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THE INSTITUTE OF ADOPTION IN THE REPUBLIC OF KAZAKHSTAN AND THE CONSTITUTIONAL RIGHTS OF ADOPTED CHILDREN

Adoption is the legal adoption of a child into a family. A child as a relative acquires whether son or daughter all rights and obligations. Parents thereby acquire the highest responsibility for the child and his full development. The article talks about the importance of the institution of adoption, that in our state great attention is paid to the priority of family education, and for children who have fallen into care, such an educational facility can only be provided by the institute of adoption. At the same time, the adoption of children is always a very complicated legal procedure. This is due to the fact that this issue is very important and, depending on the child's prospects, places great responsibility on the state and parents.

A number of problems in the process of adoption about the peculiarities of the adoption of Kazakhstani children by foreign adoptive parents, including from same-sex families is described by the authors. The difficulties of monitoring adopted children, especially those adopted by foreign citizens, are described. Therefore, it is concluded that main task is the protection of children's rights. The issues of adoption of disabled children, protection of their rights is also touched upon.

Key words: law; family; orphan; Constitution; convention.

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Қазақстан Республикасында бала асырып алу институты және асырап алынған балалардың конституциялық құқықтары

Баланы асырап алу-бұл тобасына заңды қабылдау. Бала туысқаны ретінде ұл немесе қыз болсын, барлық құқықтар мен міндеттерді алады. Ата-аналар сол арқылы баланың тағдыры меноның толық дамуы үшін ең жоғары жауапкершілікке ие болады. Мақалада бала асырап алу институтының маңыздылығы, біздің мемлекетімізде отбасылық білім берудің басымдығына көп көңіл бөлінетіндігі туралы айтылады, ал қамқорлыққа алынған балалар үшін мұндай білім беру мекемесін тек бала асырап алу институты қамтамасыз ете алады. Сонымен бірге балаларды асырап алу әрқашан құқықтық жағынан өте күрделі процедура болып табылады. Бұл мәселе аса маңызды болғандықтан және баланың келешегіне байланысты мемлекетке, ата-аналарға үлкен жауапкершілік жүктейді.

Авторлар бала асырап алу процесінде шетелдік асырап алушылардың, оның ішінде бір жынысты отбасылардың қазақстандық балаларды асырап алу ерекшеліктері туралы бірқатар проблемаларды сипаттайды. Асырап алынған, әсіресе шетелдік азаматтармен асырап алынған балаларға бақылау жүргізудің қиындықтары сипатталған. Сондықтан балалардың құқықтарын қорғау-басты міндет деген қорытынды жасалады. Мүгедек балаларды асырап алу, олардың құқықтарын қорғау мәселелері де қозғалады.

Түйін сөздер: заң; отбасы; жетім; Конституция; конвенция.

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Институт усыновления в Республике Казахстан и конституционные права усыновленных детей

Усыновление – это законный прием ребенка в семью. Ребенок как родственник приобретает, будь то сын или дочь, все права и обязанности. Родители тем самым приобретают самую высокую ответственность за судьбу ребенка и его полное развитие. В статье говорится о важности института усыновления, о том, что в нашем государстве большое внимание уделяется приоритету получения семейного образования, а для детей, попавших под опеку, такой образовательный объект может обеспечить только институт усыновления. В то же время усыновление детей – это всегда очень сложная юридически процедура. Это связано с тем, что этот вопрос очень важен и в зависимости от перспектив ребенка возлагает большую ответственность на государство, родителей.

Авторы описывают ряд проблем в процессе усыновления детей, об особенностях усыновления казахстанских детей зарубежными усыновителями, в том числе однополыми семьями. Описывается о трудностях проведения контроля за усыновленными детьми, особенно зарубежными гражданами. Поэтому делается вывод, что защита прав детей – это главная задача. Затрагиваются проблемы усыновления детей-инвалидов, проблемы защиты их прав.

Ключевые слова: закон; семья; сирота; Конституция; конвенция.

Introduction

One of the most pressing issues of social regulation of Kazakhstan and other countries is adoption of orphans and children left without parental care. For various reasons, children are deprived of parental care and are forced to live in an orphanage. Adopting a child solves several problems. First of all, the child will find his own family, secondly, young couple will have the opportunity to fulfill their parental duties, and thirdly, the state won't lose financially invincible, because it costs a certain amount to send orphans to an orphanage.

Therefore, complex mechanisms for adequate regulation of appropriate procedures of adoption are considered by legal systems of different countries of the world. The analysis of the different experience of adoption in Kazakhstan and other countries is carried out in order to alleviate this problem in our country.

The term “child adoption” is defined in different ways by scholars. According to many, one type of adoption is children who have been separated from their parents for various reasons.

Today, it is known that this action is recognized as a legal relationship arising on basis of act of “child adoption” because of new legal relations between child to be adopted and adopter of the child, as indicated in the scientific literature (<https://goo.edu.kz/content/view/113/7632?lang=kz>; <http://cbd.minjust.gov.kg/act/view/ru-ru/203700>).

In addition, as a result of this legal act, legal relationship between child and his biological parents is determined. According to legislation of the Republic of Kazakhstan, legal relations arise on the one hand, with the adopter, his biological relatives, and on the other hand, with the child ready for adoption, based on adoption act. In fact, the purpose of adopting a child who has lost his parents is to enable the orphan to live in a family, to protect his rights, to educate him, and to create appropriate conditions for the child's education.

The goals and grounds for adoption are defined in Article 28 of the law of the Republic of Kazakhstan “On the rights of the child in the Republic of Kazakhstan”, but definition of this concept isn't given. And the adoption as a measure to protect the rights and legitimate interests of a child deprived of parental care in his family environment is defined in the Code of Kyrgyz Republic on children in Article 44 of Chapter 8. At the same time, the adoption law is allowed only in the interests of children deprived of parental care in their family environment as an acceptable way to protect the rights of children.

Materials and methods

The historical research method is used within this article in accordance with the task of analyzing theoretical basis of regulating constitutional rights of adopters and adopted children. This method pro-

vides a detailed analysis of retrospective protection of constitutional rights of adopted children in the territory of the Republic of Kazakhstan since gaining independence.

Regulation of constitutional rights of adopters and adopted children is also used by the method of comparative analysis.

Using a comparative analysis, the study of current state of constitutional right protection of adopted children allows to identify and analyze main issues of this question, there is a need to supplement the legislation on constitutional right protection of adopters and adopted children in the Republic of Kazakhstan according to its content. We used sociological tools based on the quantitative mass survey sociological method to fully study and implement the task of conducting a sociological analysis to determine regulation of constitutional rights of adopters and adopted children. The article is also prepared using general and research methods of scientific knowledge, such as dialectical, formal-logical, systematic, technical-legal methods.

It is allowed to adopt only a minor child, in addition, a judge conducts a court at the request of people who wish to adopt a child with a special procedural procedure according to the rules of civil procedure legislation. The consideration procedure of cases of this category is regulated by Chapter 33 of the Code of Civil Procedure.

It is allowed to adopt only children who have lost their parents under 18, who are registered with the relevant rules for adopting a child, and also child's comprehensive physiological, moral, only such adopters are allowed if they make every opportunity for their psychological and spiritual development according to paragraph 1 of Article 84 of the Code of the Republic of Kazakhstan "On Marriage, Matrimony and Family".

In addition, the attention was paid to the rules for adoption of children who are citizens of the Republic of Kazakhstan in the course of the research (<https://adilet.zan.kz/kaz/docs/P1200000380>).

Results

Many studies have shown that child adoption is the most suitable form of care and social protection for a child who has lost a parent, because the child's interests are fulfilled and young childless families have the opportunity to raise a child.

For example, G. Karpushina's work "Family Law" tells about the history of child adoption as follows: "the first act of child adoption" was adopted in

1851 in the United States in Massachusetts. According to this act, the adopted child is given all the same rights as the biological children of the adoptive parents (<https://adilet.zan.kz/kaz/docs/K1100000518>). Here it is established and committed not only to the issue of providing the adopted child with food, but also to the interest of the adoptive parents in educating the adopted child, increasing his chances for education and creating conditions for this.

The history of our country shows that orphans were taken care of during difficult times. For example, during Soviet era, during severe conditions of the country, the government of Communist Party took care of orphans, made decisions about need to adopt them, showed kindness to children who lost their parents, and created conditions for placing them in families.

Thus, adoption of a child is an institution of family law. In connection with this issue, the rights and obligations of parties establishing legal relations for adoption, the procedure for adoption, termination and other relevant norms are established in the legislation.

European states have following constitutional experience. For example, the Constitution of the Slovak Republic (Article 15) and the Constitution of the Czech Republic (Article 6) specifically state that human life deserves protection even before birth. Article 40 of the Irish Constitution states: "The state recognizes the right to life of unborn children and, subject to equal right to mother's life, it shall guarantee in its laws respect for and shall, as far as possible, protect and uphold this right in its laws". These examples show that some adopters are willing to adopt a child from the time it is still in the mother's womb (<https://doi.org/10.6000/1929-4409.2020.09.210>). Neither the Constitution nor other laws in our country consider such adopters, even if they exist. This, of course, shows that the child's rights are protected even in the embryo, and that he has the right to life. That is, it is required to include such norms in our legislation.

According to natural rights, every child has the right to grow up in family that is well-educated, good-natured, spiritually and materially complete. In international law, for example, biological parents are included in the concept of "family" (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en).

In some countries, children have the right to know their birth parents ([35](https://www.eshre.eu/~media/sitecore-files/Annual-meeting/Munich/ART-</p>
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factsheet-201120062014.pdf). We know that the family-related legislation of the Republic of Kazakhstan has certain rights of a child who has lost his parents. For example, a child has the right to communicate with his biological parents, to have relations, to improve his quality, to raise his dignity in order to achieve his goals—all this is clearly stated in Article 52 “On Marriage and Family” of the Law of the Republic of Kazakhstan.

As for traditional Kazakh customs, it is an ancient Kazakh custom to bring someone’s child up, to adopt a child.

According to the Kazakh tradition, it is allowed to adopt a child only when there is no offspring. If a family had no children at all, such a family would agree with one of its close people and adopt the child.

According to Kazakh customs, the adopter usually holds shildekhana party, and when a son was adopted, he would hold assyk zhilik on his hand, and a daughter would hold tokpak zhilik on her hand. We can see that there is a great educational meaning in this. In public, he expresses gratitude for accepting the children, for giving the child to both sides by accompanying child. Among Kazakhs, it is common for children to be placed under the care of their parents. This is the selfishness of the grandmother and grandfather who consider their grandson to be their own son.

This is a traditional form of kinship that is not called adoption (<https://goo.edu.kz/content/view/113/7632?lang=kz>).

There was no word “Orphanage” in Kazakh history before. It is known to all of us. Even orphan is a very difficult word. Before the Soviet era, mothers of children who lost their fathers were arranged to marry their fathers’ brothers or sisters, so that children did not become orphans. And the children who lost their parents remained children of their father’s brother. Even a child with no blood relation was adopted by a relative. Therefore, there were no orphans in Kazakh society.

According to information, such orphanages began to appear during Soviet Union, and the number of orphans there increased significantly after Soviet years. Currently, we are in such a situation that we do not feel that the word “orphan” is a shame for the nation. Because there are many abandoned children and children with serious health problems. Divorce has also big influence on it.

The most sensitive part of any society is orphans who have lost their parents and are left out of their care. Every state tries to solve this social problem

comprehensively. For example, orphaned children were abandoned, parents were absent, disabled data were registered at the level of the Republic of Kazakhstan. Its databases include: Children’s Fund, Children’s Archive, Organized Children. At the same time, a list of citizens who are ready to adopt such children will be made there.

It is known that the institution of adoption is an important legal institution. Adoption of children who are citizens of the Republic of Kazakhstan to foreigners in accordance with paragraph 3 of Article 76 of the Law of the Republic of Kazakhstan “On Marriage and Family”. Citizens of this country permanently residing in the Republic of Kazakhstan are allowed to adopt only when there is no opportunity for adoption. Adoption of a child is carried out only in accordance with the laws of the Republic of Kazakhstan to people with citizenship in the territory of the Republic of Kazakhstan, foreign citizens, stateless people.

A state document on the financial status of potential parents, that is, a written application about moral character of license must be submitted to the relevant child protection services. At the same time, foreign adoptive citizens intending to adopt a child who has lost their parents within two weeks are allowed to choose the child themselves and get closer to him. Adoption is carried out by the court at person’s request who wishes to adopt a child. Adoption cases are carried out by the court within framework of special procedures in accordance with norms provided by the legislation of civil procedure. It is known that a foreign adoptive citizen wishing to adopt an orphaned child of the Kazakh state must be immobilized in accordance with the legislation of the Republic of Kazakhstan, Article 155, Part 1 of the Civil Procedure Code of the Republic of Kazakhstan (<https://adilet.zan.kz/kaz/docs/K1500000377>). Recognizing the need for education in the framework of happiness and love for child’s full development in a family environment, recognizing that adoption of a foreign child provides an opportunity to create a stable family in the absence of family in the country of origin, to prevent child abduction and keeping child in the family as a priority goal of each state, in international documentation, in particular, the need to take measures to stop trade is taken into account.

In some cases, an adopted child may encounter an unfavorable family and parents and develop in a negative way. Minor children, taking into account their physiological, mental and social characteristics, being one of the most vulnerable groups of the population, are considered a separate category of

criminals. Therefore, the crime of minors is not only caused by damage to social relations and the personality of the victim, but also directly affects minors, antisocial behavior is formed in their mind. Taking this into account, the issue of features of criminal liability of adopted minors is still relevant today (Yernar 2020).

For example, Khan V.V. believes that crimes against minors, especially sexual inviolability, should be investigated. For this, the crime investigator must be ready to perform the duties of supervision and control of the rights and interests of minors assigned to him (Khan 2022).

Taking into account the provisions set forth in the UN Convention on the Protection of Children published on November 20, 1989 “On social legal principles related to the interests and protection of children” 41-85, “Protection and Adoption of Children” published on December 3, 1986, July 25, 1993 The adoption of the “Convention on Cooperation in Matters of Child Protection and Adoption” were widely considered in history.

When foreign citizens adopt Kazakhstani children, the rights of these children will be protected. We can see about it in the Convention dated 2022. It is about protecting the rights and interests of adopted orphans. It is intended to take measures of mutual cooperation between states by concluding agreements against the abduction and sale of a child, to ensure that states recognize the adoption of a child in accordance with the requirements of the convention. According to the convention, the diplomatic corps and consulates of the country abroad should monitor the situation of children of Kazakhstan adopted by foreigners.

For example, UNICEF’s report “Everyday Lesson: Stopping Violence at Schools” found that half of the world’s 13-to 15-year-old schoolchildren (approximately 150 million children) have experienced peer violence both on and off school grounds. That is, the rights of the adopted child in such cases must be protected (https://www.unicef.org/publications/index_103153.html). One of the difficulties here is that we have difficulty knowing the cases of children who have left Kazakhstan. After all, the diplomatic staff of the country has rules of inviolability of the privacy of foreigners and non-interference in their lives.

One of the difficulties here is that we have some difficulties in knowing the cases of children who have left Kazakhstan. After all, the diplomatic staff of the country has rules of inviolability of the privacy of foreigners and non-interference in their lives.

In some foreign countries, adoption permits were issued even to same-sex families. For example, American Psychological Association supported the adoption and upbringing of a child in same-sex families with its official statements in 2004 (<https://adilet.zan.kz/kaz/docs/K1500000377>). And there are no such norms in Kazakhstan’s legislation. Because a same-sex family is not recognized in our country.

At the same time, some foreign citizens will adopt disabled children from Kazakhstan. The mechanism for protecting the rights of children with disabilities is provided by international law, that is, the UN Convention on the Rights of Person with Disabilities. However, it is not possible to monitor the condition of such children, as this is provided by the convention. However, it is not possible to monitor the situation of such children, because there is still work to be done on the implementation of the provisions of this convention [4].

According to the Convention, a special centralized working body was created among the states that signed the contract on children adoption who lost their parents. This body will achieve and work to achieve goals and related tasks specified in the convention for the cooperation between governments of the respective states, as well as the requirements set before the adopters.

In addition, these bodies include the necessary data on children adoption who have lost their parents, statistical documents, information in all necessary forms in the laws issued by relevant state, and each state shows and determines the implementation of the convention in its country, what are the obstacles to it, and how to solve the obstacles. In textbook “Family Rights” by B.Ye. Aitzhan and G.B. Shirkinbayev that since the evolution of civilization in the country, the status of orphanages and old people’s homes in the country has also worsened. Yes, it shows that it is a tragedy not only for individuals, but also for society. Currently, we can see that the number of adopters in the country is increasing. According to the analysis of the Ministry of Foreign Affairs of the Republic of Kazakhstan, this can be evidenced by the increase in the intention of foreigners to adopt children who have lost their parents. According to the authors, adopters from different countries can adopt Kazakh children. As proof of this, the authors say that “it can be seen from the fact that citizens of different states who intend to adopt a child who has lost their parents apply to international courts” (<https://goo.edu.kz/content/view/113/7632?lang=kz>).

According to the information of many countries, China, Vietnam, and Kazakhstan are the first countries in the world that offer their children for adoption to foreigners. Based on media information of recent years, many organizations and agencies stand in the way of adopting an orphan. All of them function due to funding, and here too it can be seen that the work of adopting a child without parents is not regulated at the required level. In this direction, for example, representatives of 28 foreign organizations work in the territory of Kazakhstan. If we look at the history of our people, we will see that there were no orphanages or abandoned children in our land. We understand that the increase of orphans is influenced by divorce, alcohol addiction, and low social status and etc.

Conclusion

Summing up, adoption is a legal fact. In the life of the country, in no fate, children have never remained indifferent, people have never left indifferent their thoughts about life and future of the child. Thus, as a result of long discussions between various members of the society, the current negative situation on the issue of adoption of Kazakh children by foreigners remains transparent.

Islamic law maintains transparent principle of adoption. It does not deny biological origin, that is, the child's blood is not deliberately denied or hidden. Since Kazakhstan is dominated mainly by Muslim population, we think that this principle of Islamic law can be used quite well. Adoption by transparent principle would have an educational moment, that is, it would not be forced to lie from childhood and would be protected in the future from

the stress associated with the disclosure of the secret of adoption. And after reaching the age of 16, when receiving an identity card, a teenager would have every right to change his questionnaire data in favor of foster parents.

Thus, as a result of long discussions between various members of society, the current negative situation on the issue of adoption of Kazakhstani children by foreigners remains transparent.

At the same time, transparent adoption is in accordance with Article 7 of the Convention on the Rights of the Child, which states that a child has the right to receive a name and citizenship of any country, even in appropriate cases, to know his parents and be under their care. Every child has the right to live and be brought up in a family, the right to know his parents and other close relatives, the right to their care and upbringing, except for cases that conflict with their interests, is established in the Law of the Republic of Kazakhstan "On the Rights of the Child". We think that the offenses committed on this issue will make other participants of the international adoption process doubt legalized activities of the institution that provided assistance to sick children. Therefore, if we want the world to respect our nation, our national image, and the future of our children, we must first of all pay special attention to every family in our country, pay special attention to their spiritual and social aspects, and help them not to fall, as well as to respect our national traditions, consciousness, and actions. It is possible to see in the works of our great poets with traditions and customs from the cradle that the future of a child in Kazakh is very consciously attached great importance to his origin and upbringing.

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