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Some features of the trial of adoption (adrogation) of a child in the courts of the Republic of Kazakhstan

Within the framework of this research, some issues of the trial of the adoption (adrogation) of a child arising in the courts of the Republic of Kazakhstan are considered. The authors analyze the composition of persons participating in a case about adoption (adrogation) of a child in civil proceedings. Two main categories of subjects are considered, depending on the obligation of their participation in the trial in the consideration and resolution of civil cases about the adoption (adrogation) of a child provided for in domestic national legislation. A comparative analysis of similar provisions of legislation of the Russian Federation and Ukraine has also been carried out. Attention is drawn to various scientific views available in doctrine sources on the issues under consideration. The authors take into account that, at the moment, there is a certain inconsistency in the norms of domestic legislation on some issues relating to the trial of the adoption (adrogation) of a child. An analysis of legal norms regulating the procedure for consideration of cases of adoption (adrogation) of a child in the courts of the Republic of Kazakhstan is carried out. The methodological basis of this scientific work is dialectical, systemic, comparative-legal, regulatory, and other methods of knowledge. The norms of the main international legal acts governing this sphere of relations are taken into account. The issue of the importance of obtaining the consent of a child to be adopted is also considered in the article. The possibility of compulsory participation in the case of adoption (adrogation) of a child of teachers and psychologists, as well as the child who has reached the age of 10 years, has been considered. As part of the improvement of domestic law regulating the attitudes in the sphere of adoption (adrogation) of children in the Republic of Kazakhstan, it is proposed to solve certain problems arising in the process of consideration of civil cases about the adoption (adrogation) of the child.

Keywords: adoption (adrogation) of a child, child's rights, adopter, adopted, legislation on adoption (adrogation), civil cases about adoption (adrogation) of a child.

Introduction

In 2021, the Republic of Kazakhstan celebrated the 30th anniversary of its independence. It is gratifying that for such a relatively short period of the establishment of the independence of the state as a full member of the world community, we have a sufficiently solid legislative framework that covers the framework of its legal regulation of various areas of social relations. Item 1 of Article 1 of the main law of independent Kazakhstan — the Constitution of the Republic of Kazakhstan, adopted on a national referendum on August 30, 1995, says: "The Republic of Kazakhstan approves itself by a democratic, secular, legal and social state, the highest values of which are a person, his life, rights and freedom" [1]. It means that the Republic of Kazakhstan recognizes itself as a social state. Thus, the direct responsibility of the state in accordance with the Constitution of the Republic of Kazakhstan is the recognition, respect, and protection of human rights and freedoms. In addition, Article 27 of the Constitution provides for the rule that: "Marriage and family, motherhood, paternity and childhood are under the protection of the state" [1].

In the social direction, the work of the relevant bodies of our state aims to attempt to change the consciousness of Kazakhstan citizens and the whole society in relation to "vulnerable children", whose will of fate remained without parental care, and designate the priority of their organization in the family, and not to government agencies. This radically distinguishes the current position of the state from the one that was previously observed.

One of the most important documents of international legal importance in the sphere of security and protection of the rights of children is the Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20.11.1989. Kazakhstan has ratified this document by adopting a resolution of the Supreme Council of Kazakhstan of 08.06.1994. Thus, throughout the territory of independent Kazakhstan, the jurisdiction of this international legal act is covered, which, in turn, indicates that our state has commit-

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ments to the best way to ensure the interests of children, compliance with issues in the sphere of childhood protection, and timely protection of violated rights and interests of minor persons. The provisions enshrined in the domestic law of the Republic of Kazakhstan on the need to ensure the legal rights and freedoms of the child, as well as the prescriptions of international legal instruments acting as legally binding rules of conduct in the territory of the Republic of Kazakhstan in this area, indicate the importance of problems arising from issues related to the organization of orphans and children left without parental care into the families of Kazakhstan citizens, as well as foreign citizens. Therefore, one of the priorities of the policy of the Republic of Kazakhstan is a trial of adoption (adrogation) of a child.

Among all possible forms provided for in modern society and enshrined by the Kazakhstan legislator as the main methods of the organization of such "vulnerable children", the institute of adoption undoubtedly occupies a leading position. Adoption Institute, as one of the main ways to guarantee the child's natural right to live and be raised in family conditions, is simply necessary. Thus, Article 20 of the above-mentioned Convention provides for the following provisions:

"1. A child who is temporarily or constantly is deprived of his family environment, or who, in his own best interest, cannot remain in such an environment, has the right to special protection and assistance provided by the state.

2. States-parties shall, in accordance with their national laws, provide a replacement for the care of such a child.

3. Such care may include, in particular, transfer to education, "Kafalah" on Islamic law, adoption or, if necessary, placement in appropriate childcare facilities. When considering replacement options, it is necessary to properly take into account the desirability of the continuity of the education of the child and its ethnic origin, religious and cultural affiliation and native language" [2].

In modern Kazakhstan society, a list of regulatory acts regulating issues related to the institution of adoption is wide. These include:

- Code of the Republic of Kazakhstan dated December 26, 2011, No. 518-IV "On Marriage (Matrimony) and Family";
- Code of the Republic of Kazakhstan dated October 31, 2015, No. 377-V "Civil Procedural Code of the Republic of Kazakhstan";
- Law of the Republic of Kazakhstan dated August 8, 2002, No. 345-II "On the Rights of the Child in the Republic of Kazakhstan";
- Code of the Republic of Kazakhstan "On Administrative Offenses" dated July 5, 2014 No. 235-V;
- Criminal Code of the Republic of Kazakhstan dated July 3, 2014, No. 226-V;
- Law of the Republic of Kazakhstan dated December 20, 1991, No. 1017-XII "On Citizenship of the Republic of Kazakhstan";
- Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 No. 2 "On the practice of applied by the courts of legislation on adoption (adrogation) of children";
- Order of the Minister of Justice of the Republic of Kazakhstan dated February 25, 2015, No. 112 "On approval of the rules for organizing state registration of acts of civil status, making changes, restoration, revocation of records of civil status acts";
- Resolution of the Government of the Republic of Kazakhstan dated March 30, 2012, No. 380 "On approval of the rules for the transfer of children who are citizens of the Republic of Kazakhstan for adoption".

Experimental

The article uses common and private scientific methods of knowledge, which allowed to objectively analyze the purpose of the study. Considering the specifics of the theme, goals and objectives of the study, a dialectical method was used, which helped to identify the methodological foundations of the study and clarify the essence of the analyzed concepts.

To clarify the main problems arising at the stage of the trial in the consideration and determination of civil cases about adoption (adrogation) in the courts of the Republic of Kazakhstan, the method of scientific analysis and summarizing judicial practice was used.

The formal legal method was applied to determine the structure and relationships of the studied concepts, as well as to study the relevant provisions of the legislation of the Republic of Kazakhstan on the court proceedings on adoption (adrogation) cases in the courts of the Republic of Kazakhstan.

The system-structural method is used for in-depth study of the regulatory provisions of national legislation on relations arising within the institution of adoption (adrogation) in the Republic of Kazakhstan as a whole, as well as in terms of consideration of issues arising at the trial of adoption (adrogation) issues in courts Republic of Kazakhstan.

Results

Currently, questions related to the adoption (adrogation) process of children have not lost their relevance compared with previous decades. In the science of family and civil procedural law, as well as in the media, the topic of adoption (adrogation) of children and its legal and moral aspects, is continuously rising.

Adoption is a state, the creation and existence of which is determined exclusively by the state. Adoption creates legal parental relations that do not depend on biological factors. It requires cessation of parental rights on the part of biological parents regarding the child and the creation of a legitimate legal "Parent–child" relationship with adoptive parents [3, 345].

In the Republic of Kazakhstan, the judicial procedure for establishing adoption (adrogation) is statutorily provided. For the entire period of its application, a sufficient amount of adoption (adrogation) of children cases was considered.

In connection with the change in marriage (matrimony) and the family legislation, as well as in order to ensure the most complete protection of the rights and protected interests of minors in consideration of the cases of adoption (adrogaion) of children in the courts, the Supreme Court of the Republic of Kazakhstan adopted a regulatory decision of 12/22/2000 No. 17 "On some issues of application by the courts of legislation on marriage and family when considering cases of adoption (adrogaion) of children". It contained the directives about the issuers on adoption (adrogation) of children at that time. Later, it become invalid in accordance with the regulatory decision of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 No. 2 "On the practice of applying the laws of legislation on adoption (adrogation) of children", which is current today as of 30.09.2021.

Since 2012, in the judicial system of Kazakhstan, the production of minors transferred to juvenile courts. In accordance with Paragraph 3 of Article 27 of the Civil Procedural Code of the Republic of Kazakhstan: "Specialized inter-district courts on juvenile affairs hear and resolve over civil cases on disputes over determination of the place of residence of the child; on determination of the procedure for communication between a parent with a child and the removal of a child who is with other persons; on determination of the place of residence of the child when a child leaves the country for permanent residence with one of the parents; on deprivation (restriction) and restoring parental rights; on adoption (adrogation) of the child and his cancellation; on the sending of minors to special educational organizations or educational organization with a special regime; on disputes arising from custody and guardianship (patronage) over minors; on the establishment of paternity of a minor and recovery of maintenance; applications to restrict or deprive a minor aged from fourteen to eighteen years of the right to independently dispose of his income; on the declaration of a minor fully capable (emancipation); on the establishment of paternity and the recovery of maintenance in percentage or fixed sum for the alimentation of the child; on reduction in the amount of alimony; on the protection of labor, housing rights of minors; on compensation for harm caused by joint minors and adults, including the participation of incapacitated or limitedly capable adults" [4]. Among all categories of civil cases belonging to the competence of the permission of juvenile courts in the Republic of Kazakhstan, the adoption (adrogaption) of the child and cancel have its own place due to the special status and the significance of this institution in modern society.

Discussion

The Republic of Kazakhstan, as a legal democratic state in modern society, statutorily enshrines for each citizen the constitutional right to protect his rights and interests from the state, which can be carried out by any ways. So, under Paragraph 2 of Art. 13 of the Constitution of the Republic of Kazakhstan: "Everyone has the right to judicial protection of his rights and freedoms" [1]. The minor persons are not an exception and, therefore, this rule finds its direct confirmation in the internal family legislation of the Republic of Kazakhstan. According to Article 67 of the Code of December 26, 2011 No. 518-IV "On Marriage (Matrimony) and family": "The child has the right to protect his rights and legitimate interests. The protection of the rights and legitimate interests of the child is carried out by parents or other legal representatives of the child, and in cases stipulated by the legislative acts of the Republic of Kazakhstan, the body carrying out functions for care or trusteeship, the prosecutor and the court, as well as the internal affairs bodies and other government

agencies within their competence" [5]. Undoubtedly, among all state bodies that can provide entities, including minors, the necessary protection of their violated and disputed rights, freedoms and interests, the court occupies a special place due to its status. The judicial authorities, first of all, perform a law enforcement function through the relevant empowers on administration of justice. As V.A. Terekhin notes the "term" law enforcement agencies "are collective, and to such bodies, of course, the court applies. Having a major legal means — current legislation — and carrying out its main — human rights — function, courts, of course, protect the rights and freedom of citizens, the interests of society and the state" [6, 11–21].

As part of the implementation of state power, the court's activities involve the establishment and research of the facts that matter to the case; determining the norm of the material right to apply; making legitimate and reasonable decision. The main purpose of the court in the law enforcement system is its competence for the implementation of justice, which manifests itself in direct consideration and permitting civil cases through the laws of judicial forms.

According to Paragraph 1 of Article 1 of the Constitutional Law of the Republic of Kazakhstan dated December 25, 2000 No. 132-II "On the Judicial System and Status of the Judges of the Republic of Kazakhstan": "The judicial power in the Republic of Kazakhstan belongs only to the courts in the face of permanent judges, as well as members of the jury involved in criminal proceedings in cases and procedure provided for by law. Justice in the Republic of Kazakhstan is carried out only by the court. The publication of legislation, providing for the transfer of exceptional powers of the court to other authorities is interdicted. No other organs and persons have the right to assign themselves the powers of the judge or the function of the judiciary. Appeals, statements and complaints to be considered in the procedure of legal proceedings cannot be considered or taken to control by any other bodies, officials or other persons" [7].

Khalikov K.Kh., as most of the authors who showed a special interest in the study of the «Justice» category, sees it as "implemented in a special procedural form and with the obligatory requirement of compliance with the special order by the courts for consideration and resolution of civil, criminal and other cases, and the application of substantive law" [8; 15, 16].

The judicial form of the right, provided by the legislation of the Republic of Kazakhstan, of all possible forms seems to be the most preferable and most suitable for the implementation of goals aimed at protection and preservation of legal rights and interests of citizens.

Consideration of any case within the framework of civil proceedings occurs in a special regulated by Civil Procedural Code of the Republic of Kazakhstan (CPC RK), that called the civil procedural form and through consecutive stages, also provided by law.

The trial, being the central stage of the civil process, implies the realization and implementation of all the main tasks of civil proceedings specified by the legislator in Article 4 of the Civil Procedural Code of the Republic of Kazakhstan. These include "protection and restoration of violated or disputed rights, freedoms and legitimate interests of citizens, state and legal entities, compliance with legality in civil circulation, ensuring full and timely consideration of the case, promoting the peaceful settlement of the dispute, prevention of offenses and the formation of a respectful relationship in society to the law and court" [4].

The opinion that exists in the doctrine of civil procedural law is generally recognized, which it is at the stage of the trial that all the principles of civil procedural law are fully manifested, enshrined both in the Constitution of the Republic of Kazakhstan and in branch-wise legislation. The significance of these principles is predetermined by Paragraph 2 of Art. 5 of the Civil Procedural Code of the Republic of Kazakhstan. "Violation of the principles of civil proceedings, depending on its nature and materiality, leads to the reversal of a court rulings" [4].

The procedure for adopting the child in the territory of the Republic of Kazakhstan is legally settled. According to Art. 87 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family": "Adoption is made by the court on the application of persons (person) who want to adopt the child. Consideration of cases of adoption of the child is made by the court in the order of special production provided for by the Civil Procedural Code of the Republic of Kazakhstan" [5].

Special production in the civil procedural law of the Republic of Kazakhstan is an independent view of civil proceedings and, accordingly, provides for special rules for consideration of certain categories of civil cases. The characteristic features of the specified type of civil proceedings in the first place, are the absence of a dispute about the right between the subjects of these legal relations and the impossibility of applying the claims of protection by them.

The civil procedural law regulates in detail all the stages of the trial of such a category of civil affairs, as the cases of the adoption (adrogation) of the child.

In accordance with Art. 35 of CPC RK "Civil cases of adoption are considered and permitted by the judge alone, which acts on behalf of the court" [4].

As a general rule, provided in Paragraph 1 of Art. 19 of the Civil Procedural Code of the Republic of Kazakhstan: "The trial of civil cases in all courts occurs openly. The judicial acts are announced publicly" [4]. This provision indicates the legal consolidation of the principle of publicity in the domestic legislation of the Republic of Kazakhstan. This principle implies not only the openness of the very proceedings, but also the transparency and availability of all procedures implemented in the process of administration of justice on civil cases.

The right to a fair trial is provided by one of the significant regulatory and legal acts of international importance — the European Convention on Human Rights. Thus, Article 6 of the specified document reads: "1. Each person has the right to determine his civil rights and duties or, when considering any criminal charges imposed on him, for a fair and public proceedings of the case within a reasonable time, an independent and impartial court established on the basis of the law. The judicial decision is announced publicly, but the press and the public may not be allowed for court sessions throughout the process or its part for reasons of morality, public order or state security in a democratic society, as well as whether the interests of minors or to protect the private life of the parties or — to the extent that this, according to the court, is strictly necessary — under special circumstances, when publicity would violate the interests of justice" [9]. However, in relation to the application of one of the main principles of civil procedural law — the principle of publicity, the legislator still provided for dedicated exceptions. The specified withdrawal from the principle of publicity suggests that the cases of adoption of the child is considered by the court in a closed court session. So, in accordance with the Law of the Republic of Kazakhstan dated December 20, 2021 No. 84-VII "On introducing changes and additions to some legislative acts of the Republic of Kazakhstan on the improvement of civil procedure legislation and the development of institutions of amicable and pre-trial settlement of disputes" Part 2 of Article 19 of CPC RK was set out in the new edition: "In the closed court session, in accordance with the law, consideration and permission are carried out, including the announcement of the decision containing information that are public secrets, as well as cases of adoption of the child" [4]. Thus, the legislator fixed in imperative order the regulation about application of this waiver regarding the principle of publicity, which is used in civil proceedings in most cases and provided for a rule on the closed trial for the category of civil affairs considered by us.

In accordance with Paragraph 1 of Art. 87 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family", "persons participating in the adoption (adrogation) of the child cases" are mandatory:

1. Adopters;
2. Representatives of the body carrying out the function of custody or trusteeship;
3. Prosecutor [5].

In turn, Art. 314 of CPC RK, listing off the persons involved in the case, indicates: "The adoptive parents (adoptive parent) and representatives of the body carrying out the function of custody or guardianship themselves. In the necessary cases, it provides for the court the right to attract to participate in parents (parent) or other legal representatives of the adopted child, his relatives and other interested parties, as well as the child who has reached the age of ten years" [4], is not a mentioned prosecutor. In this case, the inconsistency of the norms of domestic legislation is obvious.

Based on the meaning of Article 314 of CPC RK, all the subjects that may participate in the consideration and resolution of civil cases about the adoption (adrogation) of the child in the courts of the Republic of Kazakhstan can be divided into two main groups. The first group should include those whose participation on direct instructions of the law is mandatory or necessary. Namely, the adoptive parents (adoptive parent), representatives of the body carrying out the function of custody or guardianship. In the event that the listed persons do not appear at the court hearing, then the proper consideration of the case without their participation, as well as the decision of a legitimate and reasonable decision, is not possible. To the second group of subjects, it is advisable to attribute those persons whose participation in the opinion of the legislator is considered as optional or facultative. Accordingly, the consideration and permission of the civil case on the adoption (adrogation) of the child, as well as the rendering of a judicial decision without them, are possible. These include parents (parent) or other legal representatives of the adopted child, his relatives, other interested persons, and the child itself, who has reached the age of ten years. Representatives of the second group can be involved in participation in the case of the need. In practice, there were cases of consideration of civil cases about the adoption (adrogation) of a child without the obligatory participation of persons assigned to

the first group. However, here it should be noted that such a retreat could serve as a prerequisite for cancellation of a judicial act, if it was a circumstance that contributes to incorrect permission. In our opinion, such a retreat from the imperative rule, provided by the legislator, is risky and unjust and, in most cases, the cause of incorrect permission of the case.

In this case, the judge already at the stage of preparation of the case for a trial has an obligation to resolve the issue of attracting representatives of this group of individuals to participate in the case because the rights and interests of the adopted child will not to be violated. When considering cases of adoption (adrogation) of children, the interests of the child will always be placed at the head of the corner. This is explained by the essence and purpose of the institution of adoption as the most priority form of the device of children left without parental care.

The legal consequences of adoption in obligatory should be explained by the judge to biological parents if they were brought to participate in civil law on adoption (adrogation) [10].

In the present period, all sorts of factors of modern reality affecting various spheres of society in general, superimpose on their prints and on certain subjects of this society. They have a special influence on minor persons, which, by virtue of age and mental and physical immaturity, are more accessible and vulnerable in all senses. The influence of factors, such as scientific and technical progress, the era of the Internet, the publicly availableness of any information, the abundance of social networks, does not keep away from young participants in public relations too. Therefore, today such definitions as acceleration and emancipation of minors "sound familiar". The child who reached the ten-year-old age today is a completely different child compared to whom lived 50–70 years ago. The child who has reached fourteen years can well realize his actions, respond to their actions and sometimes thinking already as an adult. For this reason, the attitude of the child who has reached the age of fourteen to the subjects whose participation in the consideration of civil cases about adoption (adrogation) is mandatory, seems to us prudent and timely.

In this regard, the most correct, on our drafts, seems to see the vision of this issue, in particular, indicating the child to be adopted as a subject, the obligation of which in the case of adoption (adrogation) is imperative, through the eyes of the Russian legislator. Thus, Article 273 of the Civil Procedural Code of the Russian Federation provides for the general rule that: "An application for adoption is considered in a closed court session with the obligatory participation of adoptive parents (adoptive parent), a representative of the custody and guardianship authority, the prosecutor, the child who has reached the age of fourteen, and in the necessary cases of parents, other interested parties and the child itself aged ten to fourteen years" [11].

Even more preferable and relevant in the context of the consideration of this aspect is similar to the same norm provided by the Ukrainian legislator. In accordance with Paragraph 1 of Article 313 of the Civil Procedural Code of Ukraine, "the Court considers the case of adopting a child with the obligatory participation of the applicant, the custody and guardianship authority or an authorized executive body, as well as a child, if he is aware of the age and health status of adoption, with a challenge of interested and other persons, the court recognizes the necessary interrogation" [12]. Given the above factors of modern reality, their influence on minor persons, a different age, under which the moment of physiological and mental cultivation of children occurs, such a formulation of the law without specifying the age of the child capable of adoption (adrogation) seems to be the most successful.

The feasibility of assigning a child to be adopted to the category of subjects for which obligatory participation in consideration of cases of adoption (adrogation) is also based on the provisions of the Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of November 20, 1989. In accordance with Paragraph 1 and 2 of this article of this international legal act: "States-parties provide a child who can formulate their own views, the right to express freely these views on all issues affecting the child, and the opinions of the child pay due attention to accordance with the age and maturity of the child. To this end, the child, in particular, is given the opportunity to be heard during any judicial or administrative proceedings affecting the child or directly or through a representative or the relevant body, in the order prescribed by the procedural norms of national legislation" [2]. In the domestic legislation of the Republic of Kazakhstan, this rule was enshrined in Article 62 of the Code of the Republic of Kazakhstan "On marriage (Matrimony) and Family". Thus, the norm of this article reads: "The child has the right to express his opinion when solving in the family of any issue affecting his interests, as well as be heard during any judicial or administrative proceedings. Accounting for the opinion of the child who has reached the age of ten years is obligatory, except in cases where this is contrary to his interests. In cases stipulated by this Code, the bodies performing functions for custody or guardianship, or the court may decide only with the consent of the child who has reached the age of ten years and given in the presence of legal representatives" [5].

In addition, Paragraph 7 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan "On the practice of applying the laws of adoption (adrogation) legislation of children" provides for the following rule: "If the court comes to the conclusion about the feasibility of a survey at the court hearing of the adopted child who has reached ten years to clarify his opinion on the issue under consideration, then the court should first find out the opinion of the body that performs the function of custody or guardianship, so that the presence of a child in court does not have adverse effects on him" [10].

The plenary meeting of the Supreme Court of the Republic of Kazakhstan in Paragraph 3 of its regulatory Decree of the Supreme Court of the Republic of Kazakhstan, No. 15 "On the application of legislation by the courts in resolving disputes related to the education of children" provides that: "The survey should be made in mind the age and child's development in the presence of a teacher and (or) psychologist, in a situation that excludes the influence of interested persons. At the same time, it is necessary to find out if the opinion of the child is a consequence of the impact on him of one of the parents or other interested parties, whether he is aware of his own interests when expressing this opinion and how he justifies him" [13].

In turn, Paragraph 5 of Article 77 of CPC RK reads: "In the production of procedural actions to determine the opinion of a minor child on the subject of the dispute who has reached the age of ten years, the participation of the teacher and (or) of the psychologist must be obligatory" [4]. This provision indicates the feasibility of participation, the significance and enormous role of teachers and psychologists in assisting minors, incl. during civil proceedings, when considering civil cases, in particular and cases of adoption (adrogation) of the child. This again is explained by the fact that the child needs a special approach to him as a subject participating in certain relations, due to his physical and mental immaturity, so that possible actions are not carried out to him with harm.

When considering civil cases about the adoption (adrogation) of the child, there is no longer even the slightest pressure on the child from parents or other interested parties. With this end in view, the law provides for the possibility of a survey at the court hearing and exactly a psychologist, like no other, can cope with the goal at the proper level.

Based on the meaning of these norms, it is also seen to the feasibility of compulsory participation in the court proceedings in the cases of adoption (adrogation) of a child of a teacher and (or) a psychologist and legal consolidation of the rule about it in Paragraph 1 Article 314 of CPC RK.

Also, in the domestic legislation of the Republic of Kazakhstan, namely, Paragraph 7 of the regulatory decision of the Supreme Court of the Republic of Kazakhstan "On the practice of applications by the courts of legislation on adoption (adrogation) of children" was enshrined the rule involving a special approach to the child, which for health reasons cannot be in court, where he appears as a person participating in the case. "If a child who has reached the age of ten years cannot appear at the court hearing for health reasons (for example, a child is a disabled person since childhood and is limited in movement), the court, taking into account the interests of the child, can find out his opinion regarding adoption at the place of his location" [10].

Another important point in the civil cases of the category under consideration is to obtain an agreement to adopt a child from the statutory law. Thus, Article 95 of the Code of "On Marriage (Matrimony) and Family" outlines that "to adopt a child who has reached the age of ten years, his consent is necessary. The consent of the child for adoption is established by the court in the presence of parents or other legitimate representatives of the child, prosecutor" [5]. The specified norm is definitely imperative. Without obtaining the consent of the child, adoption is in principle impossible.

In the science of civil procedural law, there are various opinions in this respect. For instance, R.L. Murzin believes that "Specifically with the achievement of the ten-year-old age that the legislator binds the ability of the child to consciously express his will and attitude to adoption, to understand its importance in his own life" [14, 29–31]. According to A.I. Pergament: "For an independent decision of the issue, it is necessary that the child's consciousness has greater maturity. In this regard, it would be advisable to establish this age in 12 years" [15, 98].

Nevertheless, Z.Z. Aliyeva notes: "Why the age of the ten years was elected the decisive by the legislator? The development of the child is individually, based on which binding the ability to aware of what is happening with the achievement of the ten-year-old age" [16, 102–107]. Based on the results of various sociological polls of practitioners of psychologists, testifying to the ability of children to consciously express their will about a possible adoption, she proposes to reduce the age of the child, the consent of which is required to adopt to seven years.

Considering the above factors of modern reality that influence the various spheres of life in society, including the development of minor persons involved in all types of social relations, the position of Z.Z. Aliyeva is more logical, rather than the statements of her opponents.

Under the norms of international law, each child has the right to live and be brought up in favorable conditions for him. This provision finds its legal consolidation in one of the main acts of international legal importance — the Declaration of the rights of the child adopted by the UN General Assembly resolution 1386 (XIV) of the UN General Assembly of November 20, 1959. It provides the Principle 2: "The child with law and other means should be provided with special protection opportunities and favorable conditions that allow it to develop physically, mentally, morally, spiritually and socially healthy and normal means and in conditions of freedom and dignity. When publishing for this purpose, the laws should be the best way to ensure the interests of the child" [17].

Conclusions

Taking into the production of civil cases about the adoption (adrogation) of the child, the courts of the Republic of Kazakhstan take on great responsibility, since it is in the process of a trial of such a category of civil cases by making an act of justice within the framework of special production in the civil procedure, new legal relations between the child and adoptive parents will be established. In such cases, especially all circumstances relating to the case should be investigated and studied in the most thorough way because the fate of a minor person on the line. In the process of consideration and permission of a civil case on adoption (adrogation) of the child, the court on the basis of the analysis of all the circumstances of the case should make an assessment of evidence that will be subsequently based on a court decision on this case.

In each particular case, when identifying the subject of proving in a civil case on the adoption (adrogation) of the child, the courts should be guided by the norms of international legal acts, the substantive law on adoption (adrogation), and also take into account the judicial practice in this sphere. This will contribute to an effective and rapid resolution of such disputes, minimizing the risk of incorrect resolution of such a category of civil cases, as well as minimization of cases of advent of cases about adoption cancellation. This should be the main task of the bodies of justice in the consideration and resolution of civil cases about the adoption (adrogation) of the child in the civil proceedings of the Republic of Kazakhstan.

Consequently, currently legislation governing both the adoption (adrogation) procedure of children and the process of consideration and permission of such cases by the courts of the Republic of Kazakhstan as part of civil proceedings still needs a certain adjustment and improvement.

As part of the improvement of domestic legislation regulating the relations in the sphere of adoption (adrogation) of children in the Republic of Kazakhstan, the authors proposed these suggestions:

1. To provide the current legislation on the consideration and resolution of civil cases about adoption (adrogation) in the courts of the Republic of Kazakhstan with the norms of international legal acts.

2. In order to bring in uniformity of domestic legislation on the adoption (adrogation) of the child in the courts of the Republic of Kazakhstan, to comply with the norms listed in Articles 77 and 314 of the Civil Procedural Code of the Republic of Kazakhstan and Article 87 of the Code of June 26, 2011 No. 518-IV "On Marriage (Matrimony) and Family" regarding the issue of the obligatory participation of teachers and psychologists on cases involving minor persons, in particular adoption (adrogation) of the child cases.

3. In modern conditions, due to the unequal age, under which the physiological and mental cultivation of children comes, it is also proposed to consider the possibility of compulsory participation of the most adopted child who has reached the age of 10 years, as the persons participating in the case of adoption (adrogation).

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Л.Р. Әлиева

Қазақстан Республикасының соттарында бала асырап алу туралы істер бойынша сот талқылауының кейбір ерекшеліктері

Осы зерттеу шеңберінде Қазақстан Республикасының соттарында қаралатын бала асырап алу туралы істер бойынша сот талқылауының кейбір мәселелері зерделенді. Авторлар азаматтық сот ісін жүргізуде бала асырап алу туралы іске қатысатын адамдардың құрамына талдау жасайды. Ішкі ұлттық заңнамада көзделген бала асырап алу туралы азаматтық істерді қарау және шешу кезінде субъектілердің сот талқылауына қатысу міндеттілігіне байланысты екі негізгі санат қаралды. Сондай-ақ Ресей Федерациясы мен Украинаның заңнамалық актілерінің ұқсас ережелеріне салыстырмалы талдау жүргізілді. Жоғарыда аталған мәселелер бойынша доктриналық дереккөздердегі әртүрлі ғылыми көзқарастарға назар аударылды. Авторлар қазіргі уақытта бала асырап алу туралы істер бойынша сот талқылауына қатысты кейбір мәселелер бойынша ішкі заңнама нормаларының белгілі бір сәйкессіздігі бар екеніне назар аударған. Қазақстан Республикасының соттарында бала асырап алу туралы істерді қарау тәртібін регламенттейтін құқықтық нормаларға талдау жүргізілді. Бұл ғылыми жұмыстың әдіснамалық негізін диалектикалық, жүйелік, салыстырмалы-құқықтық, нормативтік және басқа да білім әдістері құрайды. Қатынастардың осы саласын реттейтін негізгі халықаралық-құқықтық актілердің нормалары назарға алынған. Сонымен қатар асырап алынатын баланың келісімін алудың маңыздылығы туралы мәселе егжей-тегжейлі қаралған. Педагогтер мен психологтардың, сондай-ақ 10 жасқа толған баланың өзін асырап алу туралы іске міндетті түрде қатысу мүмкіндігі зерттелді. Қазақстан Республикасында бала асырап алу саласындағы қатынастарды реттейтін ішкі заңнаманы жетілдіру шеңберінде бала асырап алу туралы азаматтық істерді қарау процесінде туындайтын белгілі бір проблемаларды шешу жолдары ұсынылған.

Кілт сөздер: бала асырап алу, бала құқықтары, бала асырап алушы, асырап алынған бала, бала асырап алу туралы заңнама, бала асырап алу туралы азаматтық істер.

Л.Р. Алиева

Некоторые особенности судебного разбирательства по делам об усыновлении (удочерении) ребенка в судах Республики Казахстан

В рамках настоящего исследования изучены некоторые вопросы судебного разбирательства по делам об усыновлении (удочерении) ребенка, рассматриваемых в судах Республики Казахстан. Авторы подвергают анализу состав лиц, участвующих в деле об усыновлении (удочерении) ребенка в гражданском судопроизводстве. Рассмотрены две основные категории субъектов в зависимости от обязательности их участия в судебном разбирательстве при рассмотрении и разрешении гражданских дел об усыновлении (удочерении) ребенка, предусмотренные во внутреннем национальном законодательстве. Также проведен сравнительный анализ аналогичных положений законодательных актов Российской Федерации и Украины. Уделено внимание различным научным воззрениям, имеющимся в доктринальных источниках по указанным выше вопросам. Авторами обращено внимание на то, что на сегодняшний момент имеется определенное несоответствие норм внутреннего законодательства по некоторым вопросам, касающимся судебного разбирательства по делам об усыновлении (удочерении) ребенка. Проведен анализ правовых норм, регламентирующих порядок рассмотрения дел об усыновлении (удочерении) ребенка в судах Республики Казахстан. Методологическую основу данной научной работы составили диалектический, системный, сравнительно-правовой, нормативный и иные методы познания. Приняты во внимание нормы основных международно-правовых актов, регламентирующих данную сферу отношений. Кроме того, подробно рассмотрен вопрос о важности получения согласия ребенка, подлежащего усыновлению. Исследована возможность обязательного участия в деле об усыновлении (удочерении) ребенка педагогов и психологов, а также самого ребенка, достигшего возраста 10 лет. В рамках совершенствования внутреннего законодательства, регулирующего отношения в сфере усыновления (удочерения) детей в Республике Казахстан, предложены пути решения определенных проблем, возникающих в процессе рассмотрения гражданских дел об усыновлении (удочерении) ребенка.

Ключевые слова: усыновление (удочерение) ребенка, права ребенка, усыновитель, усыновленный, законодательство об усыновлении (удочерении), гражданские дела об усыновлении (удочерении) ребенка.

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