

CHALLENGES OF ADOPTION LEGAL REGULATION AND POSSIBLE SOLUTIONS

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Abstract

Adoption is not only a legal procedure, but also a complex social phenomenon, involving psychological, emotional and ethical challenges for both the child, the adoptive parents and the biological parents. The aim of the article is to examine the legal and social foundations of adoption, to reveal the difficulties arising in practice and to propose reforms that would strengthen the protection of children's rights, while ensuring transparency and balanced support for all participants in the process. Although both in Lithuania and internationally, laws primarily aim to protect the interests of the child, difficulties often arise in practice. Some of the most important issues are the consent of the biological parents, the child's ability to participate in decision-making and the search for a balance between the adopted person's right to know their origin and the biological parents' right to privacy. Lithuanian court decisions show that the application of these principles is not simple: there is often a tension between the stability of the child's life and the interests of the parents. This article analyzes the legal basis for adoption and the current regulation, identifies shortcomings in practice, and proposes measures that can ensure more effective protection of children's rights both in the regulatory framework and in judicial practice. The study, using a national and comparative approach, reveals the need to implement reforms that would ensure the priority of children's rights, while guaranteeing transparency, proportionality, and comprehensive support for all parties involved in the adoption process. Adoption or social parenthood is considered an alternative to biological parenthood, as adoption shows that parenthood is not only a genetic connection. The most important goal of adoption is to provide a child with love, security, and opportunities to grow into a well-rounded person, regardless of their biological origin or past circumstances. Lithuanian case law shows that when deciding on adoption issues, special attention is paid to protecting the non-property rights of the child. The courts emphasize the priority of the child's interests and the need to take the child's opinion into account.

Key words: adoption, adoptive parents, adopted children, biological parents, family.

Relevance of the topic. Adoption, as a social and legal institution, is inseparable from the development of humanity and many cultures, the nature and regulation of which have changed over time (Andrzejewski, 2024). Adoption involves not only practical legal aspects, but also emotional, psychological and social challenges faced not only by adoptive parents and adoptees, biological parents, but also by society as a whole (Pivorienė, 2020). One of the fundamental issues raised by the adoption institute is the identity of the family and the meaningfulness of relationships (Perkumienė et al., 2021). The traditional family model in most societies is based on biological relationships between individuals, therefore, adoption, when children are

adopted by non-biological parents, can pose problems and challenges in understanding what constitutes a family and what meaning its relationships have (Lyttle et al., 2024). Adoptive parents, upon adopting a child, assume responsibility for their well-being, raising and educating them as if the child were their own, but often have to deal with complex emotional issues related to knowing the child's biological origin (Brown et al., 2024). In addition, adoption often poses psychological and legal challenges for the adoptee, especially when the child learns about his or her biological origin (Messina et al., 2024). Issues of identity, a sense of belonging, and the right to know one's biological parents can become serious family challenges as the adoptee matures and lead to undesirable consequences.

Adoption is a significant social and legal process that ensures the child's right to a family and care, while creating certain rights and obligations for both adoptive parents and adoptees (Milašiūtė, 2024). In modern society, the issue of adoption is becoming increasingly relevant: family models are changing

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rapidly, and there is a growing desire to ensure the protection of children's rights and standardize adoption procedures in different countries (Čiuladienė, 2024). The challenges of regulating international adoption also take on particular significance, as Lithuania, as a member of the European Union, is committed to complying with international agreements and EU legislation, which often impose additional requirements. The adoption process in Lithuania is often criticized for bureaucratic obstacles, lengthy procedures and legal regulation that does not always meet the best interests of the child.

Problem Statement. Problem formulation. When analyzing the institution of legal regulation of adoption, several fundamental issues emerge. One of the most complex and sensitive is the issue of consent to adoption. The consent of persons participating in the adoption process includes not only legal but also emotional aspects, therefore it becomes an extremely complex phenomenon. The essence of this issue lies in the need to reconcile the interests of different parties – biological parents, child and future adoptive parents – while ensuring the rights and well-being of the child. Another problem is the implementation of the non-property rights of the prospective adoptee – since the child is often limitedly involved in decision-making in the adoption process, although the main attention should be focused on the interests of the child and the implementation of his rights. These non-property rights include the right to preserve his identity, relations with the biological family (if this is in the interests of the child), to receive information about his origin, as well as the right to be heard and to participate in making decisions related to his life. The third issue concerns the right of an adopted child to know his or her biological parents, as this information is directly related to the child's identity, emotional well-being and the fullness of his or her personal life, but providing it may raise legal, psychological and social challenges. The identity of the biological parents is their private information, and therefore disclosing it to the child may create a conflict between the child's right to know his or her origins and the biological parents' right to privacy. The child's right to know his or her origins must be balanced against his or her interests and well-being.

The purpose of the article. To analyze aspects of legal regulation of adoption, identifying key problems and challenges.

Research objectives. To define the theoretical aspects of the institution of adoption; to examine the legal acts regulating the institution of adoption; to

identify the problems of legal regulation of adoption; to present proposals for improving the legal situation.

Methodology of investigation. In order to properly reveal the topic of the article and achieve the set goal and objectives, the following research methods were used: document analysis, meta-analysis, systematic analysis, comparative, logical-analytical.

The concept and purpose of adoption. Adoption is a legal process during which a child enters a new family environment, and adoptive parents acquire parental rights and obligations towards the adopted child (Arlauskas, 2017). In the case of adoption, the legal parent-child relationship between the child and his/her biological parents is terminated, and a legal relationship is created between the child and the adoptive parents, equivalent to a biological parental relationship (Baden, 2016). The purpose of adoption is to ensure the child's right to grow up in a safe, loving environment that the child's biological family cannot provide (Banevičienė, 2024). The concept and process of adoption is an important social and legal measure designed to ensure the right of children who have lost the care of their biological parents to grow up in a family where they feel loved, safe and cared for (Brandisauskiene et al., 2024). The adoption process has a clearly defined legal regulation that ensures the rights and obligations of not only the child, but also the adoptive parents (Brown et al., 2024). The institution of adoption should be considered a legal act according to which the adoptive family takes over all parental rights and obligations that previously belonged to the biological parents of the child (Čiuladienė, 2024). During adoption, the rights of the biological parents are terminated, and legal relations equivalent to biological kinship are created between the child and the adoptive parents (Gangopadhyay et al., 2021). The adopted child is provided with a new family that ensures his upbringing, care and social well-being (Hasanpoor–Azgahdy et al., 2016). Adoption as a form of social parenthood is a unique phenomenon when the parental relationship with the child is based not on biological, but on legal, emotional and social grounds (Dobre, 2015). Adoption involves the commitment of adoptive parents to care for and raise the child as their own, providing love, support, and social integration (Kamboj et al., 2024). Social parenting through adoption emphasizes the essence of the parenting role – not genetics, but the responsibility, care, and connection of parents with the child (Ricci, 2024).

The main goal of adoption is to ensure that a child grows up in a safe, stable and caring environment,

where adoptive parents provide the child with the opportunity to grow up in a family where their basic needs are met (Andrzejewski, 2024). Adoption allows the child to establish close relationships with new family members, which were missing in the biological family. Also, the adopted child acquires a new identity and rights that help him become a full member of society, since adoption is an important process based on the principle of the best interests of the child, which is the main priority of Lithuanian and international law (Ūdra, 2024).

Adoption has several essential goals that are focused on the interests of the child and the well-being of society:

1. Ensuring the best interests of the child. The main goal of adoption is to guarantee the child the opportunity to grow up in a safe, stable environment that provides love and care (Kadir et al., 2024). The family is considered the most appropriate place where a child can meet their emotional, psychological and social needs (Herczog, 2024).

2. Protection of the rights of the child. Children who are without parental care often face insecurity, material poverty and emotional separation. Adoption ensures that the child has legal protection, access to education, medical care and other necessary resources (Fox et al., 2024).

3. Providing love and care. The child receives a caring and supportive environment in which he can feel loved. Such a connection is essential for the child's psychological and emotional development (Fox et al., 2024).

4. Social and legal integration. Adoption gives the child a new surname, citizenship (if it is an international adoption), inheritance rights and other social benefits (Kadir et al., 2024).

5. Restoring family ties. A child who has lost their biological family for various reasons (e.g., death of parents, neglect, or abandonment) gains the opportunity to build new, strong family relationships with adoptive parents and their relatives (Fox et al., 2024).

Adoption is one of the most humane ways to address the situation of a child without a family (Albert et al., 2022). This legal institute legalizes the relationship between parents and a child, granting adoptive parents the rights and obligations inherent in biological parents (Herczog, 2024). The child acquires a full legal status in the family. Adoption, or social parenthood, requires the readiness and ability of adoptive parents to create a strong emotional bond with the child. The child's emotional attachment to the new family is one

of the most important adaptation processes (Kadir et al., 2024).

An adopted child becomes part of the new family culture. Adoptive parents pass on their values, traditions, and lifestyle to their children (Simmonds, 2019). Adoption is motivated by altruism and a desire to help a child who has lost their biological family. It reflects a moral responsibility for the most vulnerable members of society (Delaney, 2024). Adoption as social parenting is of great importance for the child: first of all, it provides a safe environment – the child receives the warmth and protection of the family (Delaney, 2024; Albert et al., 2022). Adoption or social parenting is considered an alternative to biological parenting, since adoption shows that parenthood is not just a genetic connection (Kadir et al., 2024; Albert et al., 2022). To care for and support a child unconditionally, is a commitment which transcends biological origin. Social parenting permits children who, for whatever reason, do not have a biological family, to have the same privileges as someone who is raised in a biological family (Albert et al., 2022). Adoption as social parenting is a the utmost humanitarian effort which underscores the social responsibility of every individual. Love and care, according to this form of parenting, do not have to be tied to blood relations. The very core of parenting is illustrated, in this case, as a commitment to the child's welfare, which transcends the biological aspect. Social parenting, as a form of social protection, is important in the child's development because it allows him/her to become a fully functioning member of society (Simmonds, 2019).

Adoption in the United States is a legal process that creates a new parent-child relationship, granting the adoptive parents all parental rights and responsibilities (Tefre, 2020). During this process, all legal ties with the biological parents are severed, as their rights are completely terminated (except in cases where a spouse's child is adopted). The adopted child becomes a full member of the family, acquires a surname, inheritance and other social rights. The basis for adoption in the United States is the principle of the primacy of the interests of the child, which forms the essence of the adoption law of this country (Weisberg et al., 2024).

In Norway, adoption is a strictly regulated legal process, the main purpose of which is to ensure the right of the child to grow up in a safe, stable and loving family environment, when the biological parents cannot ensure this right. Adoption is based on the priority of the interests of the child, which is a fundamental

provision of both national and international law (Tefre, 2020). In the adoption process, the child legally becomes a member of a new family, acquiring inheritance and other rights (Tefre, 2020). When a child is adopted, the rights of the biological parents are completely terminated, except in certain cases, for example, when the adoption is carried out by relatives (Albert et al., 2022). It should be noted that all forms of adoption must meet the requirements set by the Norwegian Child Welfare Service (Barnevernet) (Tefre, 2020).

Mechanism of legal regulation of the institution of adoption. In Lithuania, the institution of adoption is regulated by legal acts that ensure the well-being of the child, the protection of his or her rights and establish a clear adoption procedure. The main goals of the legal regulation of adoption are to create conditions for the child to grow up in a family, to ensure a safe environment and to guarantee the primacy of the child's interests. The implementation of adoption procedures and supervision of the implementation of legal acts are carried out by special institutions, and decisions on adoption are made by the court. In certain cases, children are adopted internationally. This applies to children who have difficulty finding families within their home country. International adoption is strictly regulated by international treaties, such as the Hague Convention on Intercountry Adoption, which ensures the protection of the rights of the child and ethical standards of adoption. In order to implement the goal and objectives set out in the final thesis, this part of the final thesis will analyze the conditions and procedure of adoption, the stages of the adoption procedure, the legal consequences of adoption and other legal aspects related to adoption.

In Lithuania, adoption is regulated in detail in legal acts in order to ensure that the process is transparent, legal and in the best interests of the child. The conditions and procedure for adoption include requirements for both the child who may be adopted and the adoptive parents, and also define the main procedural stages. The institution of adoption is regulated by Articles 3.209 – 3.228 of the Third Book («Family Law») of the Civil Code of the Republic of Lithuania (Civil Code of the Republic of Lithuania, 2000).

Adoption is regulated by law and is carried out in accordance with strict procedures to ensure the best interests of the child. The main stages of the adoption process: assessment of prospective adoptive parents. Persons wishing to adopt a child must meet certain requirements (age, financial situation, health, etc.).

Delimitation of the Institute of Adoption and Guardianship. In Lithuania, adoption

and guardianship institutions play an important role in caring for children who have lost parental care, but these institutions differ fundamentally in their purpose, legal consequences and the scope of children's rights and obligations. Adoption and guardianship are two main institutional mechanisms designed to ensure the protection and well-being of children who have lost parental care. Although the goal of both institutions is the care of the child and ensuring their interests, their purpose, principles of application and legal consequences differ significantly (Vasiliauskas, 2023).

Adoption is a process during which a child becomes a full member of the adoptive parents' family, as if they were their biological child. When a child is adopted, a permanent legal relationship is created between the child and the adoptive parents, and the relationship with the biological parents is terminated. Adoption gives the child the right to inherit from the adoptive parents and the adoptive parents the right to inherit from the child, as in a biological family (Vasiliauskas et al., 2022). Adoption also ensures that the child has the opportunity to acquire the adoptive parents' surname, integrate into family life and receive all the rights and obligations inherent in a family member. This procedure is final and irrevocable (except in special cases when the court makes a decision to annul the adoption). Adoption in Lithuania is carried out only by court decision, strictly adhering to the priority of the child's interests and taking into account all the requirements of legal acts (Vasiliauskas, 2023).

Guardianship is a temporary institution aimed at ensuring proper care and upbringing of a child until he or she can return to his or her biological parents or be adopted. The guardian takes care of the child, but no permanent legal relationship is created between them (Gudzinskiene et al., 2019). This means that the child's relationship with the biological parents legally remains, unless the court has limited or terminated parental rights. In the case of guardianship, the child's surname does not change, and the guardian does not inherit from the ward and vice versa. State support is often provided for the maintenance of the child, which helps the guardian to ensure the child's needs. Guardianship usually ends when the child reaches the age of majority, is adopted, or returns to the biological parents (Perkumiene et al., 2021).

In the case of adoption, full-fledged parent-child relationships are created, while in the case of foster care, such relationships are not formed. Adoption is a permanent process, while foster care is temporary – it is established only until the child's situation can be resolved in another way. In the case

of adoption, the child inherits from the adoptive parents, while in the case of foster care, the foster parents and foster children do not have the right to inherit from each other. Adoption terminates all legal relations with the biological parents, while in the case of foster care, these relations remain (Kudinavičiūtė-Michailovienė et al., 2022). Adoption in Lithuania is considered the highest form of child protection, as it provides the child with a permanent home and family. Meanwhile, foster care is usually applied as a temporary measure until the child's situation is resolved. Both of these measures are strictly regulated in the Lithuanian Civil Code, in order to ensure the protection of the child's interests (Vasiliauskas et al., 2022). Adoption focuses on the long-term well-being of the child through the creation of a family, while foster care provides a mechanism for temporary assistance and care.

Problems of legal regulation of the institution of adoption in judicial practice. Problems of legal regulation of the institution of adoption in court practice are related to the interpretation and application of legal norms in specific situations. In court practice, disputes between parties regarding the legal regulation of the institution of adoption arise: due to the principles of priority of the interests of the child; restriction of the rights of biological parents in the case of adoption must be based on clear evidence, practical conflicts are often caused by the principle of confidentiality and the right of the child to know the origin. It should be noted that in the case of international adoption, it is necessary to comply with international legal acts and ensure the rights of the child. Procedural delays and bureaucratic obstacles are also one of the main problems in adoption practice.

The anonymity of biological parents and their right to disclose information is related to the consent of persons participating in the adoption process to the adoption. For example, according to the data of the Supreme Court of Lithuania case No. 3K-3-515/2020, the parents of an adopted child signed an anonymous adoption consent, but the adopted person applied for the disclosure of information about the biological parents. The court noted that anonymous adoption must be respected, but the child's right to know the origin must be ensured if this does not conflict with the interests of society or the rights of other persons. In the case of anonymous adoption, the child's right to know the origin is assessed with extreme caution, but is an important part of his or her identity.

In court practice, there are problems with the consent of a child who is intended to be adopted

or the implementation of the right to be heard. The Supreme Court of Lithuania emphasizes that when deciding on issues related to a child, it is necessary to take into account the opinion of the child, if he is mature enough to express it. This ensures the right of the child to participate in making decisions that directly affect him. For example, on November 11, 2015, the panel of judges of the Civil Cases Division of the Supreme Court of Lithuania examined civil case No. 3K-3-574-421/2015, which resolved issues of adoption, paying special attention to the importance of the child's opinion during this process. The case examined a situation where a minor child was adopted, but the question arose about listening to the child's opinion and its importance in making a final decision. The Supreme Court of Lithuania stressed that, in accordance with the provisions of the Civil Code of the Republic of Lithuania and international legal acts, when deciding on issues related to children, it is necessary to take into account the opinion of the child, if he is mature enough to express it. The court noted that the opinion of the child must be assessed together with other circumstances of the case and is not the only decisive factor, but ignoring it may violate the rights of the child.

The analysis of Lithuanian case law on the non-property rights of an adopted child has shown that attention should be paid to several significant cases and court decisions. For example, the Supreme Court of Lithuania examined cases related to the determination of the child's place of residence. The aforementioned cases emphasized the primacy of the child's interests. For example, on December 10, 2007, the panel of judges of the Civil Cases Division of the Supreme Court of Lithuania examined civil case No. 3K-3-555/2007, which addressed the issue of determining the place of residence of an adoptive child after the divorce of adoptive parents. The plaintiff V. Č. applied to the court in order to determine the place of residence of the adoptive child with him after the divorce. The defendant I. Č. also sought for the child to live with her. The courts of first and appellate instance adopted decisions in which the child's place of residence was determined with the mother. In the cassation appeal, the plaintiff argued that the courts had not sufficiently assessed the child's emotional bond with the father and other important aspects determining the child's well-being. The Supreme Court of Lithuania stressed that when determining the child's place of residence, it is necessary to take into account the child's interests, emotional bond with both parents, the child's age, attachment to the living environment and other

significant factors. The Supreme Court of Lithuania found that the lower courts had properly assessed all relevant circumstances and made a decision that best met the child's interests. Therefore, the cassation appeal was dismissed, and the previous court decisions were left unchanged. This case emphasises that, when deciding on the issue of determining the child's place of residence, the courts must comprehensively assess the child's emotional bond with each of the parents, the child's age, attachment to the environment and other factors in order to make a decision that best meets the child's interests.

Adoption cases in foreign courts often reveal different approaches to ensuring the welfare of the child, the regulation of intercountry adoption and legal conflicts related to cultural, social or parental issues. Different countries have different approaches to adoption, which makes it difficult to reconcile different legal regulations. For example, in some countries, adoption is considered irrevocable, while in others it is possible to revoke it under certain circumstances (Private International Law., n. d.). Different requirements for adopters (age, marital status, financial status, etc.) complicate the process when the adoption covers more than one jurisdiction. Some countries have stricter conditions for adoption by foreigners in order to protect the interests of local children. Although international law (e.g. the 1993 Hague Convention on the Protection of Children and Intercountry Adoption) clearly stipulates that the best interests of the child must be the primary consideration, their implementation in practice is not uniform. Courts

often face challenges in determining what is truly in the best interests of the child. Cultural differences between the child's country of origin and the adoptive parent's country of residence can lead to debates about whether the child's relocation to another country is not against his or her best interests (Weisberg et al., 2024). Disputes often arise over which country's court should decide cases related to adoption.

Conclusion. Adoption or social parenthood is considered an alternative to biological parenthood, since adoption shows that parenthood is not just a genetic relationship. The most important goal of adoption is to provide the child with love, security and opportunities to grow up as a full-fledged person, regardless of his or her biological origin or past circumstances.

Lithuanian judicial practice shows that when resolving issues related to adoption, special attention is paid to the protection of the child's non-property rights. Courts emphasize the primacy of the child's interests, the need to take into account the child's opinion and ensure his or her rights to family ties, housing and other non-property aspects. Also, in the adoption process, courts quite often face the problem of consent of the persons involved to adopt a child.

Court practice in international adoption processes reveals the following main problems: disregard for the child's best interests, illegal adoption and human trafficking, especially when children come from countries affected by economic insecurity; international adoption processes are also complicated by differences in the recognition of court decisions between countries.

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ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ УСИНОВЛЕННЯ ТА МОЖЛИВІ ЇХ ВИРІШЕННЯ

Анотація

Актуальність теми. Усиновлення, як соціально-правовий інститут, невіддільне від розвитку людства та багатьох культур, характер та регулювання яких змінювалися з часом (Andrzejewski, 2024). Усиновлення включає не лише практичні правові аспекти, але й емоційні, психологічні та соціальні виклики, з якими стикаються не лише усиновлювачі та усиновлені, біологічні батьки, а й суспільство (Pivorienė, 2020). Одним із фундаментальних питань, що порушуються інститутом усиновлення, є ідентичність сім'ї та значущість стосунків (Perkumienė et al., 2021). Традиційна модель сім'ї в більшості суспільств базується на біологічних стосунках між особами, тому усиновлення, коли дітей усиновлюють небіологічні батьки, може створювати проблеми та виклики в розумінні того, що являє собою сім'я та яке значення мають її стосунки (Lyttle et al., 2024). Усиновлювальні батьки, усиновлюючи дитину, беруть на себе відповідальність за її благополуччя, виховуючи та навчаючи її так, ніби це їхня власна дитина, але часто стикаються зі складними емоційними проблемами, пов'язаними зі знанням біологічного походження дитини (Brown et al., 2024). Крім того, усиновлення часто створює психологічні та юридичні труднощі для усиновленої особи, особливо коли дитина дізнається про своє біологічне походження (Messina et al., 2024). Питання, пов'язані з ідентичністю, почуттям приналежності та можливістю знати своїх біологічних батьків, можуть стати серйозними викликами для сім'ї в міру дорослішання усиновленої особи та призвести до небажаних наслідків. **Постановка задачі.** Під час аналізу інституту правового регулювання усиновлення виділяється кілька основних проблем. Проблема надання згоди на усиновлення дитини особами, які беруть участь у процесі усиновлення, реалізація немайнових прав майбутнього усиновленого та право усиновленої дитини знати своїх біологічних батьків, оскільки ця інформація безпосередньо пов'язана з особистістю дитини, її емоційним благополуччям та повноцінністю її особистого життя. **Задачі дослідження.** Проаналізувати аспекти правового регулювання усиновлення, визначивши ключові проблеми та виклики. **Методологія.** Для належного розкриття теми статті та досягнення поставленої мети й завдань було використано такі методи дослідження: аналіз документів, метааналіз, системний аналіз, порівняльний, логіко-аналітичний. Усиновлення або соціальне батьківство вважається альтернативою біологічному батьківству, оскільки усиновлення показує, що батьківство – це не тільки генетичний зв'язок. Найважливішою метою усиновлення є забезпечення дитини любов'ю, безпекою та можливостями вирости повноцінною людиною, незалежно від її біологічного походження або минулих обставин. Судова практика Литви показує, що при вирішенні питань, пов'язаних з усиновленням, особлива увага приділяється захисту немайнових прав дитини. Суди наголошують на пріоритетності інтересів дитини, необхідності враховувати думку дитини.

Ключові слова: усиновлення, прийомні батьки, усиновлені діти, біологічні батьки, сім'я.

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