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# CUESTIONES POLÍTICAS

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# Implementation of State Policy in the Field of Guardianship and Trusteeship: Regional Aspect

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## Abstract

The objective of the work is to review the implications of the implementation of state guardianship policy in the Primorsky territory of the Russian Federation. The institution of the family is the most important factor for the development of the child's personality; its role is constantly growing in the development and education of children. Without a doubt, the family is a natural educational environment for a child who leaves his mark on his behavior and character. A special place in the modern legal system is occupied by the aspect of the right of the child and the protection of the interest that is left without the care of the parents. Methodologically, use was made of the documentary research technique close to legal hermeneutics. It is concluded that the guardianship and guardianship bodies perform a series of important functions for any civilized state, namely: identification of people who need to establish one of the forms of guardianship (adoption); adoption of such persons, as well as increased supervision of the guardian, the activities of the adoptive parents and of persons authorized by the state to care for those who need their help.

**Keywords:** family arrangement; guardianship; adoption; guardianship authorities; Primorsky territory.

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## Implementación de la política estatal en el campo de la tutela: aspecto regional

### Resumen

El objetivo del trabajo consiste en revisar las implicaciones de la implementación de la política estatal de la tutela en el territorio de Primorsky de la federación rusa. La institución de la familia es el factor más importante para el desarrollo de la personalidad del niño; su papel crece constantemente en el desarrollo y la educación de los niños. Sin lugar a dudas, la familia es un entorno educativo natural para un niño que deja su huella en su comportamiento y carácter. Un lugar especial en el sistema jurídico moderno está ocupado por el aspecto del derecho del niño y la protección del interés que se deja sin el cuidado de los padres. Metodológicamente se hizo uso de la técnica de investigación documental próxima a la hermenéutica jurídica. Se concluye que, los órganos de tutela y tutela desempeñan una serie de funciones importantes para cualquier estado civilizado, a saber: identificación de personas que necesitan establecer una de las formas de tutela (adopción); adopción de tales personas, así como una mayor supervisión del tutor, las actividades de los padres adoptivos como de las personas autorizadas por el estado para cuidar a aquellos que necesitan su ayuda.

**Palabras clave:** arreglo familiar; tutela; adopción; autoridades de tutela; territorio de Primorsky.

### Introduction

The state considers the family as one of the most important foundations of our society and directs its policy towards its further strengthening, its material well-being improvement, and favorable condition creation for cultural, spiritual and moral development of people, for raising children. The initial life attitudes, the foundations of character - all this is developed by the family (Uskova, 2017; Volynchuk & Kustov, 2018). The family largely determines the attitude of children to work, the culture of their behavior, initiative and activity, discipline and a number of other personality qualities (Gurkina, 2017).

Unfortunately, not all children have the opportunity to be raised in a family. And this situation is explained by some reasons. Such reasons may include deprivation or restriction of parental rights, recognition of parents as legally incompetent, failure to raise and maintain a child on the

part of his legal representatives, refusal of parents to take their children from educational organizations, medical organizations, social service organizations, or similar organizations, death of parents, action or inaction of parents, which entails the creation of a threat to a child's life and health, his socially dangerous position and many other reasons.

In 2018, the number of orphans left without parental care in Russia decreased by 15 percent, based on information provided by the federal data bank on children. But the problem continues to be acute. Besides, there is still no consensus on the nature of adoption, the only indisputable fact is that adoption gives rise to legal relations. Current legislation does not give a clear answer as to whether this relationship is parental or similar to parental. It seems possible to consider that this is a special type of legal relationship. It is difficult enough to call them similar parental relationships (Smirnova, 2017; Tretyakova, 2018).

Today, custody and guardianship are the most common form of family placement of orphans and children without parental care. Guardianship and trusteeship is only an intermediate form of minor citizen placement before adoption, since a ward does not become a full member of the family as during adoption, however, certain elements of family education are present in this case.

## **1. Legislative Basis of Guardianship and Trusteeship Institution in the Russian Federation**

Federal Law No. 48-FL (April 24, 2008) on Guardianship and Trusteeship distinguishes the following two forms of guardianship (trusteeship):

1. custody in general order.
2. preliminary (temporary) custody (The federal law no. 48-fl, 2008).

Guardianship, appointed in a general manner, requires the implementation of a standard procedure - the collection of all documents, passing a medical commission, attending foster parents' school, conducting a survey of the living conditions of a citizen who has expressed a desire to become a guardian or a trustee. At the same time, preliminary guardianship can be established only with a passport, a statement from a citizen and an act of inspection of the living conditions of a candidate for guardians (trustees). But at the same time, its duration can be no more than 6-8 months.

It should be noted that preliminary guardianship is drawn up solely in the interests of a child and so that, during the course of its operation, the guardian (the trustee) collects a full package of documents for guardianship

registration in general order. The validity of preliminary guardianship (curatorship) is established individually by the body of guardianship in each case individually, taking into account all circumstances. If necessary, the duration of the preliminary guardianship may be extended.

The RF Civil Code defines a whole list of requirements for guardians (trustees). The task of guardianship authorities is to ensure that all these requirements are taken into account when guardianship or trusteeship of a minor is established in order to avoid adverse consequences (Civil code of the Russian federation, 1994). If the establishment of guardianship (trusteeship) of a child by his next of kin is impossible, then any other person has the right to assume these responsibilities, provided that he meets all the requirements and conditions that the legislation imposes on this issue.

Adoption is considered the highest priority form of family placement for children. The adoption process takes place exclusively in court, by filing a statement of claim. When adoption is established, the opinion of a child who has reached the age of ten years is necessarily taken into account, as well as when guardianship or trusteeship is established. Cancellation of adoption also occurs by filing a statement of claim to the court to cancel the adoption.

## **2. Activities of Trusteeship and Guardianship Authorities: Regional Aspect**

All territorial departments of guardianship are under the jurisdiction of Education and Science Department of the Primorsky Territory, which in turn is included in the Government of the Primorsky Territory.

The guardianship authorities perform a number of functions:

- registration of existing orphans, as well as the children who were left completely without parental care, their detection.
- creation of a database in which future guardians, trustees and/or adoptive parents are listed.
- placement of orphans in special institutions (orphanages, boarding schools, etc.) and in foster families.
- protection of minor rights.
- control over the management of their ward property and some others.

Primorsky Territory has 1651 profiles of children who need a family. It should be noted that the number of children who still need a family is significantly reduced due to the activities of the guardianship and trusteeship

of the Primorsky Territory. So, for example, at the end of 2016, the federal databank of children in the Primorsky Territory had 2974 profiles, at the end of 2017 - 2592 profiles, at the end of 2018 - 2080 profiles.

Along with the data on the family structure of minors, there is also evidence concerning the cancellation of child adoption decision to the families of the Primorsky Territory. For example, in 2015, the amount of such decisions made 143, in 2016 – 84, in 2017 – 106, in 2018 – 158.

These data include decisions on the removal of guardians and trustees from the performance of their duties, due to the fact that they cannot cope with their implementation, the decisions on the removal of guardianship or trusteeship from a child due to the guardian, foster parent or child desire, as well as at the initiative of the guardianship and trusteeship authorities, as the case may be. Also, these figures may indicate the abolition of adoptions in relation to minors by the courts of the Primorsky Territory.

### **3. Regional Projects**

Since 2015, the “Children of Primorye” program has been implemented in the Primorsky Territory, organized on the initiative of the Administration of the Primorsky Territory. It combined the efforts of government, business, society and the media to help children from the centers for family adoption promotion.

The social project “Children of Primorye” is the initiative of journalists and social activists of the Primorsky Territory. Its goal is to attract the attention of the regional residents to the problem of social orphanhood, when children are left without family attention with living parents and close relatives, to help put minors of social institutions of the region into families and guardianship, to convince active Primorye people that they should return a family to a child - a serious step, responsible, but still not difficult.

For the fourth year in the framework of the campaign “Children of Primorye,” we have been helping families to find hundreds of young pupils of the Family Centers, and any resident of Primorsky Krai may give a New Year’s gift to these children. The project operates in several directions. The campaign “Vacations in the family” allows almost any family to pick up a child from the assistance center to their home during holidays. After such communication, many parents seriously think about the adoption or registration of guardianship (trusteeship) for a child.

It is worth noting that a child can be taken not only for the holidays, but also for the weekend, there is also the opportunity to do this regularly, to

take the child home every weekend. Sometimes families are afraid to take their children on vacation for ethical reasons, since they believe that this implies adoption or guardianship (trusteeship) in the future, but this is not the case. You can just take a child home on vacation and a weekend, thus providing support.

Another area is the collection of New Year's gifts in the regional retail chains. The campaign is supported by ordinary citizens, and the representatives of large companies and industries of the region.

Also, to attract the attention of citizens to the problem of social orphanhood, a telethon is held on the Primorye Public Television, and the viewers learn the stories of children who can and should be helped.

"Let's Go Home" program takes place for those babies who were refused by their parents immediately after birth. The program is made on the basis of the Maternity Hospital No. 3 of the Vladivostok City District, which is located in the Pervomaisky District of the Vladivostok City District. According to the Department of Health, thanks to the joint work of the employees of the "third" maternity hospital and the guardianship and trusteeship authorities of the Primorsky Territory, children are sent directly to foster care from the maternity hospital. The program "Let's go home" annually shows positive results: more and more babies left by blood parents are discharged from the institution directly to foster care.

It should also be noted that there is a school of foster parents in the Vladivostok city district, on the basis of KSKU "TSSU No. 1 of the city of Vladivostok", where future candidates for guardians (adoptive parents) and adoptive parents must be trained before they have a positive opinion on the possibility of becoming a candidate, and before they start looking for the right child for them. The same school exists on the basis of a social organization for the socio-psychological support of families in the Primorsky Territory.

#### **4. Problem Points in the Field of Guardianship and Trusteeship in Primorsky Territory and the Mechanisms of their Resolution**

According to the data at the end of 2019, the federal database on the children of the Primorsky Territory has 1651 profiles of children who need a family. The number is quite large, and there are explanations for this. There are several categories of children that are difficult to arrange for families.

The first category is the children with health problems. When they choose a child, all candidates for adoptive parents, guardians and trustees

are guided by the state of child's health whom they would like to take to their family. Before issuing an opinion on the possibility of becoming a candidate for guardians, trustees or adoptive parents, they specifically prescribe health groups in statements, within which they would like to choose their children.

The second category of children who are difficult to arrange for families are the children who have brothers and sisters. And the existing principle, thanks to which the separation of brothers and sisters is unacceptable, has not been canceled.

The third category of children is adult children. As practice shows, citizens want to take young children up to about ten years old for their upbringing. Adolescents are the most difficult group for foster parents.

Working "with adult orphans" is much more difficult. At the age of ten - eleven years the chances of finding a new family for a child tend to zero. Adolescents are less adopted and taken under guardianship (trusteeship), and their groups are the most numerous in state institutions. That is, children who were in state institutions as adults have almost no chance of raising in a family.

Such sad statistics, behind which the fates of many, many children left without parental love and care, require active work to provide a family for these children. Employed categories of children can live in family support centers and child care centers for several years, and often graduate from them into adulthood, without knowing what it means to live in a normal loving family.

Also, the territorial departments of guardianship of the Vladivostok city district, as well as some departments of guardianship in the Primorsky Territory, which have a large number of children under guardianship and wards, there have the problem of control over ward families.

There are other points on which it is necessary to exercise control over the ward families, but this is also difficult because one expert has to study the files of each child constantly in order to track all the necessary information about him.

In order to increase the number of children placed in families from the abovementioned categories, it is necessary to introduce a new form of family arrangement in the territory of Primorsky Krai. This form may be represented by foster care. This form of arrangement exists in the territories of 42 constituent entities of the Russian Federation, but has not been mastered yet in the Primorsky Territory. Thanks to foster care, the level of family structure in the Primorsky Territory will be increased; more children will have the opportunity to be raised in families. Disabled children, the children with brothers and sisters, and the children over ten years old will



have a chance to leave the walls of state institutions and be brought up in a professional and loving family.

Another proposal to improve the activities of the guardianship and trusteeship bodies of the Vladivostok city district in terms of family arrangement is the creation of an all-Russian database of citizens deprived or limited of parental rights. Thus, it will always be possible to check the candidates for guardians, trustees or adoptive parents whether citizens have previously been deprived of, or if they were limited in parental rights by their own fault.

Also, this database should include the citizens who were suspended from custody or guardianship of minors, as well as information on citizens whose child adoption was canceled. Such a database would help the employees of guardianship agencies throughout Russia to identify citizens who cannot be candidates for guardians, trustees or adoptive parents at the stage of drawing up conclusions for these citizens. Perhaps such a measure of future candidate check would reduce the number of canceled decisions on the transfer of minors to families.

Indeed, at the moment, the experts of guardianship and trusteeship authorities do not have such an opportunity. For example, any citizen residing in the territory of the Primorsky Territory who has previously been suspended from custody or guardianship, or who has lost parental rights, may receive a conclusion from the guardianship authority of another subject of the Russian Federation on the possibility of becoming a candidate for guardians, trustees or adoptive parents, and also take the child to the family. It is not known how this citizen will treat the child and how he will fulfill his responsibilities in the upbringing and maintenance of the minor.

Another proposal to improve the selection of citizens who claim to become guardians, trustees or adoptive parents is to develop testing at the stage of their education in foster parents' schools.

Specially created tests with the questions about the adoption of orphan children into a family would help screen out those citizens who are not psychologically ready to accept a child in their family. This procedure would also help to reduce the number of canceled decisions on transfer children to families in the future, as those citizens who did not pass this test would not be allowed as the candidates for guardians, trustees or foster parents. Besides, they should increase the number of candidate training days. Currently, training lasts one month and takes place exclusively on weekends. We believe that this period is not enough to understand whether a person is ready for such a serious step as the adoption of a child in his family.

The database of guardians and trustees will improve the work of guardianship and trusteeship authority experts to control families into

which minors have been brought up for education, respectively, will allow more frequent contact with guardians and trustees, and possibly also reduce the number of canceled decisions on the transfer of minors to families, as the problems that originate in families will be identified earlier and perhaps they will find their own solution that will save the family for the child.

Such a database can be created as All-Russian, to divide it into subjects and municipalities, or by education, on the basis of the “Aist” child database, which is now available in all departments of guardianship and trusteeship bodies.

The abovementioned recommendations for guardianship authorities will increase the number of children placed in families both in the territory of the Vladivostok city district and throughout the Primorsky Territory, as well as will improve control over families who raise orphans and children left without parental care, which will reduce the number of canceled decisions on the transfer of children to foster families (Zaripova, 2017).

## **Conclusions**

The existence of guardianship authorities is a very important component of Russian law. They perform the functions that are very important for any civilized society: they identify individuals who need to establish one of the forms of guardianship or trusteeship over them, are engaged in placing such persons under guardianship (trusteeship) or adoption, and also further monitor the activities of guardians (curators) and adoptive parents as the persons authorized by the state to take care of those who need their help.

The number of orphans in the Primorsky Territory is decreasing and this became possible thanks to the enormous work of government bodies and society, namely, to indifferent people who are ready to help orphans and children left without parental care, the people who are ready to take such children to their families. The authorities pursue the policy of public attraction to this problem, which is currently extremely acute throughout the Russian Federation.

New, interesting, and most importantly productive programs are being developed that allow orphans and children left without parental care to find families, and to feel the joy of motherhood and fatherhood by the people who have long dreamed of children. At the same time, the problem of the family structure continues to remain unresolved in full measure, both on the territory of the Vladivostok city district and on the territory of the Primorsky Krai and the Russian Federation.

At that, the problem of the family arrangement is not fully resolved and is acute. There is still a need to develop new programs and forms of child placement in families, to make new proposals and adjustments. It defines in a child's life. Since family education in Russia is a priority, the main task of the entire state and local authorities is to provide all possible assistance in placing children who need families (Miroshnikova *et al.*, 2016).

But first of all, it is nevertheless necessary to work with the families in a socially dangerous situation, to help them by any means and not allow the child to lose a blood family, if possible, and also, if necessary, to prevent the child from being in the family which creates the threat to his life and health.

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