



CONSIDERATION OF CIVIL CASES OF CHILD ADOPTION IN THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN: THEORY AND PRACTICE

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Annotation: *The article discusses the theoretical and practical problems of the courts applying the law on adoption cases, the participation of the prosecutor and the guardianship authority, the requirements and basis for the cancellation of adoption.*

Keywords: *adoption (adoption), civil court, guardianship and custody, invalidation of adoption.*

Аннотация: *ушбу мақолада суд томонидан фарзандликка олиш тўғрисидаги ишларни кўришда қонунчиликни қўллашга оид назарий ва амалий муаммолар, прокурор, васийлик ва ҳомийлик органларининг суд процессида иштирокига оид саволлар, фарзандликка олишга талаблар ва асосларига оид саволлар муҳокама қилинган.*

Калит сўзлар: *фарзандликка олиш, фуқаролик суди, васийлик ва ҳомийлик, фарзандликка олишни ҳақиқий эмас деб топиш.*

Аннотация: *в статье рассмотрены теоретические и практические проблемы применения судами законодательства по делам об усыновлении, вопросы участия прокурора и органа опеки и попечительства, требования и основы отмены усыновления.*

Ключевые слова: *усыновление (удочерение), гражданский суд, органы опеки и попечительства, признание недействительным усыновления.*

Adoption is considered as perfect in the interests of children when the basis of the adoptive parents is motives and ideas aimed at giving the adoptee the rights guaranteed by the Constitution of the Republic of Uzbekistan, Family and Civil Codes of the Republic of Uzbekistan for the purpose of upbringing and harmonious development of his personality, and the adoptive parents acquire rights, ready and able to bear the responsibilities of parents.

Adoption is allowed only in respect of minor children and only in their interests. If the adoptee has reached the age of ten years, then in accordance with Article 155 of the Family Code of the Republic of Uzbekistan, the child's consent is required for adoption. Thus, if the adopted child is ten years old before the court decision on the case on establishing the adoption, the court must obtain his consent (in compliance with the requirements of Article 301 of the Civil Procedural Code of the Republic of Uzbekistan).

The consent of the child to the adoption is revealed by the guardianship and custody bodies or the court when considering the case of adoption. At the same time, his attitude towards the adoptive parents, the nature of the relations established between them, and the feelings he has towards them should be clarified. Thus, clause 15 of the Regulation on the adoption (adoption) of minor children and the adoption of children into a family for upbringing (patronage) (approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated April 12, 1999 No. 171)) the consent is adopted:

if the adopted child has reached the age of ten years, his consent to adoption is established by the guardianship and custody authorities. When a child's consent is received, the legal consequences of adoption (communication with relatives, property and other disputes), about changing his name, entries in the birth certificate should be explained to him in an accessible form;

if a child is brought up in a family of adoptive parents and recognized by their parents as established by the custody and guardianship authority in the interview with him, the adoption can be made without the consent of the adopted [1].

In this regard, the legal provision of the French Civil Code is of interest: "Only children who have known to adoptive parents for at least six months can be adopted." Such a requirement of the law is justified, since it excludes the possibility of adoption of children by random people, helps the adopters and the

adopted [2]. It would be advisable to introduce a similar provision in the legislation of the Republic of Uzbekistan.

However, if prior to filing an application for adoption, the child lived in the adopter's family and considers him to be his parent, adoption, as an exception, can be made without obtaining the consent of the adopted child (art. 156 SK UK RU).

For the adoption of a child requires the consent of the parents of the adopted. Parents can consent to the adoption of a child by a certain person (s) or give consent to adoption, giving the choice of adoptive parents to the custody and guardianship authority.

Part 4 of Article 159 of the Family Code of the Republic of Uzbekistan provides that parents may revoke their consent to adopt a child. It should be noted that such a right is granted by law only to parents of the adopted and prior to the adoption of a court decision on its adoption. However, there may be a situation where the court will not take into account the recall of the parents of the consent given by them. For example, if the court determines that there are grounds listed in Article 160 of the Family Code of the Republic of Uzbekistan, for adoption of a child without parental consent.

Parents' consent to the adoption of a child must be expressed in a statement notarized or certified by the head of the institution where the child is left without parental care, or by the guardianship and custody authority at the place of adoption of the child or at the parents' place of residence. The consent of the parents to the adoption of the child can be expressed by them directly in court during the adoption.

In accordance with Part 3 of Article 159 of the Family Code of the Republic of Uzbekistan, parental consent for adoption must be expressed in a statement notarized or certified by the head of the institution where the child is left without parental care, or by the guardianship and custody authority place of residence of parents, and can also be expressed directly in court in the adoption.

In accordance with Article 302 of the Civil Procedure Code of the Republic of Uzbekistan, the court considers cases involving the adoption of a child with the obligatory participation of the adoptive parents (adoptive parent), a representative of the guardianship and custody agency, and the prosecutor. If necessary, the court may involve in the case of the parents (parents) of the adopted child, his relatives and other interested persons, as well as the adopted child himself, if he has reached the age of ten years.

However, participation in the same process by adopters and parents of the adopted, his relatives may lead to the disclosure of the secrets of adoption. Therefore, it is desirable that such cases be heard without the presence of adoptive parents in the courtroom. Undoubtedly, this procedure should be settled by the legislator.

It is noteworthy that adult citizens of both sexes can be adoptive parents with the exception of persons: deprived of parental rights or restricted in parental rights; recognized as legally incapable or partially capable in the manner prescribed by law; registered in psychiatric or narcological institutions; former adoptive parents, in case of cancellation of the adoption on the grounds specified in the first part of Article 169 of the Family Code of the Republic of Uzbekistan; previously convicted of an intentional crime.

The difference in age between adoptive parents and adopted children should not be less than fifteen years old, except in cases of adoption by a stepfather and stepmother (Art. 152 of the Investigative Committee of the Republic of Uzbekistan).

We consider to add to article 152 of the Family Code of the Republic of Uzbekistan the addition that not married to each other, cannot jointly adopt the same child.

In cases of adopting a child, the court must check the health of the adoptive parents. In this connection, we consider it expedient to adopt the "List of diseases in the presence of which a person cannot adopt a child, take him in custody (guardianship), take him into a foster family" and approve it by a resolution of the Cabinet of Ministers of the Republic of Uzbekistan. You should also include the following diseases in the "List of diseases for which a person cannot adopt a child, take him into care (guardianship), take into a foster family": tuberculosis (active and chronic) of all forms of localization in patients of groups I, II, V dispensary registration; diseases of internal organs, nervous system, musculoskeletal system in the stage of decompensation; malignant oncological diseases of all localizations; drug addiction, substance abuse, alcoholism; infectious diseases before removal from the dispensary; mental illness in which patients are recognized in the prescribed manner incompetent or partially capable; all diseases and injuries that led to disability of I and II groups, excluding the ability to work.

The court in the proceedings for the establishment of adoptions must comply with the requirement of Part 4 of Article 151 of the Family Code of the Republic of Uzbekistan, according to which adoption of brothers and sisters by different persons is not allowed, except in cases where adoption is in the interests of children.

If children are adopted by foreign citizens or stateless persons, the court should bear in mind that such adoption is carried out in accordance with Article 161¹ of the Family Code of the Republic of Uzbekistan. Adoption by citizens of the Republic of Uzbekistan of a child who is a foreign citizen or stateless person permanently residing in the territory of another state is carried out in the manner prescribed by the legislation of the state in which the specified child permanently lives in cases when the adopted child is an orphan and a close relative of the adoptive parents (adoptive parent) or when adoption is not possible for various reasons in their homeland.

When citizens of the Republic of Uzbekistan adopt a child who is a foreign citizen or a stateless person permanently residing in the territory of another state, the permit of the competent authority of the Republic of Uzbekistan to enter the child to be adopted into the Republic of Uzbekistan and permanent residence in the Republic of Uzbekistan is required.

Cases of establishing the adoption of a child are considered by the court in a closed court session (part 3 of article 3102 of the Code of Civil Procedure of the Republic of Uzbekistan). The law does not contain special rules on the timing of the consideration of this category of cases, but the need for them arises inevitably (it suffices to recall the adoptive parents imitating pregnancy). Will the courts be able to meet these people and consider their cases first?

Part of the way out can be found in the legislative securing of special terms for consideration of this category of cases, taking into account the interests of adoptive parents, imitating pregnancy.

In accordance with Art.303 of the Civil Procedural Code of the Republic of Uzbekistan, the court, having considered the application for the adoption of a child on the merits, makes a decision to approve the application or to refuse to satisfy it fully or in part to satisfy the adoptive parents (adopter) to enroll them as parents a) child in the record of his birth, as well as on changing the date and place of birth of the child.

So, when deciding on the adoption of an adoption, the court must allow and directly reflect in the operative part of the decision the following questions: name, patronymic and surname of the adopted child and the fact of their change (part 3 of article 164 of the Insurance Code of the Republic of Uzbekistan) (Part 3 of Article 164 of the Insurance Code of the Republic of Uzbekistan), recording adopters as parents of an adopted child (Part 2 of Article 164), on the preservation of personal non-property and property rights and duties of the father or mother, and in the event of death of one of the parents - on the preservation personal non-property and property rights and obligations in relation to the relatives of the deceased parent (Art. 165 SK of the Republic of Uzbekistan), on retaining the right to a pension and benefits for the adopted child (Art. 166 of the SC of the Republic of Uzbekistan).

It seems appropriate that the decision should have a record of familiarization of participants in the process with the contents of Article 153 of the Family Code "Mystery of child adoption", according to which the judges who made the decision on the adoption of a child, or officials who carry out state registration of the adoption those who are aware of the adoption are obliged to keep the secret of the adoption of the child.

It is desirable to provide for the introduction of a special procedure for clerical work in cases of this category, which would exclude the possibility of disclosing the secret of adoption.

copy of the court decision, which establishes the adoption of the child, is sent by the court within three days from the date the court decision enters into legal force in the civil registration office at the place of the decision for state registration of the child's adoption.

The time of occurrence of the adoption is considered the day of making the necessary changes to the book of birth records of the adopted person (art. 167 of the Insurance Code of the Republic of Uzbekistan).

In accordance with Article 169 of the Family Code of the Republic of Uzbekistan, the adoption is also canceled in a judicial proceeding. Based on the fact that this article does not say about the cancellation of a previously rendered decision, it is a question of a different category of cases, with its subject matter and specific grounds for arousal. Cases on the cancellation of adoption are subject to review in a lawsuit.

The right to demand the abolition of the adoption of a child in court is given to his parents, the prosecutor, the guardianship and trusteeship bodies, interdepartmental commissions for minors, as well as the adopted child who has reached the age of sixteen years (Article 170 of the Investigative Committee of the Republic of Uzbekistan).

The reasons for the abolition of adoption are evasion of adoptive parents from fulfilling the duties assigned to them by parents, abuse of parental rights, abuse of an adopted child, chronic alcoholism or drug addiction. Cancellation of adoption upon reaching the age of majority is adopted if the behavior of the adopted affects the honor and dignity of the adopters, threatens their life or health.

In addition, the court has the right to cancel the adoption of a child for other reasons based on the interests of the child and taking into account the opinion of the child (part 3 of article 169 of the Insurance Code of the Republic of Uzbekistan).

Cancellation of adoption is allowed only in court. When resolving cases on the abolition of adoption, the opinion of a child who has reached the age of ten is taken into account.

In the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 11.12.2013. No. 21 "On the practice of application by courts of legislation on cases of adoption" explains that if, due to special circumstances, a slowdown in the execution of a decision may make its execution impossible (for example, the need to conduct a course of treatment for an adopted child), then according to clause 3 of part one of Article 267 of Civil procedural code of the Republic of Uzbekistan, the court may allow the immediate execution of the decision.

Due to the fact that, unlike parents of adoptive parents, parental rights and obligations in relation to an adopted child arise from adoption, not origin, the courts must take into account that the grounds provided for in Article 169 of the Family Code are grounds for not depriving their parental rights, and for the abolition of adoption.

Cases of this category are considered with the participation of the prosecutor, as well as the body of guardianship and guardianship and the resolution of the case takes into account the opinion of a child who has reached the age of ten years.

It is explained that evasion of duties imposed on the adoptive parents or failure to fulfill them properly may be grounds for the court to cancel the adoption.

Adoption may be canceled by the court in other cases where the interests of the child require it.

If the claim for cancellation of the adoption is filed on the grounds of violation of the law during its execution, the court, resolving the dispute, is obliged to take into account all the factual circumstances, in particular, whether the cancellation of the adoption contradicts the child's interests.

When abolishing the adoption, the court, having established the child's need for material assistance, has the right to oblige the former adopter to pay funds for his maintenance.

In this case, the recovery of funds for the maintenance of the child is made by the court in a fixed sum of money, taking into account the material and marital status of the former adopter and the recoverer.

It must be borne in mind that the abolition of adoption is allowed until the majority of the adopted child, that is, until he reaches the age of eighteen.

At the same time, the abolition of adoption upon reaching the age of adoption is allowed only in cases where the behavior of the adopted affects the honor and dignity of the adopters, threatens their life and health.

It is explained that the courts, when resolving the issue of jurisdiction, the statements on the cancellation of adoption should be based on the requirements of articles 28, 29, and also article 298 of the Civil Procedure Code of the Republic of Uzbekistan.

The decision to cancel the adoption indicates whether the last name, first name and patronymic of the adopted person is preserved, and it should be borne in mind that changing the name, first name and middle name of a child who has reached the age of ten is possible only with his consent [3].

It should be noted that in the Family Code of the Republic of Uzbekistan and the Civil Procedure Code of the Republic of Uzbekistan there is an open question regarding the invalidation of adoptions. However, in accordance with clause 21 of the Regulation on the adoption (adoption) of minor children and the adoption of children into a family for upbringing (patronage) (approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 04.04.1999 No. 171), the adoption is invalid if:

- Adoption was issued on false documents;
- adoption was fictitious;
- an adult person is adopted;
- the adopter is a person who does not have the right to be an adopter, i.e., deprived of parental rights or limited in parental rights, recognized incapable or restrictedly capable in the manner prescribed by law, registered in psychiatric or narcological institutions, previously convicted of an intentional crime, and also the former adopter, in case of cancellation of the adoption on the grounds specified in paragraph 22 of these Regulations [3].

In paragraphs 31,32 Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 11.12.2013g. №21 "On the practice of application by courts of legislation on cases of adoption" explains that, in accordance with the Law of the Republic of Uzbekistan of April 30, 2013, the Family Code does not provide a basis for declaring the adoption invalid.

At the same time, the courts must take into account that, in accordance with Part 1 of Art. 4 of the Civil Code acts of civil law are not retroactive and apply to relations that have arisen after their introduction into force.

A court's recognition of an adoption as invalid may be made only in the cases provided for by the Law of the Republic of Uzbekistan dated April 30, 2013, which has become invalid, Art. 168 of the Family Code and only for those adopted up to this time: when the decision on adoption is based on false documents; when adoption was fictitious; if an adult person is adopted; if the adopter is a person who does not have the right to be an adopter in accordance with art. 152 of the Family Code and in other cases.

The parents of the adopted child, the prosecutor, the guardianship authorities, the juvenile affairs commission, as well as the adopted child who has reached the age of sixteen may file a lawsuit to declare the adoption invalid and cancel the adoption [5].

Due to the fact that the cases on the adoption, the cancellation of the adoption and the invalidation of the adoption of children require from the judges not only knowledge of legal issues, but also a certain psychological and pedagogical training, in order to most effectively resolve them, they must be considered constantly the same judges with the necessary knowledge and experience. Of course, the best solution to this issue would be the creation of specialized family courts.

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