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**TÍTULO:** Análisis de la legislación rusa que regula las relaciones sobre la participación de familiares en la educación de los niños que quedan sin cuidado parental: problemas de la práctica policial.

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**RESUMEN:** El artículo destaca los problemas de la participación de familiares en la educación de los niños que han perdido el cuidado parental, y la solución de los problemas de comunicación con dicho niño en caso de adopción o la transferencia a la custodia. Los autores también examinaron la relación que se desarrolla en el caso cuando los familiares actúan como padres adoptivos o tutores. En particular, se investiga el tema de la regulación legislativa, su implementación práctica, así como las posibles soluciones. El problema se considera teniendo en cuenta el análisis de los indicadores estadísticos del territorio de Stavropol.

**PALABRAS CLAVES:** autoridades de tutela, menores, tutor y fiduciario, familia de acogida, derecho de familia.

**TITLE:** Analysis of Russian legislation regulating relations on the participation of relatives in the upbringing of children left without parental care: problems of law enforcement practice.

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**ABSTRACT:** The article highlights the issues of the participation of relatives in the upbringing of children who have lost parental care, the settlement of issues of communication with such a child in case of adoption, or transfer to custody. The authors also examined the relationship that develops in the case when relatives act as adoptive parents, guardians. In particular, the issue of legislative regulation, its practical implementation, as well as possible solutions are investigated. The problem is considered taking into account the analysis of statistical indicators of the Stavropol Territory.

**KEY WORDS:** guardianship authorities, minors, guardian and trustee, foster family, family law.

**INTRODUCTION.**

The Family Code of the Russian Federation (further – FC RF) stipulates that a minor child has the right to communicate with close relatives. These include both parents, grandparents, brothers and sisters. As a rule, the issue of communicating with relatives in families with positive dynamics in the development of relations for raising a minor child does not arise. The relevance of the analysis of regulatory regulation of relations arising in connection with the participation in the upbringing of a child who has lost parental care.

According to the Ministry of Education of the Stavropol Territory, as of January 1, 2018, 7,751 orphans and children without parental care were registered with guardianship and guardianship authorities, of which 6,553 were social orphans.

The number of orphans and children left without parental care brought up in foster families, as of January 1, 2019 amounted to a total of 6579; including in the families of guardians (trustees) - 3449; in foster families - 869; adoptive parents - 2261 [1].

The priority forms of upbringing of minor children left without parental care in the Russian Federation were and remain adoption, guardianship and trusteeship.

## **DEVELOPMENT.**

### **Research of methodology.**

Theoretical and methodological provisions were presented by the works of Russian scientists, family law specialists in the framework of separate forms of placement of a minor child in the family, conclusions and suggestions received in the course of applied research in this area in modern realities, problems of the effectiveness of federal and regional legislation.

The research used such scientific research methods as the method of analysis of statistical data, the sociological method, the formal logical method.

The statistical method makes it possible to identify and study quantitative indicators of such a social phenomenon as orphan hood, to identify the most common reasons why children are deprived of parental care, to identify the most common forms of placement of such children, to reveal the share of family structure, to trace the dynamics of social phenomena in the direction of increase or decrease, than indirectly confirm or refute the effectiveness of measures taken by the guardianship and guardianship authorities to arrange orphans, and children left without parental care in the first place, in a replacement family. The sociological method allows you to evaluate people's behavior on issues of family education, willingness to take care of other people's children.

The use of the formal logical method made it possible to identify and evaluate the areas of legal regulation of relations, within which the state provides protection for childhood, for children who, for one reason or another, are left without parental care of family education.

**The results of the study.**

In the case of adoption of a child, such children lose their personal non-property and property rights and are relieved of their duties in relation to their biological parents (their relatives) (Clause 2, Article 137 of the RF IC), that is, all relatives of the child, including father, mother, brothers and sisters legally cease to be relatives to him and they do not have any rights and obligations in relation to him.

The legislation provides for only two very specific situations where legal relations can be preserved: Firstly, when a child is adopted by one person, personal non-property and property rights and obligations can be saved at the request of the mother if the adoptive parent is a man, or at the request of the father if the adoptive parent is a woman (paragraph 3 of article 137 of the IC of the Russian Federation). This situation is directly related to the adoption of a family, when the stepfather or stepmother adopts the spouse's child and so that there is no loss of family ties, which is specifically stipulated in the RF IC.

Secondly, if the child's parent has died, then at the request of the parents of the deceased parent (grandfather or grandmother of the child), personal non-property and property rights and obligations with respect to the relatives of the deceased parent can be preserved if the interests of the child require it (Clause 4, Article 137 SK RF).

The preservation of family ties is decided by the court solely in the interests of the child and is possible only if the deceased parent was not guilty of leaving the child without care (for example, died in a car accident or during military operations, etc.). The facts that the court maintained such legal relations are extremely rare and are made mainly at the request of the adoptive parents themselves, who are relatives of the child.

After the adoption of a child, his former relatives are not entitled to receive information about the child's device and his new personal data. In addition, the child does not retain the right of inheritance to blood relatives. So, if it is necessary to transfer the inheritance to such a child, it will be necessary to use the testament law.

Attempts to communicate with the child can be stopped by the adoptive parent in the same way as if a completely unauthorized person tried to communicate with the child. If the blood parent of the adopted child wants to receive information about the child, he can contact the guardianship authority, and the guardianship authorities offer the adoptive parent to provide this information. Sometimes this makes sense in order to obtain information about the blood parents and information about the child before adoption, while he was with the blood parents, for example: about the course of pregnancy, childbirth; existing diseases in a child, etc.

When placed under guardianship, the child, on the contrary, does not lose family rights and obligations in relation to all his relatives. Parents of the child lose the right of legal representation, but no more. They have the right to communicate with the child, like other relatives in accordance with Art. 55 SK of the Russian Federation. So, the family law takes into account the need and feasibility of maintaining and maintaining as much as possible the family ties of a child left without parental care.

The child's guardian establishes the procedure for communication with any relatives of the child at his discretion in such a way that it does not harm the development of the child, his psyche, and does not interrupt the course of training and other activities. The guardian has the right to immediately stop communication if he considers that this communication causes psychological or any other harm to the child and has the right to inform the guardianship authorities about situations that arise in the process of communication.

In cases where it is a question of reimbursable guardianship, where a guardian who fulfills his duties, in essence, provides child rearing services for a fee and concludes an agreement with the guardianship authorities on the establishment of a foster or foster family, the guardianship authority may initially specifically stipulate in the contract or annexes to him the order of communication of the child with his relatives; for example, establish such contacts as mandatory, stipulate their regularity and other conditions: place of meetings, duration, presence of third parties, order of meetings and partings, etc. The contract may also stipulate that if the child or parents have conditions for their upbringing, the contract is terminated and the child is transferred to the parents or relatives.

In Russian law, in cases where children for one reason or another are left without parental care, the law enshrines the preferential custody of close relatives.

So, in accordance with paragraph 5 of Art. 10 of the Federal Law of the Russian Federation No. 48-FZ “On Custody and Guardianship” [2] “... grandparents, parents, spouses, adult children, adult grandchildren, brothers and sisters of an adult ward, as well as grandparents, adult brothers and sisters of a minor the wards shall have the preemptive right to be his guardians or trustees before all other persons”. When placing a child, his ethnic origin, belonging to a certain religion and culture, his native language, and the possibility of ensuring continuity in upbringing and education should be taken into account (Clause 1, Article 123 of the IC of the Russian Federation).

So, when placing a child without parental care in the family, guardianship authorities must take into account the need to preserve, as far as possible, the child’s previous ties, including with his blood relatives. In addition, the general microclimate that is taking shape in the foster family plays an important role in the educational process. In this regard, the establishment of trusting relations not only between the child and the guardian, but also members of his family are of particular importance (clause 2 of article 146 of the IC RF).

Undoubtedly, the most preferred is the placement of the child in the family of their close relatives. However, by analyzing cases of refusal to close relatives in custody, the following typical violations by guardianship authorities can be identified, namely:

- Refusal to accept a guardianship application due to the health status or age of the potential guardian.
- Due to temporary disability of a close relative, candidate for guardians.
- Submission of documents in violation of the deadlines.
- Cramped or poor housing conditions.

We believe that in some cases, by refusing custody of close relatives, guardianship authorities apply excessive measures.

We can recall a situation that was widely covered in the Russian media. After the death of his grandfather, who was officially under the care of a minor child, his grandmother (a disabled person of group III) immediately applied to the guardianship and trusteeship authorities to establish guardianship, but the local guardianship authorities did not accept the statement from the grandmother in issuing guardianship, saying that the grandmother would not receive custody of the child due to the state of health and initiated the process of removing the child. It was thanks to the time that the public and the media intervened, the child was left in the family, and her grandmother was given custody.

In this regard, it is worth noting that the temporary disability of a close relative, a candidate for guardians, should not be a reason for refusal. Moreover, this circumstance should become a condition for maximum assistance to a relative, which also finds its legislative confirmation (for example, in RF Government Resolution No. 117 [3], in paragraph 5 of article 10 of the Federal Law “On Guardianship and Trusteeship”, in paragraph 5 of the Rules for the selection, registration and training of citizens who have expressed a desire to become guardians or trustees, adopted by Decree

of the Government of the Russian Federation No. 423 “On Certain Issues of Carrying Out Guardianship and Guardianship in relation to Minor Citizens” [4]).

There are cases of refusal to close relatives in custody, in particular grandmothers (as a rule, it is they who are ready to immediately take on these obligations) due to the existence of a criminal record in their lives for crimes not belonging to the category of grave and especially grave ones, as well as to crimes against sexual integrity.

In addition, one of the most controversial conditions for refusal is refusal due to the constrained or poor housing conditions of potential guardians. So, the case of the legal community received an ambiguous assessment when the grandmother was refused custody of two granddaughters, because the house was temporarily not heated, and not the fault of the grandmother, although electric heaters were used to heat the house. In addition, the guardianship authorities concluded that the grandmother would not have enough funds to provide for children, because she will be forced to leave her job and live only on retirement (children are small 3.5 and 2 years old). For some reason, the guardianship authorities did not take into account the possibility of receiving monthly benefits for each child, guaranteed by paragraph 3 of Art. 148 SK of the Russian Federation.

## **CONCLUSIONS.**

We believe that in contrast to European countries, where family education was chosen to ensure the interests of a child left without the care of biological parents, the solution to the current situation in Russia should be to ensure the implementation of such a priority area as preserving and supporting the child’s family. In this regard, it is necessary, by law, to ensure the priority of transferring children left without parental care to their direct and distant relatives.

We agree that “for the timely identification of families in need of special state support, representatives of social services (health care or social protection) visit the families of all newborns and, when identifying risk factors for social orphan hood, involve them in preventive work” [5].



**Conflict of interest.**

The authors confirm the absence of a conflict of interest.

**BIBLIOGRAPHIC REFERENCES.**

(in Russian).

1. Ofitsial'nyy portal Ministerstva obrazovaniya Stavropol'skogo kraya // [http: stavminobr.ru](http://stavminobr.ru) (data obrashcheniya 15.04.2019 g.).
2. Federal'nyy zakon ot 24.04.2008 g. № 48-FZ (v red. ot 03.08.2018 g.) «Ob opeke i popechitel'stve» // Sobraniye zakonodatel'stva RF. 2008. № 17. St. 1755.
3. Postanovleniye Pravitel'stva RF ot 14.02.2013 g. № 117 (v red. ot 20.06.2018 g.) «Ob utverzhdenii perechnya zabolevaniy, pri nalichii kotorykh litso ne mozhet usynovit' (udocherit') rebenka, prinyat' yego pod opeku (popechitel'stvo), vzyat' v priyemnuyu ili patronatnuyu sem'yu» // Sobraniye zakonodatel'stva RF. 2013. № 36. St. 4577.
4. Postanovleniye Pravitel'stva RF ot 18.05.2009 g. № 423 (v red. ot 21.12.2018 g.) «Ob otchel'nykh voprosakh osushchestvleniya opeki i popechitel'stva v otnoshenii nesovershennoletnikh grazhdan» // Sobraniye zakonodatel'stva RF. 2009. № 21. St. 2572.
5. Larin A.N, Konopleva I.N. Praktika raboty s det'mi, ostavshimisya bez popecheniya roditeley, v razvitykh zarubezhnykh stranakh // Elektronnyy zhurnal «Psikhologicheskaya nauka i obrazovaniye» [www.psyedu.ru](http://www.psyedu.ru) / ISSN: 2074-5885.

(in English).

1. The official portal of the Ministry of Education of the Stavropol Territory // [http: stavminobr.ru](http://stavminobr.ru) (accessed April 15, 2019)
2. Federal law dated 24.04.2008 No. 48-FZ (as amended on 08/03/2018) “On guardianship and trusteeship” // Collection of legislation of the Russian Federation. 2008. No. 17. Art. 1755.

3. Decree of the Government of the Russian Federation of February 14, 2013 No. 117 (as amended on June 20, 2018) "On approval of the list of diseases in the presence of which a person cannot adopt a child, take him into custody (guardianship), take in a foster or foster family" // Collection of legislation of the Russian Federation. 2013. No. 36. Article 4577.
4. Decree of the Government of the Russian Federation dated 05/18/2009 No. 423 (as amended on 12/21/2018) "On certain issues of the implementation of guardianship and trusteeship in relation to minor citizens" // Collection of legislation of the Russian Federation. 2009. No. 21. Art. 2572.
5. Larin A.N., Konopleva I.N. The practice of working with children without parental care in developed foreign countries // Electronic Journal "Psychological Science and Education". 2013. № 3. P. 162 // [www.psyedu.ru](http://www.psyedu.ru) / ISSN: 2074-5885.

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