

РАЗДЕЛ 3

ПРАВО И ЮРИСПРУДЕНЦИЯ

Key features of child adoption in France

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In France, the Civil Code covers a vast area of relations giving special attention to adoption. Under French law the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. According to the Civil Code of France there are two types of adoption: *simple adoption* and *plenary adoption*.

1. **Plenary adoption.** Under Articles 343–343-2 of the Civil Code of France adoption may be petitioned by two spouses not judicially separated, married for more than two years or who are both older than twenty-eight years, and by a single person over twenty-eight years of age. The age requirement is not imposed in the case of adoption of the spouse's child. In accordance with Article 344 of the Civil Code of France the adopters must be *15 years* older than the children whom they propose to adopt (in the case of adoption of the spouse's child — only *10 years*). However, the court may, if there are good reasons, make an adoption order where the age difference is smaller than *15 years (10 years)*. Under Article 345 of the Civil Code of France plenary adoption is allowed only if the child is fewer than *15*. Moreover, where the adopted child is older than *13*, he or she must personally consent to his or her plenary adoption. Furthermore, a full *6 months* must elapse after the child has been placed with a family before the adoption application is submitted to the court. This procedure means ensuring that the adoption takes place in the best interests of the child.

In France, prospective individuals are considered adoptive parents for the child from the day of filing the petition for adoption. Under Article 358 of the Civil Code of France an adoptee is given the same rights, privileges and duties including the rights to inheritance as a biological offspring in the family of the adopter. According to Article 359 a plenary adoption is irrevocable. Thus, plenary adoption provides that the relations between the adoptive parents and the adopted child are more or less equivalent to those between biological offspring and their parents. Moreover, a plenary adoption order results in termination of the legal relationship between the child and his or her family of origin.

2. **Simple adoption** is a type of adoption where the adopted person maintains some legal and financial links with his or her birth family, including inheritance

rights. Thus, with simple adoption adopted people have two families. *Moreover, according to Article 360 of the Civil Code of France simple adoption is allowed regardless of the age of the adoptee.* In practice, in France a simple adoption is asked in favour of the adults by elderly persons. In this case, adoption is aimed at ensuring inheritance rights. In addition, this type of adoption is often used in case of re-marriage by one of the birth parent in order to approximate the child to a new spouse without losing the bond of kinship with the other birth parent of the child. In general simple adoption is carried out in accordance with the same requirements as plenary adoption. However, according to Article 370 of the Civil Code of France simple adoption may be revoked on serious grounds permitted by law (for instance, chronic alcoholism, misconduct, ingratitude, etc.) on request of the adopter or the adoptee, or, where the latter is a minor, of that of the Government procurator's office. A request for revocation made by the adopter is admissible only where the adoptee is over 15. Where the adoptee is a minor, the father and mother by blood or a member of the family of origin up to the degree of cousin-german may also request revocation.

In 2013 French President Francois Hollande signed a law authorizing gay marriage and adoption by same sex couples. In our opinion, it violates the right of the child to family relationship for a harmonious environment at home. To prove that, we would like to represent some data published by one of the authoritative editions "Social Science Research" in 2012. According to these data among the adult children adopted within same-sex couples there is a high level of venereal diseases (in comparison with the adult children who were brought up in traditional families). Furthermore, such adult children suffer from both gender identity disorder and from socioeconomic helplessness (most of them are unemployed; they live on social welfare payments). Such adult children suffer also from serious emotional disorders and have a greater risk of social and psychological problems. In particular, they think about suicide more often than the adult children who were brought up in traditional families.

In conclusion, it is necessary to emphasize some key features of legal regulation in governing the adoption process in France in comparison with the legislation of the Republic of Belarus. 1) There are no such types of adoption (as plenary and simple) in Belarus; 2) in France, the adopters must be older than twenty-eight years and two spouses must have been legally married for more than two years (Belarusian law does not meet such a requirement); 3) in France, the minimum age difference between the adopted child and the adoptive parents is 15 years (in the case of adoption of the spouse's child — 10 years). Article 126 of the Marriage and Family Code of the Republic of Belarus establishes a minimum age difference (not less than 16 years), and the maximum age difference (no more than 45 years). A similar requirement is applied in the case of adoption of the spouse's child; 4) in France, a child can consent to adoption if he or she is older than 13 years

(in Belarus — 10 years); 5) in Belarus, it is not required that a child should be placed with the family before the adoption application is submitted (6 months in France); 6) in France, individuals are considered to be the child's adoptive parents from the day of the filing of the petition for adoption, in Belarus — from the date of enforcement of the court decision; 7) French law allows same-sex couples to adopt children and provides for adoption of adult persons (in Belarus it is not possible).

Вспомогательные репродуктивные технологии

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С целью лечения бесплодия, улучшения репродуктивного здоровья населения и обеспечения репродуктивных прав граждан в Беларуси разрабатываются и внедряются вспомогательные репродуктивные технологии (далее — ВРТ). Это методы оказания медицинской помощи, при которых все или отдельные этапы зачатия эмбриона происходят вне организма женщины. В некоторых случаях эти методы дают шанс на продолжение рода бесплодным супружеским парам. ВРТ используются и законодательно урегулированы во многих странах мира. Однако в результате развития и распространения данных методов возникают серьезные этические проблемы и правовые коллизии. Поэтому применение ВРТ вызывает неоднозначную оценку и глубокую озабоченность во всем мире.

Программы ВРТ работают в Беларуси с конца 1990-х гг. Основные проблемные вопросы, связанные с использованием данных технологий, были сняты с принятием Закона Республики Беларусь от 7 января 2012 г. «О вспомогательных репродуктивных технологиях», который определил правовые и организационные основы применения в нашей стране ЭКО, искусственной инсеминации и суррогатного материнства.

ВРТ имеют 16-летний опыт внедрения в нашей стране. Как отмечается в Национальной программе демографической безопасности Республики Беларусь на 2011–2015 гг., в результате лечения бесплодия методами ВРТ родилось более 600 детей [1]. Ввиду этого создаются правовые стимулирующие условия для распространения и активного использования ВРТ, а также для дальнейшего развития научных исследований в этой сфере. В то же время в Беларуси не прекращается полемика «относительно рациональности, правомерности и этичности использования ВРТ в качестве коррекционного механизма регулирования демографического кризиса».