

## Problem aspects of adoption in civil proceedings of Republic of Kazakhstan

Gulzhazira Atalykova\*

PhD in Law

Mukhtar Auezov South Kazakhstan University

160012, 5 Tauke Khan Ave., Shymkent, Republic of Kazakhstan

<https://orcid.org/0000-0001-7939-4273>

**Abstract.** The relevance of this study was conditioned by the reduced level of effectiveness of one of the key social institutions due to the presence of problematic aspects and conflicts of legislation. In this regard, the purpose of this study was to analyse the problematic aspects of the current adoption procedure under the current legislation of the Republic of Kazakhstan. The study employed several methods of scientific cognition, namely logical analysis, formal-legal, functional analysis, dogmatic, legal hermeneutics, and others. A study of statistical data on the total number of registered orphans revealed that the current figures are still quite high; however, the number of children raised in orphanages is declining. This study investigated the legislative acts that thoroughly regulate the procedure and order of adoption, namely the Convention on the Rights of the Child, the Civil Procedural Code of the Republic of Kazakhstan. It was noted that a significant role in adoption cases is given to the decisions of the plenums of the Supreme Court of the Republic of Kazakhstan, which serve as a guide for the courts in considering and resolving civil cases and are applicable to different proceedings. It was also found that the national legislation of the Republic of Kazakhstan does not make provision for such a procedure as pre-adoption, compared to the foreign practices of some countries. No less important is the analysis of the adoption procedure for found and abandoned children by foreign nationals. The practical value of the obtained results lies in providing a detailed characterisation of the mentioned process and offering some recommendations for its improvement

**Keywords:** guardianship; family legal relations; social protection; children's rights; orphans; institution; state

### Introduction

Currently, there is an increasing interest on the part of society and the state in issues related to the younger generation. Laws, such as the Law of the Republic of Kazakhstan No. 63 "State Allowances for the Families with Children" (2005), are being adopted to improve the demographic situation in the country, protect the rights of underage citizens, and develop legal relations in society. The institution of adoption has ancient historical roots, and it was established in ancient times within patriarchal families. Adoption has taken different forms in different historical eras, but the legal regulation of this institution has been underdeveloped. The original purpose of the institution of adoption was to maintain the size of clan communities, but over time such community ties have become more complex and changed.

Although the total number of registered orphans in Kazakhstan has decreased over recent years, the number of children being placed back into orphanages has paradoxically increased. This counterintuitive trend is due to several factors, including the instability of some adoptive families and guardianships, which has led to the return of children to state care. Additionally, there has been an increase in

cases where children who were previously under informal care arrangements are now being formally registered as orphans. These dynamics reflect the complexities of the adoption system and highlight the need for ongoing support for adoptive families to prevent disruptions in placement (Child for rent..., 2023). According to international and national standards, adoption is considered the preferred method for the placement of such children, for assorted reasons, to provide for children who find themselves in difficult life situations due to loss of parental care. In this regard, it is quite relevant to consider the regulation of the procedure following the current legislation of the Republic of Kazakhstan.

Considering the goals of adoption from a social standpoint, its main objective is to create for children who have lost their parents for various reasons conditions as close as possible to their stay in a biological family. This means providing them with a decent level of upbringing, care, education, and other social benefits necessary for their personal development. According to L. Aliyeva *et al.* (2024), adoption contributes to the fulfilment of key values of family relations, including the protection and respect of the rights and

### Suggested Citation

**Article's History:** Received: 15.05.2024 Revised: 24.08.2024 Accepted: 25.09.2024

Atalykova, G. (2024). Problem aspects of adoption in civil proceedings of Republic of Kazakhstan. *Social & Legal Studios*, 7(3), 75-83. doi: 10.32518/sals3.2024.75.

\*Corresponding author



Copyright © The Author(s). This is an open access Article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

interests of the child, as well as providing an opportunity for parents who, for whatever reason, cannot have biological children to meet their needs in the role of parents and fulfil the functions of motherhood and fatherhood. A.B. Tursunov (2020) believes that the social role of the institution of adoption is to create favourable conditions for the development of children in a family environment, which contributes to their moral and ethical development.

N. Çalıř (2022) consider that adoption of siblings by different adoptive parents is inappropriate and therefore inadmissible. However, the law does not oblige the court to verify the opinion of the sibling to be adopted as to whether they need such an adoption, as K. Shalgimbekova *et al.* (2023) note. According to K. Luhamaa and C. O'Mahony (2021), there is a debate on this issue, which is often raised in academic circles, on whether the contact of adopted children with their grandparents should be prevented to preserve the confidentiality of the adoption. To solve these problems, it is necessary to combine the efforts of all branches of government, and in this process public control bodies will play a significant role. Effective measures should also be taken to increase the number of children available for adoption. In analysing current trends in the development of the institution of adoption in Kazakhstan, the legislator is taking a number of measures aimed at improving the existing legal mechanism of adoption.

J. Palacios *et al.* (2023) explore the multifaceted aspects of adoption within the broader framework of developmental psychology and the law. They highlight the importance of creating a legal environment that supports the best interests of the child, emphasizing that pre-adoption procedures should be designed to ensure a thorough evaluation of prospective adoptive parents. This evaluation is crucial in determining the suitability of candidates to meet the psychological and emotional needs of the child, thus contributing to more stable and successful adoptions. J. Luyt and L. Swartz (2023) delve into the complexities of the legal and policy frameworks surrounding transracial adoption in South Africa. Their analysis underscores the need for a clear and consistent legal approach to pre-adoption processes, particularly in cases involving transracial adoptions. The authors point out that while pre-adoption procedures can help ensure the compatibility of adoptive families with the child's cultural and racial background, there are also significant challenges. These include the potential for reinforcing racial biases and the difficulty of balancing the rights of biological parents with those of adoptive parents.

C. Ingenito (2023) discusses the protection of relationships in adoption, particularly in cases addressed by the Constitutional Court of Italy. The author examines the legal provisions that safeguard the continuity of the child's relationships with significant others during the adoption process. Pre-adoption procedures are seen as vital in protecting these relationships, but C. Ingenito (2023) also highlights the potential drawbacks, such as the risk of prolonging the adoption process and causing additional stress for the child. The analysis suggests that while pre-adoption assessments are necessary to protect the child's welfare, they must be carefully managed to avoid unnecessary delays and complications in the adoption process.

Proceeding from the above, the purpose of this study was to analyse the current adoption procedure in Kazakhstan and identification of insufficiently regulated, problematic

aspects of this procedure. For this, such tasks as studying the regulatory framework, defining the term "adoption" and analyse statistical data on the total number of registered orphans in the country are necessary.

### Materials and methods

This study was conducted using several types of analysis method. The method of logical analysis made it possible to characterise the term "adoption", to learn about the key features and principles of the implementation of this act, to identify the range of subjects and objects. The above method helped to highlight the rules governing adoption in Kazakhstan, stages, procedures, and requirements. The method of functional analysis provided an opportunity to investigate the functions and role of legislative acts in regulating the adoption procedure. The method of statistical analysis helped to learn about the data that shows the total number of registered orphans in Kazakhstan from 2018 to 2022. The method of comparative legal analysis was used to consider the experience of some countries, to identify the specific features of the adoption procedure, signs and principles in comparison with the law enforcement practice of Kazakhstan. The abstraction method provided an opportunity to focus in greater detail on such aspect of the research as the adoption procedure for found, abandoned children, and the adoption of children by foreign nationals. This helped to identify the essential characteristics of these procedures in Kazakhstan and to assess the law enforcement practice and its compliance with international norms.

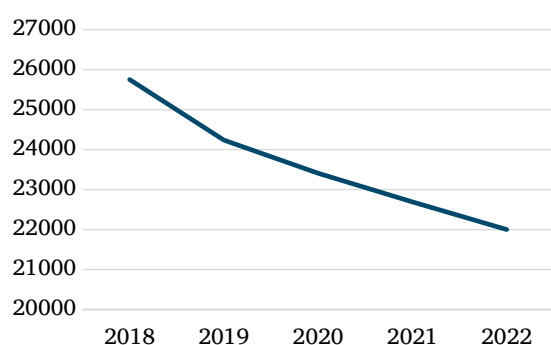
The formal-legal method was used to analyse the norms that govern the adoption procedure and the protection of children's rights and interests in general. This study investigated such acts as the Constitution of the Republic of Kazakhstan (1995), Convention on the Rights of the Child (1989), the Code of the Republic of Kazakhstan No. 518-IV "On Marriage (Matrimony) and Family" (2011), the Civil Procedural Code of the Republic of Kazakhstan (2015), the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 1 "On Some Issues of Application of Legislation on the Judiciary in the Republic of Kazakhstan" (1998), the Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 2 "On the Practice of Application by Courts of Legislation on the Child Adoption" (2016), the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 15 "On the Application by Courts of Law in Resolving Disputes Related to the Upbringing of Children" (2018), the Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 692 "On Approval of the List of Diseases, in the Presence of Which a Person Cannot Adopt a Child, Take Him under Guardianship or Trusteeship, Patronage" (2015). The method of legal hermeneutics was used to determine the meaning and intention of the legislators inherent in these norms, which involved analysing the text, context, and other aspects and made it possible to identify their compliance with the principles and objectives of family law. The dogmatic method helped to identify legal concepts and terms used in Kazakhstan's norms on adoption, to analyse the content of these norms, their applicability and impact on legal relations in the field of adoption in Kazakhstan.

The method of deduction provided an opportunity to characterise the institution of adoption in Kazakhstan based on its inherent features, attributes, and principles of implementation. The method of induction was used to provide

concrete characteristics of the mentioned institution proceeding from the norms prescribed in the legislation. The synthesis method, based on the results obtained, made it possible to determine the compliance of the current regulations with international norms and to provide recommendations.

## Results

In the modern legislation of Kazakhstan, the main goal is to protect the interests of children (Constitution of the Republic of Kazakhstan, 1995). To achieve this goal, all adoption-related regulations play a significant role. Particular attention is paid to the establishment of an adoption order. Approval of an adoption trial is a necessary step to ensure that the rights of all parties involved are respected, as well as to protect the interests of the child and ensure legality in the adoption process. Adoption of a child is permitted only according to the procedures established by law and under the supervision of the State. This is confirmed by the provisions of Article 21, paragraph A of the Convention on the Rights of the Child (1989), which states that a child should be adopted only with the authorisation of authorised bodies and following the established legal provisions. Ethnic origin, religious and cultural background, native tongue, and the possibility of maintaining continuity in upbringing and education are the primary factors considered when deciding whether to adopt. Adoption should always be a voluntary process and no coercion is allowed. It is worth considering statistics on the total number of registered orphans (Fig. 1).



**Figure 1.** Total number of registered orphans in Kazakhstan 2018-2022

**Source:** compiled by the author of this study based on Zh. Tileukhan (2023)

The data provided suggests that from 2018 to 2022, the level of registered orphans decreased by 15%. Therewith, at this stage, the rates are quite high. Accordingly, it is vital to consider the regulation of the adoption of children. The procedure for the adoption of children is defined in the Code of the Republic of Kazakhstan No. 518-IV (2011), namely in its Article 87; according to this article, adoption is carried out through the judicial process, as this is the best way to respect and realise the rights and guarantees of children without parental care. To assist the child welfare authorities, it was established that all persons and organisations that become aware of a child without parental care must report it. They are obliged to inform the authorities at once and the authorities are obliged to carry out an inspection within three days. If this fact is confirmed, the authorities must ensure that the rights and interests of the child are protected until

a decision is taken on their placement in a family or an institution for orphans and children left without parental care. However, for example, if a new-born baby is left in a medical organisation, staff must notify the relevant authority within three working days (Article 91, paragraph 1). Having received supporting information, the authority must provide documented information (questionnaire) for inclusion in the Republican Data Bank of orphans and children left without parental care (Article 91, paragraph 2). Thus, the guardianship and custody agencies, as well as other structures, create a national data bank of orphans and children left without parental care. It is formed based on questionnaires completed by the authorities, the Committee, and the Department, and consists of three sections: the Children's Data Bank, the Children's Data Archive, and information on settled children.

As of 2024, the hearing and resolution of cases at court hearings stand for a key part of the proceedings in any type of case. The importance of this stage is undoubted, and this also applies to adoption cases. It should be emphasised that it is at court hearings that the objectives of civil justice are first realised. According to current legislation, these objectives are to protect the rights, freedoms, and interests of citizens, the state and organisations, to strengthen law and order, and to prevent offences. For adoption cases, correct judgement is of immense importance. The right decision involves many aspects. Not only formal compliance with the procedural norms of the Civil Procedural Code of the Republic of Kazakhstan (2015) (CPC of RK) is important, but also the achievement of the set goals in the adoption process. This requires highly skilled adoption professionals. The requirements for their professionalism apply to everyone involved in adoption. According to the current legislation, adoption cases are considered in a special (undisputed) procedure.

The differences between special action proceedings exist and are prescribed in the relevant chapters of CPC of RK (2015). Notably, they are not purely technical and have a substantial impact on the course of the case and the achievement of its goals. These differences are significant because they tailor the legal process to the unique needs of adoption cases, ensuring that the best interests of the child are prioritized. For example, special action proceedings may involve stricter timelines, specific requirements for evidence, and particular attention to the psychological and emotional well-being of the child. These procedural nuances are designed to prevent delays, ensure thorough consideration of the child's needs, and avoid legal pitfalls that could jeopardize the adoption. By adhering to these specialised procedures, courts can more effectively achieve the goals of protecting the child's welfare and ensuring a stable, legally sound adoption process. The effectiveness of the resolution of court cases of the category in question depends largely on the consistent observance of the principles of civil procedure law.

An important role in adoption cases is played by the decisions of the plenums of the Supreme Court, which, along with the Constitution of the Republic of Kazakhstan (1995) and the CPC of RK (2015), provide guidance to courts in considering and resolving civil cases and are applicable to different proceedings. Documents of general importance include regulatory resolutions of the Supreme Court of the Republic of Kazakhstan, such as Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 1 (1998), Normative Decision of the Supreme

Court of the Republic of Kazakhstan No. 2 (2016) and Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 15 (2018).

The CPC of RK (2015) thoroughly regulates the legal proceedings concerning the adoption of children in Kazakhstan. The adoption process can be divided into three main stages: pre-trial, trial, and post-trial. Notably, in a pre-action adoption, citizens wishing to adopt a child must personally establish contact with the chosen child and maintain contact for at least 2 weeks (Article 148, paragraph 3). Kazakh citizens who reside outside the country and foreign persons must have direct communication for at least 4 weeks (Article 148, paragraph 4).

The national legislation of Kazakhstan does not make provision for such a procedure as pre-adoption. In contrast, a legislative initiative, such as Regulation of Adoption and Foster Care of Minors (1983), has been proposed in Italy that allows for the application for future adoption of an unborn child. In this case, the adopted child is identified by the identity of the mother (birth mother) who plans to relinquish the child after birth. A pregnant woman who decides to relinquish her child after birth can go to the juvenile court to search the database for adoption candidates, and her identity is guaranteed anonymity. However, candidates for adoption must still meet the legal requirements. This procedure aims to protect the rights of the child and the use of such a legal mechanism is necessary. The use of pre-adoption procedures, as highlighted in the Italian legislative initiative, is aimed at safeguarding the child's rights by ensuring that the adoptive parents are thoroughly vetted and prepared before the child's birth. This process has been shown to reduce the risk of adoption disruptions by allowing for early intervention and support, as noted by J. Palacios *et al.* (2019). The structured approach also ensures that the adoptive parents are fully committed, reducing the likelihood of a child being returned to state care. Considering the legislation in Kazakhstan and the existing challenges in adoption, such a procedure could significantly improve the adoption process for orphans. By allowing for early matching and commitment, it would provide a more stable environment for children and decrease the number of children who are returned to orphanages. Implementing a similar pre-adoption process in Kazakhstan could help address the current gaps in the system, leading to more successful and permanent placements for children in need. The mother's initial agreement to relinquish the child must be evidenced by her consent to the adoption, which is consistent with current family law.

The Commonwealth of Independent States (CIS) and Baltic countries have established uniform rules of jurisdiction for all adoption cases, regardless of the residence and nationality of the adoptive parents. Specifically, the Code of the Republic of Kazakhstan No. 518-IV, Article 91 (2011) outlines these jurisdictional rules. Article 22 of the Law of the Republic of Lithuania "On Fundamentals of Protection of the Rights of the Child" (1996) and the Family Law Act of Estonia, Article 148 (2009), also adhere to the same jurisdictional standards. However, for those living abroad, adoption proceedings may be complicated by the need to obtain additional authorization or consent from the competent state authorities. In Kazakhstan, adoption of found or abandoned children is not possible without a birth certificate. The court reviews the application to determine if the child is registered with the state. If the child is not registered, the court may

return the application to the applicant before the registration is finalised (Code of the Republic..., 2011). When considering cases of adoption of children by foreign persons, it is worth noting that they have equal procedural rights and obligations with citizens, if this does not contradict ratified international treaties. Documents that have been issued, drafted, or certified by the competent authorities of foreign states and relate to organisations or persons in Kazakhstan may be accepted by the courts with consular legalisation or apostille (Civil Procedural Code..., 2015).

When verifying the documents confirming a person's eligibility to adopt, it should be considered that information on the existence or absence of a criminal record must be confirmed by the authorities competent to make such a judgement in the country where the person resides and wishes to adopt a child. When checking for medical conditions following the Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 692 (2015), it is necessary to consider the medical certificate obtained in the country where the applicants reside. If there are doubts about admissibility and sufficiency as evidence, the court may suggest a medical examination. If an adoption located in orphan and children's organisations is being considered, the court should be satisfied that the applicants are on the register of persons. Adoption of children by foreigners is allowed only to citizens of a country that has international obligations in the field of protection of the rights and interests of children, equivalent to international treaties ratified by the Article 95 of the Civil Procedural Code of the Republic of Kazakhstan (2015). The legal norms established in Kazakhstan's Civil Procedural Code are stringent and aim to ensure the protection of children's rights by thoroughly verifying the eligibility of prospective adoptive parents. The requirement to confirm the absence of a criminal record and the need for a medical examination reflect a commitment to safeguarding the child's well-being. The emphasis on foreign adoption being permissible only from countries with equivalent child protection obligations aligns with international standards. In comparison, countries like the United States and the United Kingdom also have rigorous procedures. In the United States, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) mandates that adoptive parents undergo background checks, including criminal record checks, and comprehensive medical evaluations. Similarly, in the United Kingdom, the Adoption and Children Act (2002) requires prospective adoptive parents to pass thorough criminal background checks and health assessments, often involving home visits and interviews by social workers.

However, some countries, such as Italy and France, may have more flexible norms regarding the verification process, particularly in medical examinations, stringent as those in Kazakhstan. For example, in Italy, while criminal background checks are mandatory, the health assessments are generally less rigorous, focusing primarily on severe physical or mental conditions that could impede the ability to parent, rather than a comprehensive medical examination. France also has a more flexible approach, where the psychological readiness of the adoptive parents is given more weight than the detailed health conditions. Kazakhstan's approach, particularly its insistence on confirming the equivalence of child protection obligations in the adoptive parents' home country, is a robust measure that underscores a

high level of caution. This ensures that the adoption process aligns with international standards and protects the rights of the child, but it can also make the adoption process more complex and potentially lengthier. While these norms are effective in preventing unsuitable adoptions, they could be perceived as barriers by some prospective adoptive parents, especially foreigners, leading to fewer international adoptions. Thus, while Kazakhstan's norms are thorough and in line with protecting children's best interests, there might be a need for some flexibility or additional support systems to streamline the adoption process without compromising child safety, especially in international cases.

In Kazakhstan, an adoption is finalised when the court decision enters into force. The adoption is then registered with the respective state agency. After the finalisation of the adoption, the adoptive parents shall be obliged to submit annual reports to the state authority on the child's living conditions, education, upbringing, and health. These reports should include photographs of the child. The frequency of reporting may be adjusted by the state agency at its discretion. Foreign adoptive parents must file their reports through an accredited adoption agency for the first three years after the adoption is finalised, and then once a year thereafter until the child turns 18 (Code of the Republic..., 2011).

It is quite expedient to introduce amendments on issues of the adoption process in the Code of the Republic of Kazakhstan No. 518-IV (2011). This would involve adding a requirement to obtain a psychologist's report to assess a person's capacity to be an adoptive parent. Such pre-adoption counselling with psychologists would encourage more informed decisions about adoption and, as a result, reduce the number of refusals and adoption annulments. Apart from being an important document that helps the guardianship authorities and the court to determine whether the applicant meets the requirements for adoption, the psychologist's report can also help to improve the quality of the adoption. Thus, it will help adopters better understand their own needs and capabilities, as well as the child they plan to adopt. Pre-adoption counselling with psychologists is a well-established practice in various countries, designed to ensure that prospective adoptive parents are well-prepared for the challenges of adoption. In the United States, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) mandates psychological evaluations as part of the home study process. This evaluation includes assessing the mental and emotional readiness of the applicants, which helps in identifying potential issues that could affect the adoption. The goal is to ensure that adoptive parents fully understand their own needs and capabilities, as well as the needs of the child they plan to adopt. This process is crucial for reducing the likelihood of adoption disruptions and annulments.

Similarly, in the United Kingdom, the Adoption and Children Act (2002) requires prospective adopters to undergo a detailed assessment, which includes psychological counselling. This assessment helps the adoption agency evaluate the suitability of the applicants and provides them with insights into their own readiness to adopt. The psychological report plays a significant role in this process, offering valuable information that aids in making informed decisions and enhancing the quality of the adoption. In Australia, the Adoption Act (Victoria) (1984) includes provisions for pre-adoption counselling, where prospective parents receive

guidance from psychologists. This counselling helps to address any emotional or psychological issues before the adoption is finalized, contributing to more successful and stable placements. The psychological evaluations are intended to help applicants understand their readiness for adoption and ensure they are prepared for the responsibilities involved. These international practices highlight the importance of psychological counselling in the adoption process. Such evaluations are not only vital for assessing the suitability of adoptive parents but also for enhancing the overall quality of the adoption by ensuring that both the parents and the child are adequately prepared for the transition.

Counselling with a psychologist can help adoptive parents create a stronger and more harmonious relationship with their adopted child, which will help the child adapt more successfully to their new family. Research by C. Balenzano *et al.* (2018) indicates that pre-adoption counselling, including psychological assessments, helps adoptive parents better understand the emotional and behavioural needs of their child, leading to more effective parenting strategies and improved family dynamics. This, in turn, facilitates the child's successful adaptation to their new environment by addressing potential challenges proactively and fostering a supportive family atmosphere. The problem lies in the fact that adoption is a complex transition for both the child and the adoptive parents. Without proper psychological support, parents may struggle to address the unique challenges of adopting a child, such as dealing with trauma or attachment issues, which can hinder the child's successful integration into the family (Dufynets *et al.*, 2024). Pre-adoption counselling helps mitigate these challenges by equipping parents with the tools and insights needed to support their child's emotional well-being effectively.

Establishing the stages of the adoption process and the relevant requirements is important in terms of safeguarding the interests of the children and understanding the legal implications of adoption. These should be clearly defined so that adopters and foster carers know what is needed from them at each stage. The requirements for adopters must be reasonable and in the best interests of the children. Some concrete requirements that could be introduced in the Code of the Republic of Kazakhstan No. 518-IV (2011):

- adoptive parents should receive adoption training (this should include information on the psychological and emotional aspects of adoption, as well as the legal implications of adoption);
- criminal record checks, which are necessary to ensure the safety of children;
- being interviewed by a psychologist to assess the adoptive parents' ability to raise the child.

The introduction of these requirements will help to ensure safer and more successful adoptions, which is in the interests of all parties involved in the process: children, adoptive parents, and society as a whole.

## Discussion

Adoption is an important and complex legal process in all countries of the world. The future fate of a child often depends on the correct and responsible decision of prospective adoptive parents. Even the slightest mistake in conducting an adoption can violate the rights of both the parents and the child, as well as those who wish to adopt. That is why the law strictly regulates the conditions and procedures for

conducting and terminating an adoption. Under Article 27 of the Constitution of the Republic of Kazakhstan (1995), marriage and the family, maternity, childhood, and pater-nity are protected by the State. To protect the interests of children without parents, the law prescribes the possibility of guardianship and trusteeship. Thus, these children can be adopted and taken into foster care.

Provisions on the process of adoption of children in Kazakhstan are contained in a special legal act and represent the legislative mechanism used in adoption (Code of the Republic..., 2011). These rules aim to ensure that the adoptive parent and adoptee interact in a way that creates a relationship similar to parent-child relationships, both emotionally and legally. Among these norms, the grounds and purposes of adoption, who can be the adoptive parent and the adoptee, as well as the legal consequences of adoption, are regulated. In modern conditions, legislation relating to adoption and subsequent monitoring of the upbringing of children is in a constant process of improvement. This is primarily because the possibility of adopting children by foreign nationals became available only after Kazakhstan gained independence. During this time, new regulations have been developed, but conditions are changing.

According to C. McMellon and E.K.M. Tisdall (2020), psychologists around the world argue that a child needs a family to develop fully, and the earlier adoption takes place, the more seamless it will be for the child. The researchers also argue that adoption can help children who have experienced trauma or abuse as it can give children the sense of security and stability they need to heal. It is worth agreeing with this and emphasising that increased juvenile delinquency, deviant behaviour, illness, and a tendency towards unhealthy habits are all negative factors that can arise if adoption or relinquishment occurs late (Spytska, 2023). There are three forms of family upbringing in Kazakhstan: adoption, guardianship (custody), and foster family. The most preferable option for realising the interests of the state and the child is adoption.

O.M. Onayemi (2021) defines intercountry adoption as a legal act that establishes a personal and property relationship between the adopted child and the persons who foster the child. He also notes that intercountry adoption is a complex and multi-stage process that is governed by the laws of two countries: the country of origin of the child and the country of adoption. It is necessary to add to the author's position that these relations are similar to parent-child relations, but they are complicated by the presence of a "foreign element". According to C. Dumitru and N. Ghițulescu (2019), such relationships are governed by the rules of private international law, which determine which laws of several countries apply in a given situation. It should be added that if the adopter and the child to be adopted are nationals of different countries, or if the adoption is to take place abroad and follow the law of another country, the term "international" or "foreign" adoption applies.

Adoption of children by foreign nationals is permitted only for citizens of a country that has relevant treaty obligations of an international nature with Kazakhstan (Podoprigora *et al.*, 2019). According to L.D. Leve *et al.* (2019), children can only be placed for adoption by foreign nationals after no suitable candidates from among relatives, citizens permanently residing both within and outside the state, can be found within 3 months of the child's inclusion in the

centralised registry. An important aspect of judicial review of the adoption process is to verify whether these children were actually offered to Kazakh adoptive parents prior to the transfer of information about them to foreign nationals. According to Article 84 of the Code of the Republic of Kazakhstan No. 518-IV (2011), children may be placed for adoption by foreign citizens only if it is not possible to place them with Kazakh citizens or relatives.

This subject stays topical in the Republic of Kazakhstan due to the insufficient development of the legislative framework and the difficulty of tracing adopted children. This is particularly noted in US experience, where the practice of adoption annulment is common, as noted by M. Barney *et al.* (2022). As the authors mention, in the US, the monitoring of adopted children is nationwide, child welfare authorities are entitled to conduct adoption checks at any time after adoption. In Kazakhstan, adopted children are monitored only within consular districts, which currently exist only in New York and Washington, D.C. (White *et al.*, 2022). This means that adoptive parents living in other regions of Kazakhstan cannot be sure that their children are properly supervised. In the US, criminal record certificates are issued based on a multi-county or state background check. This provides a more comprehensive criminal record check, as adopters may have criminal records in more than one place. In Kazakhstan, criminal record certificates are issued based on a criminal record check in only one county or state (Abdrasulov *et al.*, 2023). That is, adoptive parents may not be aware of a child's criminal record if the child was convicted elsewhere. Family law in the United States and Kazakhstan is generally similar. However, there are some crucial differences that can complicate the adoption process. For instance, in the USA, adoption usually takes place through state guardianship and custody agencies, while in Kazakhstan it can take place through both state guardianship and custody agencies and private agencies (Maksymenko, 2024). This can lead to confusion and delays in the adoption process. Overall, there are several shortcomings in adoption practice in Kazakhstan that need to be addressed to ensure the safety and well-being of children.

The above examples provide grounds for reconsidering the possibility of adoption of Kazakh children by foreign nationals, as the state should maximise their safety and control over their well-being. A specific feature of adoption of children who have reached the age of 10 is the need to obtain the child's consent following the Code of the Republic of Kazakhstan No. 518-IV (2011). Kazakh citizens who permanently reside outside the country may adopt children, but only if it is not possible to foster them with Kazakh citizens or relatives of the children. I. Farmakopoulou *et al.* (2022) note that the development of adoption legislation has led to different approaches to this legal institution in different countries. The authors also mention that approaches differ in terms of adoption goals, age of the child, candidates for adoption and adoption procedure. It should be added to this position that the institution of international adoption must consider the existing socio-legal contexts of adoption in each individual legal system.

After Kazakhstan gained independence and opened its borders, the adoption of Kazakh children by foreign nationals became much more common. Until 1991, the borders were effectively closed and adoption of children from Kazakhstan by foreign nationals was not considered possible

(Seymore, 2022). Later, there was a period of updating the legislative framework of the Republic of Kazakhstan, and therefore adoption agencies were unable to operate in Kazakhstan. The updating of the legislative framework for international adoption began after a multitude of applications from foreign nationals to adopt children. However, many cases of children travelling abroad have been accompanied by violations of the law and moral problems, as D. Lasio *et al.* (2021) write. The authors mention that they include the illegal removal of children from families, child trafficking, and the mistreatment of children. In some cases, children were abused or exploited after adoption. There are several reasons for the introduction of litigation to establish adoption.

According to B. Mounts and L. Bradley (2019), in the first place, the administrative adoption procedure allowed for gross violations of existing legislation in adoption decisions. S. Malcorps *et al.* (2021) note that in most foreign countries, adoption is judicial. In their view, this means that the decision to adopt is made by the court after careful consideration of all the circumstances of the case. This provides safeguards to protect the rights of children and adoptive parents. Proceeding from the above positions, the advantages of the judicial process are also that the court is independent and acts only according to the law; it is not subject to parochial interests and judges have professional knowledge of the law.

It is important to mention that there are currently some shortcomings in Kazakh legislation regarding the adoption of children by foreign nationals. Accordingly, measures such as improving the state's mechanism for monitoring the well-being of adopted children abroad by providing annual reports on their situation; and tightening criminal record checks on foreign adopters through the competent international bodies are proposed. This will provide an opportunity to ensure an effective and quality adoption procedure, as well as protect the rights and interests of children.

### Conclusions

This study was conducted to analyse the adoption procedure according to the norms of the current legislation of the Republic of Kazakhstan. A statistical analysis was conducted on the total number of registered orphans in the country from 2018 to 2022. Accordingly, it was found that the level of indicators is still at a fairly high level at this stage. However, the number of children in orphanages continues to decline as 80% of the 22,000 children were adopted.

The current legislative framework was analysed. During the analysis, it was noted that the procedure for the adoption of children is defined, first and foremost, by the Code

of the Republic of Kazakhstan No. 518-IV "On marriage (matrimony) and family", namely its Article 87. The analysis also found that the judicial process of child adoption in the Republic of Kazakhstan follows international standards and norms, as well as with the practice of other countries. Furthermore, it was established that for the effective work of guardianship and custody bodies, the identification of orphans and children left without parental care should be carried out by all individuals and legal entities who have learnt of the child's lack of parental care. In this connection, there is a national data bank of orphans and children left without parental care. This study regulated the procedure and its specific features for the implementation of adoption of found and abandoned children by foreign nationals.

An analysis of foreign legislation from Italy, Estonia, and Lithuania reveals significant insights into adoption practices and regulations. Italy's adoption framework is governed by the Regulation of Adoption and Foster Care of Minors, which includes provisions for pre-adoption procedures that allow prospective adoptive parents to apply for future adoption even before the child's birth. This approach is designed to facilitate early planning and ensure that the adoptive parents are well-prepared to meet the child's needs from the outset. Family Law Act of Estonia outlines rigorous standards for the adoption process. The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption mandates that prospective adopters undergo comprehensive assessments, including psychological evaluations, to ensure their suitability. These evaluations are crucial in helping adoptive parents understand their readiness for adoption and addressing any potential issues before the adoption is finalized. Lithuania's adoption regulations require prospective parents to undergo detailed background checks and medical evaluations, aiming to ensure that only those who are fully prepared to adopt are approved. Overall, these legislative frameworks illustrate a strong emphasis on pre-adoption counselling and thorough assessments, reflecting a commitment to ensuring the well-being of both the child and the adoptive parents. These practices contribute to more informed decision-making and can lead to more successful and stable adoption placements. Subsequent research will focus on comparative legal analysis of the procedure of adoption by foreign citizens in foreign countries.

### Acknowledgments

None.

### Conflict of interest

None.

### References

- [1] Abdrasulov, E., Saktaganova, A., Saktaganova, I., Zhenissov, S., & Toleuov, Zh. (2023). Legal awareness and its significance when determining the nature of a person's legal behaviour. *International Journal of Electronic Security and Digital Forensics*, 15(6), 578-590. [doi: 10.1504/IJESDF.2023.133960](https://doi.org/10.1504/IJESDF.2023.133960).
- [2] Adoption and Children Act. (2002, November). Retrieved from <https://www.legislation.gov.uk/ukpga/2002/38/contents/enacted>.
- [3] Aliyeva, L., Ilyassova, G., Rustembekova, D., Karibayeva, A., & Shnarbayev, B. (2024). Legislative and criminological problems of intercountry adoption of Kazakhstani children. *Pakistan Journal of Criminology*, 16(3), 565-580. [doi: 10.62271/pjc.16.3.565.580](https://doi.org/10.62271/pjc.16.3.565.580).
- [4] Balenzano, C., Coppola, G., Cassibba, R., & Moro, G. (2018). Pre-adoption adversities and adoptees' outcomes: The protective role of post-adoption variables in an Italian experience of domestic open adoption. *Children and Youth Services Review*, 85, 307-318. [doi: 10.1016/j.childyouth.2018.01.012](https://doi.org/10.1016/j.childyouth.2018.01.012).

- [5] Barney, M., Murdie, A., Park, B., Hart, J., & Mullinax, M. (2022). From age to agency: Frame adoption and diffusion concerning the international human rights norm against child, early, and forced marriage. *Human Rights Review*, 23(4), 503-528. doi: [10.1007/s12142-022-00670-4](https://doi.org/10.1007/s12142-022-00670-4).
- [6] Çalış, N. (2022). Children without parental care. In B.K. Yerdelen, K. Elbeyoğlu, O. Sirkeci, Y.M. Işıkcı, S. Grima & R.E. Dalli Gonzi (Eds.), *Being a child in a global world* (pp. 141-147). Leeds: Emerald Publishing Limited. doi: [10.1108/978-1-80117-240-020221014](https://doi.org/10.1108/978-1-80117-240-020221014).
- [7] Child for rent: In Kazakhstan, children are being returned to orphanages more often. (2023). Retrieved from [https://baigenews.kz/rebyonok-naproat-v-kazahstane-stali-chasche-vozvrashat-detey-v-detdoma\\_146029/](https://baigenews.kz/rebyonok-naproat-v-kazahstane-stali-chasche-vozvrashat-detey-v-detdoma_146029/).
- [8] Civil Procedural Code of the Republic of Kazakhstan. (2015, October). Retrieved from <https://adilet.zan.kz/eng/docs/K1500000377>.
- [9] Code of the Republic of Kazakhstan No. 518-IV "On Marriage (Matrimony) and Family". (2011, December). Retrieved from <https://adilet.zan.kz/eng/docs/K1100000518>.
- [10] Constitution of the Republic of Kazakhstan. (1995, August). Retrieved from <https://adilet.zan.kz/eng/docs/K950001000>.
- [11] Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. (1993, May). Retrieved from <https://assets.hcch.net/docs/77e12f23-d3dc-4851-8f0b-050f71a16947.pdf>.
- [12] Convention on the Rights of the Child. (1989, November). Retrieved from <https://www.ohchr.org/sites/default/files/crc.pdf>.
- [13] Dufynets, V., Shcherban, T., & Hoblyk, V. (2024). Post-traumatic stress in children as a result of war: Strategies for psychological support. *Scientific Studios on Social and Political Psychology*, 30(1), 16-26. doi: [10.61727/ssspj/1.2024.16](https://doi.org/10.61727/ssspj/1.2024.16).
- [14] Dumitru, C., & Ghițulescu, N. (2019). Impact of parenting skills development on succesful adoption of hardly-adoptable children. In E. Soare & C. Langa (Eds.), *European proceedings of social and behavioural sciences "Education facing contemporary world issues"* (pp. 430-436). London: Future Academy. doi: [10.15405/epsbs.2019.08.03.51](https://doi.org/10.15405/epsbs.2019.08.03.51).
- [15] Family Law Act of Estonia. (2009, November). Retrieved from <https://www.riigiteataja.ee/en/eli/530102013016/consolide>.
- [16] Farmakopoulou, I., Stavropoulou, K., Bari, N., Theodoropoulou, N., & Theodoratou, M. (2022). The application of the new law of adoption and the psychological preparation of prospective stepparents. *European Psychiatry*, 65, 881-882. doi: [10.1192/j.eurpsy.2022.2288](https://doi.org/10.1192/j.eurpsy.2022.2288).
- [17] Ingenito, C. (2023). The protection of relationship in adoption in particular cases: Side notes of the sentence of the Constitutional Court n. 79/2022. *BioLaw Journal*, 1, 417-436. doi: [10.15168/2284-4503-2642](https://doi.org/10.15168/2284-4503-2642).
- [18] Lasio, D., Chessa, S., Chistolini, M., Lampis, J., & Serri, F. (2021). Expecting an already born child: Prospective adoptive parents' expectations in intercountry adoption. *Children and Youth Services Review*, 128, article number 106163. doi: [10.1016/j.childyouth.2021.106163](https://doi.org/10.1016/j.childyouth.2021.106163).
- [19] Law of Australia No. 10150 "Adoption Act (Victoria)". (1984, November). Retrieved from <https://www.legislation.vic.gov.au/in-force/acts/adoption-act-1984/075>.
- [20] Law of the Republic of Kazakhstan No. 63 "State Allowances for the Families with Children". (2005, June). Retrieved from <https://adilet.zan.kz/eng/docs/Z050000063>.
- [21] Law of the Republic of Lithuania "On Fundamentals of Protection of the Rights of the Child". (1996, March). Retrieved from <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.382481?jfwid=32ocqqtax>.
- [22] Leve, L.D., Neiderhiser, J.M., Ganiban, J.M., Natsuaki, M.N., Shaw, D.S., & Reiss, D. (2019). The early growth and development study: A dual-family adoption study from birth through adolescence. *Twin Research and Human Genetics*, 22(6), 716-727. doi: [10.1017/thg.2019.66](https://doi.org/10.1017/thg.2019.66).
- [23] Luhamaa, K., & O'Mahony, C. (2021). International human rights law governing national adoption from care. In T. Pösö, M. Skivenes & J. Thoburn (Eds.), *Adoption from care: International perspectives on children's rights, family preservation and state intervention* (pp. 177-194). Bristol: Policy Press. doi: [10.51952/9781447351054.ch011](https://doi.org/10.51952/9781447351054.ch011).
- [24] Luyt, J., & Swartz, L. (2023). Documentary analysis of the legal and policy framework of transracial adoption in South Africa. *Child & Family Social Work*, 28(3), 788-798. doi: [10.1111/cfs.13004](https://doi.org/10.1111/cfs.13004).
- [25] Maksymenko, O. (2024). International practices in the development of administrative legal relations in the field of child protection. *Law. Human. Environment*, 15(1), 37-52. doi: [10.31548/law/1.2024.37](https://doi.org/10.31548/law/1.2024.37).
- [26] Malcorps, S., Vliegen, N., Nijssens, L., Tang, E., Casalin, S., Slade, A., & Luyten, P. (2021). Assessing reflective functioning in prospective adoptive parents. *PLoS ONE*, 16(1), article number e0245852. doi: [10.1371/journal.pone.0245852](https://doi.org/10.1371/journal.pone.0245852).
- [27] McMellon, C., & Tisdall, E.K.M. (2020). Children and young people's participation rights: Looking backwards and moving forwards. *International Journal of Children's Rights*, 28(1), 157-182. doi: [10.1163/15718182-02801002](https://doi.org/10.1163/15718182-02801002).
- [28] Mounts, B., & Bradley, L. (2019). Issues involving international adoption. *Family Journal*, 28(1), 33-39. doi: [10.1177/1066480719887494](https://doi.org/10.1177/1066480719887494).
- [29] Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 2 "On the Practice of Application by Courts of Legislation on the Child Adoption". (2016, March). Retrieved from <https://adilet.zan.kz/eng/docs/P160000002S>.
- [30] Onayemi, O.M. (2020). Anatomy of the long-waiting period of prospective adopters on the state corridor of child adoption: A necessity or a denial? *Journal of Public Affairs*, 21(3), article number e2247. doi: [10.1002/pa.2247](https://doi.org/10.1002/pa.2247).
- [31] Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 692 "On Approval of the List of Diseases, in the Presence of Which a Person Cannot Adopt a Child, Take Him under Guardianship or Trusteeship, Patronage". (2015, August). Retrieved from <https://adilet.zan.kz/rus/docs/V1500012127>.
- [32] Palacios, J., Adroher, S., Brodzinsky, D.M., Grotevant, H.D., Johnson, D.E., Juffer, F., Martínez-Mora, L., Muhamedrahimov, R.J., Selwyn, J., Simmonds, J., & Tarren-Sweeney, M. (2019). Adoption in the service of child protection: An international interdisciplinary perspective. *Psychology, Public Policy, and Law*, 25(2), 57-72. doi: [10.1037/law0000192](https://doi.org/10.1037/law0000192).

- [33] Palacios, J., Brodzinsky, D.M., & Grotevant, H.D. (2023). Adoption. In A.D. Redlich & J.A. Quas (Eds.), *The Oxford handbook of developmental psychology and the law* (pp. 169-193). Oxford: Oxford University Press. doi: 10.1093/oxfordhb/9780197549513.013.9.
- [34] Podoprigora, R., Apakhayev, N., Zhatkanbayeva, A., Baimakhanova, D., Kim, E.P., & Sartayeva, K.R. (2017). Religious freedom and human rights in Kazakhstan. *Statute Law Review*, 40(2), 113-127. doi: 10.1093/slr/hmx024.
- [35] Regulation of Adoption and Foster Care of Minors. (1983, May). Retrieved from <https://www.gazzettaufficiale.it/eli/id/1983/05/17/083U0184/sg>.
- [36] Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 1 "On Some Issues of Application of Legislation on the Judiciary in the Republic of Kazakhstan". (1998, May). Retrieved from <https://adilet.zan.kz/rus/docs/P98000001S>.
- [37] Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 15 "On the Application by Courts of Law in Resolving Disputes Related to the Upbringing of Children". (2018, November). Retrieved from <https://adilet.zan.kz/eng/docs/P180000015S>.
- [38] Seymore, M.L. (2023). *Adoption ouroboros: Repeating the cycle of adoption as rescue*. *Pepperdine Law Review*, 50(2), 229-284.
- [39] Shalgimbekova, K., Smagliy, T., Utegenova, B., & Demisenova, S. (2023). Organisation of social and pedagogical support for orphans in foster care families. *3i Intellect Idea Innovation*, 2, 241-248. doi: 10.52269/22266070\_2023\_2\_241.
- [40] Splytska, L. (2023). *Social-psychological peculiarities of youth with delinquent behavior*. *Youth Voice Journal*, 2, 9-17.
- [41] Tileukhan, Zh. (2023). *Kazakhstanis took 80% of the 22 thousand orphans into their families*. Retrieved from <https://factcheck.kz/manipulation/faktchek-kazaxstancy-zabrali-v-svoi-semi-80-iz-22-tysyach-detej-sirot/>.
- [42] Tursunov, A.B. (2020). *The current issues on protection of children's rights in Kazakhstan*. *Bulletin of the Academy of Law Enforcement Agencies under the General Prosecutor's Office of the Republic of Kazakhstan*, 1, 100-106.
- [43] White, E.E., Baden, A.L., Ferguson, A.L., & Smith, L. (2022). The intersection of race and adoption: Experiences of transracial and international adoptees with microaggressions. *Journal of Family Psychology*, 36(8), 1318-1328. doi: 10.1037/fam0000922.

## Проблемні аспекти усиновлення в цивільному процесі Республіки Казахстан

Гульжазіра Аталикова

Доктор філософії в галузі права

Південно-Казахстанський університет імені Мухтара Ауезова

160012, просп. Тауке Хана, 5, м. Шимкент, Республіка Казахстан

<https://orcid.org/0000-0001-7939-4273>

**Анотація.** Актуальність даного дослідження обумовлена зниженням рівня ефективності одного з ключових соціальних інститутів через наявність проблемних аспектів і колізій законодавства. У зв'язку з цим метою даного дослідження був аналіз проблемних аспектів сучасної процедури усиновлення за чинним законодавством Республіки Казахстан. У дослідженні було використано декілька методів наукового пізнання, а саме: логічний аналіз, формально-юридичний, функціональний аналіз, догматичний, юридичної герменевтики та інші. Вивчення статистичних даних про загальну кількість зареєстрованих дітей-сиріт показало, що нинішні показники все ще залишаються досить високими, проте кількість дітей, які виховуються в інтернатних закладах, зменшується. У ході дослідження були вивчені законодавчі акти, які детально регулюють процедуру і порядок усиновлення, а саме: Конвенція про права дитини, Цивільний процесуальний кодекс Республіки Казахстан. Відзначено, що значна роль у справах про усиновлення відводиться постановам Пленумів Верховного Суду Республіки Казахстан, які служать керівництвом для судів при розгляді та вирішенні цивільних справ і застосовуються в різних провадженнях. Також було виявлено, що національне законодавство Республіки Казахстан не передбачає такої процедури, як попереднє усиновлення, в порівнянні з зарубіжною практикою деяких країн. Не менш важливим є аналіз процедури усиновлення знайдених і покинутих дітей іноземними громадянами. Практичне значення одержаних результатів полягає у наданні детальної характеристики зазначеного процесу та формулюванні деяких рекомендацій щодо його вдосконалення.

**Ключові слова:** опіка; сімейні правовідносини; соціальний захист; права дитини; діти-сироти; інститут; держава