

Current Controversies and Solutions Related to Adoption in Georgia

Kukhianidze Ketevan, PhD student
Grigol Robakidze University, Tbilisi, Georgia

Abstract

Adoption in Georgia is a matter of Family Law. The institute, in its essence, has always been one of the most sensitive matters which was getting more and more actual as the centuries passed and is still faced as one of the most important issues of the modern era, which needs a new approach and deep analysis.

This article aims to review the current issues related to the adoption and suggest the recommendations on improvement of the institute.

Keywords: Adoption, adoptive parent, control, psychologist, confidentiality

Introduction

Adoption is regulated by the constitution of Georgia, international treaties and agreements, the Civil Code of Georgia, the law of Georgia on "Adoption and Foster Care" and other legal acts. [8, 6] However, nowadays, the institute of adoption in Georgia isn't well-organized and needs to be improved and adapted to innovations, which should mostly be determined by the protection of child's best interests.

Government's primary task is to look after the children left without warmth and parental care and to bring them up in favorable conditions and it has responsibility to create a loving, healthy family environment for each child and ensure a happy childhood for them.

The fact is that the adoption has always been a complex process and the potential adoptive parents had to wait for years to adopt a child with the help of official agency.

That's why the majority of people wishing to adopt a child chose a way to make it in an informal way, by private agreements and to buy a child illegally. Although there were changes in a new law on "Adoption and Foster Care", which made it easier to adopt a child, still the problem remained unsolved. Problems can be grouped in the following aspects:

Illegal adoption

The first thing that should be noted is associated with illegal adoption. Despite the fact, that abovementioned actions are not rumored in the society, which can be explained by the hidden actions in many cases and is difficult to understand whether the private agreement took place between the adoptive parent(s) and the biological parent(s) or not, at least we believe that system of police and prosecutor's office should be improved and involved more seriously in the process of adoption and the use of dominant right in adoption process will help to prevent illegal adoption and to give a proven and reliable information to the Social Service Agency about the action of adoptive and biological parents. [7]

We believe that the social workers must operate more rapidly as it is mentioned in The Hague Convention on "the Protection of Children and Cooperation in Respect of Intercountry Adoption", which obliges the states to act quickly during the process of adoption and this will help to eliminate the problem.

The social workers need constant trainings and professional development for the effectiveness of adoption procedure. Certain trainings must be conducted for them, so that they could share international standards and learn from the experience of other countries and use it in their own practice.

Assessing Adoptive Parents

The second issue which is worth paying attention to is the assessment institute of adoptive parents.

According to the current law of Georgia there are a few number of requirements for assessing adoptive parent. One can often read the following assessment in the conclusion of social workers: "they have a flat, space X square-meters, secure living conditions, satisfactory sanitary hygiene, with some furniture and home appliances, continuous electricity etc. Living space and conditions, appliances and furniture, utilities: electricity, gas and water". But it isn't determined what kind of financial indicator a potential parent should have, for considering whether a child will be ensured in given family or not, what level of education is satisfactory and there is no indication as well about what kind of personal features and social status in society corresponds to the standards. The social workers often assess adoptive parents by following words: "family has open borders to actively interact with the environment systems, they have a strong social support network."

It's obvious that while assessing adoptive parent, the social worker, who is in charge of the case, is responsible for taking into consideration every concrete situation about the environment in which a child is going to

be brought up and make a conclusion whether his/her future will be secured in that family or not.

As it is known the law of Georgia on “Adoption and Foster Care” Article 15 [2] concerns the registration of adoptive families/parents. Article is about the list of documents the adoptive parent is obliged to submit. We believe, that this list must be expanded and the education certificate (high school diploma) , if divorced – the court’s decision on legal divorce or a valid copy of the divorce document, if a widow – her husband’s death certificate should be added. Therefore the abovementioned Article 15 needs to be changed and formed in a new way:

Article 15. Registration of adoptive families/parents

2) When the adoptive parent agrees to adopt the child offered by the local guardianship and curatorship authority, the one is obliged to submit the local guardianship and curatorship authority the following documents:

a) The spouse’s consent, if the child is being adopted by one of the spouses;

b) Copy of the ID document (personal ID, passport, residence ID);

c) Copy of the marriage certificate (if applicable);

d) In case of divorce – the Court’s decision on legal divorce or a valid copy of the divorce document, if a widow – her husband’s death certificate;

e) Education certificate (high school diploma);

f) Reference sheet on health condition;

g) Reference sheet of the medical-narcological inspection;

h) Reference sheet on the criminal record.

As it is known, the order N50/N of the Minister of Labor Health and Social Affairs of Georgia, proposed on February 26, 2010, about “ Establishing the Procedures and Forms of the Adoption” Article 15 is about the conclusion on adoption. [5]

Paragraph 5 of the abovementioned Article implies the facts that should be included in conclusion on adoption.

Article 15. Conclusion on adoption

5. Conclusion on adoption includes the following:

a) Biographic data, personal characteristics, social and health conditions of the adoptive parent, the motive for adopting a child;

b) Biographic data, personal characteristics, social and health conditions of the child to be adopted.

In our opinion, given paragraph doesn’t push social workers to study personal characteristics or social and health condition of adoptive parent more deeply, which contributes to superficial approach towards a matter of adoption. We believe that it’s necessary to concrete the criteria of the assessment of personal and family conditions of the adoptive parent and

determine the validity of the conclusion – a period of 2 years. In particular, in case of obtaining a positive conclusion for child adoption, the consent will be valid during the period of 2 years.

Assessment of adoptive parent, carried out by the social worker, consists of no more than three pages, where the condition of adoptive parent and family is briefly noted, when the same type of conclusion prepared abroad may consists of 20-30 pages. Therefore we consider that Article 15, paragraph 5 must be amended as follows:

5. Conclusion on adoption includes:

a.a. Biographic data of adoptive parents (their history, childhood, youth, school years, education certificate);

a.b. Personal characteristics (habits and interests, information about the membership of any club or association, leisure time, hobby); adoptive parent(s)'s ability to deal with stress; adoptive parent(s)'s parenting skills; relationship with their parents and siblings (if there exist ones);

a.c. Adoptive parent(s)'s economic condition and financial management skills;

a.d. Social status of adoptive parent(s) – living conditions;

a.e. Health conditions;

a.f. Emotional condition (mental condition) and stability – the psychologist's conclusion should be presented;

a.g. Criminal record of adoptive parent(s);

a.h. Information about friends and relatives;

a.i. The motive for adopting a child, the parent(s)'s opinion about the fact of revealing origin of the child;

b) Biographic data, personal characteristics, social and health conditions of the child to be adopted.

In case of obtaining positive conclusion for child adoption for child adoption, the consent will be valid during the period of two years.

Confidentiality of Adoption

The third issue related to adoption is to keep adoption secret. As we know, the Civil Code of Georgia, Article 1263 prohibits the publication of information about the adoption, which means that the collection and disclosure of information regarding the adoption without consent of the adoptive parent is prohibited, until the adopted child turns 18. Also, the collection and disclosure of information regarding the adoption is prohibited without consent of the adoptee, if he/she has already turned 18, even if there isn't consent of the biological parent, the collection and disclosure of information regarding the adoption is prohibited. [1]

That's why the legislator establishes a high standard to keep adoption secret and any person who discloses the fact of adoption shall be held

accountable according to the rules prescribed by law of Georgia on "Adoption and Foster Care".

Despite this fact, there are numbers of “well-wishers” who reveal the fact of adoption and make a harmful effect upon the child. Partly, “accidentally” understood truth can be difficult for a child to accept, as he/she wasn’t told the truth by parents when it was time.

That’s why, it’s necessary for adoptive parent, to timely analyse the results that could happen in case the child is told the truth by another person and together with psychologist they should gradually inform the child about adoption.

The fact is that there are many cases when adoptive parents are in difficult situations for not telling the truth on time to the child they adopted.

We believe that the Civil Code of Georgia, Article 1263 should be changed and the following sentence should be added: “taking into consideration the child’s psycho-physiological state, the adoptive parent should be allowed to tell the adoptee about the fact of adoption”, and it should be formed as follows: [6, 102]

Article 1263. Disclosure of Information on Adoption Not Allowed

1. The collection and disclosure of information regarding an adoption without the consent of the adoptive parent is prohibited, until the child turns 18.
2. The collection and disclosure of information regarding an adoption without the consent of the adopted child is prohibited, if he/she has already turned 18.
3. The collection and disclosure of information about the biological parent(s) is prohibited without their consent.
4. Taking into consideration the child’s psycho-physiological state, the adoptive parent should be allowed to tell the adoptee about the fact of adoption.
5. A person who discloses the fact of adoption shall be held accountable according to the rules prescribed by law.

Despite the fact, that according to the Criminal Code of Georgia Article 175 disclosure of adoption secret without the adoptive parent’s wish is punishable, we believe that the punishments aren’t so strict, as compared to the sufferings the adoptive parent and adopted child go through, and they need to be tightened. The period of corrective labour should be increased from 6 months to one year, and the same action, by the one who is obliged to keep the fact of adoption as official and professional secret, that has given rise to any grave consequence, - shall be punishable by the restriction of freedom from three to five years or by imprisonment similar in length, by deprivation of right to occupy a position or pursue a particular activity from three to five years in length. [4]

We believe, that the change should be done in a mentioned Article and it should be formed as follows:

1. Disclosure of adoption secret without the adoptive parent's wish, - shall be punishable by fine or corrective labour for up to one year in length.
2. The same action:
 - a) the same action, by the one who is obliged to keep the fact of adoption as official and professional secret;
 - b) that has given rise to any grave consequence, - shall be punishable by the restriction of freedom from three to five years or by imprisonment similar in length, by deprivation of right to occupy a position or pursue a particular activity from three to five years in length.

In order to raise awareness in the community and increase the amount of such kind of victims who apply to the Interior Ministry in order to make sure that a person who committed a crime doesn't remain unpunished, the following measures must be taken:

- A) Social advertisements should be shown on TV and social networks in order to inform the population. Provide them with the information about what would happen if anyone dares to disclose the secret of adoption;
- B) Make informational brochures where there will be the results of disclosure of adoption secrets.

Institute of psychologist

The fourth issue worth mentioning is to introduce the institute of psychologist and increase the involvement in the adoption proceedings. Institute of psychologist is not provided in legal acts regulating the adoption process.

We think that as far as the process of adoption is a very specific matter, the psychologist's involvement is necessary from the beginning to the end of the process, in particular, in the assessment of adoptive parents and preparation of the conclusion about the readiness of them to adopt a child and compatibility of the child to be adopted.

Improvement of Court System on adoption proceedings

We believe, that the fifth issue worth considering is the improvement of court system, which makes final decision on adoption. In particular, the system of court isn't well-motivated in the child adoption proceedings. It only relies on the conclusion of Social Service Agency, which may consist of 1-3 pages and provide the information about the study of adoptive parents and family. The judge isn't aware of studying the case in-depth during court hearing and determine what's best for a child. Such kind of hearings may not last more than 10 minutes. In such a short period of time, we think that it's impossible to determine the child's best interests. That's why, changes

should be made in the law on “Adoption and Foster Care” and the “Civil Procedure Code” and the court should gain a right to include the psychologist as an independent expert in the specific case.

The basis of reversal and nullification of court decision on adoption

If we study the law of Georgia on “Adoption and Foster care”[2], we will see that the basis of reversal and nullification of court decision on adoption are not separated from each other, the latter is regulated by general standards of the legislation of Georgia. As far as the adoption is a very specific matter, it needs to be concretized and it’s necessary to merge the basis of reversal and nullification of court decision from each other, without proceedings from general standards. In particular, the law on "Adoption and Foster Care”, Article 27, sixth paragraph states that the court decision on adoption can be declared null and void in compliance with the rule for nullification of court decisions, established by the law of Georgia. We think, that the basis of nullification of court decision should be specified and the reasons by which the court decision on adoption can be declared null should be provided in an exact way.[10,365]

Social benefits

One of the biggest problems in our country in reality, is the adoption of children with disabilities by adoptive parents living in Georgia, their mentality and attitude, that they all want a “healthy child”.

It would be good if government introduces encouraging measures for adoptive parents and prove those measures by legislation.

Changes should be made in the Tax Code of Georgia, in order to simplify the adoption process and improve approaches for regulation of adoption of children with disabilities.

Taxable income should not be the subject to the tax exemption during the calendar year after adoption, as it is mentioned in the Tax Code of Georgia, Article 82 a.d. sub-paragraph of the second paragraph. But we believe, that this period should continue until adulthood of the adoptee. In addition, there is nothing mentioned about a person who adopts the child with disabilities or a child with apparent or strongly apparent disabilities. We think that only tax exemption isn’t enough for them and they should be given the amount of 700 Lari as the government assistance until the adopted child becomes an adult. [11, 176-177]

That’s why the second paragraph of Article 82 from the Tax Code of Georgia, needs to be changed in a following way:

2) The following types of individuals should be exempt from paying taxes:

A) taxable income of the following individuals up to 3 000 Lari received during the calendar year.

a.a) the citizens of Georgia that participated in World War II and the battles for territorial integrity of Georgia;

a.b.) a person who has been assigned an honorary title of “Kartlis Deda” (“Mother of Georgia”);

a.c) a single mother;

a.d) a person who has adopted a child (after the adoption until the adulthood);

a.e) a person who has taken a child under foster care;

a.f) taxable income received during a calendar year by an individual with many children residing in a highly mountainous region (who has three or more dependent children under age 18) from the activity in the above-mentioned region, and the income tax payable for up to 3,000 Lari of taxable income received during a calendar year by an individual with one or two children (who has one or two depended children under age 18) residing in a high mountainous region from activity in the above- mentioned region shall be reduced by 50 percent.

B) taxable income up to 6000 Lari received during a calendar year by a person with disability since childhood, as well as the person with apparent or strongly apparent disabilities.

B.1) a person who adopted a child with disability since childhood or a child apparent or strongly apparent disabilities should make a profit by tax credit and should be given 700 Lari annually until the child becomes adult;

B.2) the citizens of Georgia that participated in “Peacekeeping Military Operations” or in other activities for maintenance and restoration of international peace and security, and were badly injured during the operation, should get a taxable income up to 6000 Lari during the calendar year.

C) an individual residing in a highly mountainous region, from the activity in the abovementioned region should receive a taxable income up to 6000 Lari during the calendar year, besides the salary income from budget organization.

If we look through the practice of other countries, we will see, that the adoptive parent living there is given a social assistance after adoption. For example, on December 8, 2010 a law was enacted by Kurgansky district, law N81 - “ To support adoptive parents who adopt unaccompanied children and minors”, which is still valid nowadays, as one-time financial encouragement of parents who adopt a child : 20000 Ruble – after the court decision about the adoption of orphan child enters into force; 120000 Ruble – in case of adopting a minor with special needs, or disabilities, or 10 years of age, or orphan child together with his/her brothers and sisters; 200000 Ruble – for adoption of child under the age of 3.

100000 Ruble for adoption of 10-year-old minor; 250000 ruble – in case of adoption after acceptance of primary education (and 150000 Ruble – after finishing the boarding school).

In addition the ladies will get the monetary compensation (материнский капитал) if they: 1) adopt a second child; 2) adopt a third or subsequent child if in the meantime they didn't use the financial assistance like that. The lonely men are also given opportunity to get the monetary compensation in case they adopt a second, third or subsequent child if in the meantime they also didn't use the financial assistance like that.

Financial assistance (материнский капитал) is annually reviewed by authorities because of changes in Inflation, which is reflected in the federal budget and is regulated by federal law. On January 1, 2014 the amount of financial assistance was 429 408 Ruble. [15]

It's also interesting, that in contrast to Russian legislation which provide a one-time assistance, for adoptive parents after adoption, from the local budget, the amount of which could reach 300000 Ruble and in some regions the adoptive parents may also be given a residence document, completely different regulations are in the United States. Adoptive parents do not receive social assistance from the states, but on the contrary, they pay out tens of thousands of dollars during the procedures of adoption (however, they have tax benefits after the adoption. For example, in 2012 the amount of tax benefit made up \$12650). [13]

Ukrainian legislation preserves the right on social assistance as well. In particular, the adoptee preserves the right on pension and other social payments, Survivor's benefit as well.

The state is trying to help the adoptive parents, that's why the legislation provides state assistance for them and the adoptive parents may also use their vacation time. The Cabinet of Ministers of Ukraine made a resolution on December 27, Article N1751(Revised) about “Approval of the Procedure for Appointment and Payment of the Government Assistance to Families with Children”. In case of adopting a minor (whose parents have been deprived of parental rights) or an orphan, adoptive parent, a citizen permanently residing in the territory of Ukraine, gets the right to take government assistance. Support will also be given to each adopted child after the court decision on adoption enters into force.

It should be noted, that in order to get the assistance, an individual should apply to the appropriate authority within 12 calendar months of the year, after the court decision enters into force, because, after mentioned period adoptive parent is deprived of right to receive assistance. [14]

Study of the laws of foreign countries helped to demonstrated the important aspects needed for effective transaction of the process of adoption.

Post-adoption control

A very important problem is that there doesn't exist any post-adoption controls inside the country, which would have made us sure whether the adoption corresponds to the best interests of the child or not. The law of Georgia on "Adoption and Foster Care " doesn't say anything about such approaches.

For making sure that the baby is growing up in a healthy environment and the adoption corresponds to its original purpose, it's necessary to create the controlling mechanism, in order to enable the state to take care of the child after adoption and establish control on adoptive parents and family.

We believe, that such kind of institute should be created within the Ministry of Labor, Health and Social Affairs for controlling the adoptive parent(s) or family during certain period of time, for example, within 2 years after the court decision enters into force. [10, 364]

We think, that post-adoption control standards should be reflected in the law on "Adoption and Foster Care",[2] where there should be made some changes in the Article 26 first paragraph and it should be formed as follows:

Article 26. Post-adoption control

1. In case of domestic adoption the guardianship and curatorship authority has to control adoptive family regularly in their place of residence, during the period of 2 years after the court decision on adoption enters into force.
2. During international adoption, the central body is obliged to request, based on the special Agreement, from the central body of the adoptive country (in case of non-existence of such body – with the licensed or/and accredited relevant authorized organization) to annually submit information about the health and social condition of the child adopted from Georgia, in compliance with the special form, until the adopted child becomes 18 years old.
3. The Ministry approves the special form for submitting information about the health and social condition of the child adopted from Georgia.

If we look through the examples of other countries, we will see that some foreign countries impose control during a certain period of time after adoption. For example, in Bulgaria the state organizations are charged to monitor the family who has adopted the child, during at least two years after adoption. [12] In addition, Cabinet of Ministers of the Republic of Latvia submitted the regulation N111 on the "Procedures of Adoption", according to which, during the period of two years, after the Orphan's court (According to second paragraph of regulating law Orphan's court is a guardianship and trusteeship institution established in some district, city or by local parish authority) makes final decision on adoption, adoptive families are controlled regularly (in their place of residence).

Conclusion

According to the research analysis and findings included in this work, we may conclude, that the legal acts regulating the process of adoption need to be improved and refined, in order to simplify the adoption process and to ensure the encouragements for adoptive parents in the country.

1. The system of police and prosecutor's office should be improved and involved more seriously in the child adoption proceedings and the use of dominant right in adoption process will help to prevent illegal adoption and to give a proven and reliable information to the Social Service Agency about the action of adoptive and biological parents.

2. The social workers need constant trainings and professional development for the effectiveness of adoption procedures.

3. The list of needed documentations related to candidates' request to adopt a child should be specified in detail in the law of Georgia on "Adoption and Foster Care".

4. It's also necessary to specify the criteria for the assessment of personal and family conditions of the adoptive parent and to determine the validity of positive conclusion prepared by the Social Service Agency – during a period of two years.

5. A record should be included in the Civil Code of Georgia Article 1263 about confidentiality of adoption, according to which the adoptive parent will be given the right to inform a child about the fact of adoption, by taking into consideration his/her psycho-physiological condition.

6. The institute of psychologist should be activated. A psychologist should be involved in the case of adoption from the very beginning to the end.

7. Court system should be improved while handling adoption cases. Changes should be made in the law on "Adoption and Foster Care" and the "Civil Procedure Code" and the court should gain a right to include the psychologist as an independent expert in the specific case.

8. We think, that the basis of nullification of court decision should be specified and the reasons by which the court decision on adoption can be declared null should be determined by certain paragraphs in an exact way.

9. It would be good if government introduces encouraging measures for adoptive parents and improve approaches for regulation of adoption of children with disabilities. Taxable income should not be the subject to the tax exemption during the calendar year after adoption, as it is mentioned in the Article 82 a.d. sub-paragraph of the second paragraph. But we believe, that the record should be added to the Tax Code of Georgia and this period should be extended until adulthood of the adoptee. In addition, there is nothing said about the person who adopts a child with disabilities or a child with apparent or strongly apparent disabilities. We think that only tax

exemption isn't enough for them and they should be given the amount of 700 Lari as the government assistance until the adopted child becomes an adult.

10. The creation of controlling mechanism is necessary as well, to enable the state to take care of the child after adoption and establish control on adoptive parents and family during certain period of time. Such kind of institute should be created within the Ministry of Labor, Health and Social Affairs for controlling the adoptive parent(s) or family during 2 years after the court decision on adoption enters into force.

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