

Legal problems of the claim on cancellation of adoption in Uzbekistan

Problemas jurídicos del reclamo sobre la cancelación de la adopción en Uzbekistán

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ABSTRACT

The article analyzed the legal problems of consideration of the claim on the abolition of adoption, relevant conclusions were made to improve the civil procedure legislation of the Republic of Uzbekistan. The law strictly protects the rights of adoptive parents concerning adopted children. This protection is of great importance, as it ensures compliance for the interests of the adoptive parents and the adopted kids, contributing to the strengthening of the relations between them. The adoption may not stop arbitrarily at the request of the adopter or the adopted. The legal relationship between the adopter and the adopted person is terminated by repealing the adoption act by the relevant state body (court). The question of the abolition of adoption only in court was specified in article 169 of the Family Code of the Republic of Uzbekistan. This provision on the procedure for cancellation by the court of adoption subsequently found legislative consolidation in the Code of Civil Procedure of the Republic of Uzbekistan (art. 304). Following Art.304 of the Code of Civil Procedure of the Republic of Uzbekistan, adoption is cancelled in a court of law. Based on the fact that this article does not say about the cancellation of a previous decision, we are talking about a different category of cases with your subject and specific grounds for excitement.

Keywords: civil procedure, consideration of the claim, adoption, cancellation of adoption, termination

RESUMEN

El artículo analizó los problemas legales de consideración de la reclamación sobre la abolición de la adopción, se hicieron conclusiones relevantes para mejorar la legislación de procedimiento civil de la República de Uzbekistán. La ley protege estrictamente los derechos de los padres adoptivos con respecto a los niños adoptados. Esta protección es de gran importancia, ya que garantiza el cumplimiento de los intereses de los padres adoptivos y los niños adoptados, contribuyendo al fortalecimiento de las relaciones entre ellos. La adopción no puede detenerse arbitrariamente a solicitud del adoptante o del adoptado. La relación legal entre el adoptante y la persona adoptada se termina derogando la ley de adopción por el organismo estatal (tribunal) pertinente. La cuestión de la abolición de la adopción solo en los tribunales se especificó en el artículo 169 del Código de Familia de la República de Uzbekistán. Esta disposición sobre el procedimiento de cancelación por el tribunal de adopción posteriormente encontró la consolidación legislativa en el Código de Procedimiento Civil de la República de Uzbekistán (art. 304). De conformidad con el artículo 304 del Código de Procedimiento Civil de la República de Uzbekistán, la adopción se cancela en un tribunal de justicia. Con base en el hecho de que este artículo no dice sobre la cancelación de una decisión anterior, estamos hablando de una categoría diferente de casos con su tema y motivos específicos de emoción.

Palabras clave: procedimiento civil, consideración del reclamo, adopción, cancelación de adopción, terminación

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INTRODUCTION

An interesting historical fact testifies to two types of cancellation of adoption - administrative and judicial, the use of which depended on how long the adoption took place and how much the adopted child was attached to the adoptive parents. At present, as was noted, only the judicial order has been preserved, and this is correct since the adoption itself is also carried out in a judicial order, i.e. determined the exclusive jurisdiction of the cases of adoption and the abolition of adoption by the courts in civil cases.

Cancellation of adoption means that the legal relationship between the child and the adoptive parent is terminated, except some cases of preservation of relations on the content of the adopted. At the same time, if the interests of the child require it, the mutual rights and obligations of the biological parents (his relatives) are restored. Thus, the abolition of adoption is, at the same time a legal and legal fact.

However, the question arises: if adoption itself equates a legal relationship to a blood-related one, then why, if adopters fail to cope with their responsibilities, the court cancels the passage, and does not deprive the parental rights.

In Art. 169 of the SC of the Republic of Uzbekistan, the legislator provides a list of reasons for the cancellation of adoption, which are clearly identical to the grounds for depriving of parental rights if: adoptive parents evade from their responsibilities or do not fulfil them properly; abusing parental rights; abusively adopted; are chronic alcoholics or drug addicts.

Identification of the child's consent to the cancellation of the adoption in the above cases is not required. Removal of adoption on the grounds listed in Article 169 of the Investigative Committee of the Republic of Uzbekistan is associated with the criminal behaviour of the adopter. Therefore, we can talk about the undisputed grounds (circumstances) for the abolition of adoption.

As noted, similar circumstances are grounds for depriving parents of parental rights. But it should be noted that in the case of criminal behaviour of the adoptive parents, the question may be raised about abolishing the adoption, and not depriving the parental rights since the parental rights and obligations arising from the adopters as a result of the passage, and not from the origin of the children.

However, if the list of grounds for deprivation of parental rights is formulated as exhaustive, the list of properties for cancellation of adoption is open. In part 3 of Article 169 of the SC of the Republic of Uzbekistan, the court's right to cancel the adoption is approved on other grounds, taking into account the interests of the child and taking into account his opinion. We are talking about the abolition of adoption in the absence of the criminal behaviour of the adopter when the circumstances necessary for the healthy development and upbringing of the child did not develop due to conditions both dependent and not dependent on the adoptive parent. As L.M. Pchelintseva correctly noted, these are circumstances that in any way affect the interests of the child (Ivanov, 1974); Dobrovolsky, 1958).

In the UK, the Republic of Uzbekistan does not provide an indicative list of these other reasons for the cancellation of adoption in the interests of the adopted child. Such circumstances, in particular, include the failure to obtain the consent of the persons specified in the law for adoption; lack of mutual understanding due to the personal qualities of the adopter and/or adopted, as a result of which the adopter does not enjoy authority of the child or the child does not feel himself as a member of the adoptive family; identification after adoption of mental inferiority or hereditary deviations in the state of health of the child, significantly complicating or making impossible the process of education, the presence of which the adoptive parent was not warned during adoption; Restoration of the child's parents, to whom he is firmly tied and cannot forget them after adoption, and that negatively affects his emotional state, etc. In these cases, the court has the right to cancel the adoption based on the interests of the child and taking into account the opinion of the child himself, if he has reached the age of 10 years (Article 171 of the Insurance Code of the Republic of Uzbekistan).

In the above cases, there is precisely another situation where the adoptive parents, due to circumstances beyond their control, did not at all deal with the upbringing and maintenance of the child. Therefore, to protect the interests of the child, it was necessary to cancel the adoption, which the courts did.

In cases where the adoptive parents do not fulfill the duties assigned to them by law due to the confluence of difficult life circumstances, we believe the court has the right to decide not to cancel the adoption (if there are no grounds for this - Art. 169 of the Investigative Committee of the Republic of Uzbekistan), but about his custody of the custody and guardianship authorities, provided that leaving the child with the adoptive parents is dangerous for him.

The practice is also known cases when adoption is purely formal, and the adopter is not engaged in the child's upbringing and is not going to do so.

However, in itself, the dissolution of a marriage with a parent of a child or another adoptive parent cannot serve as a basis for the cancellation of adoption. After all, the legal relationship between the adopter and the adopted does not depend on the relationship between his relatives. Of course, as a result of the divorce, the living conditions of the adopted person often change.

For example, the adoptive parent, having dissolved the marriage with the mother of the child, may shy away from performing his duties. Moreover, if it is possible to enforce the obligation to maintain it, collecting alimony, then it is hardly possible to implement the commitment to bring up.

The abolition of adoption can be made on a variety of reasons, and the child's interests are decisive, so you must cancel the passage, even under circumstances that could not question the preservation of relationships with parents.

Based on the interests of the child and taking into account the views of the child himself, the court has the right to cancel the adoption. This opinion should come to light when the court established the circumstances sufficient for the cancellation.

To clarify the child's opinion on the abolition of adoption must be approached delicately, even when circumstances are established that give grounds for the removal of passage in the interests of the child (for example, the unconditional basis for the removal of adoption - adoptive parents suffer from chronic alcoholism).

If an adopted child has not previously been aware of his adoption, the disclosure of the secrets of adoption can seriously affect his moral and mental state. Therefore, concrete forms for clarifying the child's opinion on the cancellation of the passage should be determined by the court, taking into account the situation and the recommendations of the representative of the guardianship and custody agency involved in the case. In this regard, the Law (this may be both the UK and the Code of Civil Procedure) should reflect the form of clarification of the child's opinion when considering the case on the abolition of adoption.

In any case, the norm of the child's opinion should not be interpreted narrowly. The court may decide the opposite of the child's viewpoint.

The application for the abolition of the adoption of a child who is a citizen of the Republic of Uzbekistan, citizens of the Republic of Uzbekistan is submitted to the court according to the general rules of jurisdiction provided for by the Code of Civil Procedure of the Republic of Uzbekistan, i.e. at the place of residence of the defendant. However, the law has not resolved the question of the tribal jurisdiction of these cases. Considering the problem of tribal jurisdiction, V. Ustyuzhaninov and S. Sapozhnikov note that the adoption is cancelled by the decision of the judge, based on the literal interpretation of the proceedings of the court of first instance (Kuznetsova, 1981; Evdokimova & Pergament, 1974). According to A.M. Nechaev, the case on the abolition of adoption is not a matter for the judge of the inter-district civil court for civil cases, since the facts on the adoption of a child are excluded from his competence (Nechaev, 2003). But neither the ruling of the Supreme Court of the Republic of Uzbekistan, nor the Code of Civil Procedure of the Republic of Uzbekistan says anything about the tribal jurisdiction of cases on the abolition of adoption by citizens of the Republic of Uzbekistan permanently residing outside the territory of the Republic of Uzbekistan, foreign citizens or stateless persons wishing to adopt a child who is a citizen of the Republic Uzbekistan

In order to protect the rights and legitimate interests of adopted children and based on the practice of Estonia (Article 113 of the Estonian CCP), Latvia (Article 259 of the CCP of the Republic of Latvia), it is proposed to add to Article 35 of the Code of Civil Procedure of the Republic of Uzbekistan that statements about the adoption of a child the court at the place of residence (location) of the child to be adopted, the application for cancellation or invalidation of the child's adoption is presented to the court that made the decision on adoption and is considered an exclusive jurisdiction. " In this connection, it is proposed to add article 35 of the Code of Civil Procedure of the Republic of Uzbekistan with the fourth part of the following content:

"Applications for the adoption of a child are presented to the court at the place of residence (location) of the child to be adopted, a statement about the cancellation or invalidation of the adoption of the child is presented to the court that decided to adopt."

The form and content of the statement of claim filed when applying to the court for the case of cancellation of the adoption must also meet the general requirements of art. 189 GIC RUz. In addition to generally accepted requirements relating to all disputes (name of the court to which the claim is filed; name of the claimant, his

place of residence; name of the defendant, his place of residence or location), in cases of cancellation of adoption, particular attention should be paid to some documents. The most important of these will be, first of all, the birth certificate of the child. Another equally important document is a court decision on the adoption (Nechaev, 1989).

As is known, the rights and obligations of the adopter and the adopted occur from the day the court decision on adoption comes into force.

Consequently, the fact-finding is a court decision, and if, for some reason, the registration of the adoption in the civil registry office did not take place, the court does not have the right to refuse to accept the application to cancel the approval.

A claim for cancellation of an adoption may be filed at any time. The statute of limitations does not apply to it. According to T.P. Evdokimova, establishing a statute of limitation is in the interests of children, since the adoption relations are stabilized, it is noted that it is unreasonable to protect the right to parenting, who was not interested in the fate of the child and did not challenge adoption (Evdokimova, 1978). However, after all, the possibility that the parent did not participate in the upbringing of the child is excluded, because he was recognized as missing or he did not know about the birth of the child. Therefore, the opinion on the establishment of a statute of limitations seems erroneous.

The case of the abolition of adoption is considered with the participation of the guardianship and custody, as well as the prosecutor (Article 170 of the UK Inspectorate). Unlike the assistance of these persons in adoption cases, in cancellation cases they can participate in two forms: by applying for the benefit of another person (in this case, a child) and entering into the process to give an opinion. If they do not participate in the case by filing a claim for cancellation of the adoption, they should be brought in to provide an idea.

The requirement for the participation of the guardianship and guardianship bodies, as well as the prosecutor in resolving the dispute, arises from the family and civil law objectives of these bodies and is aimed at ensuring adequate protection of the legal rights and interests of adopted children. The guardianship and custody authority is obliged to conduct and submit to the court opinion on the compliance of the cancellation of the adoption to the interests of the child.

In conclusion, the guardianship and custody body makes a judgment not only about the actual circumstances that were investigated. As it is correctly noted in the scientific literature, the conclusions of the government bodies concern not only the practical, but also the legal nature of the dispute, are of a legal quality, which is caused both by the goals of their involvement or entry into the process, and the tasks assigned to them (Pchelintsev, 2006).

Consequently, the conclusion of the guardianship and custody body should reflect not only the factual circumstances but also the opinion of the guardianship and custody body on how the matter should be resolved, i.e. whether to satisfy the claim or to refuse to fulfil the request. However, the court, assessing the conclusion in conjunction with all other circumstances established in the case, may come to the opposite end. In this case, the court is obliged in the decision to motivate in detail its disagreement with the findings of the guardianship and trusteeship body, set out in the opinion.

The prosecutor also gives an opinion on the merits of the case after examining all the evidence in the case, before the court debate of the persons involved in the case.

After the end of the consideration of the case on the abolition of the adoption on the merits and the judicial debate, the court retires to the deliberation room to make a decision. When deciding on the removal of approval, the court should reflect in the operative part of the decision the following questions:

- on the restoration of mutual rights and obligations of the child of his parents (his relatives), if this is required by the interests of the child (part 1 of Article 172 of the Insurance Code of the Republic of Uzbekistan);
- on the transfer of the child to be raised by the parents or the guardianship authority, when there are no parents, or if the transfer to the parents is contrary to the interests of the child (part 3 of Article 172 of the Insurance Code of the Republic of Uzbekistan);
- whether the child's name, patronymic and surname assigned to him in connection with the adoption are retained for the child (part 4 of article 172 of the Insurance Code of the Republic of Uzbekistan);
- the imposition on the former adopter of the obligation to pay funds for the maintenance of the child.

The main consequence of the abolition of adoption is that there is a cessation of all legal consequences of adoption for the future. Mutual rights and obligations of the adopted child and adoptive parents (relatives of the adoptive

parent) are terminated. This situation once again emphasizes the difference between parental legal relations and legal relations of adoption. It means that it is unacceptable to legally communicate the child with the adopter and his relatives.

In this regard, the decision of the court to cancel the adoption should provide for mandatory rehabilitation procedures for the child, carried out by the guardianship and custody authority, since it is no longer a matter of keeping the adoption secret.

According to Article 173 of the Insurance Code of the Republic of Uzbekistan, the court, based on the interests of the child, has the right to oblige the former adopter to pay for the maintenance of the child in the prescribed amount of Art. 99, 101 SK of the Republic of Uzbekistan. The amount of alimony now corresponds to that established for maintenance collected from parents in favour of minor children. Thus, the legislator took into account the proposals of individual scientists about the need to provide in the law the same amount of content from the adopter, which is established by statute when collecting alimony from parents (Ershova, 1984). At the same time with the cancellation of the adoption, the court also resolves the question: does the child keep his / her first name, patronymic and surname assigned in connection with the passage? The court cannot resolve this issue against the wishes of the adopted, ten years old. The opinion of the adoptive parent regarding the preservation of the child's last name and middle name does not matter (Antakolskaya, 1997).

At one time in the literature, it was noted that the lack of indication in the court decision regarding the name, patronymic and surname of the adopted person makes it difficult for the authorities to record civil status acts when performing the necessary actions related to the cancellation of the adoption. The opinion was expressed that, by the general rule on the full restoration of the former position of the child, the civil registry offices in the absence of any instructions in the court's decision should restore the old name, patronymic and surname of the child.

If the guardian (custodian) of the child deems it necessary to preserve the information assigned during the adoption, you will need to go to court with a request for either an additional decision or review of the decision as a supervisory procedure (depending on whether the question was considered at all) (Ustyuzhaninov. & Sapozhnikov, 2003). Such judgments were previously quite controversial, and now they are entirely unacceptable since the right to a name – the personal liberty of a citizen and a child who has reached 10 years – is entitled to exercise it independently. In the absence of instructions in the court's decision, the registry office does not have the right to take such an initiative.

Art. 172 of the Criminal code Republic of Uzbekistan indicates that it is possible to restore mutual rights and obligations of the child and his parents (his relatives), if this is in the interests of the child. Of course, the decision depends on the specific circumstances established by the body of guardianship and guardianship and fixed by it in the relevant act. As a result of assessing these circumstances, the court may come to the conclusion that it is unacceptable to restore parental legal relations, for example, in cases where the moral characteristics of the parents preclude their contact with children, if they were deprived of their parental rights, etc.

Another critical issue solved by the court in case of cancellation of adoption is the possibility and expediency of transferring the child to parents (part 2 of article 172 of the Insurance Code of the Republic of Uzbekistan).

The circumstances preventing this are not provided for in the Family Code and the court will be guided only by the interests of the child. Whether it will be possible for these interests to meet the living conditions of the parents can be established by the guardianship and custody agencies, which the court may require to provide an opinion on the validity and compliance of the transfer of the child to his parents. Moreover, surely the decision should reflect the form of the child's device after the cancellation.

Cancellation of adoption occurs forever and irrevocably. It is impossible to restore confirmation by changing the behaviour of an unscrupulous adopter, his lifestyle, attitude towards raising a child, as is the case about deprivation of parental rights. Assuming the possibility of parents of a child deprived of parental rights, to restore these rights, the legislator does not introduce a similar rule for former adoptive parents. However, so categorical prohibition of re-adoption of the same child is not always, in our opinion, expedient.

For example, if the adoption was cancelled for reasons that did not fault the adopter, but they were eliminated, it would be possible to allow the court to apply to the court for adoption again. Moreover, if the court concludes that it is in the best interests of the child, such a request can be granted.

To legally resolve cases on the abolition of the adoption of a child and based on the practice of Latvia (Chapter 32 of the Civil Procedure Code of the Republic of Latvia), it is proposed to amend the Code of Civil Procedure of the Republic of Uzbekistan a separate chapter 291. Cancellation of adoption of a child.

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