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IMPROVEMENT OF ADOPTION PRINCIPLES

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Annotation

The article examines the legal basis of the adoption institution, which is the main principle of the adoption. Adoption is revealed on the basis of the underlying legal concepts and its main factors. The mandatory conditions for adoption are also covered.

Keywords: Adoption, child, upbringing, youth, legal culture, society, guardianship, patronage.

Introduction

The main principle of the institution of adoption is the full provision of the rights and legitimate interests of the adoptee. This principle is embedded in the content of family legislation - it is based on the priority of protecting the rights and legitimate interests of minors. Ensuring the interests of children is a mandatory condition for any adoption. In adoption, the interests of the child are understood as providing the necessary conditions for his physical, mental, spiritual and moral maturity and growth. Each child is a unique, irreplaceable person. It is impossible to properly educate a child without knowing him, without understanding his abilities and interests. From this point of view, each adoption situation is unique. The task is to find a worthy family for the child, where his interests will be highly ensured, and to determine the psychological compatibility of the family with a particular child, taking into account his abilities and spirituality. It is from this point of view that it is necessary to approach the issue of adoption.

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The rights of adoptees are guaranteed by law. In accordance with Article 27 of the Criminal Code, minors aged fourteen to eighteen years shall conclude transactions with the written consent of their parents, adoptive parents or guardians. A transaction concluded by such a minor shall be considered valid only after its subsequent written approval by his parents, adoptive parents or guardian. However, if there are sufficient grounds, the court, upon the petition of the parents, adoptive parents or guardian, or the guardianship and trusteeship body, may restrict or deprive a minor aged fourteen to eighteen years of the right to independently dispose of his salary, scholarship or other income.

According to the researchers, N. Ashurova comprehensively studies the issue of the participation of minors in civil legal relations. The author, having studied the legal status of minors, their participation in civil legal relations, and issues such as liability, pays attention to the rights and obligations of minors, as well as adopted children, parents, guardians, and custodians, and adoptive parents, as well as the legal consequences of transactions concluded by minors. In his opinion, any transaction concluded by minors requires the consent of legal representatives - parents, guardianship or trusteeship institutions, and adoptive parents [1.129.].

According to E.A. Sukhanov, if a minor starts to engage in entrepreneurial activity at the age of 14, the state of emancipation should be applied [2.58.]. N. Ashurova correctly decided to apply emancipation to the entry of a minor into labor and entrepreneurial relations at the age of 16. Entrepreneurship and labor impose a great responsibility on a person. If we apply emancipation from the age of 14, the child at this age does not yet have a sense of responsibility to that extent and the consequences are likely to be negative [1.68.]. The author's opinion on this matter cannot be fully agreed with. True, the provision of the state of emancipation by the legislator imposes a certain level of responsibility on a minor. However, how can a 16-year-old person professionally engage in entrepreneurial activity? For this, certain knowledge, experience and skills are

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required. In addition, one of the important conditions for entrepreneurship is to have financial resources, as well as to take a certain amount of risk. Even if he is a 16-year-old person, how can he take such big risks, and his experience in the field of entrepreneurship is also in doubt. We do not intend to diminish the rights of a minor here. However, if you think about it more deeply, knowledge, skills, experience, financial resources and other factors really affect entrepreneurial activity. Therefore, the use of emancipation in relation to entering into an entrepreneurial relationship does not have its own logical basis. It should be noted here that in order for a minor adopted person to engage in entrepreneurial activity, he must first have certain experience and skills, and have the opportunity to take risks.

In legal literature, a number of points of view have been put forward regarding the institution of adoption. In particular, according to Yu.F. Bepalov, adoption is not only a form of placing children deprived of parental care in a family, a fact of legal significance, but also a method of protecting the family rights and interests of the child [3.20.]. Here, one can agree with the author's opinion that adoption is the most complete of all forms of raising children deprived of parental care. Because, unlike other forms of placing children deprived of parental care, it provides a high level of opportunity to ensure and realize not only the interests of the child, but also the interests of adoptive parents who, for one reason or another, cannot have children themselves.

Japanese law defines adoption as a private legal contract and gives rise to the same legal consequences for the adoptees as for the children of a husband and wife. Such a contract is concluded between the parties and assumes the presence of mutual will. As in marriage, an adoption contract does not allow for any conditions or deadlines (for example, concluding it without granting the right to inherit)[4.216.].

According to Japanese law, the parties may terminate the adoption by mutual agreement (Article 811 of the Civil Code). In this case, this agreement must be

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made between the parties. At the same time, minors who have reached the age of 15 may also participate in the termination of an adoption on their own. The interests of minors under the age of 15 are represented by their legal representatives (or determined by the court). An appropriate application for termination of adoption must be submitted in accordance with the procedure established by law. This application must be signed by at least two adult witnesses and meet the relevant requirements (Articles 812, 739 of the Criminal Code). Adoption is considered one of the forms of protection of the personal and property rights of minors, a legal document - the basis for its creation is this act (i.e., the will of the adopter and the decision of the governor), as well as the long-term legal relationship between the subjects of adoption (the adopter and the adopted child). In addition, the consent of the parents to adoption is manifested not only in the performance of legal actions (indicating the consent of the parents in the application), but also in the concluding actions (collecting the necessary documents, obtaining information from the guardianship and trusteeship body). The secret of adoption is information about the adopter, the adopted child, its time, place and other circumstances relevant to the adoption.

Adoption is determined based on the interests of the child. Adoptive parents try to fully replace the parents, the main thing is that, unlike other forms of placement of children deprived of parental care, there is no interim period (limited in time) of raising children in a family.

One of the important conditions for adoption is to take into account the interests of the child. The current family legislation does not provide a definition of the concept of the interests of the child in family relations. Some scholars have paid attention to this issue and put forward their own views. For example, I.M. Kuznetsova suggests that the interests of the child in adoption should be understood as the child's adequate upbringing, providing conditions for his full physical, mental, and spiritual development [5.84.].

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Agreeing with these points of view, it can be said that all authors put forward the idea that the interests of the child mean the creation of the necessary conditions for his comprehensive development and upbringing. Therefore, when deciding on the issue of adoption, special attention should be paid to the previous living conditions of each child, his age, level of mental and physical development, psychological state, and relationship with the adoptive parent. Such an approach requires the specifics of family legal relations and, in most cases, a separate, individual approach.

In conclusion, in this case, the real situation of the adoptees in the family, their lifestyle, opportunities for study, education and upbringing, and other legitimate needs should be ensured. The guardianship and trusteeship body must exercise constant state control over the future life of the adopted. It is advisable for the guardianship and trusteeship body to exercise constant control over the real situation of the adoptees in the family, their lifestyle, opportunities for study, education and upbringing, and the extent to which their other legitimate needs are being ensured. However, the main condition here is to maintain the secrecy of the adoption and not allow excessive arbitrary interference in family affairs.

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