PRIVATE PROFESSIONAL EDUCATIONAL INSTITUTION

“KRASNOYARSK COOPERATIVE COLLEGE OF ECONOMICS,

COMMERCE AND LAW”

Theme of the educational and research project

ORGANIZATION OF WORK FOR PREPARING THE ADOPTION CASE FOR TRIAL

The project is completed:

Kuligina Ekaterina Aleksandrovna

student of JA-2(3)

College NC “ККЭКиП”

Project manager:

Panasyuk Tatiana Vladimirovna

Krasnoyarsk, 2024

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# ABSTRACT

This study aims to investigate the organization of the work on the preparation of a child adoption case for court proceedings. The relevance of this topic is due to the increasing attention paid to the reliable protection and safeguarding of the rights and interests of children in the current conditions of the development of civil society and rule of law.

KEY WORDS

Adoption, legal proceedings, legislation, and civil code.

# INTRODUCTION

The Family Code of the Russian Federation, which is based on the provisions of the Convention on the Rights of the Child, establishes the fundamental principles of family law, including the principle of the priority of family education for children. It also enshrines the right of each child to be brought up in a family, wherever possible.

The legal institution of adoption, or adoption for short, is one of the main safeguards for ensuring the protection of this fundamental right of children in cases of parental abandonment. Adoption is a process of family-based care for children who have lost parental care, involving the establishment of legal relationships between the adopted child and their adoptive parents in the same way as between parents and their children.

In fact, the adoption procedure is aimed not only at helping children but also at allowing adoptive parents to find new families, as well as providing support to those who are already in adoptive families. Of the two types of family arrangements for children who are left without parental care, adoption is the optimal option. With adoption, close family relationships develop between the adoptive parents and the adopted child, and there is a legal consolidation of these relationships. This means that the adopted child has the same rights and duties as biological children, and the adoptive parents take on the responsibilities of parents.

The goal of this coursework is to conduct a deep analysis of the topic through research into all available materials.

# Necessary conditions for adoption

Adoption is a complicated and responsible process, which requires meeting certain requirements. Guardianship and custody authorities verify compliance with these requirements and make a decision on whether to grant or deny the right to adopt.

Adoption is permitted in relation to minor children for whom the only parent, or both parents:

- Have died;

- Are unknown, recognized as missing or declared dead by the court;

- The court has declared them incompetent;

- Have been deprived of their parental rights by a court decision;

- Gave their consent to adoption in accordance with established procedures;

- For reasons recognized by the court as unjustified, they have not lived together with the child for more than six months and have avoided raising and maintaining him/her (except in the case of adoption by foreign citizens or stateless people of children who are Russian Federation citizens).

Adoptive parents can be adults of either sex, with the following exceptions:

1. Persons recognized by the court as legally incapable or with limited legal capacity;

2. Spouses, one of whom is recognized by the court as incompetent or limited in legal capacity;

3. Persons deprived of parental rights by the court or restricted in parental rights;

4. Persons removed from the duties of guardian (trustee) due to improper performance of duties assigned to them by law;

5. Former adoptive parents if adoption was canceled due to their fault;

6. Persons who are unable to adopt for health reasons, such as drug addiction or mental disorders;

7. Persons who, at the time of adoption, did not have an income that provided the adopted child with the living wage established by the subject of Russian Federation on the territory where such persons reside. Persons who do not have a fixed place of residence, with the exception of those belonging to the Indigenous small peoples of Russia, who lead a nomadic or semi-nomadic life and do not permanently or predominantly have a residence, if they adopt a child belonging to those same Indigenous small peoples.

8. People who have or have had a criminal history, are currently or have previously been the subject of criminal proceedings (with the exception of those whose criminal proceedings have been terminated due to rehabilitation), for crimes against the sexual integrity and freedom of individuals, as well as crimes against life and health, freedom, dignity, and honor of individuals (with the exception of unlawful hospitalization in a mental health facility, and defamation); against the family, minors, public health, public morals; against public safety and peace and security for mankind, except in the cases provided for in the next paragraph.

9. Persons from among those specified in the preceding paragraph who have a criminal record or have been subjected to a criminal offence for crimes related to minor or moderate-severity crimes, if the court considers such persons to pose a danger to the life, health, and morals of the child being adopted. When making a decision about the adoption of a child by such a person, the court will take into account the circumstances surrounding the act for which the person was criminally charged, the length of time that has passed since the act was committed, the degree of guilt, the characteristics of the individual, including their behavior after the act was committed, and other factors to determine whether it is possible to provide the adopted child with full physical, mental, spiritual, and moral development without endangering the child's safety and health.

10. People with criminal records for serious and particularly serious crimes.

11. Persons who have not completed a program approved by the executive authorities of the constituent entities of the Russian Federation whose purpose is to facilitate psychological and pedagogical training for individuals wishing to adopt a child into their families (with the exception of close relatives of the child and persons who are, or have been, adoptive parents in respect of whom adoption has not been terminated, and guardians (trustees) who have not been suspended from performing their duties); and

Those who are in a partnership established between same-sex individuals, recognized as marriage and registered under the laws of the state in which such a marriage is recognized, as well as those who are citizens of that state and are not married. The organization of the above-mentioned training program is carried out within the limits and at the expense of funds provided for this purpose in the budget of the relevant Russian Federation subject.

Foreign citizens, stateless individuals, or Russian citizens permanently residing outside of the Russian Federation may submit documents for the relevant training to be conducted on the territory where they permanently reside.

If such individuals have not previously received training on the relevant matter within the foreign state where they reside, they may request to receive this training on the Russian Federation territory.

## 1.1 Consent to adoption

To adopt a child, the consent of its parents is required. If the child's parents are under the age of 16, the consent of their legal guardians (or trustees) is also necessary. If there are no parents or guardians, the consent of the guardian and the guardianship authorities is required. The consent must be expressed in writing, notarized by the head of an organization that has left the child without parental care or by the guardian and guardianship authorities at the location of the adoption or the parents' residence, and it can also be directly expressed in court during the adoption process.

Parents can consent to the adoption by a specific individual or without specifying a particular person. The consent can only be given after the child's birth. Parents have the right to withdraw their consent to the adoption before the court's decision on the adoption is made. The consent of a child's parents is not required for their adoption if they:

- are unknown or recognized by the court as missing;

- are recognized by the court as incapable of taking care of the child;

- were deprived of their parental rights by a court decision for reasons including, but not limited to, showing disrespect for the child.

If the child has reached the age of 10, their consent is also necessary, except if, before applying to adopt, the child had been living in the adoptive parents' home and considers them his family.

When adopting a child through one of the parents, the other parent's consent is required, unless the child is adopted by both parents. However, if the parents have ended their family relationship, have not been living together for over a year, and the address of the other partner is unknown, their consent will not be required.

# Features of the Consideration of Adoption Cases

In the Russian Federation, the process of preparing an adoption case for court involves the following steps:

1. Filing an application for adoption with the guardianship and custody authorities at the applicant's place of residence to obtain a recommendation on the possibility of adopting a child.

Citizens of the Russian Federation who wish to adopt a child must file an application with the guardianship and custody authority at their residence, requesting a recommendation regarding their suitability as adoptive parents. The application should include:

- Surname, first name, and patronymic (if applicable) of applicants desiring to adopt a child

- Information about identity documents held by applicants

- Details of the applicants' residential address

2. After receiving the application, the guardianship and custody authorities will conduct an examination to determine whether the applicants are suitable for the role of adoptive parents and whether they meet the requirements for adoption.

3. If the examination concludes that the applicants are eligible to adopt, they will be provided with a recommendation from the guardianship and custody authorities.

4. Based on the recommendation, the applicants will then be able to proceed with the adoption process.

- Information confirming that a citizen does not meet the requirements specified in subparagraphs 9-11 of paragraph 1 of article 127 of the Russian Family Code;

- Information about the pension, its type and amount (for individuals whose main source of income is compulsory pension insurance or other pension payments).

Citizens who wish to adopt a child must confirm, by signing, with the date, the information provided in the application, as well as their awareness of the responsibility to submit reliable or accurate information in accordance with Russian legislation.

2. Finding a child. Obtaining a referral to visit a child's placement facility where the child resides. The referral is valid for 10 days. Upon returning from the visit, you are required to inform the guardianship authority of your decision.

3. Submitting an adoption application in court. Citizens of the Russian Federation can submit an adoption application to the district court in the place where they reside or where the adopted child is located. The application must include: the data of the prospective adoptive parents, the data of the adopted child (taking into account information about their parents and any siblings), circumstances justifying the adoption request, and documents that support these circumstances. It may also include a request for changes to the child's full name, birthplace, and birthdate (if the child is less than one year old) or to include the adopted parents' names on the birth certificate record. Citizens of the Russian Federation who are permanently residing outside the territory of Russia, foreign citizens, or stateless individuals who wish to adopt a Russian child, must submit an adoption application to the relevant court in their area, depending on the location of their residence or the location of the child they wish to adopt. These courts are the Supreme Court of a republic, regional, city, or district court, depending on where the child resides.

4. Verification of the applicant's compliance with the adoption conditions. Passing medical exams, attending the foster parents' school. For adoption, it is necessary to obtain guardianship and custody authorization on the validity of the adoption and its compliance with the interests of the child, providing information about personal communication between adoptive parents (parent) and child.

5. Preparing case files for submission to the court. The guardianship and custody authority prepares the case files, including information on the child and applicant, extracts from verified documents, an opinion from a judicial psychology and pedagogy service employee.6. Conducting a court hearing. Adoption cases are heard by the court, with the mandatory involvement of the adopting parents themselves, guardians and guardians, as well as a prosecutor. Based on the results of reviewing the case files, the court will make a final decision on the adoption. All of these steps must comply with legal regulations and be carried out within established requirements for adopting children.

## 2.1 Preparation of the case for judicial review

This stage begins after the application for adoption has been submitted. The specificity of this stage is that the training takes place both by the court and by the guardianship and custody authorities. The judge requires the guardianship and custody authorities at the location of the adopted child's residence to submit an opinion to the court on the validity and compatibility of the adoption with the child's interests.

The start of the preparation for trial of the adoption process is formalized through a court order.

One of the main objectives of preparing a case for trial is to clarify the actual circumstances that are significant for the correct decision of the case. It is necessary to establish the circumstances that need to be proved in the case, and then to determine the circumstances that must be proved by the claimant, the individuals involved in the case. Based on these circumstances, the court determines which facts are relevant to the case and thus forms the basis of evidence in the trial. If the judge finds that some of the necessary documents have not been attached to the guardianship or guardianship report, or if the documents do not meet certain requirements, he should request the relevant information from the guardianship authorities.

## 2.2 Consideration of an application for adoption

In the preliminary court hearing, a decision may be made on the termination of the case, which leaves the application without further consideration. The court assesses evidence from the moment the case is filed until the final decision is made. Therefore, the assessment of evidence can be both interim and final.

The list of required evidence in adoption cases is provided by the norms of the Civil Procedure Code of the Russian Federation. Through the study and analysis of these pieces of evidence, prepared in accordance with the current legislation, the court can determine the legal facts included in the subject matter of proof in adoption cases. An adoption application is considered in a closed court hearing, with the mandatory participation of the adoptive parents, a representative from the guardianship and guardianship authorities, a prosecutor, the child who has turned fourteen, and, if necessary, the parents, other interested parties, and the child themselves aged ten to fourteen. In order to ensure the legal protection of the secrecy of adoption, the court, under Article 273 of the Code of Criminal Procedure of the Russian Federation (CPC), considers all cases of this nature in a closed session, including the announcement of the decision. For this purpose, individuals involved in the consideration of the matter are advised of the need to maintain confidentiality of information relating to adoption that becomes known to them as well as the possibility of prosecution for disclosure of the adoption secret against the wishes of the adoptive parent, as provided for in Article 155 of the Russian Criminal Code, which is recorded in the court proceedings and confirmed by signatures of the relevant individuals. The court, after considering the application for adoption, will make a decision that will either satisfy the request of the adopting parents (adopting parent) for a child to be adopted or refuse to do so. If the court decides to accept the request, it will recognize the child as being adopted by the specific parents (parent) and indicate in the court order all the necessary information about the adopted child and adopting parents (adopters) for state registration of the adoption in civil registry offices.

Once the adoption application has been accepted, the rights and responsibilities of the adopting parents and the adopted child will begin from the moment the court's decision becomes effective.

# CONCLUSION

The main objective of this coursework was to analyze the process of adopting a child and to discuss the organization of work related to preparing a case for adoption for trial. Based on the results from the first chapter, we can conclude that adoption is a serious decision that is not suitable for everyone. This can be clearly seen from the list of requirements, starting with those for the adoptee and finishing with those for the adoptive parents (adoptive parent). However, if these requirements are met, then the procedure is available even for foreigners, stateless individuals, or citizens of the Russian Federation who are permanently residing outside of the territory of Russia.

The second chapter details the stages involved in preparing the case for trial, including the documents required for the adoption application and the overall preparation for the hearing. And finally, the third chapter discusses the possibility of cancelling adoption, its process, conditions, and consequences. Therefore, in this study, we have fully explored the issues related to the process of adopting a child, and our goal has been achieved.

# A list of sources used

1 The Constitution of the Russian Federation

2 <https://www.consultant.ru/document/cons_doc_LAW_39570/>

3 <https://www.consultant.ru/document/cons_doc_LAW_8982/>

4 https://www.consultant.ru/document/cons\_doc\_LAW\_26751/

5 https://www.vsrf.ru/documents/own/8369/