

CONSEQUENCES OF REVISION OF THE EUROPEAN CONVENTION ON ADOPTION OF CHILDREN TO NOVEL OF CIVIL CODE

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The aim of article, presented with name Consequences of Revision of the European Convention on Adoption of Children to novel of Civil Code on Conference of Young Lawyers –COFOLA 2008 organized by Faculty of Law of Masaryk's university in Brno, is to present the work of miniteam for family law on recodification of private law.

In the terms of recodifying activities in field of private law is the main aspiration to create a comprehensive private-law codex, which should, inter alia, includes the regulation of family law too, incl. the regulation of substitutional family care. Regarding to conceptual animadversions to regulation of adoptions entrusted the miniteam prof. Hrusakova and the author of paper with preparation of alternative conception of regulation the adoptions. The specialist for adoptions were consulted and their list is presented in beginning of the article.

The authors came out during the preparation of alternative conception mainly from critical evaluation of actual text of draft of recodified Civil Code. Already in whole beginning of critical conclusions is the author pointing out that the basic building stone of the recodification is using the principle of discontinuity and separation from the period of socialistic legislation during the creation of text, which is now preparing, however it is not further commented, that the legal regulation set by legal codexes from 1960's was modernized after year 1989 based on the international obligations of Czech republic (or ČSFR). The consequences of accession to a European Convention on Adoption of Children from the year 1963 were to harmonize the national legal regulation with the text of named convention, because of the fact, that named convention is still binding for Czech Republic, the suggestion of recodified Civil Code shall be in general principles as same as actual legal

regulation regulated by socialistic family code. Other critical conclusions are pointing at crucial contradiction in terms and are expressing disagreement with used terminology

The authors of alternative conception used as basic stone for its creation the draft of revised European Convention on adoption on children, which was prepared by Council of Europe. Consequence of probable czech accession to revised Convention would be to prepare another significant novel of intended text of prepared Civil Code, and all of this in situation, when the recodifying commission as background for preparation of recodification should take in account the drafts of international conventions too. Draft of recodified Civil Code but didn't take in account the revised Convention at all.

In next part of paper is the author engaged more in details in specific suggested changes. Before all he commented the creation of general clause, which is aimed to definition of adoption, elimination of improper financial gain and guarantee the legal obligation of all the professionals to educate themselves.

Further the author pointed at the terminology change projected the principle of best interests of the child into text of draft from the reason of understandableness, because draft of Civil Code came out from the terminology having no pillar in actual modern international regulation.

Other important part, which was point of author's interest, was projection of requirements of revised Convention concerning the age limits. It is a characteristic for actual czech legal regulation, and in the last analysis the contemplated recodification of Civil Code, that no age limits are concretely set. On the contrary the revised Convention is based on the determination of minimal or maximal age limit for specific situations, which should be necessarily projected into the draft of conceptual changes. The age limits are now suggested for the minimal necessary age of an adopter, definition of child, further for minimal age difference between an adopter and an adoptee and finally also for minimal age, when the child must agree with adoption (if the age limit is reached). Author explains also reasons for each limit.

From author's point of view the most important part of changes made on the draft of recodified Civil Code is concerning with preadoptional care. Author deduced the importance of preadoptional care, when especially pointed at fact, that relationships in field of adoption

are connected with important status changes. Author stressed the basic idea of adoption thus the will to create a new family, which should be imitation of biological parentage. Author considers a preadoption care to be unfungible element, which should ensure sufficient number of information leading to the conclusion, that there was established the bound between the prospective adopter and adoptee, which is same as between parents and children, and so is fulfilled the condition for adoption itself.

Enumeration of necessary preliminary enquiries mentioned in revised Convention, which should serve as background for well-informed position deciding body, is started with theoretic basis and considerations. Further author dealt with projection this enquiries into the text of draft of recodified Civil Code. This part is started with elimination of duplex system of decision-making of administrative bodies and courts in cases of preadoptional care.

Final part of essential changes is regulation of automatic conversion revocable adoption to the irrevocable only by lapse of period of time set by law, if isn't transformed on basis of adopter's petition.

In the end pointed author at eligibility of terminological change in whole text of family-law part of the draft of recodified Civil Code concerning institut named according to actual legal regulation „paternal responsibility“ and according to draft of recodified Civil Code „paternal rights and duties“, when he recommended return to actual, already contentually clear term „paternal responsibility“.

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