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POST DIPLOMATIC-MASTER STUDIES

THEME:

ADOPTION PROCEDURES IN KOSOVO

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INTRODUCTION

To write about adoption is a very sensitive theme in its essence, because it touches the most sensitive part of society – children. The part with most interest in a society, are children and their bringing up is a very important aspect, which we should give priority to. All the children must have the fate to live in a family and society with its mechanisms should engage to provide them a family. The same fate doesn't belong to all the children and this is a distress of all times, even our time. When I mention the issue that fate isn't the same to all children, I mean that the category of children who were prived from family, for many reasons, for which they aren't guilty. They are children who need safety, love and parental care.

Adoption procedures are a component of family, which are regulated with special norms of the law on family. The family right as a content of the law system studies the whole law norms that regulate family-marriage relations, between parents and adopting children and custody. The purpose of the family right includes whole law norms that regulate relations which are born from family, marriage, adoption, custody and relations between parents and children.

The man kind is born, lives and dies in family. At first sight, it seems that family and family relations are a well known occurrence from everyone. However, the doctrine and law practice show the contradiction. Family relations are enough complex and with a more specific nature than other social relations. The complexity of family relations from their nature as personal relations, are touched from basic human rights connected with many relations such as marriage relations between parents and children, people in gender, children's interests protection etc.

The importance of adoption is exactly linked to family relations that are created between the adoptive and his/her relatives with his/her new born. This relation is created in a legal form with a law agreement of the adoptive and adopted and court decision. The blood gender is created since birth which is a natural connection, meanwhile adoption is a form of law defined connection.

Adoption is at first a special form of children care who are without parental. The purpose of intermediating adoption is to put the adopted child in the custody of the individual who wants to take care of that child, well emphasized in the law for family in Kosovo section 160, para.1.

By the establishment of adoption relation, there can be established other same relations as parental relations respectively between the adoptive and adopted, there are created relations between parents and children. By adoption, it is formed the gender of adoption, adoptive and adopted with the new born, branched in lines and stages depending on the number of birth. The purpose of this theme is linked to the form how this field is treated because it's very sensitive in Kosovo's society. The adoption procedures in Kosovo, as I have mentioned above, are regulated with the Law for Family 2004/32. Adoption, is a well spread practice in human societies and it means that family takes a juvenile child of someone else by giving them the same rights as if it was their own child, respectively to make the baby their own daughter/son. This means to also

follow legal and official procedures to legalize this adoption. Therefore many world countries foresee laws regards to children adoption. Through this paper work, we will try to present main procedures up to the final decision from the court, forms of adoption, compliance of parents, juridical effects of adoption, and cancellation of adoption, and I will also present the purpose and motivation of parents to have a child, and also a special important issue is the weakness that comes from the adoption of child for their own child. The will to have a child and leave descendants behind is a trend formed to the man kind that dates since its existence in this world. Due to this, the efforts of humanity to obstacle barriers which unable spouses to have a child are many.

In the past even the littlest causes were an obstacle in having a child, but fortunately in the contemporary era it is an extreme progress in this field.

In this theme, I have loaned some parts from the law on family and many citations of different authors for the family rights and especially the adoption right, which are incoorporated in this theme. Sources which are incoorporated in this theme are of the manual and electronic nature. In this paper work, I will deal with adoption definitions, definitions on adoption procedures, the rights and obligations of the adoptive etc. The research methodology has an important character because it is the form of taking information for a defined occurrence or phenomenon and through it, it represents an objective analysis on that occurrence.

In this paper work, the research methodology is:

- Analytical method-which aims to find fact elements of adoption
- Comparative methodology, which aims to find the comparison between laws and costumary right

Because the adoption touches the field in the family right and has a social character, dealing with this field it's a content character, because it proces how this chain functions as a very sensitive one in society.

In this paper work, main objects were:

- Deeper study in the aspects of awareness of adoption procedures
- Study and analysis of adoption features
- Study of problems during and after adoption
- Importance and necessity of the parent-child relation as in the family aspect and as in the social one.

Through this paper work, I expect to touch the problems on the adoption procedures and expand the field of study of creating and tear the adoptive-adopted relation. This field has a possibility for

being expanded and compiled in the analytical and scientific aspect, so it is an obligation to deal with this theme deeper from the relevant state institutions which study this field. As we know, adoption is saint and creating healthy family relations is exclusively depended on the way how each society approaches to this field.

Let's not forget an essential element that the development and education of children from this parental relation is essential for the development of good family relations. Therefore, through this study field, I expect to touch the issue fundamentally and give my humble contribution in defining the relations between the adoptive and the adopted.

CONCLUSION

In our country, adoption is one of the basic form of the law-family protection of children without parental care and with non-adequate parentla care. The adoption institution is mainly reglated with the Law for Family and Law for Social and Family relations, but the provisions that deal with it, whetehr directly or indirectly, are spread even in other laws and sub law acts. Also, in the spehere of adopting a child, there are implemented international conventions which directly or indirectly deal with this law-family institution.

With the Law for Family, it hasn't been defined any court competence for establishing adoption. Also, it hasn't been expressed if the adoption procedure is contestimory or non-contestimory. But, from the meaning of the provisions of Law for Family linked to the Law for the non-contestimory procedure and Law for Regular courts of Kosovo (Nr.44/1984), which are implementing laws in Kosovo, it results that the issue of the competence for establishing adoption belongs to the Municipal Court. The adoption procedure is a non-contestimory procedure and must be developed according the rules of that procedure. Meanwhile, from the 1st of January 2013, a competent court for the case of establishing the procedure of adoption will be the Basic Court.

To release this paper work, there have been implemented many different scientific methods of study. With the law positive method of study, there have been studied in details the Law for Family, Law for Social and family services and other legal and sub legal acts, and also international conventions which directly or indirectly deal with adoption as a form of protecting law-family children without parental care and of those with non-adequate parental care.

With the implementation of this scientific study method, there have been presented in details many aspect of the adoption institution, such as: legal conditions for establishing adoption, extinction fo adoption, adoption of Kosovan children abroad, role of the bodies of social wel-fare in the protection of chilren and in adoption procedures etc.

With the implementation of the comparison study method, there have been highlighted the specific of the legal adjustment of adoption in our country compared to the legal adjustment of it in other countries, such as those who are neighbour countries with Kosovo, some Europe countries, USA and Canada. For many issues and dilemmas that deal with the adoption institution, there have been done comparisons between the legislation of Kosovo and the legislation of those countries.

Also, there have been identified many other issues, very important one, which other countries have regulated them with law, meanwhile our countries hasn't addressed or regulated them with law. So, adopted children, their biological families, adopting families of them, and many other social categories still don't have law and social protection in our country, whereas many other contemporary countries have expanded their law and social services of protection to these social ctaegories, as well.

The Law of Family in Kosovo gives adoption an important place as a law-family institution in protecting children without parental care and other children in need, in the Islam right the adoption is forbidden in means of changing the name of the child, creating law relations between the child and its adoptive as a parent-child relation and in means of the extinction of law relations between the child, parents and relatives in blood gender. From the Islam point of view, the production of such law effects is in full contradiction with the principle of truth, with the rights and freedom of the child, with the rights and freedom of other individuals and with other principles in which the Islam right leans on.

In the Islam right, biological parental relations or of blood relations are only created through the act of giving birth to your child, but never on the base of establishing adoption or other law institutions. It is not accepted to imitate blood relations between the adopted family and adoptive family. Grown ups can take care of children in need and especially of orphans, but it isn't allowed that they consider themselves as their parents, or to treat them as their own children. But, nobody has the right to be attributed as the child of the individual who in reality isn't the biological parent, and also not a family member.

Among these two law institutions, there have been found mutual points in dealing with children without parental care, mainly in the issue of offering respect and love towards them, in taking care of them, in the issue of financially providing for them, in protecting and administrating with the trust of their wealth etc.

In my opinion, I consider that our institutions should recommend to change the legal framework for adoption in our country, to foresee and regulate with law another protecting form, which would provide the welfare of children without parental care and those with non-adequate parental care.

And also, to further develop other protection forms of children, and especially custody and family accommodation.