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**ADOPTION AND ADOPTION'S PROCEDURES IN THE BASIC
COURT IN GJILAN AFTER 2000**

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INTRODUCTION

Based on the circumstances and the existing factual situation after the war for the liberation of Kosovo from the serbian-slavic invasion, namely the dissolution of former SFR Yugoslavia, in the postwar in Kosovo, consolidated courts, in particular courts of Anamorava, respectively municipality of Gjilan that were appointed by the OSCE, as a model court for expertise and analysis, for the functioning of the legal order with the help, supervision and care of institutions, international organizations and other forms had begun an intensive trial work to settle a new legal order in comparison with the existing situation, starting with a legal infrastructure inherited from the former Yugoslavia, Serbia and SAP of Kosovo.

In the absence of legal infrastructure, Kosovo's courts began to apply all not discriminating laws of former SFR Yugoslavia, the Republic of Serbia, the Socialist Autonomous Province of Kosovo, in particular international conventions and other international acts, resolutions, regulations, orders and decisions of the UN, International Courts, UNMIK, OSCE, having a general attitude to avoid anarchy and establish social peace, tranquility and transnational tolerance, to establish a new legal order in the postwar Kosovo.

From the family law which precedes civil law, due to its specifics, as a branch of positive law, the utmost importance is the study of the family, while the theme of this study-scientific research will be the Institution the Adoption of Children, in particular the adoption procedure in the Basic Court of Gjilan after 2000, as a current issue not only in the region of Anamorav region, but also throughout the Republic of Kosovo.

Regarding the development of the family as the cell of society, now in Kosovo after 2000, namely population growth, except biomagnifications from marriage and outside marriage, the Institute of Adoption of Children and the procedures of establishing the adoption has an important role in this issue.

In the region of Anamorav, namely the Municipality of Gjilan, after the Kosovo's war, the Institute of the Adoption of Children has found support by disdaining the legal provisions of the laws that regulate adoption, competent courts, in particular the Basic Court in Gjilan with its branches, have established the adoption of children in different families proposed by adoptive and other cases, from the non legalized factual adoption, the fact that even in the Gjilan region the "factual adoption" is still current that is popularly known by the title "son spirit" of the adaptation family, and in such cases the factual adoption now has had cases that the adopted child without formal legalization grew in adoptive family, was held, fed, educated, married and now has created a new family with children.

Basic Court in Gjilan since 2000, after the Kosovo's war, has spoken of the establishment of adoption for married couples, adopter with the factual adoptee and legalized such factual adoptions, to formalize the legal status of factual adopters, which had not passed the age of 18.

Some factual adaptations were founded and created more under the rules of Albanian customary law, in particular by adapting the general rules of the Canon of Lek Dukagjini, which was implemented in Kosovo's society, since the legal Serbian-Slavic system was not our favorite and trusted system.

In the first Serbian-Croat-Slovene Monarchy and in Yugoslavia after World War II, the procedure of establishing adaptation for Albanian people and non-Serbian nationalities, it is manifested by several administrative state obstacles, other forms of segregation, by the regime of Yugoslav-Serbian-Slavic.

Yugoslav-Serbian-Slavic state and state authorities their intent and activities were focused on the disappearance, assimilation and expulsion of the Albanian nation, forcing them to pay higher taxes, prolonging - delaying the procedure and the procedural actions for adoption, national discrimination has been made in particular to Albanians in every area of life and with difficulty, they were unable to exercise their rights to adoption, and for the Albanian people under the Serbian-Slavic invaders in Kosovo and other regions have established the so-called factual adoption or adoption without judicial or administrative proceedings, by adhering to common law.

Albanian people have treated the adoptee anything more than a biological baby, so they called it as "nje per malle" and "birshpirt" or "hasret", for this the adoptee in the Albanian family has enjoyed all rights with great family support, was also privileged compared with siblings and this was manifested by advanced adopting from the Albanian nation in relation to the adoption of other nations, as adoptees with bliss have supported his upbringing, family and wider social circle.

Distrust of the Albanian nation for the Serbian-Slavic legal system, Prof. Dr. Muhamet Kelmendi, concluded: "the total decay of legal bodies" humanism "and their serious violations and unprecedented federal laws by Serbian cliques with purposes of terrorism" 1. The author has revealed that the Serbian-Slavic regime has used violence and state terror against the Albanian and non-Serbian people, until the liberation of Kosovo.

So on the territory of Kosovo, the created state should extend its sovereignty, while the will of the people cannot be defeated.

After the war Kosovo began to create institutions of the democratic state and for the first time Albanians and other citizens were enabled the realization of all rights on constitutional law. Democracy in Kosovo was used as competition for places and important political positions during the occasional free elections, to create a new democratic state on the principles of the European Union, marginalizing and abandoning the previous socialist-communist system of ex Yugoslavia.

Basic Court in Gjilan always appealed through the Center for Social Work in the municipality of Gjilan, civil society, different associations, governmental and nongovernmental organizations, different persons, persons with professional influence, so it has achieved the goal and request of adopters for the initiating of procedure for the adoption of children and

the legalization of existing factual adoptions in cities or developed villages, that the adoptee and the adopter to achieve legal certainty concerning legal rights and obligations that refer to the relevant laws.

Based on the collected data that are secret for publication, adoptions until 2007 were established by administrative procedures and competences of administrative bodies of the Center for Social Work and the Custodian Body in Gjilan.

From 2007 to 2013, the proposal for the review and consideration of adoption is reviewed and decided in contentious proceedings, from the Municipal Court in Gjilan and its branches.

By 2013 and onwards, the proposal for the review and establishment of adoption is reviewed and decided in contentious proceedings, from the Basic Court in Gjilan with its branches in Viti, Kamenica and Novo Brdo.

In this regard it is unofficially confirmed that from 2000-2013 there were 95% proposals for adoption that were performed non-contentious for adoption, meanwhile from in proceeding there may be pending cases from 2013 and also 2014, some cases may have problems or procedural obstacle in the progress of proceedings, technical barriers such as the possibility of getting children etc.

Regarding the refusal of requests for the imposition of adopting, all the proposals for the legalization of factual adoption are approved, while the postwar period from 2000 until the end of 2013 we had approximately 2-3 cases of refusal proposals for adoption and that for the parties' subjective reasons, because they have not fulfilled the conditions due to personal characteristics, economic issue etc.

The interest on the study of this topic has been a priority because the procedure for reviewing and establishing adoption according to the New Law for Family was transferred in competences the courts, but from 2007 and onwards the working author of this topic has proceeded most proposals and materials for adoption, in the Municipal Court and now in the Gjilan's Basic Court, applying the provisions of the Family Law in Kosovo.

The fact is that before the application of the New Law for Families in Kosovo, namely before 2007, responsible for the establishment of adoption in administrative procedure was the Center for Social Work-the Custodian, in Gjilan.

With the introduction of the New Law for Family in Kosovo, in some courts a duality about competence and how to proceed for the establishment of child's adoption were established. Some Centers for Social Work, in different municipalities of Kosovo were still operating by developing administrative procedures for adoption, considering that they are responsible for solving the issue of establishment of adoption. With the New Law for Family in Kosovo there were innovations in the legal system of Kosovo, especially regarding the procedure and the competence of the courts to review and propose for adoption.

On the other hand, a confusion was created among courts of different instances, while in some municipalities, the procedure for setting the establishment and adoption falls within the

jurisdiction of the District Courts, in some municipalities the procedure for the establishment and adoption falls within the jurisdiction of the Municipal Courts, since the New Law for Family in Kosovo, was not assigned specifically to any particular provision of competence to decide the issue.

Each state regulates the power of the courts and each institution that operates in the country with the Constitution, Laws and normative acts, which is essential for the functioning of the state and law, the courts judge according to the law, the decisions are all based in the law.

In this period, despite the fact that New Law for Family in Kosovo has confirmed that the institution of adoption and its foundation is initiated and completed in contentious proceedings by the courts, in spite of this, the Centers for Social Work continued to proceed with administrative procedure and decide for solving cases related to the adoption.

After creating a confusion about the type of procedure and the issue of jurisdiction for the establishment of adoption, according to the European legal standards outside Kosovo, no decision for adoption in administrative proceedings by CSW The Custodian was not accepted as legal, while other countries, especially the European Union, recognize the court decision on the establishment and adoption, while CSW administrative procedure during the adoption procedure, the parties have caused loss of time and costs, the parties again initiate proceedings in the competent courts.

Legal order in Europe, recognize the procedure of the adoption by the competent courts, meanwhile before the war and after 2000, until 2006, the Law on Marriage and Family Relations was applied, Official Gazette of the Socialist Province of Kosovo, No.10 / 1984 proposal for adoption was reviewed and placed in administrative proceedings within the competence of the public administration, the Center for Social Work - the Custodian in the relevant municipalities of Kosovo.

From 2006 and onwards, the procedure regarding the imposition of the adoption now in Kosovo is regulated by the New Law for Family in Kosovo, entered into force by UNMIK Regulation, Nr.20006 / 7, dated on 16.02.2006, Extrajudicial Procedure Law, Law of Civil Procedure, the Law on Personal Name, the Law on Registry Books, the Administrative Instruction of the Ministry of Labour and Social Welfare of Kosovo, regarding the establishment of the Panel for placing children without parental care , foster care and adoption, no.05/2006, on 17.07.2006, case law and obligations law, with commentary that provides, quote: basic principles for all obligations, Article 1 of this law and Article 2 cite the provisions of law applicable to the relations of regulated obligations by other legislation related to issues that are not regulated by these acts, here it refers to the Law on Family in Kosovo regarding the rights and obligations that parents carry in relation to children, adoptive with adopted children.

For the implementation of the procedure regarding the adoption, international sources are applied too, when there is legal emptiness and in case of conflict of laws there will be applied the International Treaties, the European Convention on Human Rights and Fundamental Freedoms of 1950, the World Convention on the Rights of the Child, adopted by the UN

Assembly, on 20.11.1989, Convention for the Protection of Children and Cooperation in relation of International Adoption, approved on 29.05.1993, in Hague and has entered into force on 01.25.1995, the European Convention on the Adoption of Children, on 27.11.2008, the Council of Europe and other international treaties.

I want that other study researchers to join in the further of their research contributing in the study of the adoption institute and the adoption procedure for the establishment in the competent courts, to help new generations of students and opinion as to closely get familiar with the rights and obligations arising on the occasion of the adoption, between adopters - the adoptee and vice versa.

Scientific-research work will consist of three parts: introduction, several chapters, conclusion and initial basic literature that is used during the research work, meanwhile the selection of the theme is the success and proposal of my mentor Prof. Dr. MuhametKelmendi, a lecturer at the AAB College in Pristine.

CONCLUSIONS AND RECOMMENDATIONS

The procedure for establishing adoption from 2000 to 2006 that was implemented in the administrative procedure, the Centre for Social Work and the Custodian, meanwhile in legal and judicial aspect, the Anamorava people have been less notified for this institute from the family right.

Kosovo's people with difficulty have realized the rights in the procedure for the establishment of adoption, because it was an administrative procedure and such decisions were rarely recognized in the European countries with which the various parties, in international terms were not able to realize some rights from establishment of adoption, with international character, or with a foreign element.

Republic of Kosovo in the status-family right has successfully managed the approval of the Family Law of Kosovo in 2006 by removing some of the drawbacks of the previous Law on Marriage and Family Relations, meanwhile a New Law on Family in Kosovo has been harmonized with international conventions, regulations and international recommendations, while Kosovo has achieved progress in the beginning of the application of international standards concerning the institution of adoption.

Through courts attitudes of higher instances of state, seminars, publications and commenting on the New Law for Family of Kosovo, I think that the population of this area is quite informed on the matter and may at any time realize the requirements in the written proposal, through the competent court for the establishment of the adoption.

Each person or couple and other persons are preferably-advised at any time to address the Basic Court in Gjilan for giving - getting councils to achieve their goals related to the adoption.

Basic Court in Gjilan is ready at any time to help its citizens in accordance with the law by giving advice to take action for the realization of their proposals-requirements regarding the establishment of adoption, care, housing and welfare of different categories of children.

Court within its competences that the Constitution and Law guarantees, will act urgently and with efficiency in the removal of criminal phenomena and prosecution of perpetrators of criminal acts that in the name of establishing the adoption benefit on trafficking and selling children, and for this the court officially and urgently would act in this regard with the assistance of the competent prosecution, would prevent such a phenomenon to isolate the perpetrators of negative phenomena, namely offenses of trafficking and sale of human beings, which will be put before justice.

Such action for the detection of negative phenomena that appear for adoption, that make the trafficking and selling of children would have been in the interest of the child or adopted child, protection of society and the human being, that would have been the object of crime, trafficking in human beings.

For all the information and notifications sent to Competent Courts and investigative bodies, positively impact the preservation of society, children and the elimination of criminal phenomenon that will save the man, the family, society and the state of Kosovo.

Court during the examination of false adopting or for the purpose of trafficking in children, the suspect or the adoptive proposer adoptive, makes the proposal unacceptable, despite the discovery of the such circumstance namely a criminal offense, the court possesses the legal capacity against such proposers called "Kuaziadoptues" will initiate criminal proceedings for a criminal offense that can be put on charge and take appropriate investigation action as necessary, which foresees the Kosovo's Penal Code and Code of Criminal Procedure of Kosovo.

Preferably every citizen, regardless of nationality, religion, or gender, in case that they have information or indications, evidence that there is such criminal activity for the false adoption by quasi adopters and child trafficking without hesitation notify the investigating bodies, the policy, competent prosecution and court, criminal department and civil department, in order to prevent such occurrences and preservation of society and the state from such unlawful negative phenomena, namely the protection and rescue of children from trafficking.

Material and literature is collected and used by referring to suggestions from the text "How to write a scientific work" that is used by the candidate of the paper.

CONCLUSION

Basic Court in Gjilan, with its branches in Viti, Kamenica and Novo Brdo have given the adequate contribution and commitment to achieve a more suitable option and complete the implementation of applications, namely the review of proposals for adoption.

In the region of Anamorava except Albanian majority, live members of other ethnic groups: Serbs, Turks, Bosnians, Gypsy, Romani, Egyptian, Macedonian, Gorani and other confirmed that in addition to the Albanians, Turks and Romani there are no cases of proposal of adoption in court proceedings in the competent court.

While solving other issues of status issues and marital, trust of children, removal of the parental care, deprivation of parental care, from the area of inheritance until the procedure of ownership and dissolution of marriage are current subject even today.

Anamorava region concluded that all nationalities initiate and prosecute objects, with the exception of cases relating to the adoption of which Serbian nationality, did not express the interest and have not filed a proposal to the adoption, which is found based on the work and the practice of the courts.

The created family by the parties to the adoption on the occasion of creation and birth, family renewal of the adoptee is a society cell growth, which has the dominant role, the same as biological family.

We believe that the institution of adoption or the adoption procedure will be implemented:

- Flee and secured life, food, parental care and good care for children in foster families,
- Carry-out requirements of couples and individuals to benefit children
- The family of adopter get renewed,
- To provide social assistance to abandoned children, orphans, children without parental care, sick children and children with special needs, based on the principles of humanity, solidarity and generosity for providing food, maintenance, upbringing, education, education and medical assistance services, for a better life of the adopted child for potential adoption.

State and society shall make available all legal mechanisms for the further development of the adoption of children institution, in particular to those children without parents or parental care, so that the adoption can happen in the interest of the child's adoptive parents, better life conditions and upbringing of the adopted child or children.

If the adoptee spends a weaker life compared to the life with biological family, the establishment of such adoption would not be welcome.

In the case law of the Basic Court in Gjilan we have cases where adoptive family's interest have been ignored, such as the addition of the family, when a brother has no children the other brother gives the child to his brother, adopts his child, issues of inheritance, hidden interest, or to not get adopted by adoptive family tending that the blood of the family will not

get mixed, the court can develop a procedure for termination of the adoption taking into consideration the life of the adoptee.

Basic Court in Gjilan is committed at any time, place or space to help proposers-adopters to realize their goals for adoption of children.

In the Competent Courts of Anamorava Region proposals for the adoption of children proceed, a so-called from family in family, namely the proposers are a broad family with biological parents and potential adoptee. These types of adoptions do not encounter difficulties and the case is not postponed, respectively are updated in time and appropriate legal term.

The procedure of adoption for abandoned children and children without families is a procedure with other specificities, the slow, has enhanced formalities, be that in the actions of the courts or the actions of the administration bodies, the Centre for Social Work , the Custodian, or delays arise until the adequate child is found for adoption even though the Centers for Social Work take numerous actions to create and win the figure and the adequacy of the physiognomy of the adoptee in relation to adopters, but it goes to the extension of time for adoption, with which the proposer for adoption could possibly even lose patience for the interest of the adoption and therefore loses the prior chance for the adoption of children by which the number of children without family support and abandoned children will be added and this burden falls on the state budget and social regression in the Republic of Kosovo.

Center for Social Work-the Custodian expects for months or even years on the requests according for the consent from the Panel for placing the child for adoption and his transfer in adoptive family, such phenomenon of Panel regarding the delay for the consent to adoption causes a lack of confidence, lack of proposers for adoption so that the filled proposal for adoption may withdraw from the procedure for adoption.

Negligence and unforeseen delays from administrative bodies regarding the action of their work in the adoption procedure, significantly affects the addition of extra cases, pending in the competent courts to be resolved and completed related to the adoption.

Having respect and consideration towards the proposers to adopt children, the competent courts in the Region of Anamorava insist to maintain the status and reports between proposers promising proposers, perhaps with less grounded promises, informing them that the Centre for Social Work, The Custodian and the Court are making efforts to find an appropriate child for adoption.

The Court with such promises keeps the proposers in hopereasoning the prolonged time to give the consent from Panel forthe adoption and transfer of the child from the Center for Social Work-the Custodian to the adoptive family.

I propose to the administrative bodies, courts and other bodies possibly to take all of their actions thatthey have in their competence, to undertake and complete the legal deadlines associated with the process of the adoption, so the proposerscannot create any negative conviction against administrative bodies or courts, thus the phenomenon of delay puts the

proposer - adopters in doubt that can create a distrust of state administration bodies and the competent courts according to the performance, the continuation and completion of the adoption procedure.

Therefore we hope that the courts of Anamorava are going to try to be better and efficient courts in the Republic of Kosovo for the updating and processing of cases in time, to avoid the mistrust that society has previously created, due to delays related to the adoption.

Proposal and requirements of the following adopters will be not to cause delays and negligence by the administration bodies to find the potential child for adoption.

Hopefully in the future the procedure for adoption not only in the region of Anamorava, but also throughout the Republic of Kosovo will have efficiency, it will create delays and waste of time without any reason, what would cause distrust of Kosovo's people and the removal of various negative dilemmas towards the courts and administrative bodies for which the parties in the procedure of the adoption will be more satisfied regarding the realization of their rights in the procedure for adoption .

An efficiency and readiness in the review of proposals and processing of cases for adoption of children increases the realization of rights and freedoms, with which Kosovo fulfills them beyond the European standards regarding the recognition, protection and realization of human rights and freedoms.

Hopefully in the future that the Basic Court in Gjilan, with its branches in the municipalities of Viti, Kamenica and Novo Brdo regarding the processing of requests for adoption of children will remain as a good model court in the Republic of Kosovo, maybe in the region of the Western Balkan countries too.