

Law**მინდობით აღზრდა და მისი გამიჯვნა
მომიჯნავე ინსტიტუტებისაგან**

*მასხარაშვილი ხატია
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მინდობით აღზრდის მიზანია ბავშვი აღიზარდოს ოჯახურ გარემოში და ჩამოყალიბდეს სრულფასოვან მოქალაქედ. უზრუნველყოს ბავშვის საზოგადოებაში ინტეგრაცია, ეკონომიკური უთანასწორობის შემცირება, თავიდან გვაცილებს მზრუნველობამოკლებული მოზარდის კრიმინალური სამყაროს გავლენის სფეროში მოქცევის საფრთხეს, მოცემული კვლევის მიზანს წარმოადგენს ასევე მინდობით აღზრდის ინსტიტუტის და სხვა მსგავსი ინსტიტუტების შესწავლით ხელი შეუწყოს აღნიშნულ სფეროში კანონმდებლობის სრულყოფას, მომავალში ასეთი ბავშვების ინტერესების დაცვას და მათი ოჯახურ გარემოში აღზრდის სრულყოფას. ილია ჭავჭავაძე ბრძანებდა: „შვილის გაზრდა, შვილის კაცად გამოყვანა უწმინდესი და უდიდესი ვალია მშობლებისა... გაზრდა შვილისა ისეთი მოვალეობაა, რომ სხვა ყველაფერი ამას უნდა შეეწიროთ, ამას უნდა შევალიოთ, სხვაგან და სხვაში უნდა დავიკლოთ და ყოველივე ნაწლავ-ნადაგი, ყოველივე ამაგი უფრო _ ერთი დრო ამას უნდა შევახმაროთ... ტანთ მოიკელო, ფეხთ მოიკელო, მშიერ-მწყურვალი იარე და ნუ ჩასდგები ჯერ შვილისა და მერე ქვეყნის ცოდვაში. აი, რა უნდა ეწეროს გულის ფიცარზე იმ წმინდა საქმეს, რომელსაც მამა-შვილობას ეძახიან“.⁵ ზევით ხსენებულიდან ნათლად არის ჩამოყალიბებული ის საკითხი თუ რა საერთო და რა განმასხვავებელი ნიშნები აქვს მინდობით აღზრდას სხვა მომიჯნავე ინსტიტუტებთან, კერძოდ, შვილად აყვანას, მეურვეობას და მზრუნველობას. რაც ძალზედ მნიშვნელოვანია თითოეული ჩვენგანისთვის, რათა ბავშვი აღიზარდოს ოჯახურ გარემოში და ჩამოყალიბდეს სრულფასოვან მოქალაქედ, მიიღოს განათლება და ჩადგეს თავისი სამშობლოს სამსახურში.

Foster Care Placement and its Differentiation from Related Institutions

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Upbringing of and care for the child is an important function of the state. Parents are primarily responsible for physical, mental and moral development of the child; however, the state also assumes responsibility to take care of the child. The child belongs to the state and society. One of the fundamental functions of the family, among many others, is appropriate upbringing of children. A child is extremely sensitive and it is the family where the child gets to know the simple rules of moral behaviour, "good" and "bad" traits.

One of the most significant objectives of the Family Law is upbringing of the child in the family harmoniously combined with social upbringing which implies devotion to the homeland, readiness to contribute to development of the country.

It is the aim of the family to facilitate growth and development of an individual at a specific stage.

It is also noteworthy that the rights of the child are protected under the United Nations Convention on the Rights of the Child of 1959 the preamble of which states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."¹

"Children are the future citizens of the mankind. Upbringing of the child is one of the most significant objectives of our life. Our children represent our old age, bad upbringing implies our own future grief, our sorrow, it is our crime before the mankind, the whole country," these are the words of the great pedagogue Makarenko.

Family Law stipulates several forms of upbringing of the child in the family, of which the following are the most important: adoption, guardianship and trusteeship, foster care. Despite of the fact that all these institutions are aimed at protecting the rights of the child, bringing up and taking care of the child within a family, there is also an essential difference between them.

Foster care is very important for upbringing of neglected children and children deprived of parental care. One of the most significant objectives of the care for children is bringing up a child in a home and not in a children's home.

Foster care aims to ensure that children are brought up in a domestic environment and develop as full-fledged citizens, receive education and serve the interests of the country. Studying such institutions promotes improvement of the legislation in this field, protection of the rights of such children in the future and enhancement of their upbringing in the domestic environment.

Foster care placement dates back to 1998 when the President's special order "On State Supported Activities for Parentless Children" was adopted. It stipulated placing children with foster care-givers based on an agreement. A one-time allowance in the amount of GEL 500 and a monthly double minimum salary amount until the child is coming of age was allocated to the families who chose to accept parentless children, who were sent to state orphanages by their family members, for the purpose of care and guardianship. This money was intended to be used as a means of supporting foster care children, buy clothes and other necessary items.

Due to the fact that the order failed to settle all the issues with regard to the children deprived of parental care who were in the state custody, adoption of a normative act (law) was found reasonable. Remuneration of a foster caregiver was not defined separately. Adoption of the Law of 1999 "On Foster Care for Orphans and Children Deprived of Parental Care" was facilitated by high levels of awareness of the acute character of problems related to the upbringing of children and the keen interest in the issues raised in the President's order. By virtue of this Law, social relationships related to foster care were regulated, basic principles were elaborated, remuneration for child care and upbringing was defined separately, and such kind of activity was considered as the basis for calculating length of service. This Law was in effect for eight years.

As a result of legislative, political, and structural changes taking place in the state, it became necessary to clarify the content of specific provisions of the Law of 1999 and to consider certain amendments to it.

Consequently, a new Law "On Foster Care" was adopted on December 18th, 2007 aiming at providing a domestic environment to children and supporting the child's primary right to develop as a person, socialize and adapt to the society by means of the system of foster care, i.e. foster placement.

It goes without saying that such issues as the institution of foster care, the legal basis for its establishment and termination, its comparison with related institutions, such as guardianship and trusteeship, as well as adoption, are of great importance.

These issues are included in regulations which are stipulated by both domestic and international law.

Improvement of living conditions of children is regulated by the Law of Georgia "On Adoption and Foster Care." The new child care system serves as the basis for a healthy future, including facilitating integration of the child into the society, decreasing the threat of the influence of the criminal world on children deprived of parental care, narrowing of economic inequality, providing equal opportunities, and supporting social justice.

Georgia acceded to the United Nations Convention on the Rights of the Child on April 21st, 1994. The accession obliged the country to bring its domestic legislation in compliance with the aforementioned Convention.

Foster placement is one of several alternative ways of state care of a child which in the custody of the state. This institution is one of the most acceptable forms of care for children deprived of parental care.

Family is undoubtedly an essential and irreplaceable condition for development of a healthy and full-fledged individual. Children at children's homes lack parental love, care, affection, sibling relationship, and domestic environment. It is obvious that specialized children's homes cannot ensure harmonious development of the child and are unable to replace the family. Foster placement aims to deal with this specific problem and envisages temporarily placing the child with a family based upon mutual agreement between the state and the foster family. Consequently, foster care is one of the most important outcomes of the civil legislation. The child is entitled to the right to live and be brought up in the domestic environment for the purpose of full and harmonious development, if the child is left without parental care. Due to this fact, foster placement of the child is one of the most acceptable forms and care for such children is a high priority for the state. Accordingly, the state is obliged to supervise foster children who are in its care.

Child care became a pressing issue after the reform taking effect, particularly after the invasion of the Russian troops in August 2008 that created a difficult economic, social, and political situation, caused destruction of property and devastation of economic resources, claimed numerous lives, and deprived hundreds of children of parents and places of residence. Alongside with the provision of humanitarian support, all legal forms of child care and upbringing should be used to alleviate their plight, in particular foster care.

Often families cannot provide conditions appropriate for life and education. A lot of children from such families become inmates of children's homes at best and street wanderers at worst. This situation poses a serious threat to their future.

Analysis of foster placement and study of peculiarities of legal regulation was conducted based upon comparative, historic and logical approaches.

The practice of fostering parentless children (orphans) in families for the purpose of their upbringing has been a long-standing practice in Georgia. To this effect, funds would be allocated to foster families from the state budget (treasury). Later on, foster care incorporated different forms (protection, patronage). Then the state was no longer able to extend material assistance to foster families and the institution of patronage was incorporated into guardianship and trusteeship. Formerly applicable Civil Code (1964) did not stipulate patronage as a form of placing children deprived of parental care with families any more.

The Law on "Foster Care" defined legal principles of foster care, regulated relationship between the state and the foster family, determined the rules and procedures of foster placement, and guarantees of performance. It also defined the status and rights and responsibilities of the social worker engaged in the issues related to child care throughout the entire period of foster placement.

The Law "On Foster Care" adopted in 2007 did not serve as a sufficient basis for complete establishment of this institution and a new Law "On Adoption and Foster Care" was adopted in 2009 and took effect in 2010. It was due to the fact that these two significant institutions – adoption and foster placement – are similar to each other in a certain way and are almost similarly managed and regulated. The difference between them is in legal consequences, namely, in the case of adoption, biological parents are replaced and adopting parents acquire the status equal to that of biological parents. In the case of foster care, the state offers a domestic environment to children deprived of parental care that envisages maintaining all kinds of legal relationship between the foster child and the biological family.

State care is provided through the guardianship and trusteeship body represented by the Social Service Agency, according to the Georgian legislation. Competence of guardianship and trusteeship body includes care for underage persons who do not have legal representative or whose representative has restricted authority or has been deprived of representative authority.

Foster child retains the surname of the biological family and maintains connection with it. He or she is not an heir to the property of the foster parents. In case of foster care, the child is in touch with their parents and family members. This is the difference between adoption and foster care. In the case of adoption, biological parents are replaced with the persons expressing wish to adopt the child. Consequently, foster care is temporary (while the adoption is not).

Foster children are persons whose family, due to poverty or other reasons, is unable to provide proper upbringing and education to the child. Such parents agree to temporarily place them with foster families, as they are unwilling to place the children with children's home. Foster

parents are persons who temporarily perform functions of parents. They may not have children or have one or two children and willing to temporarily host foster children. This is effected by a mutual agreement between the state and the foster family.

Adoption is regulated by Article 6 of the Law of Georgia "On Adoption and Foster Care" which states that:

Subject to adoption is a registered person under 18 years of age that is granted the status of the child sought to be adopted. The status of the child sought to be adopted is granted to the person: a) whose parent (parents) was/were acknowledged by the state as incapable, recognized as missing or declared deceased; b) who is an orphan; c) whose is recognized as an abandoned child; d) whose parent (parents) was/were deprived of the parental right; e) whose all legal representatives gave their consent for the child to be adopted, according to the rule defined by the Minister and by means of filling in the relevant form.

In case of foster care, foster parents are entrusted with the upbringing of the foster child which means that they get allowance for upbringing of the foster child and the whole period of foster care is considered as a service. Moreover, they are entitled to tax benefits, namely they are exempt from income tax. Foster parents are allowed to work in public or private sector. Social worker is responsible for managing the process of care. Their primary functions include the following: The social worker is supposed to help citizens get involved in the foster care program; based on an application of the family, he or she shall examine the person (the minor) who is in need of special care and the condition of his or her families, as well as the condition of the applicant foster family. Following this, the Social Service Agency shall make a decision, within the limits defined by the law, on whether to grant the child the status of a child deprived of parental care, and then the foster care placement of the child. The social worker provides the relevant evaluation and opinion that will serve as the basis for further activity.

The scope of application of this Law increased considerably as a result of the legislative changes introduced in 2009 and is formulated as follows: The Law applies to citizens of Georgia, stateless persons permanently residing on the territory of Georgia, and citizens of foreign country willing to adopt or seeking to provide foster care for underage citizen of Georgia or a stateless person permanently residing in Georgia, as well as to citizen of Georgia and stateless person permanently residing in Georgia who, pursuant to this Law, are subject to adoption or foster care.

The legal bases for adoption and foster care, according to Article 3 of the 2009 Law of Georgia on "Adoption and Foster Care" are the fol-

lowing: The Constitution of Georgia, international agreements and conventions acceded to by Georgia, including The United Nations Convention on the Rights of the Child, The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, The Civil Code of Georgia, the law of Georgia "On Social Assistance," the law of Georgia "On Adoption and Foster Care," as well as other legal acts.

The scope of application of Article 7 of the Law which provides the definition of *foster mother* and *foster father* increased considerably. According to the Law the following persons are entitled to this right:

1. Citizens of Georgia, stateless persons permanently residing in Georgia and citizens of foreign countries permanently residing in Georgia willing to extend foster care to the child (who should apply to the guardianship and trusteeship body according to their place of residence).

2. Foster mother/father can be any person of the full legal age, including a relative of the child, except:

A) The person acknowledged by the state as incapable or of restricted capacity;

B) The person whose parental or guardianship/trusteeship rights and responsibilities are restricted, as a result of non-fulfilment of the obligations assumed under the Law;

C) The person who is unable to take care of the child due to deterioration in health condition;

D) The person who or whose family members have been convicted for a grave or especially grave crime, as well as the person who or whose family members have not been exonerated or discharged in accordance with the procedures defined by the Georgian legislation;

E) The parent, foster care-giver, guardian and trustee of the child who bear the responsibility to support the child.

A local branch of the Social Service Agency has the authority to carry out the foster care procedures, including identifying a person subject to foster care and a person seeking to accept the foster child within the administrative-geographic area it is responsible for, registering the person subject to foster care (foster child), the person seeking to accept the foster child (foster mother and father), and systematize information on these persons, conducting an assessment of the person seeking to

foster a child and the foster child, analysing the compatibility between the person seeking to foster the child and the person subject to foster care, considering the negative criteria (except for emergency cases of foster care), elaborating the plan of individual development of the child and monitoring implementation of this plan, supervising the living, educational, development, health conditions of the foster child, as well as fulfilment of obligations assumed by foster mother/father, providing consultations, within its competence, on issues of foster care, and exercising other prerogatives granted to it by the Georgian legislation.

Registration shall include the following steps: The person willing to provide foster care for a child should apply to the local guardianship and trusteeship agency (based on their residential address), fill in the special application form (annex 1), and in the case of an emergency foster care registration, attach the following documents:

- A) Identification document (the ID card, passport or residence permit of the applicant) and its copy;
- B) Criminal Record;
- C) Health certificate (Form IV-100a);
- D) Drug check-up, if the health certificate does not contain the relevant information.

The social worker shall, no later than 10 working days from the receipt of the application, provide an initial assessment of the person/family willing to extend care to the child and include his or her opinion. Should the social worker's assessment be negative, the local branch of the guardianship and trusteeship agency shall make a decision to decline the registration of applicant foster mother/father. Shall the local guardianship and trusteeship agency refuse to register the applicant foster mother/father, they may re-apply to the local guardianship and trusteeship agency for registration as foster mother/father after one year. Should the initial assessment of the applicant(s) be positive, the social worker no later than 15 working days provides a comprehensive assessment of the family and his or her opinion to be submitted to the local guardianship and trusteeship agency.

The Civil Law provides both the basis for foundation of this institution and termination of the rights and responsibilities of the participants of the aforementioned legal relationship:

Article 33 of the Law of Georgia of 18 December 2009 "On Adoption and Foster Care" stipulates that a foster care agreement may be terminated in the following cases:

- a) On the initiative of the foster family, due to substantive reason (illness, deterioration of health or economic condition, conflict between the foster child and the foster family members);
- b) On the initiative of the guardianship and trusteeship agency, due to adverse conditions and environment for child care;

- c) In case of return of the foster child to its biological family;
- d) In case of adoption of the foster child;
- e) In case the foster child attains the legal age of majority;
- f) In case of the foster person is getting married;
- g) In case of abrogation of the basis stipulated by Article 8 of this Law;
- h) Upon termination of the validity of the agreement.

Agreement on foster care is also regulated by Order 51/n of 26 February 2005 of the Minister of Labour, Health and Social Affairs of Georgia "On Approving Procedures and Forms of Foster Care," Article 17 of which enumerates a list of restrictions for termination on foster care. These include the following:

- A) Termination of the agreement, if its term has not been extended;
- B) Foster mother/father filing an application for cancellation of their registration;
- C) Passing away of the foster mother/father;
- D) Passing away of the child;
- E) Returning of the foster child to his or her biological family;
- F) The foster child coming of age;
- G) The foster person getting married;
- H) On the initiative of the foster family, due to substantive reason (illness, deterioration of health or economic condition, conflict between the foster child and the foster family members);
- I) On the initiative of the guardianship and trusteeship agency, due to adverse conditions and environment for child care;
- J) In all other cases stipulated by the Law of Georgia "On Adoption and Foster Care."

The agreement on foster care can also be terminated on the initiative of the foster family, due to substantive reason (illness, deterioration of health or economic condition, serious conflict between the foster child and the foster family members). In this case, taking into account the interests of the foster child, it is reasonable to terminate the agreement.

Civil Law stipulates three forms of child placement: Guardianship and trusteeship, foster care, and adoption. All of these institutions ensure protection of the child and are closely interrelated; however, there are a lot of differences between them as well.

Above was mentioned the difference between a foster child and an adoptee. Adoption can be allowed only if the interests and welfare of the child is the basic concern and if it is probable that the relationship will be formed between the adopter and the adoptee as that between the parents and the children.

Adoption dates back to the Roman law where adoption was aimed to exert influence of the adopter on the children of another family by means of establishing kinship ties with them. An adoptee was released

from obligations to their previous family and was totally accepted in the adopter's family.

At the initial stage, adoption was stipulated by the necessity to have a son in the family as the religious tradition obliged a family to rear a son for the purpose of protecting the sanctity of family. If a family was unable to have its own son, it had to adopt somebody else's. During the period of class division in Rome, adoption became a political method for noble patricians to maintain and continue their noble clan as well as to replenish and renew low and middle class of the patricians.

Academician Iv. Javakhishvili stated that the document in feudal Georgia certifying adoption was called "Adoption Book" or Charter. The existence of a special document indicates that the institute of adoption was widespread in the feudal Georgia. With regard to inheritance, an adoptee enjoyed the same rights as the family's own son.²

Adoption should ensure that interests and moral views of the underage child shall be considered, but equally significant is clarifying such issues as are defining the participants of the adoption process, as to who adopters and adoptees are going to be.

Participants in the adoption process are adopters and adoptees, in consideration of the age defined by the regulations of the Code.

It should be noted that the decision on adoption must be registered at the Territorial Service of the Civil Registry Agency according to the place of decision making. Authenticity of adoption, rights and responsibilities of the adopters and adoptees as well as of their relatives, take legal force upon the court decision being rendered, however their registration at the Territorial Service of the Civil Registry Agency is of paramount significance with regard to the protection of the child's rights and interests. The registration certifies the fact of adoption and ensures the integrity of the adoption. The aforementioned Agency makes relevant amendments to the records in relation to the given name, patronymic, and surname of the adoptee, place and date of birth of the parents and issues repeated certificates based upon the corresponding act record.

Adoption implies permanent relationship between the adopter and the adoptee; consequently, this form of placement is not used when the child is temporarily deprived of parental care or when the condition of health of the child does not allow his or her adoption. In some cases when children remain in the families who actually rear them but do not express wish to adopt them, guardianship and trusteeship agencies do not find it reasonable to place them with an adoptive family. In this case guardianship and trusteeship can be provided.

The Law does not equal relationship of guardians and trustees to that established by kinship. From the legal standpoint the adoptee is fully equal to the family's own children. Adopters and adoptees gain the

same rights and responsibilities as those that exist between the parents and the children.

The Civil Code of Germany gives the picture of the institute of adoption similar to that of Georgia.

According to the Civil Code of Germany adoption is allowed only under condition that the child's welfare is ensured and the same relationship is established as that between the parents and the children. A person who supported the mediation that was against the moral principles and the Law on adoption, or who transferred the child for the purpose of adoption and/or assigned or paid a price to the third person to this effect, can adopt the child only if it is indispensable for the child's welfare.

A (unmarried) single person may adopt a child individually only.

It is also noteworthy that the German legislation sets the age of 25 as the age for a person to become eligible to adopt a child.

Consent of the child is necessary for adoption, on behalf of incapable child or the child who has not yet reached 14 years of age, consent is given only by the child's legal representative. In other cases the child can give his/her consent personally only.

If the adopter and the adoptee are citizens of different countries, the consent should be approved by the Family Court. This rule does not apply, if German law is applicable with regard to adoption.

Decision on adoption is made by the Family Court based upon the application of the adopter.

It is inadmissible to file an application conditionally or by specifying the term. It should be notarized.³

Guardianship and trusteeship is similar to foster care and adoption. Guardians and trustees fulfill the same responsibilities, but they have certain rights restricted, are subject to supervision and are accountable to state guardianship and trusteeship agencies.

The institution of guardianship and trusteeship is one of the most ancient in the history of law that dates back to the law of Ancient East and Rome. These institutions were regarded as institutions of custodianship there.

The Roman law extended care to those persons as well who did not have a care-giver, or those who were deprived of paternal care or whose parents were deceased. Subject to care were also persons suffering from mental illness.

The institution of guardianship and trusteeship protected and managed the property, interests and rights of the persons under guardianship and trusteeship. A person having close relationship with the family of the person under guardianship, such as family member or kindred, was mainly appointed as guardian.

The fact that preliminary agreement between parents and guardians was necessary for marriage in Rome and Ancient Greece also indicates to existence of the institution of guardianship and trusteeship. Such agreement was mainly prerogative of the guardian or the parent, as infants were usually “engaged”.

As we can see the institution of guardianship and trusteeship played a very significant role in matrimonial and domestic relationships in Ancient Greece, Rome, and Byzantium.

The term “guardianship” and “trusteeship” means performing exactly the same function as is implied by the purpose of this institution. Dictionaries do not provide any other specific definition of this term. The Georgian word for this institution is the same as its name and literally means supervision, custodianship extended to a person.

According to the Civil Code of Germany, a guardian is assigned to an underage person, if this person is deprived of parental care or the parents are not entitled to represent the underage person both in relation to personal and property issues.

Guardian is appointed by the Family Court at its initiative. If it is considered that a guardian needs to be assigned to a child from the moment of his/her birth, the guardian can be assigned prior to his/her birth. The assignment itself takes effect upon the birth of the child.

Guardianship is terminated by the elimination of the precondition stipulated for ascertaining guardianship.

There are a lot of common issues between the German and Georgian legislations. It is important to differentiate them.

Guardianship and trusteeship do not stipulate the property related rights and responsibilities equal to those of parents; consequently, there is no requirement to register guardianship and trusteeship in the state agency.

Guardians and trustees are not obliged to support the children under their guardianship. In case of insufficient resources, the guardianship and trusteeship agencies allocate allowances to guardians and trustees.

Total number of children in the receiving family, including the family’s own children, should not exceed eight. Age difference between the parents seeking to accept the child and the child sought after should not be less than 15 years.

Children with disabilities, poor health or less advanced children can be transferred only if the family gives consent to accept them and who have appropriate conditions, in the first place financial and material means. These conditions should be indicated in the opinion provided by the guardianship and trusteeship body.

Development, change of content and termination of other forms of guardianship, trusteeship or care are subject to the law of the country

where a person to whom care is extended belongs. Foreigners or refugees residing in Georgia can be assigned guardian or trustee, according to the Georgian legislation.

If it is necessary to implement the procedures for guardianship but it is not defined as to who is going to participate in this process, or if the participant is in another country, the law of that country is applied which is most beneficial for the person to whom guardian is to be assigned.⁴

Child transferred to receiving family for upbringing retains the right to receive alimony, pension and other social allowances and compensation that are transferred into the bank account opened in the name of the child. Alimony, pension and allowance granted to the child placed with the receiving family are used by the receiving family to support, bring up the child, and ensure his/her education, considering restrictions defined by the legislation for guardianship and trusteeship.

Monetary funds are allocated from the state budget to receiving families to support each child they accept, considering such expenses as: clothes, shoes, everyday items, toys and books. If the child is placed with the family for more than one year, additional funds are allocated to purchase necessary furniture. These funds are allotted by the local body of self-government (government) for receiving parents throughout the whole period of the agreement.

The amount of monthly allocation is defined by the local body of self-government (government) based on the regulations for material support, considering prices defined in the specific region.

The law emphasizes that guardian and trustee are assigned voluntarily and free of charge.

Guardianship ceases as soon as the child reaches 7 years of age and the guardian becomes trustee without any particular permit. Trusteeship is terminated by the decision of guardianship and trusteeship agency when the child turns 18 years old.

Receiving parents are not entitled to prevent the relationship between the child and his/her parents and close relatives, if such relationship does not counteract with the child's own interests.

Guardianship and trusteeship agency issues a certificate to receiving parents indicating the parent's surname, given name, patronymic and address, date and number of agreement, as well as the child's surname, given name, patronymic and date of birth.

According to Article 1289 of the Civil Code of Georgia, guardians (trustees) are obliged to support the child they receive. Obligations of guardian and trustee are fulfilled free of charge. The child retains legal relationship with parents or close relatives subsequent to assigning a guardian. Consequently, close relatives have a responsibility to support the child and if such persons are not available, a pension or allowance is

allocated to the child. Guardianship and trusteeship agencies allocate allowance to the guardian or trustee for the purpose of supporting the child, if sufficient funds are not available. Like guardianship and trusteeship, adoption is also free of charge. Adopted child, as mentioned above, is legally equal to the family's own children.

The adopter assumes full responsibility to fulfil the obligations of the parent. Unlike adoption, guardianship and trusteeship, foster placement implies that paid agreement is concluded between the state and foster family that serves as the basis for transferring the child to the receiving family for the purpose of extending care and providing upbringing. Agreement on foster care significantly differs from other civil and legal agreements with its content and the rule of conclusion.

The agreement can be terminated on the initiative of the guardianship and trusteeship agency, when it becomes evident based on the opinion of the social worker that conditions have arisen that are inappropriate and/or harmful for the child.

In case of premature termination of the agreement on foster care, the child is transferred to the guardianship and trusteeship agency that shall take measures stipulated by the Georgian legislation.

As adoption is only legal relationship (not biological), the law envisages the possibility for its termination and relates it to certain legal circumstances.

The law stipulates termination of adoption: by cancellation of adoption and recognizing adoption as invalid.

Cases related to cancellation of adoption and recognizing adoption as invalid are relegated to the category of child-rearing cases. Consequently, the court considers them, if guardianship and trusteeship agencies are participating, no matter who has submitted the relevant request. Guardianship and trusteeship agency submits to the court an act on the conditions of the life and upbringing of the child in the adoptive family reflecting all the circumstances essential for decision making and issues an opinion upon verification, based upon this act, with regard to the case. The opinion should give the basis and motivation for the decision which is essential for establishing further relationship.

If the requirements of the law are violated during adoption, adoption can be cancelled, proceeding from the child's interests.

Deprivation of parental right does not cause cancellation of adoption in any case. If the child has reached 10 years of age, his/her interests should by all means be considered. Adoption can be cancelled by the court only and the relevant motive that stipulated cancellation of this act should be indicated.

Cancellation of adoption is final and for deprivation of parental right, the law considers possibility of its resumption.

Persons who consider that adoption does not serve the child's interests and that it should be cancelled, should submit the relevant information to guardianship and trusteeship agency that will make decision regarding the request for cancellation of adoption.

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Endnotes

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5. Chavchavadze, I. *Works*, Vol. IV, p. 364-365