

Legislative and Criminological Problems of Intercountry Adoption of Kazakhstani Children

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Abstract

The study analyses the features of the adoption institution in Kazakhstan, particularly the adoption of Kazakhstani children by foreign citizens. The aim of the study is to identify the key criminogenic factors and propose ways to enhance the legal and regulatory framework to mitigate the risks of abuse and criminality in intercountry adoptions. The methodological approach incorporates dialectical, systematic, comparative legal, and other methods to investigate this criminological aspect of the adoption system. The authors highlight the characteristic challenges and vulnerabilities in the application of national legislation, as well as the international legal regulation of these cross-border adoptions. Specific attention is paid to the potential for criminal exploitation, such as child trafficking and document falsification, that can arise due to the complex and loosely regulated nature of intercountry adoption. Based on the analysis, the authors conclude that Kazakhstan needs to strengthen the protective measures and oversight mechanisms to safeguard the rights and wellbeing of children subject to adoption by foreign nationals.

Keywords: intercountry adoption; adoption; child rights; protection of child rights; adoption cases; legal and regulatory framework.

Introduction

Adoption is a legal institution designed to create a relationship between the parties, the adoptive parent and the adopted child, as close as possible to that which actually takes place between parents and their own children. As an established institution, adoption has its roots in ancient times. Despite this fact, its

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components were constantly subject to a certain evolution and thus, the content of this institution changed. Over time, the most comprehensive symbiosis and integration of the two family models is observed. The first of them, which is considered to be classic, is based on kinship. The second is based on adoption. Initially, this cohesion mainly arose precisely due to the similarity of the sphere of legal regulation of relations between adoptive parents and adopted children and such relations that arise and are implemented between parents and their children. Along with this, the institution of adoption was built on the principle of a consanguineous family.

While adoption is meant to provide a caring family for a child in need, the criminal misuse of this institution can instead expose young, impressionable individuals to neglect, abuse, and identity crises. The lack of robust safeguards and effective monitoring has allowed some adoptive parents to exploit the system, either through financial motives or by being unfit to handle the responsibilities of parenthood. Furthermore, the anonymity and lack of transparency inherent in many cross-border adoptions can conceal deeper issues like organ trafficking and other forms of exploitation.

M.V. Antokolskaya (2004) concludes that sociology views adoption as a type of social parenthood or motherhood. However, while the rights and responsibilities of adoptive parents are very similar to those of biological parents, the actual dynamics of the adoption process may not necessarily reflect the typical parent-child relationship. Therefore, if the child recognizes the adoptive parents as his or her parents, then in such cases their relationship may be considered kinship. Otherwise, if the child knows that the adoptive parents are not his or her biological parents, the true relationship will be altered. According to G.S. Pak and E.B. Khodyreva (2017), the family is a unique entity that combines genetic and social kinship. The childless family continues to be a type of social relationship based on kinship. Adoption no longer means the absence of children, but rather the preservation and expansion of the existing social structure of kinship. Adoption is seen as a social action aimed at establishing social ties.

The adoption of children who have citizenship of one country by citizens of another state can be observed everywhere today. Since the emergence and active growth of intercountry adoptions, there have been multiple inconsistencies with the norms of law and morality. Of course, this has become a cause for concern for the international community and various international organisations. Often, such violations were associated with a lack of awareness of the specific features of local law, the mentality of the corresponding people or nation, their culture and established customs.

Considering the intercountry adoption in more detail, then of course, both its advantages and disadvantages can be highlighted. The main advantages of intercountry adoption are that even more children can be reached and involved in the procedure around the world. As a rule, all children acting as adoptees are designated as orphans. In addition, in many countries the conditions provided for intercountry adoption are very often more loyal than in the home country.

Disadvantages include a longer adoption process after the adopter has chosen a particular child. One or more compulsory visits to the child's home country are envisaged. They will have to spend several weeks there. And perhaps there will be little and inadequate medical information about the birth of a child. The biological mother of the child may not have been provided with prenatal medical services at the proper level, and if the child was in an orphanage, mental or physical developmental delays are possible. More documents related to the procedure will be required.

Other disadvantages of intercountry adoption may be an increased likelihood of fraud, and the possibility of war or unrest if the country is not politically stable. These factors create significant complexities in the adoption process, increasing the likelihood of criminal activity such as child trafficking or falsification of adoption records. In places characterized by political instability, the breakdown of the legal and administrative framework may facilitate the use of the system by unscrupulous individuals. This may entail circumventing legitimate legal procedures in order to expedite the adoption process or engaging in blatantly illegal activities, such as kidnapping or trafficking of children under the pretext of adoption.

The purpose of this study is to examine legislative and criminological issues related to the international adoption of Kazakhstani children in order to identify key vulnerabilities and suggest ways to strengthen the legal and regulatory framework to reduce the risks of criminal exploitation.

Materials and Methods

The methodological basis of the study is formed by systemic approaches to the investigation of the theory of relations between an adoptive parent and an adopted child, laws that relate to the issues of legal regulation of the institution of adoption in general and, in particular, issues related to the institution of adoption by foreigners of children who are citizens of the Republic of Kazakhstan. In addition, methods of analysis, synthesis, comparison, and dogmatic analysis, historical and normative, substantive, and functional approaches are used.

The legal basis for the study is: the Constitution of the Republic of Kazakhstan (adopted at the republican referendum on August 30, 1995) (with

amendments and additions as of 03.23.2019), the Code of the Republic of Kazakhstan dated December 26, 2011 No. 518-IV "On Marriage (Matrimony) and Family" (with amendments and additions as of 01/02/2021), Law of the Republic of Kazakhstan dated August 8, 2002 No. 345-II "On the Rights of the Child in the Republic of Kazakhstan" (with amendments and additions as of 07.07.2020), and international legal acts regulating the issues of legal regulation of the institution of adoption.

The dissimilarity of the legal and legislative regulation of the institution of adoption in different states predetermines and indicates the significance and role of conflict of laws rules in the area under consideration. Differences can be manifested in the unequal assessment of the possibility of adoption of persons who have become fully capable, the fact that the adoptive parents have their own children, the difference in age between the adoptive parent and the adopted child, etc.

The question of the law to be applied to adoption arises in the following situations:

- 1) the child and the adoptive parent are citizens of different states;
- 2) adoption with the same citizenship of the parties is carried out on the territory of another state.

During the existence of the Soviet Union, foreign adoption in Kazakhstan was subject to legal regulation through the norms of national legislation (as well as throughout the USSR). Namely, not a single legal act that was adopted in different historical periods of the existence of Kazakhstan provided for the possibility of consolidating conflict of laws rules allowing the application of foreign law when regulating foreign adoption. Notably, the adoption itself was more permissive. This state of affairs took place until the adoption of the Law of the Republic of Kazakhstan "On Marriage and Family" of December 17, 1998, already in independent Kazakhstan. Admittedly, despite the fact that this law cannot be considered sufficiently consistent with the provisions of the Hague Convention of 1993, it nevertheless was the first rapid step forward. This normative legal document became a bright accent in the national legislation in the sphere of the relations in question and existed until the adoption of the current Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family". A fairly large number of significant changes, which have become a kind of novelties in legislation, have provided answers to many questions. First of all, the establishment of adoption became possible only in court. However, the changes in relations to foreign element have not occurred. Since the Law of the Republic of Kazakhstan "On Marriage and Family" did not provide for a bilateral conflict of laws rule. Thus, paragraph 1 of Article 209 of the law stipulated that adoption,

including the cancellation of adoption, on the territory of the Republic of Kazakhstan by foreigners of a child who is a citizen of the Republic of Kazakhstan, was carried out in accordance with the legislation of the Republic of Kazakhstan in compliance with the requirements of Articles 76-78, 82-84 and 96 of the Law of the Republic of Kazakhstan "On Marriage and Family" (1993).

Until the beginning of the 1990s, cases of adoption of children – citizens of Kazakhstan by foreigners were few in number. Accordingly, it did not seem expedient to improve the legislation on intercountry adoption. For the most part, these were requests for the adoption of foreign diplomatic workers, journalists who did not have their own children, who at that time worked in the territory of the Republic of Kazakhstan. After the fall of the Iron Curtain in the period from 1990 to 1991, citizens of foreign countries wishing to adopt a child began to apply to various children's institutions, educational organisations, and ministries. In the same period, the first adoption agencies, mainly from Sweden and America, began to operate in Kazakhstan and other post-Soviet countries. In addition, representatives of all kinds of foreign adoption intermediary organisations from countries such as the USA, Canada, Italy, France, etc., and married couples who decided to adopt a Kazakh child on their own, have become more active.

The law enforcement practice that existed at that time revealed an unlimited number of problems of both procedural and legal nature. And all this took place with what seemed to be an effective detailed legal regulation of certain aspects of adoption. Extremely many questions arose then regarding the adoption of children with Kazakh citizenship by citizens of other states. The most pressing problem is that the state often does not have vital information about the future fate of children adopted by foreigners.

Results

Adoption is a prerequisite for the emergence of a fictitious relationship. Adoption relationships are predominantly artificial. The conditions, goals and consequences of adoption are completely differently represented in the legal norms of foreign states.

In this area, an unlimited number of complex issues arise that are precisely of a conflict in nature. The main ones include the following:

1. Who is allowed to adopt.
2. At what age is it allowed to adopt.
3. Is it possible to adopt an adult.
4. Whether consent for adoption is required between the adoptive parent and the adoptee or their legal representative.

5. Will the legal connection of the adopted child with blood relatives be preserved.

Conflict rules governing the adoption process conventionally emphasise the prevailing personal law of the adoptive parent. Among the main conventions on adoption, the most famous is the 1965 Hague Convention on Jurisdiction, Applicable Law, and Recognition of Decisions on Adoption. It provides requirements for persons using the right of adoption and requirements for the person being adopted. The general rule with regard to adoption is the application by the competent authorities of their national law. The Convention provides for the following exceptions to this principle:

1. Any provision prohibiting adoption contained in the national law of the adoptive parent or of the adoptive spouses shall be taken into account, if the application of such prohibition is provided for by the declaration of the state of nationality of the adoptive parents upon ratification of the convention.

2. With regard to the issue of consent to adoption of persons who are not members of the adoptive parent's family, the law of the child's citizenship shall apply. The same law applies to the terms of consultation with these persons.

The Convention stipulates that the cancellation of adoption is possible on any grounds provided for by the law of the state competent to resolve this issue (Hague Convention on Jurisdiction ..., 1965). In the process of adopting children with citizenship of one country by citizens of another state, the interests of several subjects must be respected. These include: citizens of different states and persons living in the territory of different states.

The countries of Western Europe provide by law that adoption is possible only with the interests of children in mind. But at the same time it aims to "provide childless persons with heirs, to make the existence of the company possible". [5,74] As a consequence, in some countries it is possible to conclude a marriage between an adopted child and an adoptive parent, and the adoption of persons who have reached the age of majority. The German civil code does not contain a clear definition of "adoption". It provides that "adoption is permissible as long as it is for the good of the child and the relationship between the adoptive parent and the child is to be expected to be the same as between parent and child" (German Law: Civil Code, 1996). In the 1978 Scottish Act, "adoption refers to a procedure consistent with parental rights and responsibilities that establishes the bond between the child and the adoptive parent" (Anton and Beaumont, 1990).

Chapter 4 of the Swedish Parental Code does not provide for the term "adoption". In Muslim countries, adoption is generally prohibited. This prohibition defines the position of the Qur'an (33: 4-5): "Allah did not arrange for a man with two hearts inside and did not make your adoptive children your children. Lead

them to their fathers, this is truer with Allah, and if you do not know their fathers, then these are your brothers in faith and your loved ones". The only Muslim state where the institution of adoption exists is Tunisia (Book 7 of the Personal ..., 1958). In other countries, there is an institution of "admission" or "asylum", according to which spouses undertake to accept the child and provide them with the necessary assistance, but the child can neither bear the name of their new family, nor count on part of the property or inheritance (Ryzhkova, 1999).

In France, in practice, the rights of the adoptive parent and the adoptee are collectively applied, despite the fact that the law speaks of the personal law of the adoptive parent. A similar mixture of personal laws is adopted by the laws of Norway, Sweden, and the Bustamante code. In England, an adoption order is issued by an English court, and adoption is subject to English law. After joining the European Convention on Adoption (1967), the adoption law was passed in England, according to which the English courts, at the request of the adoptive parents, issue an order for adoption in cases where the adoptive parents and children reside in the territory of the countries participating in the Convention.

As for the 1967 European Convention on the Adoption of Children, it is aimed at regulating relations between the member states of the Council of Europe. The advantage of this Convention lies in the fact that it includes in its content the norms of a material nature on adoption and its consequences in a unified form. According to the multilateral Convention on Legal Assistance of the CIS Countries of January 22, 1993, "adoption or its cancellation is determined by the legislation of the Contracting Party of which the adoptive parent is a citizen at the time of filing an application for adoption or its cancellation, if the child is a citizen of another Contracting Party, upon adoption or cancellation must obtain the consent of the legal representative and the competent state authority, and the consent of the child, if this is required by the legislation of the Contracting Party of which he is a citizen. If a child is adopted by a spouse, one of whom is a citizen of one Contracting Party and the other is a citizen of another Contracting Party, the adoption or cancellation must be made in accordance with the conditions provided for by the legislation of both Contracting Parties; in matters of adoption or its cancellation, the authority of the Contracting Party in whose territory the spouses have or had their last joint residence or place of stay is competent" (Convention on Legal Assistance..., 1993).

Article 21 of Convention on the Rights of the Child (1989) states that "States Parties that recognise and/or permit the existence of an adoption system shall ensure that the best interests of the child are taken into account as a matter of priority and they should:

a) ensure that the adoption of a child is permitted only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all relevant and reliable information, that adoption is permissible in view of the child's status in relation to parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such consultation as may be necessary;

b) recognise that adoption in another country can be considered as an alternative way of caring for a child if the child cannot be placed in foster care or placed in a family that could provide for foster care or adoption, and if the provision of any suitable care in the child's country of origin is impossible;

c) ensure that in the case of adoption of a child in another country, the same guarantees and rules apply as apply to adoptions in the home country;

d) take all necessary measures to ensure that, in the event of adoption in another country, the placement of the child does not result in unjustified financial benefits for the persons associated with the child;

e) promote, where necessary, the achievement of the objectives of this Article by concluding bilateral and multilateral agreements and strive to ensure that the placement of a child in another country is carried out by the competent authorities or bodies ".

It is important to note that adoption, although intended to create a supportive family environment, can sometimes contribute to criminal or deviant behavior as a result of the complex and sometimes contrived relationships it forms (Drozdov & Basysta, 2023). This complexity is compounded when adoption is spread across different legal jurisdictions, each with its own set of rules and criteria.

Adult adoptions, while less common, present unique challenges and opportunities to be taken advantage of. This can include instances of financial exploitation as well as more serious types of abuse if the adoptive relationship is not properly monitored and supervised. Moreover, the element of consent in adoption is vital. Lack of genuine consent on the part of the adoptee, especially when older children or their legal guardians are involved, can lead to serious emotional and psychological problems. Another important consideration is complete alienation from biological relatives. This alienation can lead to serious identity crisis and antisocial behavior as the individual struggles with their roots and sense of belonging. Legal rules, such as the 1965 Hague Adoption Convention, seek to regulate these characteristics by prioritizing the personal law of the adoptee. Nevertheless, there are cases where these restrictions can have negative consequences for the child, especially in regimes where adoption is seen

as a way to provide heirs for those who cannot have children, rather than prioritizing the welfare of the child.

The existence of legal differences and the lack of a universally accepted regulatory framework create additional complexities in intercountry and cross-border adoption. The lack of strict safeguards and effective enforcement methods can facilitate major crimes such as child trafficking and other forms of exploitation. This underscores the need for broad global cooperation and a more unified approach to adoption law in order to safeguard susceptible adolescents, who are central to these proceedings. To successfully navigate the complex legal field of adoption, the many elements that can affect a child's well-being must be carefully weighed and scrutinized. Policymakers and practitioners need to develop and strictly enforce robust legal safeguards to reduce the likelihood of adoption being used as a vehicle for criminal or abnormal behavior.

Discussion

Nowadays Kazakhstan can be confidently considered a full-fledged member of the world community. Thus, since gaining independence, the Republic of Kazakhstan has significantly expanded the range of its international legal ties. Accession to the European and, in general, the world community has become a prerequisite for the conclusion of a huge number of international treaties, their recognition, signing, and ratification. This, in turn, predetermined the need for a parallel revision and improvement of the current national legislation in all areas of activity.

Speaking about the legal regulation of relations arising from the institution of adoption, including intercountry adoption, it can be noted that Kazakhstan is still experiencing a significant intensity in this area.

The reasons that predetermine the urgency of this problem include:

- lack of public awareness;
- irrational stereotypes;
- unwillingness to look at the problem globally;
- features of the national mentality;
- features of national culture and customs.

Particular attention is paid to the enormous difficulties such as "lack of public awareness" and "irrational stereotypes". These problems indicate a widespread misunderstanding or ignorance of the procedure and benefits of adoption among the general public. In addition, the use of "irrational stereotypes" indicates ingrained prejudices and unfounded beliefs that can shape public attitudes toward adoption. These stereotypes may relate to adopted children, such

as assumptions about their background or behavior, or to adoptive parents, such as their motives for adopting.

The Kazakh legislator fully permits and, accordingly, provides for the procedure for resolving this issue. The adoption procedure, undoubtedly, is far from simple for the citizens of Kazakhstan, not to mention the citizens of foreign countries. However, the question itself is delicate, hence all the resulting difficulties.

The legislation of the Republic of Kazakhstan allows the adoption in the Republic of Kazakhstan by foreign citizens of children who are both Kazakh citizens and foreign ones living in the Republic of Kazakhstan. Such adoption is carried out in accordance with national legislation. The rules for the adoption of children – Kazakh citizens by foreigners on the territory of the Republic of Kazakhstan are established by the legislation of the republic. The legislation of all states is united by one general rule, which says: "Adoption is allowed in relation to minor children, and solely in their interests". Children who are citizens of the Republic of Kazakhstan, who are centrally registered in the Republican databank, can be transferred for adoption to foreigners only in cases where the child cannot be adopted by relatives, citizens of the Republic of Kazakhstan living in the territory of the Republic of Kazakhstan and abroad. When considering a case on the adoption of a child by foreigners, the court must make sure that the authorised body in the field of protecting the rights of children of the Republic of Kazakhstan is exercising the right of priority adoption of this child by relatives, regardless of their citizenship and place of residence, or by citizens of the Republic of Kazakhstan (Code of the Republic of Kazakhstan No. 518-IV, 2011).

Based on the results of the study and analysis of the judicial practice of the application of legislation on the adoption of children, and to uniformly apply the norms of the current marriage and family legislation, the plenary session of the Supreme Court of the Republic of Kazakhstan on March 31, 2016 issued Regulatory Resolution No. 2 "On the practice of the courts' application of legislation on the adoption of children".

According to clause 11 of this resolution, "When considering cases of adoption of a child – a citizen of the Republic of Kazakhstan, by citizens of the Republic of Kazakhstan permanently residing outside the territory of the Republic of Kazakhstan, the courts should keep in mind the following:

- 1) adoption of children is allowed only in cases where it was not possible to transfer these children to the families of citizens of the Republic of Kazakhstan permanently residing in the territory of the Republic of Kazakhstan (adoption, guardianship, foster care, foster family or other forms of placement of children left

without parental care provided by law), or for adoption by the relatives of children, regardless of the place of residence and citizenship of these relatives;

2) citizens applying for the adoption of a child – citizen of the Republic of Kazakhstan and registered in the prescribed manner through accredited adoption agencies, must submit to the court an opinion of the competent authority of the state of which they are citizens or have a permanent place of residence, on the conditions of their life and on the possibility of being an adoptive parent, permission of the competent authority for the entry of an adopted child from the Republic of Kazakhstan to the receiving state (Regulatory Resolution of the Supreme Court ..., 2016).

In the course of considering and deciding the issue of adoption, the authorised bodies must take into account the ethnic origin of the child, their religious and cultural affiliation, native language, and the possibility of ensuring the continuity of upbringing. Without these important factors, effective and correct adaptation of an adopted child in a new environment among new people is impossible. In accordance with Article 97-1 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" (2011), adoption by foreigners of a child who is a citizen of the Republic of Kazakhstan, including the cancellation of such adoption, on the territory of the Republic of Kazakhstan is carried out in accordance with the legislation of the Republic of Kazakhstan. Consequently, adoption of children by foreigners is subject to the general procedure for adoption established by the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family". Admittedly, the procedure for the adoption of a child by foreign citizens will have its own characteristic features, in view of the presence of a foreign element in the adopted relationship under consideration. Any manifestation of a foreign element in legal relations will always complicate them. Therefore, the sphere of family and marriage relations with foreign participation in the consideration and regulation of issues of adoption of children with evidence of belonging to one state by citizens of other foreign states is no exception.

Children who are citizens of the Republic of Kazakhstan, who are centrally registered in the Republican databank, can be transferred for adoption to foreigners only in cases where the child cannot be adopted by relatives, citizens of the Republic of Kazakhstan living in the territory of the Republic of Kazakhstan and abroad. When considering a case on the adoption of a child by foreigners, the court must make sure that the authorised body in the field of protecting the rights of children of the Republic of Kazakhstan is exercising the right of priority adoption of this child by relatives, regardless of their citizenship and place of

residence, or by citizens of the Republic of Kazakhstan (Code of the Republic of Kazakhstan No. 518-IV, 2011).

In accordance with paragraph 3 of Article 85 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" (2011): "Foreigners applying for the adoption of a child submit to the authorised body in the field of protection of the rights of children of the Republic of Kazakhstan a written statement of their desire to adopt a child, along with certificates of income, marital status, health status, including the absence of mental, behavioural disorders (diseases), including those associated with the use of psychoactive substances, no criminal record, personal moral qualities of potential parents, issued by specially authorised foreign government agencies and organisations for adoption. After submitting the documents to the authorised body in the field of protecting the rights of children of the Republic of Kazakhstan and with the consent of the adoptive parent for the adoption of the child, the adoptive parent must have direct contact with the child for at least four weeks".

On the positive side, the Kazakh legislator has toughened the requirement for a foreign adoptive parent in terms of direct contact with the adopted child and doubled this period, i.e., from two to four weeks. Undoubtedly, such strict requirements for a foreign adoptive parent are justified. The process of adoption, including foreign adoption, is inherently quite complex and its consequences are directly related to the rights and interests of the child, which is the most paramount and most important. According to statistics, as of 2020, about 9,000 children, who are our compatriots, were adopted by foreign citizens in Kazakhstan. The vast majority of foreign adoptive parents are US citizens. The rest of the adoptive parents took Kazakh children to Ireland, Great Britain, Germany, France and other European countries (Yakymenko, 2023).

The Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" (2011) consolidated an important rule, which previously was only advisory in nature, that "the adoption of children by foreign citizens is allowed only in cases where it is not possible to arrange them in a Kazakh family or to relatives child regardless of their place of residence and citizenship.

In accordance with paragraph 3 of Article 89 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" (2011): Kazakhstan in the manner determined by the Ministry of Foreign Affairs of the Republic of Kazakhstan". Paragraph 6 of Article 84 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" (2011) provides: "The procedure for transferring children who are citizens of the Republic of Kazakhstan for adoption is approved by the Government of the Republic of Kazakhstan".

Control over children adopted by foreigners who are citizens of the Republic of Kazakhstan is carried out by foreign institutions of the Republic of Kazakhstan and the authorised body in the field of protecting the rights of children of the Republic of Kazakhstan. The authorised body in the field of protecting the rights of children of the Republic of Kazakhstan is the Committee for the Protection of the Rights of Children of the Ministry of Education and Science of the Republic of Kazakhstan (Regulation on the Ministry of Education..., 2004). Thus, subparagraph 11 of paragraph 1 of the "Regulations on the Committee for the Protection of the Rights of Children of the Ministry of Education and Science of the Republic of Kazakhstan" (2016) in the list of functions of the said Committee provides for the control over children transferred for adoption to foreigners.

On the territory of the Republic of Kazakhstan, adoption is carried out by courts within the framework of special proceedings according to the rules of civil proceedings. The procedural arrangements for considering civil cases on the adoption of a child is provided for in Articles 310-316 of Chapter 33 of the Civil Procedure Code of the Republic of Kazakhstan (2015). In the courts, the issue of intercountry adoption has almost always met with an inadequate response. Many judges have shown and are showing extreme caution, demanding a lot of additional, sometimes completely unnecessary, certificates and papers. Since the word "international" alone in the context of adoption confuses them.

In many foreign countries, family legislation contains conflict links, according to which the adoption (including its cancellation) on the territory of a given state by foreign citizens of a child who is a citizen of this state is carried out in accordance with the legislation of the country of the citizen who is the adoptive parent.

Therefore, it seems necessary to amend the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" by introducing a bilateral conflict of laws rule on the regulation of foreign adoption on the territory of the Republic of Kazakhstan by the legislation of the country of citizenship of the adoptive parent. Information on foreign law will be provided by the Ministry of Justice. But it is also necessary not to forget about the mandatory rules for foreign adoption. Consequently, in clause 1 of Article 97-1 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family", it is also necessary to indicate which relations on adoption will be regulated by the legislation of the state of which the adoptive parent is a citizen, and which by the legislation of the Republic of Kazakhstan. In particular, the norm may be as follows: "Adoption, namely 1) determination of the group of persons entitled to be adoptive parents; 2) accounting for the difference in age between the adoptive parent and the adopted

child; 3) obtaining the consent of the parents or persons replacing them for the adoption of the child; 4) expression for adoption of the person being adopted; 5) the assignment of a name to the child and determination of the procedure for changing the date and place of birth of the adopted child is carried out in accordance with the law of the state of which the adoptive parent is a citizen ...".

While maintaining the main approach in the regulation of international adoption, which seems to be important and ensures the child's right to family upbringing, at the same time, it is necessary to make certain amendments to legislation of Kazakhstan, taking into account the current trends in the development of private international law. Firstly, it would be necessary to legalise the consolidation of the principle of the closest connection. Secondly, it is advisable to consolidate the rules on the application of the most favourable law. It is up to the Kazakhstani judge to establish the "favourableness" of the law, who will have to first analyse the foreign law, comparing it with the law of the Republic of Kazakhstan (Convention on the Protection..., 1993).

Conclusions

The complex and insufficiently supervised nature of intercountry adoption in Kazakhstan has led to notable shortcomings that can be manipulated for illegal purposes. Problems such as lax requirements for people wishing to adopt, inadequate systems of supervision and control, and discrepancies in the application of national and international laws facilitate child trafficking and document forgery. To combat these elements that contribute to criminality, Kazakhstan should prioritize the adoption of legislative amendments that provide a stronger and more harmonized legal framework for intercountry adoption. This should include strengthening background checks on prospective adoptive parents, requiring comprehensive pre-adoption training and home assessments, and improving information-sharing procedures with countries to which children are placed. Strengthening cooperation with international organizations and strict adherence to global norms such as the Hague Adoption Convention is important.

In addition, strengthening public awareness and combating harmful prejudices about adoption can help to reduce the social and cultural elements that contribute to criminal exploitation. Kazakhstan can protect the rights and well-being of children involved in intercountry adoption by taking into account both legal and social aspects. A thorough criminological strategy is needed to effectively address the tangled web of legal, regulatory and social issues that have made Kazakhstan's intercountry adoption system vulnerable to criminal exploitation. The revision of this vital area of family and migration law should be guided by the priority of child protection and act in the best interests of the child.

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