process of adoption. The protection of the rights of children is one of the priorities of any civilized state. The controversial moments are relevant in the sphere of regulating the adoption privacy, including a procedural nature that is directly related to the protection of the rights and interests of the participants of this process. The authors of the paper aim to determine alternatives to application of provisions on the adoption privacy in civil proceedings based on the analysis of the peculiarities of Kazakhstan and foreign regulation of the relations under consideration, considering the norms of an international legal nature. The methodological basis of this work is dialectical, systemic, comparative-legal, regulatory, and other methods of knowledge. Analysis of the current legislation of the Republic of Kazakhstan allows us to conclude that there is a sufficient number of branch values in it, which ensure the adoption (adrogation) privacy. Despite this, some rules in this area require a certain adjustment and improvement, which will further contribute to more effective legal regulation of these legal relations.

Keywords: adoption, adrogation, child, child rights, adopter, adopted, adoption (adrogation) legislation, adoption privacy, civil case about adoption.

Introduction

Current international legal acts and national legislation of the greater part of developed countries, inclusively the Republic of Kazakhstan, disclose the conceptual issues providing for the priority task of each state to preserve and protect the rights and interests of juvenile persons.

According to Article 1 of the Law of the Republic of Kazakhstan, “On the Rights of the Child in the Republic of Kazakhstan”, the child is recognized as a person that is not of legal age (emancipation) [1]. Despite this, in the legislative position, such a young person is still an independent person who has a certain set of rights that have arisen from him from the moment of birth. The main right of a young person is his right to live and grow in the family. It is legally enshrined in the internal family legislation of our state [2]. One of the strongest needs of the child, both with the physiological and psychological side, is his need for the closest people, such as mother and father, and in general, the need for a family as a protective shell in a huge society.

For a certain period, some points affecting the institute of adoption did not advertise, as if limited to the framework of the personal life of a particular citizen or some particular family. The adoption privacy, provided for and protected by law, did not give full and free access to information. At the present moment, adoption (adrogation) issues have become more open to public perception and are already adequate to be subject to social discussion.

Personal and family secrets in our country are under the protection of the Constitution of the Republic of Kazakhstan. According to Article 18 of the Constitution of the Republic of Kazakhstan, each resident has the right to the sanctity of private life, personal and family privacies, protectiveness of their honor and dignity [3]. Exactly each data about adoption (adrogation) can take on the role of the family and personal secret. According to Article 10 of the Civil Procedural Code of the Republic of Kazakhstan, “Private life, personal and family privacy are under the protection of the law” [4].

In today’s society, the boundaries of the privacy of citizens as the sphere of the vital process of a particular person are clearly defined. Thus, any interference in his personal space is not the norm.

Family secrets include various information. It should not be advertised to strangers. Such information can be attributed to adoption privacy.

Thus, the Kazakhstan legislator provides exclusions from the general rule of the principle of publicity of the trial. In this regard, if it is necessary to ensure the adoption privacy, then at the application for revocation of the party to a case, a civil case can be considered and adjudicated in a closed court session.

Experimental

The authors of the article applied dialectical, common and private scientific cognition methods. Common and private scientific cognition methods facilitated to analyze the point of the study objectively. Dialectical method helped to identify the methodological foundations of the study and clarify the essence of the analyzed concepts.

To determine and systematize the problems of ensuring the adoption privacy when considering civil cases about adoption (adrogation) in the Courts of Justice of the Republic of Kazakhstan, the type of approach of scientific analysis and summarizing judicial practice were used.

The formal legal method was applied to clarify the structure and relationships of the studied concepts, to study the relevant provisions of the legislation of the Republic of Kazakhstan on providing adoption privacy during considering civil cases about adoption (adrogation) in the Courts of Justice of the Republic of Kazakhstan.

Comprehensive-textural method was used for in-depth study of the regulations of international acts and national state legislation on relations arising within the institute of adoption (adrogation) in the Republic of Kazakhstan as a whole and in part of consideration of issues of ensuring adoption privacy during the considering of civil cases about adoption (adrogation) in the Republic of Kazakhstan.

Results

In the Republic of Kazakhstan, one of the primary principles of the internal legislation on the child and his rights is the principle of the priority of the child's education in the family, and his right to live and raise it in statutorily is fixed. To guarantee compliance with this dominant right of any child, if he loses the care of his parents for any circumstances, it is the institution of adoption in his legal terms.

Creating conditions for the life and education of children, who lost the right to be called relatives for their blood parents, as close as possible to the conditions of the blood family, is the main social purpose of adoption. The same provisions are and in relation to those cases of adoption, where citizens of foreign states become adoptive parents.

In accordance with Article 102 of the Code of the Republic of Kazakhstan "On marriage (matrimony) and family", the privileged information of adoption of the child is defended by law [2].

Coincidentally, in accordance with the allotted information as defined by the law in Article 16 of the United Nations Convention "On the Rights of the Child", "No child can be an object of arbitrary or illegal interference in the implementation of its right to personal life, family life, the inviolability of housing or the secret of correspondence or illegal encroachment on his honor and reputation. The child has the right to defense against such interference or encroachment" [5].

To guarantee and ensure such a privacy, the legislator provided in Part 2 of Article 19 and Article 314 of the Civil Practice Act, civil investigation in court of case types in a proceeding heard in chambers, including without limitation the publication of the court decision [4].

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 No. 2 "On the practice of applications by the judiciary establishment of laws and regulations on adoption (adrogation) of children" enshrines the following position: "Taking into account the fact that consideration of cases of adoption in a closed court session is provided for by law, the judge on the preparation of the case should make such a decision and indicate this in determining the appointment of a case for a trial" [6].

"In the session of the court, the court must warn persons participating in the consideration of the case, on non-disclosure of information that has become known in the course of consideration of the application, and the possibility of bringing them to criminal responsibility for the disclosure of the adoption privacy, which should be reflected in the protocol of juridical session in writing or in a brief protocol and audio recordings of the court session" [6].

Criminal liability for the disclosure of adoption (adrogation) privacy in contradiction to the pleasure of the adopter is provided for in the Criminal Code of the Republic of Kazakhstan. Under Art. 138 of the Criminal Code of the Republic of Kazakhstan "Disclosure of adoption (adrogation) privacy contrary to the will of the adopter, committed by a person who is obliged to keep the fact of adoption as a service or professional secret, or other person from lucrative or other low-alignment, shall be punished with a fine in the amount of

up to two hundred monthly calculated indicators by either correctional treatment in the same amount or involvement of public work for a period of up to one hundred and eighty hours, or arrest for up to fifty days, with deprivation of the right to hold certain positions or engage in certain activities for three years or without of such" [7].

The position of the legislator is not entirely understood, which reduced the arrest of sixty to fifty days by making an appropriate change in Article 138 of the Criminal Code of the Republic of Kazakhstan in accordance with the Law of the Republic of Kazakhstan dated July 12, 18. No. 180-VI "On Amendments and Additions to Some Legislatives Acts of the Republic of Kazakhstan on the improvement of criminal, criminal procedure legislation and the activities of law enforcement and special state bodies" [8].

Discussion

One of the significant institutions reflecting the relationship of the interests of the individual, the state and society as a whole, as well as the ratio of public and private law and the degree of state intervention in the private sphere is the Institute of privacy. It includes different public relations in various spheres with the participation of the personality, state, and society.

In this regard, the most important aspect, which can be considered in the process of adoption (adrogation) of children, is a rather problematic discussion question about the adoption privacy.

The adoption privacy is traditionally considered a certain ban on the publication or publicity of any information about the adoption or adrogation of the child. As we have noted above, such a privacy is protected by law. Therefore, on all persons who participated in the process of adoption is assigned to keep it.

Turning to the history of the emergence of both the institute of children's adoption and adoption privacy, it can be noted that the phrase "adoption privacy" originated simultaneously with the institution of adoption itself. From the beginning, adoption (adrogation) was presented as an open phenomenon. Participants in the adoption process did not suppress this fact, and the adopted themselves supported the relationship with their biological parents and relatives.

Gradually, the situation changed and different approaches to this phenomenon were found. In this regard, the adoption procedure has ceased to be open. The main explanation of the new approach was the view that adopted by which the fact of adoption is known will face the future with the difficulties of adaptation in a new family. In addition to this explanation, an absurd representation was added that the lack of her own children in a woman makes it defective and flawed in society. In the aggregate, it served as the basis for recognizing the need to preserve the adoptions in society.

The Soviet legislator has already provided for provisions indicating the provision of the Institute of adoption privacy. Thus, Article 10 of the RSFSR Code "On marriage and family" 1969 regulated the implementation of adoption privacy. A change in the place and date of birth of the adopted child was not allowed without the consent of the adoptive parents and bodies of the custody and the guardianship to publish whatever information on adoption, as well as to make disclaimers from the registration of acts of civil status, based on which might reveal the absence of biological parents of adopted [9].

In addition, the norm provided for the prescription, which to persons who disclose the adoption privacy, contrary to the ability of the adopter, may be applied to the measures of responsibility established by law.

In the modern period, in all areas of human and society's life, all civilized states of the world put the goal of bringing their internal national legislation in line with the norms and principles of international legal acts. This rule today is due to the authority of international law and its influence on the world community. It is not an exception and rendering in equivalence of the norms regarding the implementation of the judicial protection of the legal rights and interests of citizens, including the legal rights and interests of minor children. It suggests a natural question: "Is there a need for the Institute of adoption (adrogation) privacy of the child in the realm of the consideration and resolution of civil cases in the courts of the Republic of Kazakhstan?"

The historical community of all the Union republics of the ex-USSR, and now the CIS member states, is the cause of similarity in many views and moments. So, our common mentality and related public consciousness are indisputable obstacles to open conversations about adoption (adrogation). The adoption (adrogation) process is a prerequisite for the emergence of various situations in which future adoptives are forced to be. It is believed that the institution of adoption (adrogation) privacy will create the most comfortable conditions for the adopted child in the process of its upbringing and will provide a smooth background for adoption relations in general.

The category “adoption privacy” in jurisprudence of foreign countries has been fixed for a long time. Relations arising from the Institute of adoption (adrogation) privacy in many states are regulated at a sufficient legislative level due to their widespread. Thus, the United States and some European states provide for the principle of “open adoption” due to the inconsistency of the rules to ensure the adoption privacy and provisions of a number of international documents on the protection of children’s rights.

These states make no secret of the adoption (adrogation) process. The publicity of any information arising from the adoption (adrogation) process about either the procedure itself or its participants is not the basis for attracting individuals to any type of responsibility. Children to be adopted by other people can be found by their biological parents without special difficulties and problems. The disclosure of the adoption privacy is not a huge problem, which involves tensions in subsequent relations between all the participants of this process.

This approach is based on the provision that the possession of any information or any data about the blood parents of the adopted child is a prerequisite for the effectiveness of the adoption process itself.

The adoption (adrogation) privacy can be considered as a means by which the adopted child will be adapted to new family conditions and will be able to accept adopted parents as biological.

As a part of ensuring the adoption privacy, the Kazakhstan law provides following special measures:

1) changing the date of the birth of the adopted child, but not more than six months only with the adoption of the child under the age of three years;

2) a change of the place of birth of adopted child, but only within the territory of the Republic of Kazakhstan and at the request of the adopter, regardless of the age of the child;

3) a change of the name, patronymic and family name of the adopted child who has reached the age of ten years, but only with his concurrence, except in cases that require adoption privacy [2].

The institute of adoption privacy unites several interrelated components. These include, first of all, psychological aspects. Human relationships are complex and sometimes unpredictable, and even more so if the situation is completely extraordinary, as in the occurrence of child adoption. The relationship between parents and children, which are blood relatives, they themselves enter the natural behavior of such subjects. While with legal relations between the adopter and adopted, such behavior may be complicated by many moments by virtue of their “artificiality”. Secondly, civil law aspects involving some procedural features provided for by national legislation for consideration and adjudication of such a category of civil cases, as well as for submission of court decisions on them. Finally, the criminal law aspects provided by the legislator from the state of certain sanctions for violation of the relevant rules and regulations operating under this institution. To exclude or ignore one of these moments is impossible due to their close relationship, the specifics of the relationship under consideration. Invertible discussions regarding the institute of adoption privacy, which occur both in legal science and among psychologists and sociologists, are explained by the relevance and constant scientifically heated interest.

The inevitability of guaranteeing the adoption (adrogation) privacy is preferably caused by scientific research on the formation of the adopted personality. Despite this, adoptive parents have the right to share with an adopted child any information about his adoption or adrogation.

The definition of “adoption (adrogation) privacy” is often mentioned in the domestic legislation in power of the Republic of Kazakhstan. During the consideration of the problems of ensuring and protecting the adoption (adrogation) privacy, but contrary to this fact, it is not observed legal definition and disclosure.

In legal science, on the contrary, there have been repeated attempts to define and decode this category. In this sense, we prefer the definition given by Yu.I. Antonov. The “adoption (adrogation) privacy” is seen as absolutely any information and any data about adoption and adrogation, which make up the content including documents that make it clear that adoptive parents and blood parents are not the same persons permanently not subject to any publicity or publishing contrary to the will of any adopter [10; 19–21].

N.V. Letova believes that the term “adoption (adrogation) privacy” should cover information on the identity of the adopter, the adopted child, time, place, and other significant circumstances of adoption [11; 107].

Although adoption is regularly subjected to scientific views in the doctrine of family law and civil procedural law, today it still does not have a single well-established scientific definition, to which the majority of scientific researchers would be inclined. Approaches to the issue of adoption privacy are based on two preferential scientific currents.

Representatives of the first scientific direction unanimously note that the consolidation of adoption privacy at the legislative level is a faithful decision, in view of the fact that it has favorably affects the formation of relations between the adopter and adopted, which will subsequently be as similar to such relationships arising and having a place between parents and their biological children. In addition, they consider the adoption privacy as a factor contributing to the reliability of adoption (adrogation), allowing to minimize or eliminate the difficulties associated with the process of educating the adopted child [11; 108].

Norms that guarantee the adoption privacy are considered reasonable as they were used for a long period of time. It is believed that the norms of the adoption privacy are a guaranteed means of protecting and keeping the interests of the adopter and adopted throughout their lives.

The peculiarity of most adoptive parents is that they have a great desire to conceal from all others, and first of all, from their adopted children, any facts confirming that they are not actually their blood parents. This does not apply to situations in which an adopted child regarding older age has memories of biological parents. Obviously, such cases in principle do not need to apply the rules for ensuring adoption privacy.

In a completely different way, we can try the same provisions to the cases when a child is subject to adoption or adrogation of a child of juniority or older child, but not remembering his parents at all. Applying the main rule on the preservation of adoption privacy, it is much easier and faster to create relationships as close as possible to relations between parents and children with them.

Representative of the same point of view, O.Yu. Yurchenko, assumes that measures provided and developed by the legislator in order to guarantee non-disclosure of adoption privacy without the will of the adopter must exist [12; 23–27]. A.G. Grigorieva believes that the current society has not yet matured to cancel the norms that ensure the adoption privacy [13; 37–43].

However, M.A. Botchaeva considers not only the preservation of the most adoptions itself but also proposes to provide for a more severe punishment for the disclosure of such a privacy [14; 181–188].

One of the most powerful adoption privacy point of the specified researcher group is the fact that any adoption of information included in the adoption privacy will facilitate the causing mental and moral suffering to the child, complicates the relationship between the adopter and adopted, will negatively affect the educational process and may even be the reason for the family.

Scientists agree that “the institute of adoption privacy includes any information that allows to testify or point out the fact that adoptive parents and biological parents of adopted child this is not the same persons, not only the court decision and registration of adoption in government bodies. All such information, an application for adoption or adrogation and documents attached to such a statement, records in registration journals for the applications received, accounting for applications in electronic form, civil case with a court session protocol, an accounting and statistical card for this case should be the adoption (adrogation) privacy of the child” [15].

Representatives of the second direction doubt whether the actual need to hide information constituting the adoption privacy [16; 112, 113].

They argue it with the following provisions:

- “The adoption privacy is appropriate in the situation when the adoptive parents themselves wish. In their opinion, it is meaningless to hide something, if the adoptive ones know the details of its origin and parents”;

- “The question of the adoption privacy is particularly acutely in the adoption of children by foreign citizens and stateless persons in the post-soviet space, due to the fact that the legislation of foreign countries does not contain norms contemplating the adoption privacy” [17; 22–29].

M.V. Antokolskaya regards the imperative prescriptions of the current legislator regarding the need to preserve the adoption privacy regarding the adopted child as a survival of times past [18; 301]. So, once adopted child, becoming fully capable, has the right to have access to all information related to the process of his adoption. In certain situations, this may become a decisive factor and will help avoid negative consequences in the future, for example, in order to identify genetic diseases or prevent marriage with blood relatives. V.P. Lebedinskaya, in the light of considering of the specified question, proposes to allow the disclosure of the adoption of the adoptive child who has become fully capable if he wants it. Her proposal, she argued by the frequency of appeals of such citizens containing requests to produce at least some information about their biological parents to the relevant state bodies, which include custody and guardianship bodies, Agencies of Civil Acts Registration Bureau and judicial institutions [19; 544–546].

By appealing again to the provisions of the Convention on the Rights of the Child, we can note the important rule, enshrined in Art. 7 of the specified international legal document, which providing for the right

of children to know their parents. "The child is registered immediately after his birth and from the moment of birth has the right to the name and acquisition of nationality, as well as, as far as possible, the right to know his parents and the right to their tendance" [5].

The successful practices of foreign countries, indicating the effectiveness and priority of the child's education under the conditions of family, once again confirms that the success of family education lies precisely in the detailed regulation of interpersonal relationship between the subjects of the adoption process, but not in the observance of the various formalities of this process.

Today, many civilized countries of the world welcome the rule, according to which the child has the right to know the whole truth about his biological parents. The Italian legislator in imperative procedure provides for adoptive parents the duty to disclose to adopted the information about his past. The United States work on the principle of "open adoption", where the adoption process itself is public. The basic essence of such a principle is in the free communication of the child with his blood parents. France is also a supporter of this approach. The adopted child, becoming fully capable, gets access to all information about his adoption there.

On this issue, I.G. Korol expresses her interesting opinion, which considers the adoption privacy as "creating many secrets around itself: for example, a lawyer secret, the secret of the court session, secret of name, secret of place of birth, etc." [20, 99–103].

Article 46 of the Code of Kazakhstan "On marriage (matrimony) and family" also proclaims "as far as possible, the right to know his parents. And Article 102 of the same regulatory act in turn provides a norm, establishing the adoption privacy" [2].

The controversy of the norms of domestic legislation, generating uncertainty in the question about the need for a person to own information on his biological parents.

In various sources, one general thought is spoken, as far as it can be appropriate to allow one person to not recognize the obligatory right of another to know their origins. And all this is explained, first of all, the fact that the adopted child did not in his will turned out to be cut off his biological parents.

In neighboring Russia, gradual attempts of transition to open adoption and denial of adoption are already being taken. Thus, the Russian legislator in order to form state policies to improve the situation of children was adopted by the "National Action Strategy for Children for 2012–2017" [21]. It is symbolic that the decree "On the National Strategy of Action for Children for 2012–2017" President of the Russian Federation signed an ordinance just on June 1 on the International Children's Day. However, to draw conclusions and implications about the pros and advantages of such a transition is still early. Since, the prerogatives and perspectives of adoptive parents and adopted, which can be disadvantaged including on the part of biological parents, who, for example, regret the refusal of their child and want to return their children back. This state of affairs is definitely not satisfied with adoptive parents and their interests will be affected as subjects of newly created relations.

Each new case with the participation of the institution of adoption is always purely individual. The envisaged rules on the adoption privacy, applied in disposal of legal proceedings of civil cases about the adoption (adrogation) in the courts of the Republic of Kazakhstan, suggest some infringement of the principle of publicity provided for by Article 19 of the Civil Procedural Code of the Republic of Kazakhstan. There are cases when the rules on the adoption privacy are used to apply nonreasonably, such as if the child has already been shown on television as potentially ready for adoption in view of the state policies today within the framework of agitation and support of legally free children.

It is also unreasonable sometimes the imperative regulation on the disposal of legal proceedings of a civil case on the adoption (adrogation) of a child who has reached the age of 10 and giving his concordia to adoption in a closed judicial session.

It would probably be better to soften the imperative nature of this norm by change paragraph 2 of Article 14 of the Civil Procedural Code, providing in it the traditional principle of publicity, which involves openness and publicity during disposal of legal proceedings of this category of civil affairs, in case of presentation of the adopter himself.

There are also nuances relating to international adoption. Thus, the rights of the adopted child may be affected, in the event that it is subject to adoption by foreigners who are citizens of those foreign countries, where the adoption privacy in principle is not legally fixed.

Of course, the order and procedural features of consideration of civil cases about the adoption (adrogation) of the child are in relationship with existing scientific views on the essence and legal nature of the Institute of adoption privacy.

Thus, Article 314 of the Civil Procedural Code of the Republic of Kazakhstan provides for the rule that the consideration of the case about adoption (adrogation) of the child the court exercises in a closed court session [4]. Obviously, this rule is intended to guarantee the adoption privacy. Aside from that, paragraph 15 of the regulatory decision of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 No. 2 «On the practice of applications by the courts of legislation on adoption (adrogation) of children» duplicates the specified rule, referring to Art. 19 and 314 of the Civil Practice Act the Republic of Kazakhstan [6].

Exploring the specified position and, accordingly, the relevance of its legislative consolidation should be indicated on a certain inconsistency of some points:

1. The explicit contradiction is seen in the ratio of the content of the norms of Art. 314 Civil Procedural Code of the Republic of Kazakhstan and paragraph 8 of Article 14 of the Civil Procedural Code of the Republic of Kazakhstan. Thus, according to the latter, in order to ensure the adoption privacy about the proceedings of the case in a closed court session, the court makes a definition that is submitted to the trial of the court session [4]. However, there may be a situation in which the adopters will not pursue the goal to keep any facts about the process of adoption (adrogation) from anyone, starting with the adopted child and ending with any number of unspecified persons. In this case, respectively, there is no need in rendering of ruling by the court on the proceedings of this civil case on the adoption (adrogation) of a child in a closed court session and entering it into the protocol of juridical session.

It is necessary to take into account the formed practice of submission to the court by all parties to a case, non-disclosure agreement of information that became known to them in the process of consideration of a particular civil case on adoption (adrogation). According to Parshutkin V. and Lvova Ye., «The courts form by this a peculiar secret of the court hearing, which is not only contrary to the legislation, but also contributes to the birth of secrets that are not related to the concept of «adoption privacy»» [17; 22–29].

So, according to Art. 102 Code of the Republic of Kazakhstan «On marriage (matrimony) and family» the concept of adoption privacy implies basically the fact of carried out adoption (adrogation) of a certain child with a certain person (persons) [2]. Thus, the legislator does not include to the content any information that was the subject of consideration at the court hearing on adoption. Based on this, criminal responsibility measures can be applied to persons who have disclosed personal information about the adoptive person, including, for example, data on his salary, medical status, social and property status, etc., as a rule, at all that have no relation to the content of adoption privacy.

All of the above may be the basis that sowing certain doubts on the feasibility and the need to apply the provisions on the adoption privacy in the consideration of civil cases about the adoption (adrogation) of the child in the courts of the Republic of Kazakhstan. For good measure, the impression will be created that the application of the provisions of the institute of adoption privacy for all adoption cases will contradict the norms and principles enshrined in international legal acts regulating the issues of the legal regime of the institute of adoption privacy. For this reason, the improvement of civil procedural legislation is required.

Conclusions

The institute of adoption privacy, provided for by the current legislator and the relevant problematic and controversial issues related to its provision, has both a legal and moral ethical component.

No matter how difficult it was morally and psychologically, a child who lost the right to have parents and be under their care and guardianship, still must feel the loss of people close to him. It is practically the same natural right as his right to own information about his origin, to know his blood relatives, his heredity, including a medical history. And the most efficient way to help such an adopted child is opposite the rejection of the adoption (adrogation) privacy, and much better its full opposite — “the truth of adoption”.

Today such developed countries as the USA, which have made such a serious step as accepting “open adoption” and the introduction of it into its system, are already obtaining the profits of their desperate right decision. In this adoption, applied honesty and openness unequivocally have a positive effect on children and families participating in them. The effect obtained from an open adoption involving a close relationship and open communication between adoptive parents and biological parents allows to affect the adopted children of precisely greater confidence and ability to adapt in new conditions. The relationship between adoptive parents and adopted children differ with a great constancy and confidence character.

A secret adoption, in turn, is a prerequisite for arising of concernment, a peculiar tone between adoptive parents and adopted children, as well as constant fear of the likely exposure of this issue.

Considering the successful practices of foreign countries in the using of “open adoption”, the practice of the European Court of Human Rights on affairs related to the disclosure of adoption information, as well as

the practice of the highest judicial bodies of many civilized states within the issue under consideration, seems to be simply necessary for the gradual improvement of Kazakhstan legislation in the sphere of institute of adoption privacy in particular, as well as in the sphere of adoption (adrogation) institution as a whole.

References

- 1 Закон Республики Казахстан от 8 августа 2002 г. № 345–II «О правах ребенка в Республике Казахстан» (с изм. и доп. по сост. на 12.10.2021г.) [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/? doc_id=1032460
- 2 Кодекс Республики Казахстан от 26 декабря 2011 г. № 518–IV «О браке (супружестве) и семье» (с изм. и доп. по сост. на 20.12.2021г.) [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/? doc_id=31102748
- 3 Конституция Республики Казахстан (принята на Республиканском референдуме 30 августа 1995 г.) (с изм. и доп. по сост. на 23.03.2019г.) [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/? doc_id=1005029
- 4 Кодекс Республики Казахстан от 31 октября 2015 г. № 377–V «Гражданский процессуальный кодекс Республики Казахстан» (с изм. и доп. по сост. на 10.01.2022 г.) [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/document/? doc_id=34329053
- 5 Конвенция о правах ребенка, принятая Резолюцией 44/25 Генеральной Ассамблеи от 20 ноября 1989 г. [Электронный ресурс]. — Режим доступа: https://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml
- 6 Нормативное постановление Верховного Суда Республики Казахстан от 31 марта 2016 г. № 2 «О практике применения судами законодательства об усыновлении (удочерении) детей» (с изм. и доп. по сост. на 30.09.2021 г.) [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/? doc_id=38778421
- 7 Уголовный кодекс Республики Казахстан от 3 июля 2014 г. № 226–V (с изм. и доп. по сост. на 10.01.2022 г.) [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/? doc_id=31575252
- 8 Закон Республики Казахстан от 12 июля 2018 г. № 180–VI «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам совершенствования уголовного, уголовно-процессуального законодательства и деятельности правоохранительных и специальных государственных органов» [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/? doc_id=34803153
- 9 Кодекс о браке и семье РСФСР от 30 июля 1969 г. (КоБС РСФСР) (утратил силу) [Электронный ресурс]. — Режим доступа: <https://base.garant.ru/10103535>
- 10 Антонов Ю.И. Тайна усыновления (удочерения) как предмет преступления, предусмотренного ст. 155 УК РФ / Ю.И. Антонов // Российская юстиция. — 2018. — № 3. — С. 19–21.
- 11 Летова Н.В. Усыновление в Российской Федерации: правовые проблемы / Н.В. Летова; науч. консул. Р.П. Мананкова. — М.: Волгетс Клувер, 2006. — 248 с.
- 12 Юрченко О.Ю. О целесообразности сохранения тайны усыновления / О.Ю. Юрченко // Вопросы современной юриспруденции. — 2014. — № 33. — С. 23–27.
- 13 Григорьева А.Г. Проблемы обеспечения тайны усыновления / А.Г. Григорьева // Экономика. Право. Вестн. Кубан. соц.-экон. ин-та. — 2014. — № 1 (61). — С. 37–43.
- 14 Ботчаева М.А. Тайна усыновления в Российской Федерации / М.А. Ботчаева // Актуальные проблемы российского права. — 2012. — № 1. — С. 181–188.
- 15 Нежежков А.П. Тайна усыновления. Обеспечивается ли она при принятии заявлений в суде [Электронный ресурс] / А.П. Нежежков. — Режим доступа: <http://www.suprcourt.khakasnet.ru>
- 16 Нечаева А. Тайна усыновления / А. Нечаева // Закон. — 2000. — № 3. — С. 112, 113.
- 17 Паршуткин В. Всегда ли оправданно сохранение тайны усыновления / В. Паршуткин, Е. Львова // Российская юстиция. — 1999. — № 3. — С. 22–29.
- 18 Антокольская М.В. Семейное право: учеб. / М.В. Антокольская. — 3-е изд., перераб. и доп. — М.: Норма: Инфра-М, 2010. — 431 с.
- 19 Лебединская В.П. И снова к вопросу о тайне усыновления / В.П. Лебединская // Молодой ученый. — 2013. — № 11. — С. 544–546.
- 20 Король И.Г. Личные неимущественные права ребенка: дис. ... канд. юрид. наук / И.Г. Король. — М., 2008. — 222 с.
- 21 Указ Президента РФ от 1 июня 2012 г. № 761 «О Национальной стратегии действий в интересах детей на 2012–2017 годы» [Электронный ресурс]. — Режим доступа: http://www.consultant.ru/document/cons_doc_LAW_130516/

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Қазақстан Республикасының соттарында бала асырап алу туралы азаматтық істі қарау кезінде бала асырап алудың құпиясын қамтамасыз ету проблемалары

Мақалада Қазақстан Республикасының соттарында бала асырап алу туралы азаматтық істі қарау кезінде бала асырап алу құпиясы туралы негізгі ережелер қарастырылған, сондай-ақ оны қамтамасыз ету проблемалары қозғалған. Бала асырап алу құпиясы бала асырап алу процесіне қатысатын негізгі субъект ретінде баланың құқықтары мен заңды мүдделеріне қатысты маңызды санат ретінде

қаралады. Бүгінгі таңда балалардың құқықтарын қорғау кез келген өркениетті мемлекеттің басым міндеттерінің бірі болып табылады. Бала асырап алу құпиясын реттеу саласында осы процеске қатысушылардың құқықтары мен мүдделерін қорғаумен тікелей байланысты даулы сәттер, оның ішінде процестік сипаттағы мәселелер өзекті болып саналады. Авторлар қарастырылған қатынастардың қазақстандық және шетелдік заңнамалармен реттелу ерекшеліктерін, сондай-ақ халықаралық-құқықтық нормаларды ескере отырып, талдау негізінде, бала асырап алу құпиясы туралы ережелерді азаматтық сот ісін жүргізуде қолдану кезінде туындайтын өзекті мәселелерді анықтауға бағытталған мақсаттарды қойған. Бұл жұмыстың әдіснамалық негізін диалектикалық, жүйелік, салыстырмалы-құқықтық, нормативтік және танымның басқа әдістер құрайды. Қазақстан Республикасының қолданыстағы заңнамасын талдауда бала асырап алу құпиясын қамтамасыз ететін салалық маңызы бар нормалардың жеткілікті саны бар деген қорытынды жасауға мүмкіндік береді. Осыған қарамастан, бұл саладағы кейбір нормалар белгілі бір түзету мен жетілдіруді талап етеді, бұл кейіннен осы құқықтық қатынастарды неғұрлым тиімді құқықтық реттеуге ықпалын тигізеді.

Кілт сөздер: бала асырап алу, бала құқықтары, бала асырап алушы, асырап алынған бала, бала асырап алу туралы заңнама, бала асырап алу құпиясы, бала асырап алу туралы Азаматтық іс.

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Проблемы обеспечения тайны усыновления при рассмотрении гражданского дела об усыновлении (удочерении) ребенка в судах Республики Казахстан

В статье тайна усыновления (удочерения) рассмотрена как важнейшая категория, касающаяся прав и законных интересов ребенка, как основного субъекта, участвующего в процессе усыновления. Защита прав детей сегодня является одной из приоритетных задач любого цивилизованного государства. Актуальными в сфере регулирования тайны усыновления представляются спорные моменты, в том числе и процессуального характера, которые непосредственно связаны с защитой прав и интересов участников данного процесса. Авторами статьи преследуется цель, направленная на выявление проблемных моментов, возникающих в процессе применения положений о тайне усыновления в гражданском судопроизводстве на основе анализа особенностей регулирования рассматриваемых отношений казахстанским и зарубежным законодательствами, а также с учетом норм международно-правового характера. Методологическую основу данной научной работы составили диалектический, системный, сравнительно-правовой, нормативный и иные методы познания. Анализ действующего законодательства Республики Казахстан позволяет сделать вывод, о том, что в нем имеется достаточное количество норм отраслевого значения, которые обеспечивают тайну усыновления (удочерения). Несмотря на это, некоторые нормы в этой сфере требуют определенной корректировки и совершенствования, что в дальнейшем будет способствовать более эффективному правовому регулированию данных правоотношений.

Ключевые слова: усыновление, удочерение, ребенок, права ребенка, усыновитель, усыновленный, законодательство об усыновлении (удочерении), тайна усыновления, гражданское дело об усыновлении.

References

1. Закон Республики Казахстан от 8 августа 2002 года № 345-І «О правах ребенка в Республике Казахстан» [Law of the Republic of Kazakhstan of August 8, 2002 N 345-II "On the Rights of the Child in the Republic of Kazakhstan"]. (2002, 8 August). *online.zakon.kz*. Retrieved from https://online.zakon.kz/Document/?doc_id=1032460 [in Russian].
2. Кодекс Республики Казахстан от 26 декабря 2011 года № 518-ІV «О браке (супружество) и семье» [Code of the Republic of Kazakhstan of December 26, 2011 N 518-IV "On Marriage (Matrimony) and Family"]. (2011, 26 December). *online.zakon.kz*. Retrieved from https://online.zakon.kz/Document/?doc_id=31102748 [in Russian].
3. Конституция Республики Казахстан (Принята на Республиканском референдуме 30 августа 1995 года) [Constitution of the Republic of Kazakhstan (adopted at the republican referendum on August 30, 1995)]. (1995, 30 August). *online.zakon.kz* Retrieved from https://online.zakon.kz/document/?doc_id=1005029 [in Russian].
4. Кодекс Республики Казахстан от 31 октября 2015 года № 377-V «Гражданский процессуальный кодекс Республики Казахстан» [Code of the Republic of Kazakhstan of October 31, 2015 N 377-V "Civil Procedural Code of the Republic of Kazakhstan"]. (2015, 31 October). *online.zakon.kz*. Retrieved from https://online.zakon.kz/document/?doc_id=34329053 [in Russian].
5. Конвенция о правах ребенка. Принята Резолюцией 44/25 Генеральной Ассамблеи от 20 ноября 1989 года [Convention on the Rights of the Child, adopted by General Assembly resolution 44/25, on November 20, 1989]. (1989, 20 November). *un.org/ru*. Retrieved from https://un.org/ru/documents/decl_conv/conventions/childcon.shtml [in Russian].
6. Normativnoe postanovlenie Verkhovnogo Suda Respubliki Kazakhstan ot 31 marta 2016 goda № 2 «О практике применения судами законодательства об усыновлении (удочерении) детей» [Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 N 2 "On the practice of applications by the courts of legislation on adoption (adrogation) of children"]. (2016, 31 March). *online.zakon.kz*. Retrieved from https://online.zakon.kz/Document/?doc_id=38778421 [in Russian].

- 7 Ugolovnyi kodeks Respubliki Kazakhstan ot 3 iiulia 2014 goda № 226–V [Criminal Code of the Republic of Kazakhstan of July 3, 2014 N 226-V]. (2014, 3 July). *online.zakon.kz*. Retrieved from https://online.zakon.kz/Document/? doc_id=31575252 [in Russian].
- 8 Zakon Respubliki Kazakhstan ot 12 iiulia 2018 goda № 180–VI «O vnesenii izmenenii i dopolnenii v nekotorye zakonodatelnye akty Respubliki Kazakhstan po voprosam sovershenstvovaniia ugolovnogo, ugolovno-protsessualnogo zakonodatelstva i deiatelnosti pravookhranitelnykh i spetsialnykh gosudarstvennykh organov» [Law of the Republic of Kazakhstan of July 12, 2018 N 180-VI “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on the improvement of criminal, criminal procedural legislation and the activities of law enforcement and special state bodies”]. (2018, 12 July). *online.zakon.kz*. Retrieved from https://online.zakon.kz/Document/? doc_id=34803153 [in Russian].
- 9 Kodeks o brake i seme RSFSR ot 30 iiulia 1969 goda (KoBS RSFSR) (utratal silu) [Code of Marriage and Family of the RSFSR of July 30, 1969 (CoMF of RSFSR) (became invalid)]. (1969, 30 July). *base.garant.ru*. Retrieved from <https://base.garant.ru/10103535> [in Russian].
- 10 Antonov, Yu.I. (2018). Taina usynovleniia (udochereniia) kak predmet prestupleniia, predusmotrennogo statei 155 UK RF [Mystery of adoption (adrogation) as a subject of a crime provided for by Art. 155 of the Criminal Code of the Russian Federation]. *Rossiiskaia yustitsiia — Russian Justice*, 3, 19–21 [in Russian].
- 11 Letova, N.V. (2006). *Usynovlenie v Rossiiskoi Federatsii: pravovye problemy* [Adoption in the Russian Federation: legal problems]. R.P. Manankova (Ed.). Moscow: Volters Kluver [in Russian].
- 12 Yurchenko, O.Yu. (2014). O tselesoobraznosti sokhraneniia tainy usynovleniia [On the feasibility of preserving the secrets of adoption]. *Voprosy sovremennoi yurisprudentsii — Questions of modern jurisprudence*, 33, 23–27 [in Russian].
- 13 Grigoreva, A.G. (2014). Problemy obespecheniia tainy usynovleniia [Problems of ensuring adoption secrets]. *Ekonomika. Pravo. Vestnik Kubanskogo sotsialno-ekonomicheskogo instituta — Economy. Law. Bulletin of the Kuban Socio-Economic Institute*, 1 (61), 37–43 [in Russian].
- 14 Botchaeva, M.A. (2012). Taina usynovleniia v Rossiiskoi Federatsii [Adoption privacy in the Russian Federation]. *Aktualnye problemy rossiiskogo prava — Actual problems of Russian law*, 1, 181–188 [in Russian].
- 15 Nemezhkov, A.P. (2011). Taina usynovleniia. Obespechivaetsia li ona pri priniatii zaiavlenii v sude [Adoption privacy. Whether it is ensured when accepting applications in court]. *supcourt.khakasnet.ru*. Retrieved from <http://www.supcourt.khakasnet.ru> [in Russian].
- 16 Nechaeva, A. (2000). Taina usynovleniia [Adoption privacy]. *Zakon — Law*, 3, 112, 113 [in Russian].
- 17 Parshutkin, V., & Lvova, E. (1999). Vsegda li opravdanno sokhranenie tainy usynovleniia [Is always justified the preservation of adoption secrets]. *Rossiiskaia yustitsiia — Russian Justice*, 3, 22–29 [in Russian].
- 18 Antokolskaia, M.V. (2010). *Semeinoe pravo* [Family law]. Moscow: Norma Infra–M [in Russian].
- 19 Lebedinskaia, V.P. (2013). I snova k voprosu o taine usynovleniia [And again to the question of the secret of adoption]. *Molodoi uchenyi — Young scientist*, 11, 544–546 [in Russian].
- 20 Korol, I.G. (2008). Lichnye neimushchestvennye prava rebenka [Personal non-property rights of the child]. *Candidate's thesis*. Moscow [in Russian].
- 21 Ukaz Prezidenta RF ot 1 iunია 2012 g. № 761 «O Natsionalnoi strategii deistvii v interesakh detei na 2012–2017 gody». [Decree of the President of the Russian Federation of June 1, 2012 No. 761 “On the National Strategy of Action for Children for the 2012–2017”]. (2012, 1 June). *consultant.ru*. Retrieved from http://www.consultant.ru/document/cons_doc_LAW_130516 [in Russian].