
Procedural Peculiarities of Consideration of Civil Cases in the Arena of Children's Rights Protection

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Abstract

Protecting the rights of children and creating conditions for ensuring their interests is among the prime state tasks in accordance with international and Russian legislation. One of the fundamental rights of a child, which is enshrined not only in Russian legislation, in particular in the Family Code of the Russian Federation, but also in other international acts, is the right to live and grow up in a family. [1] However, attention must be drawn to the reality that children are left with no parental care for various reasons, and then one of the priority forms of placement of such children is adoption. The leading purpose of this procedure is to offer family education for children left without parents, which guarantees optimal protection of their legal rights and interests. It should be noted that the problems of resolving cases related to the upbringing of children currently require a comprehensive study to raise the effectiveness of judicial protection of violated (disputed) children's rights. Most disputes about the right to raise children are resolved exclusively in court. Therefore, particular attention is drawn to the role of the court, guardianship authorities and the prosecutor as mandatory participants in the judicial process in this category of cases, as well as the legal status of the child and his legal representatives.

Keywords: protection of children's rights; civil procedure; adoption; family upbringing of children.

Introduction

The problem of orphanhood in Russia does not lose its relevance due to the instability of socio-economic and political life, as a result of which family problems increase, and there are no mechanisms for identifying "problem" families at an early stage. From year to year, more than sixty thousand children are left without the opportunity to grow up and live in a family. [2]. Orphans are children under the age of 18 who have lost two or one of their parents. But most of the identified children left with no parental care are social orphans. Causes of social orphanhood: deprivation or restriction of parental rights of parents; recognition of parents as incompetent; abuse of alcohol or drugs by parents; refusal of parents from children. The significance of this research is defined by the necessity to improve civil procedure and family legislation. The research subject is the study of legal relations that arise when a court considers civil cases related to the upbringing of children, at all stages of judicial proceedings, including during the execution of a court decision, determining their legal nature and features of legislative regulation. The aim of this study is to examine the whole range of issues that determine the specifics of disputes associated with the children's upbringing; identify the most relevant theoretical and practical problems related to the consideration of disputes about children; search for ways to improve civil procedure and family legislation in terms of the administration of justice in this category of cases.

Methodology

The study methods are illuminated by structural-functional, systematic, structural-logical, institutional, descriptive, and also dialectical approaches of scientific knowledge, analysis and collection of practical and scientific materials.

Results and Discussion

In modern society, problems related to the resolution of family conflicts, especially affecting the rights of minor children, are of great importance. Currently, the judicial form of preservation of the rights of the child is the main one, and any violated (contested) right of the child can be protected in court (Article 46 of the Constitution of the Russian Federation, Articles 8, 56 of the Family Code of the Russian Federation). The Constitution of Russia not only guarantees civil and human freedoms and rights according to normally distinguished norms and principles of global law (Article 17), but also establishes the provision that motherhood, fatherhood and childhood, and the family are protected by the state (Article 38), which creates legal and socio-economic prerequisites for the regular growth, education and upbringing of children [3]. The priority of family upbringing of a child, the need to realize the right of every person to be brought up in a family environment for the harmonious and full growth of the individual are enshrined in both national and international legislation and are indisputable. Currently, there are a

huge number of children left without parental care in Russia. It should be emphasized that adoption is a complex socio-legal institution. In addition to ensuring the interests of children, adoption allows people who do not have their own children to find the joy of motherhood and fatherhood. Thus, the institution of adoption meets the human needs and interests of foster parents. The judicial procedure of adoption is the most preferable. The decision on adoption is so important for the child and foster parents that it must be made in compliance with all the procedural guarantees that only a judicial process can provide. The judicial procedure should also allow overcoming the many abuses that occurred earlier in the adoption process. In the administration of justice in cases of child rearing, the mandatory participation of social workers, psychologists and teachers is required. The purpose of a trial involving a minor, first of all, should be to protect the rights of the child, which can be achieved by a court decision aimed at restoring intra-family relations in the interests of the child; simultaneously, arbitrary, illegal interference in the life of the family is unacceptable. Adoption is an independent legal fact that gives rise to family legal relations between the adoptive child and parent, and also between other persons. The result of adoption is the emergence of legal relations between the adoptive person and parent, the same as between children and their biological parents. Sometimes the adoption is canceled if the child's interests require it. The cancellation of an adoption usually occurs due to the harmful effects of the environment on the child. Adoptive parents are not always able to withstand the challenges associated with a radical change in their lives due to the appearance of a child in the family that requires special and careful care, treatment, etc. Psychological incompatibility of a foster parent and an adopted child it is not excluded that they fail to establish close contact, without which it is almost impossible to have a successful family upbringing. The reality, unfortunately, is that most often children from dysfunctional families are given up for adoption. In this regard, there is a very high risk of hereditary diseases, mental retardation, the consequences of parental alcoholism, or other factors that affected the child's development during the mother's pregnancy or in early childhood. Foster parents often discover one of these diseases in a child after a few years. Sometimes the disease is so serious that it leaves no hope for the normal development of the child. This creates a serious moral dilemma. Undoubtedly, it is immoral to abandon a sick child and demand the cancellation of adoption. Often, adoptive parents become attached to such children, raise them as real parents and do everything possible to mitigate the consequences of the disease. However, we must not forget that the biological connection and the parental instinct based on it, which forms the basis of parental relations, are absent in adoption or, at least, are less pronounced. In some cases, foster parents may not be able to continue their relationship with a sick child. The question is how much the court should consider their feelings. The fact is that preserving the adoption and leaving such a child in the family of the foster parent is almost always in the best interests of the child. However, the interests of the foster parent themselves cannot be completely ignored. Complete disregard of their interests will lead to the cancellation of the adoption, and they may be forced to violate the interests of the child. It turns out that if the adoptive parent presents convincing arguments in favor of the fact that it is unacceptable for him to continue living with the adopted child, the adoption should be canceled. Based on these considerations, the law provides for the fundamental possibility of canceling adoption, as well as establishes the grounds for its cancellation. Cancellation of adoption is made only in court. A summary of court practice shows that Russian citizens in most cases refused to accept children for upbringing in their families because of the health status of children placed for adoption and the presence of burdened heredity. In some cases, this refusal was influenced by the age of the children, their appearance, gender, unfavorable social status of the parents, as well as the incapability to set up psychological contact with the child. Thus, when considering one of the adoption cases, the Saratov Regional Court found that due to problems in the behavior and age of the adopted child (nine years), 17 Russian families refused to adopt a minor. In addition, the child was placed under guardianship twice, but at the request of the guardians, he was released from his duties due to problems in the child's behavior.[4] Adoption is a legal institution created to establish the relationship between an adoptive parent and an adopted child that is closest to the relationship that arises between parents and their own children. So, adoption is an act that gives rise to the emergence of parental obligations and rights based on the law. [5] This was the definition of adoption before. This action is understood as a set of actions of future adoptive parents and the body authorized to perform them. Adoption is a voluntary procedure, so if there are no obstacles to the transfer of a child to this person, it decides for itself which child to adopt, with the final decision on this issue in the child's interests by the competent state authority. The main law on which the whole institution of adoption is built is the best possible protection of the child's interests during adoption. The interests of the child should be the determining criterion when evaluating persons who want to become adoptive parents, when making decisions about adoption, when canceling adoption, and when resolving all other, more personal issues. Thus, we will draw the following conclusions: adoption is the oldest, most classical and most complex legal institution. The fate of the child depends on the correct choice of the adoptive parent, the family to which the child is transferred. Mistakes during adoption can also violate the rights and interests of both the child's parents and those who want to adopt him (foster parents). That is why the law regulates in detail the conditions and procedure for the production and termination of adoption. Adoption a child who is a Russian citizen on the Russia territory by foreign residents is carried out in accordance with the state legislation of which the adoptive parent is a resident at the submitting time the application for adoption. The relevant requirements of the Family Code of the Russia are also observed, considering all the provisions of the international treaty of Russia on collaboration in the arena of children adoption. The Civil Procedure Code of Russia establishes different generic jurisdiction for cases of adoption, depending on the subject composition of persons applying to the court. [6]

If an application for adoption is submitted by Russian citizens wishing to adopt a child, it is subject to the jurisdiction of the district court (generic jurisdiction) at the residence place of the adopted child (territorial jurisdiction). Russian citizens permanently living out of the Russian territory, foreign residents or stateless people wishing to adopt a child who is a Russian citizen, submit applications for adoption, in turn, to the republic supreme court, the regional court, the federal city court, the autonomous region court and the autonomous district court (generic jurisdiction) at the residence place the adopted child (territorial jurisdiction). Article 270 of the Civil Procedure Code of the Russian Federation sets out the requirements for an application for adoption, which are closely interrelated with the subject of proof, since the grounds of the application are one of the sources of formation of the subject of proof in the case. Consideration of the case is carried out in a closed court session due to the non-disclosure of the secret of adoption, as indicated in the ruling on the appointment of the case to trial (paragraph 2, paragraph 6 of the resolution of the Plenum of the Supreme Court of the Russian Federation of 20.04.2006 No. 8 "On the application of legislation by courts when considering cases of adoption of children"). An adoptive parent (s), a representative of the guardianship and guardianship authority, a prosecutor, and in some cases — parents, other interested persons, and the child who has reached the age of 14 must participate in the consideration of the case. The judge may also summon a child between the ages of 10 and 14 to appear in court. Based on the consideration of the case, the court makes a decision to satisfy the application or to refuse its satisfaction in full or in part to satisfy the request of the adoptive parents (adoptive parents) to record them as parents (parents) of the child in the act record of his birth, as well as to change the date and place of birth of the child (part 1 of Article 274 of the Civil Code of the Russian Federation). Mutual rights and obligations of the adoptive parent and the adopted child are established from the date of entry into force of the decision. A copy of the court decision that establishes the adoption of a child is sent by the court within three days from the date of entry into force of the court decision to the registry office at the place of making the decision for state registration of the child's adoption (Part 3 of Article 274 of the Civil Procedure Code of the Russian Federation).

Summary

In the conclusion of our study, it should be said that many legal requirements must be met during adoption, and accordingly, these circumstances, if any, should also be included in the subject of proof. For example, if the adopted child has reached the age of 10, then his consent to adoption is mandatory. Therefore, the court must request the child's consent. If the adopted child has brothers and sisters left without care, and the question of their adoption was not raised by the applicant or they are adopted by other persons, the court checks whether this is in the best interests of the children. If the child being adopted has parents, their consent for adoption must be submitted. In every society and every state, there have always been, are and will always be children left without parental care, and orphans. Therefore, the state and society take care of the upbringing and development of such children.

Conclusions

Summing up, we note that by establishing a judicial procedure for adoption, the legislator could not immediately solve all the problems that could arise during adoption, which practice showed already in the first years of the new legislation.

There are also a number of reasons why Russian married couples are afraid to adopt children left without parental care, such as illnesses, the need for rare operations followed by a course of long-term rehabilitation, and the inability to provide financial assistance to the child. Foreign citizens are not afraid of such problems, since the adoption of babies abroad is associated with huge difficulties, and in Russia this procedure is easier.

Thus, it can be noted that the judicial procedure for the adoption of children complies with the Constitution of the Russian Federation, international treaties of the Russian Federation, generally recognized norms and principles of international law, and world practice of child adoption. It follows from this that the adoption of a child on the basis of a court decision meets the interests of the child, is a guarantee of respect for his rights and legitimate interests. Scientific research in this area will remain relevant and in demand in practice for the foreseeable future.

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