

## CHILD ADOPTION PROCEDURE UNDER GERMAN LAW

**Soliyeva Kamola Rustamjon-kizi**

*Master degree, Tashkent state university of Law*

Child adoption is a priority form of placing a child in a family for upbringing, in which a family relationship is legally established between the child and a person or a couple who are not his birth father and mother.

Article 6, Part 1 of the German Constitution stipulates that marriage and family are under the special protection of the state. The concept of "family" covers the relationship between parents and their children. It should be understood primarily as an expression of the constitutional "guarantee of the institution", a fundamental value enshrined in public and private law. According to part 2 of this article, the care and upbringing of children is the natural right and main duty of parents.

The main source of German family law is the fourth book of the Civil Code, which consists of four chapters. The first three are related to "Civil Marriage", "Family Relations" and "Custody". However, many issues are regulated by judicial practice, in particular, a detailed description of the procedure for obtaining guardianship rights<sup>57</sup>.

The legal basis for regulating adoption in Germany is Articles 1741-1766 and 1767-1772 of the German Civil Code.

At the same time, the German Civil Code does not define the concept of "adoption", it is allowed only if the adoption is in the best interests of the child, and it is said that warm relations between the adopter and the child should be expected. (Part 1, 1741)<sup>58</sup>.

For thousands of years, the institution of adoption in Germany was developed to help childless couples (or single people) get an heir to continue their dynasty and pass on their inheritance after their death. And only from the last decades, the interests of minors began to be given great importance. Now the priority is to help children who are in need of material conditions or deprived of parental love<sup>59</sup>.

Based on this, Article 1741 of the German Civil Code defines the purpose of adoption: "It is permissible to adopt a child if it serves his interests and it is expected that a warm relationship will develop between the adopter and the child."

In 1977, the adoption procedure in Germany was radically changed. Since then, many changes have been made to the legislation governing these issues, the most recent of which is related to the reform of the institution of child adoption. The purpose of these changes was, firstly, to put an end to the illegal practice of mediation in adoption

<sup>57</sup> Ботчаева М.А. Усыновление по российскому и германскому праву //Актуальные проблемы российского права. 2009. №3. С. 546&551.

<sup>58</sup> Развитие законодательства об иностранном усыновлении в США, Италии, Испании, Канаде // URL: <<http://www.easyschool.ru/>> (дата обращения: 31.05.2013)

<sup>59</sup> Горев О. Русская Германия. Как законно усыновить ребенка в Германии // URL: <[http://www.rgrb.de/law/2003/20\\_1.shtml](http://www.rgrb.de/law/2003/20_1.shtml)> (дата обращения:07.06.2013).

(including the adoption of foreign children), and secondly, to strengthen the legal status of fathers who are not married to the child's mother.

Under this legislation, an adopted child must join the adoptive family as a birth child. Also, all kinship ties with the adopted child's biological parents are terminated. Adoption itself is carried out on the basis of the decision of the court on guardianship and sponsorship cases. Before issuing a decision on the implementation of adoption, the Court of Guardianship and Sponsorship together with the Department of Youth Welfare (Jugendum) must check the extent to which the adoption is in accordance with the rights and interests of the adopted child. A period of so-called "care time" or adjustment time is given before the adoption so that the subsequent adoption does not adversely affect the rights and interests of the child. In Germany, as a rule, it takes one year.

Spouses can adopt only jointly. There are only a few exceptions to the general rule. In addition, single persons can also adopt a child if certain conditions are met. According to statistics, adoptions by single individuals almost never happen. Germany's youth department experts, as well as judges, agree that there should be two adoptive parents.

The age of adopters should not be less than 21 years for women and 25 years for men. Single adopters cannot be under 25 years of age. At the same time, judicial practice shows that it is not appropriate to give babies and young children for adoption to persons older than 35-40 years. Of course, children can be adopted at this age, but guardianship and guardianship authorities offer adopters of this age to adopt older children<sup>60</sup>. The consent of the other is required for the adoption of one of the spouses. At the request of the adoptee, the guardianship and guardianship court may replace the said consent with its decision. If the consent is against the legal interests of the other spouse and the whole family, it is not allowed to replace it. According to official German statistics, Germany has a high adoption rate, with 16 families for every child.

According to the decision of the Constitutional Court, both biological parents must consent to the adoption of their child (even if they do not have custody). Also, the child, if he is over 14 years old, must express his consent to live in a family that is ready to accept him, and his wish must be confirmed by the consent of his legal representative. The guardian of the child is the Department of Youth Support, from the time when the application for consent to the adoption of the child is submitted by both parents until the decision on adoption is made by the court. At the same time, the obligation to support the child during the one-year trial period belongs to the adopters. But during this period, they will not be entitled to the corresponding child benefit.

The court may issue an adoption order without the consent of the biological parents, if the biological parents cannot be found despite a search, or if they cannot give their consent due to a serious (primarily mental) illness.

---

<sup>60</sup> Калинкина М. Как происходит усыновление детей? // URL: <<http://shkolazhizni.ru/archive/0/n&6977/>> (дата обращения: 07.06.2013).

To protect mothers of newborn babies, the law sets a period of eight weeks after the birth of the child, before which consent is not allowed. Thus, the law protects mothers from making hasty and thoughtless decisions. If the parents are not married and the father does not have custody, he can express his consent to adoption even before the birth of the child. It should be noted that consent to adoption in Germany must be notarized. After that, consent cannot be withdrawn.

The adoption process can be stopped when the adopters withdraw their application or the application for adoption is rejected (the conditions established by the law are not met).

In certain cases, the consent of the child's parents can be replaced by a decision of the guardianship and guardianship court for the following reasons:

- firstly*, the indifferent attitude of the parents to the child;
- secondly*, their willful neglect of parental duties for a long time;
- thirdly*, when a child is physically tortured or sexually abused by his parents.

In these cases, the consent of biological parents is not required.

German law provides for the possibility of invalidating an adoption. It should be noted that our national legislation rejects the possibility of invalidating an adoption. In Germany, adoption is considered invalid in strictly defined cases, for example, in the absence of prior consent of the parents, as well as if the adoption was carried out by misrepresentation, deception, threats (according to statistics, the number of such processes from the total number of adoptions is 10% constitutes ). In this case, the court finds the adoption invalid. The claim period in such cases is three years. It is during this period that the adoption process can be applied for in reverse order. In Germany this is called de-adoption. This happens, first of all, when mutual understanding is not developed between him and his new parents, in the interest of the child, when his future life in the new family becomes unbearable. The consequences of such a court decision include, firstly, the possibility of returning the child to his birth family to his biological parents, and secondly, the possibility of his adoption by other persons. When making an adoption decision in Germany, the court must first of all govern the observance and protection of the best interests of the child.

A child adopted or recognized as adopted by a German citizen under German law acquires German citizenship if he or she is under 18 years of age.

The compliance of an adoption outside Germany with German law, which leads to the granting of German citizenship to the adoptee, is determined by the public authorities of the Federal Republic of Germany. If the adoption of a child is recorded in one of the German civil status registers, this means that it is recognized under German law. The

validity of the adoption of a child outside Germany is not confirmed if its recognition is contrary to the rules of "good faith" or the laws of the Federal Republic of Germany<sup>61</sup>.

Thus, we can conclude that in Germany, the family based on kinship and the family based on adoption of a child are gradually approaching. Previously, this convergence was mainly due to the approximation of legal regulation of relations between adopted children and adopters to legal regulation of relations between parents and children. Currently, in Germany, the legal basis of the relationship between parents and children is increasingly approaching the legal basis of adoption. But, in spite of everything, adoption is the best type of family upbringing of children, because when children are adopted, they find themselves in conditions that are most similar to those that develop in a family based on kinship relations.

In conclusion, even in Germany, adoption as a complex legal issue requires certain guarantees of respect for the interests of the parties, especially the child, because mistakes in adoption can lead to violations of the rights of the child, as well as his parents and adopters.

#### LIST OF USED LITERATURE:

1. Ботчаева М.А. Усыновление по российскому и германскому праву //Актуальные проблемы российского права. 2009. №3. С. 546-551.
2. Развитие законодательства об иностранном усыновлении в США, Италии, Испании, Канаде // URL: <<http://www.easyschool.ru/>> (дата обращения: 31.05.2013)
3. Горев О. Русская Германия. Как законно усыновить ребенка в Германии // URL: <[http://www.rgrb.de/law/2003/20\\_1.shtml](http://www.rgrb.de/law/2003/20_1.shtml)> (дата обращения:07.06.2013).
4. Калинкина М. Как происходит усыновление детей? // URL: <<http://shkolazhizni.ru/archive/0/n& 6977/>> (дата обращения: 07.06.2013).

---

<sup>61</sup> Развитие законодательства об иностранном усыновлении в США, Италии, Испании, Канаде // URL: <<http://www.easyschool.ru/>> (дата обращения: 31.05.2013).