

PECULIARITIES OF THE LEGAL REGULATION OF ADOPTION UNDER THE CONDITIONS OF MARTIAL LAW IN UKRAINE

ОСОБЛИВОСТІ ПРАВОВОГО РЕГУЛЮВАННЯ УСИНОВЛЕННЯ В УМОВАХ ВОЄННОГО СТАНУ В УКРАЇНІ

**Paraschuk L.H., Doctor of Law,
Professor at the Department of Civil Law and Procedure
West Ukrainian National University**

**Kovalchuk Y.P., Lecturer at the Department of Fundamental and Special Disciplines
Chortkiv Educational and Scientific Institute of Entrepreneurship
and Business West Ukrainian National University**

**Shumskyi S.I., Student of the Faculty of Law
West Ukrainian National University**

The fact that family education has a significant impact on the formation and development of a child as an individual is indisputable. Foundations laid from childhood in the family circle give a person the opportunity to become a full-fledged part of society in the future. At the same time, a significant number of children due to various circumstances are deprived of the opportunity to grow up in the family of their biological parents. Adoption is an institution by which it is possible to provide orphans and children deprived of parental care with the opportunity to realize the right to a family, since the child is accepted as a daughter or son.

The scientific article examines the legal aspects of the institution of adoption in Ukraine based on the analysis of normative legal acts. Legal requirements for people who can be adopted, adopters are considered. Emphasis is placed on the changes that have taken place in the legal regulation of adoption since the beginning of the full-scale war in Ukraine. It was concluded that, despite the armed aggression of the Russian Federation and in connection with this increase in the number of children who lost their parents or lost contact with them and therefore need help from the state in terms of family arrangement, the adoption procedure has practically not undergone any changes.

The introduced changes mostly concern not the simplification of the adoption procedure itself or the shortening of the period during which the said process takes place, but the creation of optimal conditions under the existing situation in order to maximally contribute to the achievement of the goal of adoption – the realization through adoption of the child's right to a family. The recently activated service of submitting an application for registration of adoptive parents through the Unified portal of state services "Dija" will also facilitate the adoption process.

Special attention is paid to expanding the grounds for granting a child the status of a child deprived of parental care. This is caused by the fact that the map of military actions on the territory of Ukraine is constantly changing, and therefore it became necessary to add grounds related to military actions to those existing before the war.

The scientific analysis carried out in the article does not cover all aspects of the legal regulation of adoption and will serve as a basis for further investigations.

Key words: child, parents, orphan child, child deprived of parental care, adoption, adopter, martial law.

Беззаперечним є факт значного впливу сімейного виховання на формування і розвиток дитини як особистості. Підвалини, закладені з дитинства у сімейному колі, дають особі можливість у майбутньому стати повноцінною частиною соціуму. Водночас, значна кількість дітей в силу різних обставин позбавлена можливості зростати у сім'ї своїх біологічних батьків. Усиновлення є інститутом, за допомогою якого вдається забезпечити дітям-сиротам та дітям, позбавленим батьківського піклування можливість реалізувати право на сім'ю, оскільки дитина приймається у неї на правах дочки або сина.

У науковій статті на основі аналізу нормативно-правових актів досліджуються правові аспекти інституту усиновлення в Україні. Розглянуто законодавчі вимоги до осіб, які можуть бути усиновлені, усиновлювачів. Акцентовано на змінах, які відбулися у правовому регулюванні усиновлення з моменту початку повномасштабної війни в Україні. Зроблено висновки, що, незважаючи на збройну агресію Російської Федерації та у зв'язку з цим збільшенням кількості дітей, які втратили батьків або втратили зв'язок з ними і тому потребують допомоги з боку держави щодо сімейного влаштування, процедура усиновлення практично не зазнала змін.

Внесені зміни здебільшого стосуються не спрощення самої процедури усиновлення або скорочення строку, протягом якого відбувається зазначений процес, а створення оптимальних за існуючої ситуації умов для того, щоб максимально сприяти досягненню мети усиновлення – реалізації через усиновлення права дитини на сім'ю. Сприятиме полегшенню процесу усиновлення також нещодавно активована послуга подачі заяви про взяття на облік кандидатів в усиновлювачі через Єдиний портал державних послуг «Дія».

Окремо звернено увагу на розширенні підстав для надання дитині статусу дитини, позбавленої батьківського піклування. Це викликано тим, що на території України мапа воєнних дій постійно змінюється і тому виникла необхідність до існуючих до війни додати підстави, пов'язані з воєнними діями.

Здійснений у статті науковий аналіз не охоплює усіх аспектів правового регулювання усиновлення і слугуватиме основою для подальших розвідок.

Ключові слова: дитина, батьки, дитина-сирота, дитина, позбавлена батьківського піклування, усиновлення, усиновлювач, воєнний стан.

Formulation of the problem. Undoubtedly, since ancient times, the family, family values, and family education have been the basic factors in the development of human morality. Staying in a family environment under the influence of parental upbringing contributes to the formation of a child as an individual, is a qualitative basis for its harmonious development and socialization. The role of parents in a child's life cannot be overestimated. At the same time, growing up in the full family of one's biological parents is the most optimal, but due to various life circumstances, it is far from always possible for a child.

Adoption, being one of the family forms of placement of children left without parental care, is becoming especially relevant today in connection with the full-scale aggression of the Russian Federation against our state and, as a result, a significant increase in the number of children who have lost their parents or contact with them, complicating the work of the bodies involved in the adoption process. Under these conditions, it is important to create the necessary legislative basis for the normal organization of the adoption process in Ukraine under martial law. The analysis of the changes that have taken place in the normative legal acts that regulate

activities related to the adoption of children during the last year will contribute to their further improvement.

Analysis of the latest research. The issues of legal regulation of adoption in Ukraine, the practical aspects of the adoption procedure under martial law are increasingly being paid attention to by both legal scholars and practicing lawyers. Among them, the scientific works of D. Vasylieva, N. Kosenko, K. Kuznetsova, V. Mykytin, I. Timush, D. Timush, L. Tokarchuk, Ya. Tuboltseva, I. Yanitska and others should be noted.

The purpose of the article is a legal analysis of the development of the institution of adoption, taking into account the changes that have taken place in the legal regulation of the adoption procedure since the introduction of martial law on the territory of Ukraine.

Presenting main material. The preamble of the 1989 UN Convention on the Rights of the Child emphasizes the social importance of the family, recognizing it as a natural environment necessary for the growth and well-being of children [1].

L. Tokarchuk emphasizes the importance of adoption for all parties involved in this process. According to the author, the purpose of adoption by the state is to place orphans and children deprived of parental care, to ensure stable and harmonious living conditions for children, to prevent poverty and crime in society, etc. The purpose of adoption on the part of adopters is to satisfy the natural needs to have and raise children, satisfying the need to sympathize, take care of disadvantaged children, and create conditions for their harmonious development. The goal of adoption by children who have reached such an age and level of development that they can be aware of it is to live in a happy family with protective parents, to obtain real family relationships, etc. [2, p. 197-198].

In modern democratic states, including Ukraine, the need for family upbringing of children left without parental care is implemented thanks to the creation of alternative ways of ensuring the child's right to a family.

The Family Code of Ukraine (hereinafter – the Family Code of Ukraine) establishes the following forms of placement of orphans and children deprived of parental care: adoption, guardianship and care, upbringing and living in a foster family, upbringing and living in a family-type orphanage [3]. Among the forms of placement of children left without parental care proposed by the legislator, the priority is adoption, as the form closest to the family environment, since the child is accepted into the family with the rights of a daughter or son.

The adoption process takes place only in court. An exception is the case when the adoption is carried out by a citizen of Ukraine of a child who is also a citizen of Ukraine, but lives outside our country. In this case, the adoption takes place in a consular institution or diplomatic mission of Ukraine. According to Art. 310 of the Civil Procedure Code (hereinafter referred to as the Civil Procedure Code of Ukraine), an application for the adoption of a child or an adult who does not have a mother or father or has been deprived of their care is submitted to the court at their place of residence [4].

Procedural issues related to the consideration and resolution of adoption cases, the grounds and procedure for adopting children in Ukraine are regulated by a number of normative legal acts, including: the SC of Ukraine, the Civil Code of Ukraine, the Law of Ukraine "On Childhood Protection", the Law of Ukraine "On State assistance to families with children"; Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Implementation of Adoption Activities and Supervision of Compliance with the Rights of Adopted Children", Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Assigning and Paying State Assistance to Families with Children"; the order of the Ministry of Social Policy of Ukraine "On the procedure and conditions for the reception of citizens of Ukraine who live outside Ukraine and foreigners who wish to adopt a child in Ukraine, for their submission of cases"; the order of the Ministry of Health of Ukraine "On approval

of the List of diseases, in the presence of which a person cannot be an adoptive parent", etc.

An adopted person can be a person who has the legal status of a child, that is, until he or she reaches the age of majority. At the same time, in exceptional cases, the adoption of an adult who does not have a mother or father or is deprived of their care is allowed (Article 282 of the Civil Code of Ukraine) [3].

Children who can be adopted are subject to compulsory registration. The list of entities that are required to keep records is established by the Procedure for conducting adoption activities and supervising the observance of the rights of adopted children, approved by Resolution No. 905 of the Cabinet of Ministers of Ukraine dated October 8, 2008. According to clause 3 of the said Procedure, the responsibility for the registration of children who can be adopted is entrusted to the children's services of district, district in the cities of Kyiv and Sevastopol state administrations, executive bodies of city, district in cities (if formed) councils at the place of origin of a child who, for one reason or another was left without parental care, authorized bodies of the executive power of the Autonomous Republic of Crimea on children's issues, as well as children's services of the regional, Kyiv and Sevastopol city state administrations and the National Social Service. If the place of origin of the child is the territory of a village, a settlement of a united territorial community, it is taken into account by the children's service of the district, district in Kyiv and Sevastopol, the state administration, the executive body of the city, district council in the city (if formed) according to the location of such a territorial community [5].

There are three categories of children that are subject to registration. These are orphans, children deprived of parental care and children whose parents have given consent for adoption. The need to register the children of the specified categories must be confirmed by relevant documents certifying the impossibility of raising the child by the natural parents or the consent of the natural parents to adoption.

Depending on the time that has passed since the child was registered, he or she may be on local, regional or centralized registration. The above-mentioned procedure establishes one-month period during which interested persons may express a desire to adopt a child, after which, in the absence of potential adopters, it is taken into regional registration. A period of one month has also been set for expressing a desire to adopt a child who is in the regional register, after which, in the absence of the will of the relevant persons, it is transferred to the centralized register. During the entire period of stay in the registry, information about the child is entered in the Children's Registration Book and the Unified Data Bank.

Please note that a child who is a citizen of Ukraine, but lives outside Ukraine, and a child of one of the spouses, who is adopted by the other spouse, do not need to be registered.

The adoption process concerns children, and therefore one of the most vulnerable categories of individuals. Therefore, it is quite justified to establish clear requirements by legislation for subjects who intend to adopt a child, failure to comply with which makes adoption impossible. They concern, first of all, their age and the age difference between the adopter and the child. Yes, according to Art. 211 of the Civil Code of Ukraine, a person who has reached the age of twenty-one can adopt a child. At the same time, it is allowed to adopt a child by a person who has not reached the specified age, if he is a relative of the child. The age difference between the person wishing to adopt the child and the child must be at least fifteen years. If a person who has reached adulthood is adopted, the age difference increases to eighteen years.

In addition to requirements regarding the age of the adopter and the age difference between him or her and the child, there are a number of requirements regarding the family status of the adopter. First, the adopters can be spouses. Secondly, due to the fact that according to the domestic family legislation, one of the grounds for the emergence of family relations

is the residence of a man and a woman in the same family without registration of marriage, the court can issue a decision on the adoption of a child by these persons or on the adoption by one of the participants of actual marital relationship of the child of another participant in this relationship. Thirdly, based on the fact that one of the signs of marriage, concubinage in Ukraine is heterosexuality, persons who live together but have the same sex cannot be adoptive parents. Fourthly, if the child has only a mother or only a father, who lose contact with him due to adoption, the adopter can be one man or one woman.

The rest of the requirements cover, in particular, the physical, mental and social aspects of the adopter's life, which are important for creating favorable, safe conditions for the child's life and development. From the content of Art. 212 of the Civil Code of Ukraine stated that the adopter must have full civil legal capacity, a permanent place of residence and permanent earnings (income), not need permanent outside care due to his or her health, not abuse alcoholic beverages or narcotic drugs, not suffer from diseases, the list of which is approved the central body of the executive power, which ensures the formation of state policy in the field of health care, etc. [3].

There are not isolated cases of the desire to adopt the same child by several people. The solution to this problem can be found in the provisions of Art. 213 of the Civil Code of Ukraine, according to which priority is given to a citizen of Ukraine in whose family a child is raised; who is the husband of the mother, the wife of the father of the adopted child; who adopts several children who are siblings or who is a relative of the child; spouse [3].

Both children in need of adoption and people intending to adopt a child are subject to appropriate registration.

With the beginning of the full-scale military invasion of the Russian Federation on the territory of Ukraine, the number of children who, for various war-related reasons, were left without parental care increased significantly. According to the Law of Ukraine "On the Protection of Childhood" dated April 26, 2001 No. 2402-III, the status of an orphan child is given to a child whose parents have died or died, and the status of a child deprived of parental care is a child left without parental care due to the deprivation of their parents parental rights, taking them away from parents without depriving them of parental rights, recognizing parents as unknown absent or incapacitated, declaring them dead, serving sentences in places of deprivation of liberty and keeping them in custody during the investigation, searching for them by the National Police authorities, connected with the lack of information about their whereabouts, the long-term illness of their parents, which prevents them from fulfilling their parental duties, as well as children separated from their families, abandoned children, children whose parents are unknown, children who have been abandoned by their parents, children whose parents do not fulfill their parental responsibilities for reasons that cannot be ascertained in connection with the parents' stay in the temporarily occupied territory of Ukraine or in the areas of anti-terrorist operation, implementation of measures to ensure national security and defense, repel and deter armed aggression of the Russian Federation in Donetsk and Luhansk regions, and homeless children [6].

Due to the fact that the map of military operations on the territory of our country is constantly changing, taking into account the above, the list of grounds for granting a child the status of "child deprived of parental care" declared in the Law needs to be adjusted. The existing list of grounds was expanded by the Resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure for Proceedings by Bodies of Guardianship and Guardianship of Activities Related to the Protection of Children's Rights" dated September 10, 2022 No. 1013 [7]. The specified status is also granted to children whose parents do not fulfill their responsibilities to raise and support the child for various war-related reasons, including: the parents' stay in the territories located in the area

of military (combat) operations or which are in temporary occupation, encirclement (blocking) / temporarily occupied territory; are wanted as missing under special circumstances or recognized as missing under special circumstances; are prisoners of war (held captive by the aggressor state); deprived of personal freedom (detained, taken hostage) by the authorities of the aggressor state (occupation administrations and armed formations). In order to grant the status of "child deprived of parental care", the specified circumstances, due to which the parents do not fulfill their parental duties, must be documented (clause 24 of the Procedure for conducting activities related to the protection of human rights by guardianship authorities, approved by the Cabinet resolution of the Ministers of Ukraine dated September 24, 2008 No. 866) [8].

If the parents, who were wanted as missing under special circumstances or were recognized as missing under special circumstances, are located, if the mother, father returned from captivity or after deprivation of their personal freedom (detention, hostage-taking) by state authorities – the aggressor (occupation administrations and armed formations), left the temporarily occupied territories of Ukraine or in the case of deoccupation of these territories, and as a result the custody of the parents or one of them is resumed, the child loses the status of a child deprived of parental custody (clause 27 of the Procedure) [8].

As already noted above, national legislation (and this corresponds to Article 3 of the European Convention on Adoption of Children (revised) of 1989) [9] establishes the validity of adoption only if it is carried out by a court decision. Despite the importance of the mentioned process for the interests of the child, the mentioned requirement became one of the reasons for its temporary suspension, since in order to ensure the safety of subjects who directly participate in the procedure related to adoption (representatives of state authorities, courts, etc.), it was access to data that was previously publicly available is closed.

D. Vasylieva points out that the procedure became less predictable and more risky during the martial law for objective reasons. There is no simplified or accelerated adoption procedure. It is carried out on general grounds, taking into account the norms of the current national legislation [10]. At the same time, the new reality in which Ukrainians found themselves necessitated the adoption of appropriate changes to the normative acts regulating issues related to adoption. Thus, for already adopted children who were temporarily moved (evacuated) abroad, in order to supervise the observance of their rights, the adoptive parents are assigned the duty to take the child from the place of his/her location (clause 822 of the Procedure for conducting adoption activities and supervising the observance of rights of adopted children, approved by the resolution of the Cabinet of Ministers of Ukraine dated October 8, 2008 No. 905 [5]).

Currently, the updated Procedure for maintaining a data bank on orphans, children deprived of parental care, and families of potential adopters, guardians, custodians, adoptive parents, foster parents, approved by the Ministry of Social Policy of Ukraine dated December 28, 2015 No. 1256 This Procedure takes into account, in particular, the circumstances under which a child who was left without parental care was not taken into account at the place of his origin due to the fact that he was in the area of military (combat) operations, temporary occupation, surrounding (blocking). Thus, in accordance with Clause 15, under such circumstances, data on its placement on the local register must be provided by a user at the local level at the place of the child's temporary relocation (evacuation) [11].

A significant role in the procedure of adopting a child is played by the created and timely Unified Information and Analytical System "Children", the effect of which is difficult to overestimate especially in wartime. It reveals the ability to ensure harmonious functioning, interchange of existing levels of child registration, which are territorially separated from each

other. An example is cases when it is physically impossible to transfer the questionnaires of a child who is on local registration to place him on regional registration, because the local children's service is located, for example, in the area of temporary occupation. Under such circumstances, the Procedure establishes the obligation of the relevant service at the regional level to print two copies from the Unified Data Bank, to enter data on the placement of the child on the regional register and to send the child's questionnaire with copies of the necessary documents, taking into account the period of the child's stay on the local and regional register (clause 6 order).

Circumstances under which the Unified Data Bank may not function are also taken into account. In this case, the questionnaire must be filled out in the prescribed form with blue ink, or printed by a local user (clause 3 of the Procedure) [11].

Important for facilitating the adoption procedure was the approval of the resolution of the Cabinet of Ministers of Ukraine "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine Regarding Digitalization of the Processes of Placement of Children in Family Forms of Education" dated May 31, 2022 No. 636 [12]. Among the changes that were made by this act to the Procedure for conducting adoption activities and supervising the observance of the rights of adopted children, approved by Resolution No. 905 of the Cabinet of Ministers of Ukraine dated October 8, 2008, is the need to enter and update current information about the child, about the adoption of candidates for adoption to the Unified data bank (clauses 16, 29 of the Procedure); providing the opportunity for citizens

of Ukraine who intend to adopt a child to receive advice on the procedure for adopting a child by submitting a relevant application online using electronic means of communication or through the Unified State Web Portal of Electronic Services and the information systems of the Ministry of Social Policy, executive authorities and bodies integrated with it of local self-government (clause 211 of the Procedure), submit an application for inclusion in the register of candidates for adopters or for extending the term of validity of the conclusion on the possibility of being adopters (if the candidates for adopters did not adopt during the term of validity of the conclusion) in electronic form through the Unified State Web Portal of Electronic services and information systems integrated with it of the Ministry of Social Policy, executive power bodies and local self-government bodies (items 22, 27) [5].

We would like to draw attention to the fact that recently on the Unified portal of public services "Diia" there was also an opportunity to submit an application for registration of candidates as adoptive parents [13].

So, the adoption process in our country is quite complicated and long. The reason for this is a number of objective and subjective reasons related to both the adoption procedure itself and the number of people participating in it. The changes made to the legal acts regulating the adoption process, caused by the armed aggression of the Russian Federation against Ukraine, will definitely contribute not only to the optimization of the specified process, but also to the further development of the institution of adoption as a whole.

REFERENCES

1. Конвенція ООН про права дитини від 20 листопада 1989 року. URL: https://zakon.rada.gov.ua/laws/show/995_021#Text (дата звернення: 12.01.2023)
2. Токарчук Л.М. Влаштування дітей-сиріт та дітей, позбавлених батьківського піклування, як реалізація принципу державної охорони сім'ї: дис. ... докт. юрид. наук: 12.00.03 – цивільне право і цивільний процес; сімейне право; міжнародне приватне право. О., 2021. 512 с.
3. Сімейний кодекс України від 10 січня 2002 року № 2947-III. URL: <https://zakon.rada.gov.ua/laws/show/2947-14#Text> (дата звернення: 10.01.2023)
4. Цивільний процесуальний кодекс України від 18 березня 2004 року № 1618-IV. URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (дата звернення: 05.01.2023)
5. Порядок провадження діяльності з усиновлення та здійснення нагляду за дотриманням прав усиновлених дітей, затверджений постановою Кабінету Міністрів України від 08 жовтня 2008 року № 905. URL: <https://zakon.rada.gov.ua/laws/show/905-2008-п#Text> (дата звернення: 10.01.2023)
6. Закон України «Про охорону дитинства» від 26 квітня 2001 року № 2402-III. URL: <https://zakon.rada.gov.ua/laws/show/2402-14#Text> (дата звернення: 05.01.2023)
7. Постанова Кабінету Міністрів України «Про внесення змін до Порядку провадження органами опіки і піклування діяльності, пов'язаної із захистом прав дитини» від 10 вересня 2022 року № 1013. URL: <https://zakon.rada.gov.ua/laws/show/1013-2022-п#Text> (дата звернення: 10.01.2023)
8. Порядок провадження органами опіки та піклування діяльності, пов'язаної із захистом прав людини, затверджений постановою Кабінету Міністрів України від 24 вересня 2008 року № 866. URL: <https://zakon.rada.gov.ua/laws/show/866-2008-п#n15> (дата звернення: 10.01.2023)
9. Європейська конвенція про усиновлення дітей (переглянута) від 1989 року). URL: https://zakon.rada.gov.ua/laws/show/994_a17#Text (дата звернення: 09.01.2023)
10. Васильєва Д. Усиновлення під час війни: як зараз відбувається цей процес. *Юридична газета*. 04 серпня 2022. URL: <https://jur-gazeta.com/publications/practice/simeyne-pravo/usinovlennya-pid-chas-viyni-yak-zaraz-vidbuvaetsya-vey-proces.html> (дата звернення: 12.01.2023)
11. Порядок ведення банку даних про дітей-сиріт, дітей, позбавлених батьківського піклування, і сім'ї потенційних усиновлювачів, опікунів, піклувальників, прийомних батьків, батьків-вихователів, затверджений Міністерством соціальної політики України від 28 грудня 2015 року № 1256. URL: <https://zakon.rada.gov.ua/laws/show/z0380-16#Text> (дата звернення: 12.01.2023)
12. Постанова Кабінету Міністрів України «Про внесення змін до деяких постанов Кабінету Міністрів України щодо цифровізації процесів влаштування дітей у сімейні форми виховання» від 31 травня 2022 року № 636. URL: <https://zakon.rada.gov.ua/laws/show/636-2022-п#Text> (дата звернення: 11.01.2023)
13. Дія. URL: <https://diia.gov.ua/services> (дата звернення: 11.01.2023)