

INTERNATIONAL ADOPTION: REALITY AND CHALLENGES

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Abstract

The presented work is about one of the important issues of child adoption institute - international adoption. The main objective of the article is to discuss specific issues related to international adoption and to promote the role of Georgia in protection of children's rights. With the help of the research methods of comparative and logical analysis, the Georgian legislation "On Adoption and Foster Care" as well as different legal acts and statistical database of international adoption existing in Georgia nowadays will be realized.

Keywords: Child, International Adoption, Convention

Introduction

"Adoption is about finding families for children, not finding children for families".

Dr. Joyce Maguire Pavao

Almost every country of the world as well as Georgia suffers from the problem of childlessness. Many couples struggle with infertility and seek help to become parents by using any chance existed inside or outside the country. They all have one and the same dream: adopting a child, bringing him/her up and creating a perfect family. That is why conventions on the rights of a child are oriented towards their most important interest - a child should be grown and brought up in the atmosphere of love and understanding where the family conditions and parents' care will determine their well-being.

International adoption is considered to be an essential part of the adoption institute. This is an alternative form of adoption which is very important for different people of the world, although the matter of international adoption has always been the basis for great debates among protectors of human rights and children's rights.

It is also worth mentioning that only few documents can be found to regulate the institute of adoption and those that can be found are directed towards the protection of children from potential violence rather than making the process of international adoption easier.

"Private International Law" of Georgia is related to transnational adoption. The abovementioned law includes the principles of collision law for adoption. According to this law, the Article 52 of chapter VII establishes that the adoption process is regulated by the law of the country where adoptive parents are citizens, but adoption by one or both parents depends on the law of the country which is used for the general results of marriage.

According to this, if a Latvian citizen wants to adopt Georgian citizen living in Georgia, he/she cannot use the law of Georgia to regulate the process, but he/she has to use the law of Latvia. If an adoptive parent is a citizen of Georgia, then he/she must use the law of Georgia. Interests of children must be primary concern in making decisions about adoption. That is why the legislator takes into consideration the fact that the consent to adoption must be regulated by the same law for a child and for a person being in family-law relation to him/her. Also, to declare as a father or to give the name to a child in addition

depends on the law of the country where a child was born. But “if it is necessary for a child’s interest” – legislator permits to use the law of Georgia.

If we discuss this matter logically, we will see that in case of adoption, they must use the law of the country where an adoptive parent is a citizen, but the matters related to adoption is also regulated by the law of the country where a child is a citizen, and if a child’s interests demand, the Georgian law can be used.

From the period when Georgian Republic adopted the Law “On Adoption and Foster Care”, they do their best to achieve harmonization between standards of UN “Children’s Rights” Convention of 1989 and "Hague Convention" of 1993 “On protection of Children and Co-operation in Respect of Intercountry Adoption”, who are oriented towards protecting the interests of children.

The Georgian legislation “On Adoption and Foster Care” regulates international adoption which concerns two cases: The first one is when a Georgian citizen adopts a child from foreign country and the second one is when a citizen of the foreign country adopts a child from Georgia. According to the Article 19 of the same law establishes that a child can be adopted from Georgia only in case when it is impossible to return him/her to biological family or to be adopted by a Georgian citizen or by a person living in Georgia legally but is not a citizen of Georgia. As for citizens of the foreign countries, they can adopt a child who has not been adopted by a Georgian citizen during 8 months since registration. In fact, the agency studies the case and writes the conclusion in which the principal reasons are mentioned, why a child cannot be adopted in Georgia. On the basis of the study, the agency takes the interests of a child into consideration and begins the procedures of adoption in the foreign country. Hereby it’s necessary to do the expertise and make a conclusion on the health conditions of a child.

In case of international adoption in Georgia, the competent organ is the Agency (Service Centre within the system of Ministry of Labour, Health and Social Affairs, which is the central body of custody and care on the territory of Georgia), by which a citizen of foreign country must represent the following documentations in order to adopt a child:

1. Statement on the adoption of a child;
2. Wife’s or husband’s consent, in case one of them wants to adopt a child;
3. Identification document (ID card, passport, resident cart) copy;
4. Marriage certificate (if it exists);
5. Health certificate;
6. Medical – drug testing certificate;
7. Criminal record certificate;
8. Study of adoptive family conducted by the competent authority dealing with the problems of adoption in a foreign country;
9. Adoption permission given by the competent authority dealing with the problems of adoption in a foreign country;
10. Other documents (required by the agency).

An adoptive parent must include the age, sex and the following things about a child in the statement:

1. Health condition;
2. Origin of a child;
3. Religion;
4. Others.

It is also worth mentioning that all the above mentioned documents must be certified for legal purposes; they should be translated into Georgian language and notarized. But if a foreign adopter does not give a written consent to adopt a child in certain time, the child would be suggested to another adopter/adopters⁵.

In case of international adoption, the Agency must contact with the same kind of services of other countries according to demands of Hague Convention “On Protection of Children and Co-operation in Respect of Intercountry Adoption” as well as “demands of UN Convention “On Children’s Rights” and Georgian legislation “On Adoption and Foster Care”.

A citizen of foreign country can adopt a child from Georgia if an adoptive parent satisfies the demands of the law of the country and is registered legally.

According to the Article 5 of Georgian legislation "On Adoption and Foster Care", an adopter can be any capable person of the full legal age, except those who:

- a) was deprived of parental rights or adopted a child earlier, but their relationship was cancelled because of improper performance of duty;
- b) has limited parental rights according to the established law of Georgia;
- c) is not able to deal with the parental duty because of health conditions (according to the list confirmed by the Ministry);
- d) was recognized guilty by the court for grave or especially grave crime and the conviction is not removed according to the law of Georgia;
- e) was convicted for the crime established in XXIV chapter of Criminal Code of Georgia, and the conviction is not removed yet.

The Agency informs the Ministry of Internal Affairs of Georgia about the fact that the citizen of foreign country wants to adopt a child from Georgia.

In case of international adoption, the conclusion made by the Agency is represented to the corresponding Regional (City) Court in 1 week’s time. The interests of a child are protected by the authorized person from the agency in the court.

If the court recognizes that interests of an adoptive parent corresponds to the interests of a child, and all these will be done for his/her well-being, the decision on the adoption of a child is made, but it will not be publicized at the request of the applicant.

The court itself has to inform the Civil Acts Registration Organ about the decision in 5 days’ time after its entry into force. Adoption is real only after the day when the decision of the court comes to the force.

According to the statistics of international adoption in Georgia: 56 children were adopted abroad from Georgia in 2001; 122 – in 2002 (99% through direct adoption); 150 – in 2003 (99% through direct adoption); 39 children – in 2004 (most of them had health problems, 3 of them through kinship adoption); 17 – in 2005 (one of them was kinship adoption); 9 – in 2006 (3 of them were kinship adoptions); 5 – in 2007; 7 – in 2008; 1 – in 2009 (in New Zealand); 3 – in 2010 (one of them in Italy and others in the USA); 1 – in 2011 (Sweden); none – in 2012; 4 – in 2013 (the USA).

It is obvious that from 2001 to 2013, the statistics of international adoption differs in Georgia. If there are considerable amount of data of international adoption from 2001 to 2009, only 9 children were adopted abroad from Georgia since 2009 until 2013 and according to statistics, they were children with disabilities.

This is due to the fact that the Ministry of Labour, Health and Social Affairs in Georgia took over the adoption cases and began to work in this field in 2009, since then a healthy child has no longer been adopted abroad from Georgia. This can be said to be positively significant fact.

But if we take into consideration that including the 1st of August of 2013, 178 children, having the fostered status are represented on registration (35 of the children are disabled, 41 healthy (20 from them refuse to be adopted) and 102 having the health problems (mostly serious) are among them). We consider that the condition of each child adopted abroad is as important as the condition of children adopted inside the country.

It is true that Georgian legislation “On Adoption and Foster Care” provides further control on international adoption, as the central authority, on the basis of special agreement, asks the central authority of the adoptive country (in case there is not such kind of authority, then – the corresponding licensed or accredited authorized organization) to give them information each year about the health and social conditions of a child adopted from Georgia with the help of special form (made by the Ministry), before an adopted child is 18. But we think that this is not enough. Moreover, the placement control should be done during certain time in order to check the conditions of the adopted child and the recipient countries should be more involved for getting confidence between countries, without being in constant fear of exploitation, because the part of the critics believe that international adoption may be considered as an extreme form of exploitation, when poor and powerless children can be adopted by rich and powerful parents

We certainly cannot raise the question of the competence of central authorities, because in case of international adoption by a foreign adoptive parent the matter is discussed by the Ministry of Internal Affairs, but we consider that if we work out an effective mechanism of control, we can manage to protect a child’s interests.

The situation is more complicated in case of the adoption of children with special needs and children having health problems. According to the official letter of SSA (04/77449 (26 August 2013), a legal entity in the Ministry of Labour, Health and Social Affairs in Georgia, 35 children with special needs and 102 children having health problems (mostly serious) are registered in the database. This points to the fact that adoption of this kind of children inside the country can be a problem and the majority of adoptive parents refuse to adopt these children and take care of them the way they would do in case of the healthy children.

But we do not have the right to violate them when the economic situation of the country is not advancing and only minor concessions are established in the Tax Code of Georgia for the children with special needs and not only the children but also for the foster parents. Potential foster parents should be the philanthropists to adopt a child with special needs or a child with significant disabilities, since such kind of children need not only care, but also expensive medicines and treatments that is somewhat of a luxury for ordinary adoptive parents nowadays. This is the reason I think that some changes should be made in the Tax Code of Georgia in case of adoption of these kinds of children.

At present time, the tax-exemption is considered by the second part of the Article 82 of the Tax Code. Specifically it is stated, that:

The following people can avoid taxable incomes:

- A) A person who receives the amount of 3000 GEL taxable income during the calendar year.
 - A.a) Citizens of Georgia who were the participants of the Second World War, or took part in the battles for territorial integrity of Georgia;
 - A.b) A person who has assigned the title of “Mother of Georgia”;
 - A.c) Single mother;
 - A.d) A person who has adopted a child (during a year from adoption);
 - A.e) A person who has fostered a child;
 - A.f) For a person living in the mountainous region (who supports three or more children under 18 years of age), who works in the same region and also for a person living in the mountainous region, who has one or two children (who supports three or more children under 18 years of age) and works in the same region, the tax is reduced by 50 percent on received 3000 GEL during the calendar year.
- B) When a person with special needs from childhood or a person with significant disabilities receives the taxable income up to 6000 GEL during the calendar year.

I want to focus on the “B” sub-point of the second part of the abovementioned Article. In particular, when people with special needs from childhood or people with significant disabilities receive the taxable income up to 6000 GEL during the calendar year”, use tax privileges, were not foreseen by the previous edition of the Tax Code of Georgia.

This change was made on July 30, 2013 and entered into force on January 1, 2014 what is a remarkable fact. The state paid attention to such kind of people too.

But no word is mentioned here about the benefits for adoptive parents who want to foster a child with special needs from childhood or a child with significant disabilities, for having desire to adopt such kind of a child and take him/her to the family.

Here comes the question whether the restriction to 3000 GEL is enough or not if we see the social background nowadays. Do the prices go up on the current market when the standard of living is increasing day by day? Is the taxable income of 6000 GEL during a year enough for children with special needs or children with disabilities? They need a considerable amount of money to feed themselves, take medicines and at least take care of themselves. That is why we think that an adoptive parent must get help from the state not only during a year from the adoption, but until a child is an adult. And a person, who adopts a child with special needs, must receive the amount of 700 GEL each month until adulthood. In addition, people whose taxable income during the calendar year reaches up to 6000 GEL must not be taxed.

Thus, according to our point of view, the abovementioned section must be formed as follows:

According to the second part of the Article 82 of Tax Code of Georgia, income must not be taxable for:

- A) The following individuals who receive the amount of 6000 GEL taxable income during the calendar year.
 - A.a) The citizen of Georgia who participated in the Second World War, or took part in the battles for territorial integrity of Georgia;
 - A.b) The person who has assigned the title of “mother of Georgia”;
 - A.c) Single mothers;
 - A.d) Adoptive parent (From adoption to adulthood);
 - A.e) Foster parent;
 - A.f) For a person living in the mountainous region (who supports three or more children under 18 years of age), who works in the same region and also for a person living in the mountainous region, who has one or two children (who supports three or more children under 18 years of age) and works in the same region, the tax is reduced by 50 percent on received 6000 GEL during the calendar year.
- B) When a person with special needs from childhood or a person with significant disabilities receives the taxable income up to 8000 GEL during the calendar year.
- C) A person, who has adopted a child with special needs or a child with disabilities, according to a “B” sub-point of the same section, can use tax credit and receive the amount of 700 GEL each month from the government until the child is adult.

As Natia Partskhaladze, the director of the “UNICEF” Child Protection Program notes: “The fact that everyone wants a healthy child, depends on social processes existed in the country. People avoid additional expenses. As for the children with disabilities, they need treatment and special care”.

This is the reason why it would be very important to make these changes and provide loving and harmonious environment for our future generations.

Conclusion

If we reduce all of these discussions to some of the thesis, we will conclude that the issue of international adoption requires significant efforts from the state. In particular:

1. Effective controlling mechanisms must be developed for international adoption. Government has to ensure the protection of children, for not being in constant fear of exploitation, as sometimes there are cases when poor and sick children are adopted by the rich and powerful parents.
2. Changes should be made in the second part of the Article 82 of the Tax Code of Georgia, for giving adopters the desire to adopt a child with special needs. In particular, the second part of the Article 82 of the Tax Code of Georgia should be formed as follows:

People who must be free from taxable incomes are:

- A) The following individuals who receive the amount of 6000 GEL taxable income during the calendar year.
 - A.a) The citizen of Georgia who participated in the Second World War or took part in the battles for territorial integrity of Georgia;
 - A.b) The person who has assigned the title of “mother of Georgia”;
 - A.c) Single mothers;
 - A.d) Adoptive parent (From adoption to adulthood);
 - A.e) Foster parent;
 - A.f) For a person living in the mountainous region (who supports three or more children under 18 years of age), who works in the same region and also for a person living in the mountainous region, who has one or two children (who supports three or more children under 18 years of age) and works in the same region, the tax is reduced by 50 percent on received 6000 GEL during the calendar year.
- B) When a person with special needs from childhood or a person with significant disabilities receives the taxable income up to 8000 GEL during the calendar year.
- C) A person, who has adopted a child with special needs or a child with disabilities, according to a “B” sub-point of the same section, can use tax credit and receive the amount of 700 GEL each month from the government until the child is adult.

And finally, international adoption is one of the real opportunities to give a child his/her own family. Each government should try to provide harmonious, loving environment to live where the adopted child will be brought up peacefully.

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