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In the given academic digest are presented the articles of well-known Georgian and foreign scholars on the issues legal studies.

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THE POSSIBLE NEGATIVE ASPECTS OF THE ADOPTION PROCEDURE

Abstract

Adoption is an old institute, which primarily occurs like substitution for matrimonial communities that cannot have descendants. Now days, along with modernization of social values and beliefs, it is used for establishing adoption within certain country, as well as internationally worldwide. There is a serious need of it primarily because of a care for minors who remained without parents and parental care, for them to grow into psychologically stable person who will contribute for the better tomorrow. The adoptive parents provide the necessary home, love and attention, raise and educate for the adoptees, so they made up for the parental care which they were deprived. An individual will better develop in an environment where it will be surrounded with love and understanding, although there is no blood relation, then with biological parents who are not ready and able to create the needed conditions for a child to feel loved and desired.

Key words: Adoption; Trafficking of minors; Reproduction; Adaptive parents; Surrogacy;

Introduction

Emotions have always been a moving force during human development and the culminating role they have exactly in the whole process of reproduction. For realization of the desire of reproduction in one marital or extramarital community, despite emotional part, there are

some biomedical criteria that need to be fulfilled. However, what is predetermined as primary – continuation of a gender, is not always easily feasible. There is sequence of biomedical difficulties that hinder the process of formation of nascent and maintain pregnancy until birth.

As primarily solution of the problem – the inability of reproduction occurs adoption. Adoption is an old institute that traces its roots from Roman law. Primarily, it occurs like good substitute in marital communities that, from biomedical point of view, cannot have the offspring that they really want. Today, with the modernization of social values and beliefs, this institute is used by many reasons and in many ways. However, adoption is necessary to exist first of all for the care of minors who, favored by fate, are left without parental care. For these persons to be raised into psychologically stabile ones who will contribute for better tomorrow, this institute is more than necessary. Adoptive parents allow to adoptees to have needed home, love and attention, raise them, educate them and carry for them, in a word they made up for the parental care that they were deprived immediately after their birth, and much more. An individual will be much better developed in an environment in which it will be surrounded with love and understanding, though there is no blood relation, than if it is with the biological parents who are not ready or able to create the necessary conditions for child to feel loved and desired. Therefore, justification of this institute is sweeping over the years.

1. About the procedure for establishing adoption in Republic of Macedonia and its flaws

What is worrying is the procedure for adoption itself. It is a fact that it is a sensitive issue to what it should be given all necessary attention and precaution, but in such amount that is needed not to be created an open space for manipulative games. Everything that is complicated more than necessary opens up possibilities for abuses. Entire legal procedure, from the very beginning has not suffered any major changes. “The ball” is throwing constantly between Commission for adoption and competent Center for social work. Commission profile is in very appropriate composition: lawyer, pedagogue, psychologist and social worker, who must have experience in the field so they can appear as members of the Commission and from who is required to make an objective evaluation of the condition that are needed for properly growth of a juvenile. The procedure begins with filing a request by the potential future adoptive parents to the Commission, followed by all required documentation³⁸. Commission shall consider the filled documentation, and if are not all right it will rejects the request, but if they are, Commission will submit the request with the application subject to the competent Center for social work. The Center is authorized in legally specified period, a period of 4 months (before the amendments to Family Law from 2012³⁹, this period had its own legal minimum of 4 months and legally specified maximum – 6 months) to monitor potential adoptive parents and to value their suitability for adoption. An expert team of the Center

³⁸ Ministry of labor and social affairs determines the required documentation with Rulebook for keeping records of adoptees and for determining the adoption papers.

³⁹ “Official Gazette of the Republic of Macedonia” No. 44 from 30th March 2012.

prepares findings and opinion and if they are positive, the team makes a proposal for their registration into the Register of potential adopters. Such a proposal, together with findings and opinion from experts are forwarded to the Commission within 15 days – a period that was added with the recent amendments to the Family Law from 2012. If the documents are not in order they should be in, Commission pass the whole subject to the competent Center for social work with obligation within five days to remove the deficiencies and return the subject to the Commission, but if the documents are in order – Commission brings a decision for enrollment in the Registry of potential adopters. A copy of this decision with an excerpt from the Register and a copy of the documentation are forwarded back to the Center for social work for archiving data in the Program for selecting the most appropriate adoptive parents electronically. The Center also monitors minors without parental care as well and proposes to the Commission for entering them in the Registry of possible child for adoption (together with the finding and opinion from the expert team and individual finding and opinion from the experts). After receiving the proposal, Commission submits report for health conditions of the child to the Commission for valuation of health condition of children without parental care, which within 15 days submits finding and opinion for the health condition of the child. With the amendments from 2012, Institute for Social Activities is obligated to prepare a Program for evaluation of adopters (current article 104-b, paragraph 4) and Program for evaluation of minors without parents and parental care who are possible children for adoption. Before mentioned amendments of 2012, Center of social work was making the selection of the most appropriate adopter electronically and was notifying the Commission for the top five possible adopters from the list of the Program, according to Family law, Commission was making the election and it was obligate to give explanation for that choice. Now, after entering the data for potential adopted child in the Program, the Commission at the first next session has to make a choice of most suitable adopter electronically from the top three possible adopters from the list of the Program. Commission notifies Center for social work that is guardian of the child for the selection and depending on the place of living of the selected adoptive parents, will seek the custody of a specific child to be in hands of a Center of social work from the area where adoptive parent is. With that all rights and obligations of Center of social work under whose custody the child was will stop.

After all of this, Commission brings a decision for accommodation of a child in an adoptive family and submits it to the competent Center of social work. The period of the accommodation cannot be less than two or more than three months, and during this period Center of social work will continuously monitor the accommodation and make monthly reports to the Commission. After expiring the period of accommodation, Center within five days will prepare a report on it and gives an opinion for adoption of the child to the certain adoptive parents and submits it to the Commission for establishing the adoption. Commission makes a valuation on the documents and after that the report is either rejected, either whole case is backed for amendments of the procedure within 30 days and for making a new selection of potential adoptive parents, or, in the best case, the Commission brings a decision for establishing the adoption.

During the procedure of adoption, in the presence of those who are predicted by the law and accordance for adoption, minutes will be made and a decision will be brought with the data about the type of adoption and, according this, all the other necessary information (name, surname of the adoptee, place of birth, inheritance rights etc.). And finally, the decision will be forwarded to the registry office for registration in a birth certificate [1]. This procedure varies depending on whether it is complete or incomplete adoption that is establishing, depending the age of the minor who is adopted and if it is about child of a spouse or the adoptive parent is a foreigner. However, this is the essence of the adoptive procedure.

Delicacy of the matter needs a detail procedure indeed, a reasonable brake when the selection of adoptive parents is made and finding a suitable home objectively, and all of this is inserted through the existence of the Commission and Center of social work that affects each other as controllers and that are the key players in the whole procedure. Legally predicted prudence must be present into the procedure because it is a life of a minor that is decided about with who fate has not been mother but stepmother since his birth. Once made life stroke must not be repeated, especially if the minor has reached several years and starts to understand and feel the pain that comes from situation in which he or she is. But this prudence is a source of potential maneuvers. What during reading the legal procedure resembles like “ping-pong” relation, in practice creates serious complications. Primarily as a problem occurs slowness into the procedure. Meanwhile the waiting list of the potential adopters extends and the children grow without parental care that they need. Psychologically it has destructive affection over minors, but also over those who want to adopt child, especially married couples who before starting this procedure have been through a lot of trying to have their child. So, those who want to adopt are ready to “compensate” substantial sums for accelerating the procedure. The competent authorities become corrupt and direct the procedure where benefits from it are subjective. Some are deleted from the list, other mysteriously appear on it. The procedure is prolonged for some, and expedited for others. None of this differs greatly from normal administrative routine; indeed, it would have not even been worth mentioning, if it were not for an essential element which renders the overall story alarming, i.e. the life of the minors. This simple administrative procedure affects their faith and is crucial to their wellbeing; therefore, it must not in any way pose a threat to them; on the contrary, it is to be in their favor. The Rulebook on the Closer Criteria and Method of Selecting Adoptive Parents Electronically is only a part of an already complicated procedure. The value system of the Rulebook does not make any considerable distinction between the love given to the child and the ownership of an additional apartment or a house; the location of the residence and its vicinity to children’s playgrounds are considered equal to moral values and attitudes, sensibility, empathy and altruism. In general, raising a healthy and loved child does not require ownership of luxurious automobiles, houses and holiday houses, etc. What the Rulebook in fact promotes is marginalization of people with average incomes, and their legal right to adopt a child, in favor of people with higher incomes.

The illegal trade of infants is one of the by-products of the complexity of this procedure. Human trafficking of minors is a serious criminal act, which in recent decades, has been growing at an increasingly fast pace and has transcended international borders. Internationally, trafficking offenders (trafficking of infants) are known as “baby-mafia”. The severity of this criminal act is reflected in the legal distinction between incrimination of human trafficking of minors and human trafficking in the Criminal Code of the Republic of Macedonia [2], as well as in increased penalties; moreover, in Serbia there is a separate article on illegal trade of children for the purposes of adoption⁴⁰. Serbia faces kidnapping of newborns from hospitals for the purposes of illegal trade and adoption by other families within Serbia or more often beyond its borders. This criminal industry in Serbia is highly organized and the chain of human traffickers includes people employed in key positions, such as hospital staff, social services staff, judges, etc. The international nature of human trafficking and the vicinity of neighboring Serbia inevitably entail consequences for Macedonia, such as having a model for criminals to follow, as well as being an export destination. The possibility of having this complex legal procedure bypassed and having human trafficking of infants in our country is very real. There have been several instances in which families have raised suspicion of abduction and illegal trade, after the failure of hospitals to provide valid evidence of the death of their newborns.

2. Trafficking with minors for illegal adoption

The motives and the goals that are set by the perpetrators of the crime of trading with people mainly can identify regardless of whether as victims arise adults or minors.

Sexual exploitation, labor exploitation often realized through forced begging, performing works in low or no conditions relating to the construction, exploitation of victims for removing organs and illegal transplant, forced pregnancy etc. are forms that can be found in both cases when victim appears to be an adult, but a minor as well. In cases of trafficking for establishing illegal adoption, the victim who was reduced to a mere of an object without any opportunity for the expression of will, is a minor only. This form of trading in children is relatively newer than other forms of the implementation of the legal entity of the crime of human trafficking and begins to come to the surface and to develop their own forms mostly as a result of manipulation of the legal structure by perpetrators in a certain country. But despite the fact that this is a new form of the crime, the consequences of its execution are so destructive and alarming, which requires tremendous speed and organization for effective prevention and suppression.

Ways of doing this form of human trafficking are varied. Include kidnapping of children, their purchase often from the parents or guardians, as well as forcing a child (if it has reached the age of several years of life) or forcing parents to give up their child.

⁴⁰ Article 389 of the Criminal Code of the Republic of Serbia

In some countries, adoption is legally prohibited (egg Egypt), and because of that people are using baby trafficking and services of the perpetrators, all in order to get offspring.

Sometimes the very people who want to adopt a child and are coming to the desired offspring in this way are not even aware that the adoptee has obtained through its trading, because they are taken from the agency that performs mediation adoption. This is more difficult to occur in countries that do not provide private adoption, where the state itself do not give permission to the private sector to be involved in the adoption through license agencies that will carry out adoption, but adoption is carried out exclusively by state institutions and bodies established by the State responsible for adoption. Therefore in these countries occurs the element of conscious ordering adoption of children on illegal way by those who wish to have child, thus consciously entering the network of this organized crime.

Particularly difficult element to detect the trafficking of children for adoption is the international adoption. For this reason, international adoption is regulated by several international documents and bilateral agreements. The most important among them are the European Convention on the adoption of children from 24 April 1967 adopted by the Council of Europe and the Hague Convention on Protection of Children and Co-operation in the field of international adoption, adopted 29 May 1993 in the framework of the Hague Conference on Private International Law. Hague Convention in its goals that are planned to be achieved, clearly emphasizes that through the convention Contracting States have to respect the safety measures and to avoid abduction sale or trafficking of children. Also it provides the prohibition of improper financial or other gain from activity related to international adoption. The European Convention for adopting children regulates this area similarly.

3. Surrogacy and its relation with illegal adoption

The continuity of the technical and technological development spurred by globalization and eminent advancements in medicine and bio medicine, allowed other alternatives despite the adoption, for the substitution of the basic ways of establishing parental relationship - surrogacy.

Surrogacy is a method of reproduction in which a woman agrees to become pregnant with inlaid embryo from another or simply – borrows her womb. In the surrogate mother's uterus are implanted embryos that are given as a result from the artificially inseminating eggs of another woman who is unable to cope with the pregnancy. After that for nine months the surrogate mother's womb is used as an incubator. Surrogacy can be used for: artificial insemination, natural fertilization where the sperm of the father is used and the surrogate mother's eggs that after birth the child gives the baby to the father and his partner, even though she appears as a biological mother, and biomedical assisted fertilization - by entering the embryo into the uterus of the surrogate mother. Because of these features many authors speaks about the fact that surrogacy leads to "fragmentation of motherhood" and therefore only a small number of countries around the world allows such a procedure. It is allowed in

Russia, Israel, Canada, part of the U.S. states. Some states prohibit only if the procedure of having a baby for another is paid, while they allowed the birth of a child from noble motives - enabling couples to have a child who will have their genetic material, if before that, for achieving the same purpose, all other alternatives are exhausted, like in the UK. In countries like this the altruistic surrogacy is allowed but in those that are based on commercial grounds is banned.

The biggest part of the countries worldwide, including Republic of Macedonia, uses restrictive measures for its prevention, often in favor of prevention of side effects.

According to some experts (Prof. Jovan Tofoski, Macedonia), this moment makes space for a lot of manipulation, and opens countless moral, ethical and legal issues. Before all, there is the payment and the manner of regulation of the service itself, from where the dilemma that the infant from subject becomes an object is raised because, practically, baby is being sold -the "owner" usually requires money for the service and that is the point when many problems are raised. So according to this, the birth of a baby for another where the payment is included would make this act the act of human trafficking or trafficking in minors for obtaining a parental relationship. Although many believe that surrogacy is as ethically and morally justified as adoption itself, however, apart from rare cases of altruistic surrogacy, paid surrogacy violated the dignity of the person, because only things can be valorized and children are way too valuable to be the subject of sale. This surrogacy is seen as bad as baby trafficking. The child becomes the object of negotiation and purchasing agreements, and the woman comes down only to the level of reproductive machine.

In 2011 this kind of trafficking was happening in Thailand, where surrogacy for compensation is prohibited and only altruistic surrogacy by close relatives is allowed. At first it was trafficked with women from Vietnam who were moved to Thailand, their passports and money were being confiscated and they have been told that is necessary to give birth to a child for someone else, for certain amount of money - that is, to be surrogate mothers. Illegal company "Baby 101" which appears in the role of acting this activity even had a web site which represent itself as a company that offers "eugenical surrogacy", which provides the best conditions for the creation of offspring, where only the best leave embryos for implantation. However, it is not mentioned what they do with embryos that remain because they do not measure with their eugenical standards. The company offered two types of services - surrogacy and egg donation, and for that purpose they had several of photographs of women in fashion style photos who could appear in the role of surrogate mothers. For women who were unable or are unwilling to give birth there was a package worth \$ 32,000 - the couple should provide their sperm and eggs, to choose the gender of the child and the surrogate mother of the offered, later the surrogate mother is being isolate in a particular mode of life and diet, special conditions, in order to give birth of the child as it is being "ordered". The fact is that the institute adoption exists in favor of infertile couples who want to be parents, and it cannot achieve that in a natural way, but there is also present the whole "Ping-

Pong" legal procedure for achieving adoption, that would make the young couple old, while waiting in the row for adoption. And here surrogacy becomes tempting, and because it is forbidden comes to the inclusion of significant material compensation for the service in conjunction with the performance of other serious crimes for its realization. So it is easy to move in the direction of getting the labels - organized and international crime.

Conclusion

It is necessary to provide a greater amount of objectivity in the adoption procedure and to render it unsusceptible to corruption and crime. With regards to dealing with this challenge correctly, the legal and sublegal regulative do not contribute significantly; the exaggerated precaution is merely a cruel reality to the ordinary citizen wishing to adopt a child, give it a home and love to ensure its normal development. While the problem clearly exists, i.e. the procedure is violated or strict adhering to the procedure considerably delays its successful completion, more often than not, it is ignored as a result of its sensitivity. However, regardless of how sensitive this problem may be, the cost of ignoring it is too big. Human lives are at stake, the lives of the adoptive parents, and more importantly, the lives of the adopted children. There are a considerable number of homeless children, even though one of the excuses for having a complicated and demanding procedure is the low number of potential children available for adoption. Providing shelter is vital to the well-balanced growth and development of such children, as well as to the normal development of the society in general. Consequently, one must question the necessity of having a seemingly flawless procedure. Are we in fact capable of adhering strictly to the procedure, within decent time periods, and without any violations? People should act in compliance with procedures; on the other hand, procedures should be designed to be in favor of those concerned. Only then will the procedure focus on its primary and essential goal – to compensate for the loss of parental care. As such, the procedure has many flaws, and requires due precaution. The incorrect implementation of the procedure must not create a buffer zone which could be maleficent to the adoptive parents and to the adopted children. The goal of the Institute must not be reduced to mere carrying out of an administrative procedure. Its goal is humane, and its embodiment should follow along.

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THE EFFECT OF PUNISHMENT AND CRIME RATES IN THE WEST AND RUSSIA

Abstract

Since old times it is the rule to prevent undesirable, especially criminal behaviour by punishment. In medieval times most brutal sanctions are used – and as was the obvious result also in that times, with no or small effect. At the same time, the attitude to the punishment has never been straightforward. Beccaria [3, 107] wrote that we should "prevent crimes than to punish them"; it means that criminal prevention must be concentrate in "rewarding virtue." The scientist also believed that "in countries and over time with the most severe punishment most brutal crimes had been done." The effect of criminal sanctions is small, if ever given. This is shown on the background of empirical research from the USA, Finland, Germany,