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Section 32. Jurisprudence

SOME QUESTIONS OF ADOPTION LEGAL INSTITUTE DEVELOPMENT IN KYRGYZSTAN

Abstract: In the submitted article the evolution of legal representations of adoption from prerevolutionary period of Kyrgyzstan till present shall be analyzed. Process of legislation change in the matrimonial sphere and practice of state regulation of the matrimonial relations during the Soviet period shall be analyzed also. Process of synchronization of matrimonial relations ideology change and the relevant legislation shall be researched.

Key words: adoption, family, norms of common law, foster care, guardianship, norms of adat, prohibition, law.

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Introduction

It is known that the institute of adoption was familiar to different people and for a long time and has deep roots. Its existence is connected with needs of people to have full family, and without children it is impossible though many our contemporaries think differently.

Passing a long century way, in different countries the mission, conditions, an order, consequences of acceptance biologically nonnative child to the family changed. In one form or another such practice existed at many nations. At a certain stage of its development, the institute of adoption was defined by various purposes connected with history, religion, social and political life of the society.

At the different nations various ways of adoption worked, which was allowed mainly by execution of one of elements entered the relations between the mother and the child. Breastfeeding was one of widespread procedures of adoption. This way is known at Kyrgyz, Kazakh, Ossetian, Kabardian, Abkhazian and many other people.

Materials and Methods

Bases of the Turkic law [1, page 862] show that at the Turkic peoples famous now under the name «karakyrghyz» inhabiting the territory between the Chinese and Western Turkestan from the river Il to Pamir in VI-IX centuries, also occupied a

Yenisei river basin to the north from Sayans mountains, this institute applied. The adopted boy called «tutunchu» [1, page 562]. Old Turkic legends, fairy tales, and legal documents give a clear idea about the adoption institute. The contract contained detailed information on conditions and situation where the child will live in the family of adoptive parents, their rights and duties, in the absence of the contract, norms of common law acted.

On the basis of the following conditions, the position of the child in family of adoptive parents was the same as at the native son – sutpakhad. The son taken on education lived in the house of lawful father and was provided entirely by all necessary for life. He had certain domestic obligations, he had to keep fidelity and devotion to it until the end of life. The status of such child couldn't be changed, even in case the adoptive father has a new family, and he will have own biological children. The adopted son had the right for an inheritance share. The adoptive father in the course of upbringing had the right to punish the adopted child as his own one. In case it has been established that the adoptive father treats the child badly, the child had the right to leave the house [1, page 561].

Ancient Turkic peoples mainly adopted boys. Sadri Maksudy Arsal doesn't mention in his research girls adopted by foster parents, he speaks only about relationship of the father and the son.



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N.I. Gordekov writes in publication «Kyrgyz and kara-kyrgyz people of Syr Darya district» that Kyrgyz people named the adopted children «inchylesbala» [2, page 544]. In this edition the adoption order is outlined in details. Adoption is followed by presence of witnesses and animal sticking from which the aksakal gives to hands of adopted child an «asykiylik» bone, if it is the boy, and «tokpakiyliu» bone in case of girl [3, page 112; 113].

In case adoptive parents wanted to refuse the adopted child, they had to pay him «inchi» or «kalym».

The adopted children received only half of inheritance in comparison with other successors. As it is specified in the Resolution of the Tokmok extraordinary congress of Kyrgyz of the Tokmok district of 1893 [4, page 57] Kyrgyz adopted children of the closest relative of the husband to whom all property can be devolved, though N.I. Grodekov as was noted above writes that they only had the right for a half of inheritance. [2, page 544]. It is necessary to consider that N.I. Grodekov wrote about Kyrgyz of Syr Darya area.

Thus, for the end of the 19th - beginning of the 20th century it is characteristic first of all for the protection of property interests of the adoptive person-testator. At the same time, due to adoption the protection of rights of the child was carried out by his settlement to the family of the adoptive person. It had a particular importance for the orphaned children. In the rural area, the adoption gave the chance to the adoptive father to get additional labor force in household agriculture. And, what is also important, by means of adoption the host son could avoid military service, since adopted could replace him in case of call. For this reason, there was a special law where it was said that for execution of a compulsory military service the adoption of children of age less than five years shall be of importance. The desire of adoptive person to have the assistant and supporter in old age was an important reason for the adoptive person. But, by no means always the adoptive person was guided by reasons of material, business character. In general, adoption was a way of satisfaction of natural feelings of love and devotions which didn't come into use in the absence of own children.

The institute of adoption had new content during the Soviet period. In 1918 the first separate codified family and legal act – the Code of laws of Russian Soviet Federative Socialist Republic (RSFSR) «On acts of civil status, marriage, family and guardian law» was adopted [3, page 140].

The first Family code of Russia of the after-October period didn't provide adoption at all. The aspiration to eliminate any attempt of child labor exploitation was the main reason of impossibility of legal regulation of adoption relations. However, the need for adoption didn't disappear. It was explained,

firstly, by growth of number of homeless children who have lost the family, parents because of social and economic tremors which have affected all spheres of life and all segments of the population, especially child.

Thus, need of revival of adoption institute became more and more obvious. That is why shortly before adoption of new, second family code there was a Decree of All-Russian Central Executive Committee (VTsIK) and Council of People's Commissars (SNK) of RSFSR dated March 1, 1926 «On change of the Code of laws on acts of civil status, marriage, family and guardian law» by which the new chapter devoted specially to adoption was added [5, page 101].

The code of laws on marriage, family and guardianship of 1927 didn't contain an adequate attention to adoption. Its instructions in this part had the general, traditional character, or contained the features dictated by new requirements of time. Under the code of 1927 the resolution (decision) of tutorship and guardianship authority was a legal ground of adoption, after the issuance of which the adoption was registered in civil registry bodies. It was possible to cancel adoption in two ways: with the help of tutorship and guardianship authorities when parents, without whose consent adoption has taken place, asked about it, or through the courts.

Legal instructions of that time concerning adoption were extremely laconic that created a set of problems in law-enforcement practice. And in process of experience accumulation it became clear that the existing legal norms for consistent protection of adopted child were obviously not enough. The most sensitive issue was the question of adoption possibility without the consent of parents. The way to protection of rights of child in such cases has been open in 1934 by the circular of People's Commissariat of Education of RSFSR which has allowed adoption without the consent of parents if their residence was unknown for more than one year, and also when they lived separately and didn't participate in education and alimentation of minor child.

Adoption of children during years of The Great Patriotic War of 1941-1945, which was in evacuation, who lost his family and parents, was extensive regardless of national identity of the adoptive person and adopted child. And considering the interests of children, a number of normative acts which specially regulated this institute have been brought in. It is possible to refer to The decree of Presidium of the Supreme Council of the USSR of September 8, 1943 «On adoption» [5], the Resolution of the Council of Ministers of the USSR of January 23, 1942 «On the settlement of children without parental care», Instruction of People's Commissariat of Education of RSFSR, People's Commissariat of Public Health of RSFSR, People's Commissariat of Justice of RSFSR



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approved by Council of People's Commissars of RSFSR on April 8, 1943 «On foster care, guardianship and adoption of the children without parents». For regulation of an order of use of family law norms the Plenum of the Supreme Court of the USSR has adopted on June 29, 1945 the resolution «On Order of establishment of fact of adoption after death or loss at the front of adoptive parent or adopted child, if while alive the adoption has not been registered» [3, page 115]. During the same period in the Kyrgyz Soviet Socialist Republic the important resolutions concerning institute of adoption have been accepted: resolutions of Council of People's Commissars of Kyrgyz SSR of February 26, 1942. «On settlement of children without parental care», the resolution of Council of ministers of the Kyrgyz SSR of September 22, 1949. «On approval of the instruction on foster care, guardianship and adoption of children without parental care» [3, page 116]. In the resolution of 1949 points 13-22 devoted to adoption, where it was noted that adoption is admissible only concerning juvenile and minor children and is exclusively in their interests. Adoption was made at the request of adoptive parent at the place of residence of adopted child by the decision of executive committee of regional (city) Council of deputies of workers and registered in local body of civil registration [10, page 32]. The persons deprived of electoral rights by court, insane, minors which interests are opposite to the interests of adopted person couldn't be adoptive parents. Without the consent of the children who have reached ten-year age, adoption wasn't allowed. At the motivated decision, adoption made without consent of biological parents was cancelled by the tutorship and guardianship authorities [3, page 115]. The main achievement was the fact that on September 8, 1943 the Presidium of the Supreme Council of the USSR

has issued the Decree on adoption under which the adopted children was equated to own ones.

And only many years later, in 1969, the Code on marriage and family of Kyrgyz SSR has rather in detail and carefully settled the relations connected with adoption. And so that it was clear that it is about children of both sexes, the term «adoption of a girl» appeared in the text of this code besides the term «adoption» [9, page 72]. The special rules devoted to adoption without the consent of parents, change of a surname, name, patronymic of adopted child, adoption cancellation only in a judicial proceeding and other, facilitated possibility of such adoption which served the interests of child and at the same time didn't allow unjustified violation of rights of his parents, other persons [8, page 121]. The leading keynote of adoption has become complicated – interests not only of adopted child, but also the persons wishing to acquire parental rights and duties, aspiring to that their family was full, and, first of all, it was understood under the interests of adopted child the favorable conditions for his upbringing [6, page 271; 274].

Conclusion

Having passed a difficult way of formation, the family legislation of Kyrgyzstan has strengthened the position of adoption institute. On December 26, 1969 the Code on marriage and family of the Kyrgyz SSR was approved and put into effect. Chapter 14 of the Code (Art. 133 – 161, 234-236) regulated institute of adoption before acceptance of the Family code of the Kyrgyz Republic in 2003 (section IV) in which basic provisions of adoption were considered [5, page 13-21]. However, this section has become invalid according to acceptance of the Code of the Kyrgyz Republic on children (July 10, 2012) 8th chapter of which regulates adoption institute at the present time.

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