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LEGAL GUARDIANSHIP FOR BRAZILIAN ADOPTION

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Abstract: The Brazilian legal system includes laws that deal with adoption, establishing a formal and rigorous procedure in order to guarantee the adopted individual their right to belong to a family. In this light, the present research aims to analyze legal protection in relation to Brazilian adoption, a recurring and typified practice in Brazil that consists of promoting the adoption of an individual informally, that is, without respecting the procedures provided for by law. Therefore, what we seek to understand is the role of the legal system in relation to this practice and what the consequences are for “adopters” and “adopted”. It is noteworthy that the expanded summary will be carried out through searches in bibliographic sources which, as established by Chiara Kaimen, refers to analyzing the main theories of a topic, and can be carried out for different purposes.

Keywords: Illegal adoption; Crime; Formal procedure.

INTRODUCTION

The adoption procedure in Brazil is marked by formal rigidity that seeks to protect the adopted individual and ensure, in the most efficient way possible, their right to belong to a family. In this scenario, numerous legal instruments have emerged that aim to guide the adoption procedure, among them the Civil Code, Penal Code, Child and Adolescent Statute, the National Adoption Law (Law Number: 12.010/2009) and the Adoption Law (Law Number: 13,509/2017).

Law Number: 13,509/2017, known as the Adoption Law, promoted significant changes to the Child and Adolescent Statute (ECA), including article 19-A, which deals with the procedures to be carried out when the pregnant woman expresses an interest in hand over the unborn child to the adoption system, let's check it:

Article 19-A. The pregnant woman or

mother who expresses interest in giving her child up for adoption, before or shortly after birth, will be referred to the Children and Youth Court.

§ 1 The pregnant woman or mother will be heard by the interprofessional team of the Child and Youth Justice, which will present a report to the judicial authority, including the possible effects of the gestational and puerperal state.

§ 2 Once in possession of the report, the judicial authority may determine the referral of the pregnant woman or mother, upon her express agreement, to the public health and social assistance network for specialized care.

§ 3 The search for the extended family, as defined under the terms of the sole paragraph of article 25 of this Law, will respect the maximum period of 90 (ninety) days, extendable for an equal period.

It turns out that, due to the standards established by the adopter and which must be followed by the adoptee, regarding age, skin color, eye color, among other characteristics, the procedure for the adoption to take place becomes lengthy and difficult. In this scenario, armed with the hope of carrying out a faster adoption, individuals fall into the practice known as “Brazilian Adoption”, which is currently typified in the Penal Code:

Article 242 - Giving someone else's birth as one's own; register someone else's child as yours; hiding a newborn or replacing it, suppressing or altering the right inherent to marital status:

Penalty - imprisonment, from two to six years.

“Brazilian adoption” is an expression used in Brazil to refer to situations in which a child is given to a person or family, without observing legal rules and the due adoption process established by the competent authorities. This term is often used to describe informal

adoptions, which are not regulated by the legal system, and which can occur without the supervision of professionals and without guaranteeing the child's rights and well-being.

The objective of legislation and the adoption system in Brazil is to protect children's rights and ensure that they grow up in a safe and healthy environment. Brazilian adoptions, which do not follow this legal process, can be harmful to the child and subject to legal complications. Therefore, it is essential that anyone interested in adopting a child in Brazil follows applicable laws and regulations, seeking appropriate guidance and support from the competent authorities.

On the topic, author Isabel Fernandes de Assis states that:

With Brazilian adoption, the young person's right, guaranteed by article 48 of the ECA, to know your genetic origin, your parentage, after turning 18 years of age. Furthermore, the right to recognition of genetic origin is extremely personal, unavailable and imprescriptible, as provided for in article 27, also of the Child and Adolescent Statute.

It is important to emphasize that adoption is an act of love and responsibility. Following the legal process is critical to ensuring that adopted children have their rights protected and grow up in a suitable environment. Anyone wishing to adopt a child in Brazil must seek guidance from competent bodies, such as children and youth courts, and have the support of qualified professionals to ensure a safe and effective process.

MATERIAL AND METHODS

This expanded summary was prepared based on current legislation and updated doctrines that deal with the topic, among them, the Civil Code, Penal Code, Child and Adolescent Statute, the National Adoption Law (Law, number: 12.010/ 2009) and the Adoption Law (Law, number:13.509/2017).

This way, the methods used were documentary and bibliographical research, which, as established by Chiara Kaimen, refers to analyzing the main theories of a topic, and can be carried out for different purposes.

RESULTS AND DISCUSSION

Essentially, it is possible to state that the Brazilian State has great concern for children and adolescents and, for this and other reasons, has drawn up legal provisions that guarantee this public the right to have a family, for example. It turns out that, in order to circumvent the system established by the national jurisdiction, the so-called "Brazilian Adoption" appears.

"Brazilian Adoption" is characterized as illegal and its practice ends up violating the individual rights of adoptees, since, as there is no public interference in this type of adoption, there is also no compliance with the criteria that would make the act viable. On the topic,

Authors such as Antonia Torres da Rocha (2010) speak out regarding the losses caused by illegitimate action, let's check it:

(..) the registration may be annulled, which will result in the termination of the affiliation relationship. It can be seen, therefore, that it is a fragile relationship, because if, for example, there is regret from that mother who gave her child to someone else to register, with a simple DNA test, it will be possible to deconstruct that family relationship.

The second important consequence is the repercussion in the criminal area, since there is a provision for criminal offense in the practice of registering someone else's child as one's child, therefore, Brazilian adoption is a crime provided for in the Brazilian legal system.

Thus, it is possible to note that there are numerous criticisms of the practice of informal adoption, with the main object of concern being the minor and, consequently,

their individual rights and guarantees.

guarantees of the adoptee are tainted through the practice of “Brazilian adoption” by not safeguarding the procedures for validating the act of adoption or complying with the requirements required by law.

CONCLUSION

For all of the above, it is understood that the legal system and the individual rights and

REFERENCES

CHIARA, I. D. et al. **Normas de documentação aplicadas à área de Saúde**. Rio de Janeiro: Editora E-papers, 2008.

Decreto Lei nº 2.848 de 7 de dezembro de 1940. Disponível em: https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm. Acesso em: 19 de out. de 2023

HERBST, G. A.; AZAMBUJA, M. R. F.; “ADOÇÃO À BRASILEIRA”: ANÁLISE SOB A ÓTICA DO PRINCÍPIO DO MELHOR INTERESSE DA CRIANÇA E DO ADOLESCENTE. Disponível em: https://www.pucrs.br/direito/wp-content/uploads/sites/11/2020/08/gabriela_herbst.pdf. Acesso em 19 de out. de 2023.

Lei nº 13.509 de 22 de novembro de 2017. Disponível em: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13509.htm. Acesso em: 19 de out. de 2023.

MIRANDA, M. S. ADOÇÃO À BRASILEIRA: SEGURANÇA E EFICÁCIA DOS ATOS JURÍDICOS. Disponível em: <https://www.jusbrasil.com.br/artigos/adocao-a-brasileira-seguranca-e-eficacia-dos-atos-juridicos/777883379#:~:text=A%20ado%C3%A7%C3%A3o%20%C3%A0%20brasileira%20%C3%A9,por%20esta%20pr%C3%A1tica%20sendo%20que%2C>. Acesso em 19 de out. de 2023.

ROCHA, A. T. Adoção à Brasileira: Aspectos Relevantes. Rio de Janeiro 2010. Disponível em: https://www.emerj.tjrj.jus.br/paginas/trabalhos_conclusao/1semestre2010/trabalhos_12010/antoniarochoa.pdf Metodologia Científica. **Pesquisa Bibliográfica**. Acesso em 19 de out. de 2023. Disponível em: <https://www.metodologiacientifica.org/tipos-de-pesquisa/pesquisa-bibliografica/>. Acesso em: 19 de out. de 2023.