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## **PROBLEMATIC ISSUES RELATED TO THE FORMS OF FAMILY PLACEMENT OF CHILDREN DEPRIVED OF PARENTAL CARE UNDER UKRAINIAN LEGISLATION**

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***Abstract.** Childhood is a special period in a person's life, characterized by the child's dependence on adults, and especially on parents. The fact of the loss of parental care due to various circumstances, which endangers the life, health, and upbringing of a child, also changes the child's status and the child acquires the status of an orphan child and a child deprived of parental care, which in turn entitles the child to full state support and benefits provided for by law. The placement of such children is the responsibility of the competent State bodies for their placement in the families of citizens or in residential institutions of the education, health and social protection system.*

*The purpose of the article is to analyze the approaches developed in the legal doctrine to understanding the forms of placement of children deprived of parental care and upbringing, and also to outline a vision of how to overcome orphanhood in Ukraine through the introduction of both legalized family forms of placement of such children, which are prioritized over residential forms of upbringing and the unregulated ones.*

*It has been established that the forms of family placement of a child who finds himself or herself in difficult living conditions, and which are regulated by law, are not exhaustive. There are other forms, such as the actual upbringing of an orphan child or a child deprived of parental care in a given person's family without the appropriate legal basis. In the actual upbringing of a child, all parental competences are exercised, except for parental rights protection competence, and therefore, as a socially valuable phenomenon, it requires certain legal regulation.*

*The article substantiates the assertion that each of the legalized forms of family upbringing (patronage, foster family, family-type children's home) has its own peculiarities,*

but unifies them by the fact that one of the elements of the actual structure of their emergence is the corresponding agreement: on patronage; on the placement of children in a foster family for upbringing and joint residence; on the organization of the activities of a family-type children's home. These agreements are part of the group of family legal agreements on social assistance for children in difficult circumstances due to orphanhood, homelessness, conflicts, domestic abuse, etc. The purpose of these agreements is to overcome the difficult life circumstances in which a child, parents or legal representatives have been involved by means of social assistance, e.g. by giving consent for patronage. Although these agreements do not constitute legal facts in their own right that give rise to the respective legal relations, when determining the legal nature of these agreements, one should take into account the specifics of the agreement as a legal fact, which is formed under the influence of the relations that they mediate.

**Key words:** actual upbringing of children deprived of parental care; forms of family placement of children; family law agreement on social welfare; child patronage agreement; agreement in favor of a third party.

In Ukraine, the problem of orphanhood is still one of the most acute social problems, and therefore the current state of life retains not only the need for the existence of practical forms of family placement of children deprived of parental care but also does not exclude the possibility of the introduction of other forms and revision of those that were considered sustainable.

Under article 20 of the Convention on the Rights of the Child, to which Ukraine is a party, a child who is temporarily or permanently deprived of his or her family environment or who, in his or her own best interests, cannot remain in such an environment, is entitled to special protection and assistance provided by the State. Participating States shall, in accordance with their national laws, ensure the substitution of parental care. Such care may include, inter alia, foster care, adoption or, where appropriate, placement in the appropriate childcare facilities.<sup>1</sup>

<sup>1</sup> Конвенція про права дитини прийнята

The Family Code of Ukraine<sup>2</sup> (hereinafter referred to as the Family Code), based on the diversity of legal forms of placement of orphans and children deprived of parental care, constantly simulates and introduces new and viable forms of care. If initially the placement of such children was regulated exclusively within the framework of tutelage and guardianship, adoption and patronage, today it is also possible in such legal forms as family and family-type children's home, as well as with the help of the already updated institute of patronage, which we will focus on in the following.

However, this does not mean that the list of legal forms of placement of

Генеральною Асамблеєю ООН 20 листопада 1989 року, ратифікована Постановою Верховної Ради Української РСР № 789-ХІІ від 27.02.91. URL: [http://zakon.rada.gov.ua/laws/show/995\\_021](http://zakon.rada.gov.ua/laws/show/995_021) (дата звернення 10.11.2018).

<sup>2</sup> Сімейний кодекс України: Закон України від 10 січня 2002 р № 2947-ІІІ. Відомості Верховної Ради України, 2002. № 21–22. Ст 135.

children deprived of parental care is exhaustive. An analysis of the provisions of articles 261, 269 and 271 of the Family Code, as well as the procedure for the implementation of activities related to the protection of the rights of the child by the guardianship and custody bodies (para. 31)<sup>1</sup>, makes it possible to assert that they provide a legal mechanism for the placement of a child deprived of parental care, including a child separated from his or her family, in a foster care setting that differs from those already legalized at the level of the law. Such a mechanism is not explicitly referred to as a form of family upbringing, but is, in fact, a form of actual upbringing, which, like adoption, guardianship, and custody, is a form of family placement of a child.

Under article 261 of the Family Code, a person who has taken an orphan child or a child deprived of parental care into his or her own family (actual tutor) has the same rights and obligations with regard to his or her upbringing and protection as the rights and obligations of a guardian or custodian, sister, brother, stepmother, stepfather or other family members of the child. Given that guardianship and custody is one of the legal forms of placement of children deprived of parental care, actual upbringing can be classified as such.

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<sup>1</sup> Порядок провадження органами опіки та піклування діяльності, пов'язаної із захистом прав дитини: затв. постановою Кабінету Міністрів України від 24 вересня 2008 р. № 866. URL: <http://zakon.rada.gov.ua/laws/show/866-2008-%D0%BF#n136> (дата звернення 10.11.2018).

It is necessary to agree with the scholars who believe that in the actual upbringing of children all parental competences are realized, except for the protection of parental rights, and therefore as a socially valuable phenomenon, it requires a certain legal regulation.<sup>2</sup>

Actual upbringing can be characterized as an acceptance by a person – the actual caregiver – of the voluntary duty of permanent upbringing and maintenance of a child who has lost parental care – a foster-child, which is not connected with the legal registration of adoption, guardianship or custodianship, patronage, the creation of a foster family or family-type children's home.

If a child loses his or her parents or one of them, it is possible that close relatives may keep the child in their care. This is typical of families in which the relationship between relatives is of close, intimate nature, although it is not excluded that such a relationship may arise between persons who are not in a relationship of kinship. In such cases, the question of who the child will live with if he or she is surrounded by the care and attention of people close to him or her may not arise, but the problem of the qualification of such a relationship arises anyway.

Taking into account the requirements of the legislation in force, a child deprived of parental care should be monitored by the guardianship and custody authorities. These bodies are obliged to inspect the living conditions of such a

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<sup>2</sup> Короткова Л. П. Правовой статус фактических воспитателей детей. Правоведение. 1983. № 3. С. 83–84;

child by comprehensively analyzing the relations between the child and the persons the child lives with, and to reflect not only the fact of loss of parental care, but also the result of the analysis of the inspection, with the obligatory indication of the persons replacing the parents in the primary records of such children. The analysis of the relations between the child and the persons in whose family he or she lives will enable the tutorship and guardianship authorities to decide on the advisability or, on the contrary, on the inadvisability of applying such a method of protection of the child's interests as adoption, tutorship or guardianship, transfer to a foster family or family-type children's home or patronage.

Actual upbringing as a legal form of placement of children deprived of parental care should be referred to as one of the forms of family placement of a child. This point of view is not undisputed, but it is supported both in the doctrine of family law and in the legislation in force. In the 1960s, some scholars, in particular, A. Y. Perhament, proposed to provide for the possibility of establishing the fact of adoption in court in order to recognize the right of the tutor to receive alimony from the foster-child, provided that the adoption was not formalized in a timely manner for valid reasons.<sup>1</sup> Thus, not singling out the actual upbringing as an independent form of family placement of children deprived of parental care, A. Y. Perhament compared the actual tutor to an adopter.

Indirect confirmation of the fact that the actual upbringing is a legal form of placement of children deprived of parental care is contained in the provisions of Art. 271 of the Family Code: if a person before reaching the age of majority (actual foster-child) lived with relatives or other persons (actual caregivers) of the same family for at least five years, it will be obliged to provide them with material assistance if they become incapable of work, and if the persons who by virtue of the law were obliged to do so in the first place, will not be able to provide them with material assistance for valid reasons. At the same time, such a duty comes if the former foster-child is able to provide material assistance to the former actual tutors.

However, in some cases, the relationship between a person deprived of parental care and a child living in his or her family may not always be brought under the legal form of actual upbringing. Thus, N. Dyachkova believes that when a child is adopted by one of the spouses, the second spouse, without expressing a desire to become his adoptive parent, however, by giving a written notarized consent to this adoption, (Part 1 of Article 220 of the Family Code), is recognized as the actual tutor of the child while maintaining the legal relationship of the child with his father (mother)<sup>2</sup>. In this case, it is considered that it is possible to speak only about separate competences of an actual tutor of the other

<sup>1</sup> Пергамент А. И. Опекa и попечительство. Москва. Юрид. лит-ра, 1966. С. 108–109.

<sup>2</sup> Сімейний кодекс України: Науково-практичний коментар /За ред. І. В. Жилінкової. Харків: Ксілон, 2008. С. 221.

partner. Therefore, written notarized consent to the adoption of a child shall not give rise to those legal consequences that occur for the actual tutor, in whose family the child deprived of parental care lives and is brought up, and who voluntarily assumed the responsibility to replace him/her with such a child.

Returning to such legalized forms of family upbringing as patronage, foster family, family-type children's home, family upbringing is traditionally considered to be the most effective since it is characterized by continuity, longevity, perseverance and the possibility of providing an individual approach to such a child.<sup>1</sup> It should be noted that each these forms have its own peculiarities, but they are united by the fact that an element of the actual composition of their emergence is a corresponding agreement: on patronage, on the placement of children in a foster family for upbringing and general living, and on the organization of the activities of a family-type children's home. These agreements are not separate legal facts that give rise to the respective legal relations.

In modern conditions, an agreement as an initial civilistic category has acquired the features of a universal legal form, through which various social relations are regulated. This also applies fully to family relations, since the Fam-

ily Code has established general provisions for their contractual regulation. As a general rule, family relations can be regulated by agreement between the participants of these relations themselves (Article 2 of the Family Code) provided that it does not contradict the requirements of the Family Code, other laws and moral foundations of society (Part 2, Article 7; Part 1, Article 9). Thus, the contract acquires the features of a family relations regulator.

At the same time, the consolidation of the dispositive method of regulation of family relations, as well as the possibility, subject to certain conditions, of application of the Civil Code of Ukraine for their regulation (hereinafter referred to as the CCU), revived not only the discussion of the legal nature of the family legal agreements, but also renewed the interest in the problem, which has a long history, namely, the problem of the place of family law in the system of law, which, as before, is of a controversial nature.

Without delving into the discussion of the position of family law in the system of law and the legal nature of the contract in the family sphere<sup>2</sup>, we believe that in determining the legal nature of

<sup>1</sup> Татаринцева Е. А. Реформирование системы институциональной заботы о детях, оставшихся без попечения родителей в России, Англии и Японии. Проблемы гражданского права та процесу: матеріали наук.-практ. конф., присвяч. пам'яті профес. О. А. Пушкіна (Харків, 22 травн. 2010 р.). Харків: ХНУВС, 2010. С.32–35.

<sup>2</sup> Див. про це: Борисова В. І. Договір у сімейно-правовій сфері. Актуальні проблеми приватного права: договір як правова форма регулювання приватних відносин: матер. наук-практ. конф. Харків: Право, 2017. С.12–16; Боднар Т. В. Роль договору в регулюванні сімейних відносин. Сімейне право України: підручник /за заг. ред. Т. В. Боднар та О. В. Дзери. К Юрінком Інтер, 2016. С.45–50. Розгон О. В. Договори у сімейному праві України: монографія. Київ: Ін Юре. 2018. 301 с.

these contracts it is necessary to take into account the specifics of the contract as a legal fact, which is formed under the influence of the relations that are governed by it. Therefore, let's try to characterize the legal nature of the patronage agreement, which, along with the agreements on the placement of children in foster families and on the organization of the activities of the family-type children's home, is included in the group of agreements on social assistance to children in difficult circumstances due to orphanhood, homelessness, conflicts, cruel treatment in the family, etc.

It should be noted that such a form of family placement as the patronage of a child has recently been significantly updated. Currently, patronage of children is temporary care, upbringing and rehabilitation of a child in the family of a patronage tutor for the period when the child, his parents or other legal representatives face difficult life circumstances (part 1 of Article 252 of the Family Code). The term "child in difficult circumstances" in the current legislation (in particular, the Law of Ukraine "On Protection of Childhood"<sup>1</sup>, as well as the Procedure for cooperation between public authorities, local governments and institutions in providing social protection for children in difficult circumstances, including those that may threaten their lives and health)<sup>2</sup>, is understood as a

child who is in conditions that adversely affect his or her life, health and development in connection with disability, serious illness, homelessness, being in conflict with the law, involvement in the worst forms of child labor, dependence on psychotropic substances and other types of dependence, cruel treatment, in particular domestic violence, and evasion by parents or persons in loco parentis from fulfilling their obligations, if such a fact has been established on the basis of an assessment of the needs of the child.

According to the legislation in force, which is not only the provisions of Chapter 20 of the Family Code, but also the provisions of the Law of Ukraine "On Social Services"<sup>3</sup>, as well as the provisions of other legal acts, in particular, the Procedure for the creation and operation of the patronage caregiver's family, the placement and stay of the child in the family of the patronage caregiver<sup>4</sup>, the Model Agreement on the patronage of

ціального захисту дітей, які перебувають у складних життєвих обставинах, у тому числі таких, що можуть загрожувати їх життю та здоров'ю, затв. Постановою Кабінету Міністрів України від 3 жовтня 2018 р. № 800. URL: <http://zakon.rada.gov.ua/laws/show/800-2018-%D0%BF#n9> (дата звернення 10.11.2018 р.)

<sup>3</sup> Про соціальні послуги: Закон України від 19.06.2003 р. № 966-ІУ. Відомості Верховної Ради України. 2003, № 45. Ст. 358.

<sup>4</sup> Порядок створення та діяльності сім'ї патронатного вихователя, влаштування, перебування дитини в сім'ї патронатного вихователя, затв. Постановою Кабінету Міністрів України від 16 березня 2017 р. № 148 URL: <http://zakon.rada.gov.ua/laws/show/148-2017-%D0%BF> (дата звернення 10.11.2018 р.)

<sup>1</sup> Про охорону дитинства: Закон України від 26.04.2001 р. № 2402-III Відомості Верховної Ради України. 2001, № 30. Ст. 142.

<sup>2</sup> Порядок взаємодії органів державної влади, органів місцевого самоврядування, закладів та установ під час забезпечення со-

the child (hereinafter referred to as the Model Agreement<sup>1</sup>; the Procedure for payment for the services of the patronage caregiver and the payment of social assistance for the maintenance of the child in the family of the patronage caregiver)<sup>2</sup>, as noted above, patronage is based on the actual composition, which includes: (a) recognition of a child under difficult circumstances; (b) a patronage contract; and (c) transfer of the child to the patronage provider's family.

The specific features of this form of placement of a child include the following: a) the patronage is not considered to be the basis for the creation of a family and therefore does not constitute an obstacle for the adoption of the child; b) the basis for the emergence of relations between the child and the patronage provider is the agreement between the child and the body that made the decision on the placement of the child, which is to be concluded in writing; c) this form does not entail any parental rights; d) the placement of the child requires the child's consent if he or she has reached such an age and level of development. However, the child, regardless of his or her age, does not participate in the con-

clusion of the contract. His or her consent is not an element of the actual composition of the emergence of a patronage, since in certain cases the placement of a child under patronage is carried out without his or her consent, in particular when he or she has not reached the age at which he or she may express his or her wish; e) the placement of the child is carried out with the written consent of the parents or other legal representatives, and if the mother or father of the child is a juvenile, in addition to their consent, the consent of their parents is required. At the same time, without the consent of the parents or other legal representatives, the placement of a child is carried out in the event of the child's separation from them or in the absence of information about their place of residence, as well as in the event of a direct threat to the child's life or health; (f) closer ties are formed between the child and the patronage tutor than between the child and the tutor or guardian; (g) however, no alimony obligation arises between the patronage provider and the child, as parents are not exempt from the obligation to support such a child; (h) the child shall retain the right to alimony, pension, other social payments and compensation for the loss of the breadwinner, which he or she had before joining the family, for the duration of her or his foster caregiver's stay in the family; i) the child has the right to maintain personal contacts with parents and other relatives; j) the period of stay of the child in the family of patronage caregiver may not exceed six months; k) patronage provider is paid for his parenting.

<sup>1</sup> Типовий договір про патронат над дитиною, затв. Постановою Кабінету Міністрів України від 16 березня 2017 р. № 148. URL: <http://zakon.rada.gov.ua/laws/show/148-2017-%D0%BF> {дата звернення 10/11 2018 р.}

<sup>2</sup> Порядок оплати послуг патронатного вихователя та виплати соціальної допомоги на утримання дитини в сім'ї патронатного вихователя, затв. Постановою Кабінету Міністрів України від 16 березня 2017 р. № 148. URL: <http://zakon.rada.gov.ua/laws/show/148-2017-%D0%BF> дата звернення 10.11. 2018 р.)

It should be noted that prior to the introduction of amendments to Chapter 20 of the Family Code, the legislation did not regulate the question of whether a child with siblings who were raised together could be placed under patronage. In this regard, the researchers noted that, although forms such as adoption and patronage are different, they share the same goal – raising a child. That is why, based on the analogy of the law, namely the provisions of Art. 210 of the Family Code, underage brothers and sisters can not be separated when they are transferred under patronage. And only in the presence of substantial circumstances (for example, the impossibility of their joint residence and upbringing for health reasons), the tutorship and guardianship authority concludes a contract and transfers under the patronage of one of the brothers (sisters)<sup>1</sup>. This problem has now been solved since according to part 5 of article 252 of the Family Code, only children who are siblings or who have been brought up in the same family can be placed with the family of a patronage tutor at the same time.

The content of a patronage contract consists of the obligations and rights of the parties to the contract, which are set out in the Model Agreement and are aimed at improving the living conditions of a child who finds himself in difficult life circumstances, although the contract may be supplemented by other obligations by consensus.

<sup>1</sup> Сімейне право: підручник /за заг. ред. В. І. Борисової та І. В. Жилінкової Харків.: Право., 2012. С. 271.

Thus, patronage caregivers are obliged to: ensure the provision of care, upbringing and rehabilitation services for children; provide care for their moral and physical condition; bear responsibility for their life and health; create appropriate conditions for the child's living, education and physical and spiritual development in accordance with his or her age, needs and individual characteristics; represent, within the limits of their authority, the interests of a child in the relevant institutions and organizations; use, in full and as intended, all social assistance for the maintenance of a child in their family in order to ensure the child's full nutrition, maintenance, upbringing, education and development in accordance with their needs; ensure the child's access to social, educational and medical services; to organize medical examinations; and, if necessary, to provide emergency medical assistance; immediately inform parents or legal representatives (if the child is placed with their consent), the children's affairs office of any changes in the child's health status, the child's abandonment of the patronage caregiver's family and other important facts that may adversely affect the child's needs; interact with the staff of the children's affairs office, social welfare institution, and implement the activities provided for in the child's individual social protection plan; cooperate with parents/legal representatives in order to overcome difficult life circumstances within the limits and in the manner determined by the guardianship and custody authority; facilitate, in coordination with the child welfare service, the meeting (contact) of the child with the parents/legal represen-



tatives, relatives, to ensure the contact of the orphan child and the child deprived of parental care with potential guardians (custodians), adoptive parents, step-parents and parent-educators; keep a monitoring log of the child and, after his or her removal from the family, hand it over to the children's affairs service; coordinate with that service the travel of the patronage tutor's family, accompanied by the child, outside the community for more than two days; respect the confidentiality of information about the child and his or her family; at the time of the removal of the child from the patronage family, ensure that he or she undergoes a medical examination and receives an appropriate health certificate; cooperate with the parents / legal representatives to whom he or she has returned after the departure of the child from the foster care provider's family within seven calendar days, to provide advice on child care, upbringing and rehabilitation.

The patronage caregiver has the right: to receive information about the health, mental and physical development of the child placed in the family; in case of placement of the child, to use methods of communication that have a positive impact on the emotional state of the child in accordance with the recommendations of the parents/legal representatives (in case of placement of the child with their consent) and specialists involved in the patronage of the child; to obtain consultations from teachers and psychologists of the educational establishment attended by the child, specialists of health care and social protection institutions for children and families with children, other institu-

tions and establishments providing social services to children and families with children, consultations on issues related to the upbringing and development of the child, specifics of the child's care and the daily routine; to address the relevant bodies, institutions and organizations to ensure the observance of the rights of the child, satisfaction of his/her needs, and the functioning of the patronage caregiver's family; to initiate the consideration by an interdisciplinary team of issues related to the protection of the rights and interests of the child and his/her family.

Under a patronage agreement, not only the patronage provider but also the relevant body (the district administration, the executive body of the city or district in the city (in case of its creation)) has obligations and rights. Such body is obliged to 1) ensure, with the participation of relevant structural subdivisions and institutions of health care, social protection of residents and families with children and educational institutions the provision of: educational services in accordance with the age of the child, his/her development and special needs; initial medical examination of the child and provision of medical assistance; provision of social services to the child and his or her family or legal representatives in accordance with their needs; and resolution of issues related to the child's social protection and personal, property and housing rights; cooperation of corresponding structural divisions for development and performance of the individual plan of social protection of the child; social support of the family of the child for the purpose of overcoming

ing of difficult life circumstances which have led to its arrangement in a family; monitoring the child's maintenance and upbringing, ensuring his/her rights; timely decision-making on the child's return to his/her parents/legal representatives, placement in other family forms of upbringing; 2) carry out through the respective structural subdivisions the payments for patronage services and social assistance for the maintenance of the child; 3) to co-ordinate, through the participation of the Children's Affairs Service, the activities of the relevant structural units, institutions, and organizations related to the protection of the rights of the child; 4) determine the modality of cooperation between the patronage caregiver and parents/legal representatives, as well as the conditions of such cooperation.

As far as rights are concerned, these bodies have the right to make decisions, within the limits of their powers, in the best interests of the child.

It should be noted that if a child's patronage agreement was concluded with the consent of the parents/legal representatives, they also acquire certain rights and obligations under such an agreement. Thus, they undertake: to provide the patronage caregiver with information about the needs, specifics of child care, nutrition and daily routine and other important information that should be taken into account when exercising patronage; to provide the child with clothing, shoes and personal belongings and to hand over the child's available medical documents (medical records, conclusions and recommendations of specialists); to maintain contact with the

child in a way that takes into account the best interests of the child, to follow the recommendations of the children's affairs office on contact with the child during his or her stay in the family of the patronage caregiver; to inform the children's affairs office of the circumstances that led to the placement of the child in the family of the patronage caregiver, and other important circumstances about him or her and the family; to cooperate with the patronage caregiver, the staff of a social institution, and the children's affairs service on issues related to the protection of the rights and interests of the child and the overcoming of difficult life circumstances; and not to hinder the patronage caregiver in the performance of his or her duties and the realization of the rights set forth in the agreement.

Parents/legal representatives have the right: to receive information about the child during his/her stay in the family of the patronage caregiver; to take part in solving the issues of education, medical examination, treatment, recovery and rest of the child; to initiate the issue of termination of the child's stay in the family of the patronage caregiver or extension of the term of stay.

Disputes between the parties on the implementation of this agreement are resolved through negotiations, and in the event of failure of the parties to reach an accord, these disputes are resolved in court.

Such an agreement is terminated: if a tutorship and guardianship authority or a court decides that the patronage caregiver has failed to perform his or her duties or has improperly performed his

or her duties, in a situation of the emergence of conditions or circumstances unfavorable to the child's upbringing and care, as set out in article 212 of the Family Code; if the guardianship and custody body decides to return the child to his/her parents/legal representatives, to adopt him/her, to establish guardianship, trusteeship, custody, placement in a family of citizens (foster family or family-type children's home) or in an institution for children, health care, educational or other institutions; if the child reaches the age of majority or dies, or if the patronage caregiver dies, or by the termination of the agreement.

The above suggests that a child's patronage agreement is a form of family law social assistance agreement for children in difficult circumstances that they are unable to overcome on their own. The purpose of this agreement is to overcome the difficult circumstances through social assistance to the child, the parents / legal representatives, if they have consented to patronage, in which they have found themselves.

The following should be included in the specifics of a child's patronage agreement: 1) the special subjective composition and limitations of the freedom of contract are associated, first of all, with the deep ingress of public principles into family law; 2) the contract is not an independent legal fact generating, chang-

ing or terminating family legal relations, but it is one of the elements of the actual composition of patronage as a form of family upbringing of a child in difficult life circumstances; 3) the contract is concluded in favor of a third party, namely a child who finds herself in difficult life circumstances; 4) the contract is of a personal nature; 5) in addition to the preventive function (overcoming difficult life circumstances in which the child or the parents/legal representatives found themselves), the contract performs an equally important regulatory function, as the existing family legal relations are being transformed for the term of its validity: a) if the parents/legal representatives have given their consent to the patronage (this is a multilateral agreement), this agreement redistributes the non-proprietary obligations of the parents between them and the patronage provider, which corresponds to part 5 of Article 150 of the Family Code: the placement of a child in foster care does not exempt the parents from guardianship. The parents are obliged to support the child, but they are deprived of the right to a personal upbringing of the child; 2) if the parents/legal representatives have not given their consent to the patronage (in the case of a bilateral agreement), the patronage provider supposedly substitutes the parents for the duration of the patronage.

## References

### *List of legal documents*

#### *Legislation*

1. United Nations Convention on the Rights of the Child adopted by the UN General Assembly on 20 November 1989 <[http://zakon.rada.gov.ua/laws/show/995\\_021](http://zakon.rada.gov.ua/laws/show/995_021)> accessed 10 November 2018 (in Ukrainian).

2. Pro okhoronu dytynstva: Zakon Ukrainy [On the Protection of Childhood: The Law of Ukraine] 26.04.2001 №2402-III Vidomosti Verkhovnoi Rady Ukrainy. 2001 30. St. 142 (in Ukrainian).
3. Pro sotsialni posluhy: Zakon Ukrainy [On Social Services: The Law of Ukraine] 19.06.2003 №966-!Y. Vidomosti Verkhovnoi Rady Ukrainy. 2003 45 St. 358 (in Ukrainian).
4. Simeinyi kodeks Ukrainy: Zakon Ukrainy [the Family Code of Ukraine: The Law of Ukraine] 10.01.2002 №2947-III. Vidomosti Verkhovnoi Rady Ukrainy, 2002 21–22. St 135 (in Ukrainian).
5. Poriadok vzaiemodii orhaniv derzhavnoi vlady, orhaniv mistsevoho samovriaduvannia, zakladiv ta ustanov pid chas zabezpechennia sotsialnoho zakhystu ditei, yaki перебувають у складних зhyttievkykh obstavynakh, u tomu chysli takykh, shcho mozhut zahrozhuvaty yikh zhyttiu ta zdoroviu [The procedure for cooperation between public authorities, local governments, entities and institutions in ensuring the social protection of children in difficult living conditions, including those that may endanger their life and health] approved by the Resolution of the Cabinet of Ministers of Ukraine 03.10.2018 №800. <<http://zakon.rada.gov.ua/laws/show/800–2018-%D0%BF#n9>> accessed 10.11.2018 (in Ukrainian).
6. Poriadok opłaty posluh patronatnoho vykhovatel'ia ta vyplaty sotsialnoi dopomohy na utrymannia dytyny v simi patronatnoho vykhovatel'ia [The procedure for paying for the patron tutor's services and payment of social assistance for keeping the child in the family of a patron teacher] approved by the Resolution of the Cabinet of Ministers of Ukraine 16.03.2017 №148 <<http://zakon.rada.gov.ua/laws/show/148–2017-%D0%BF>> accessed 10.11.2018 (in Ukrainian).
7. Poriadok provadzhennia orhanamy opiky ta pikluvannia diialnosti, poviazanoi iz zakhystom prav dytyny [Procedure for the conduct of guardianship and trusteeship activities related to the protection of the rights of the child] approved by the Resolution of the Cabinet of Ministers of Ukraine 24.09.2008 №866 <<http://zakon.rada.gov.ua/laws/show/866–2008-%D0%BF#n136>> accessed 10.11.2018 (in Ukrainian).
8. Poriadok stvorennia ta diialnosti simi patronatnoho vykhovatel'ia, vlashtuvannia, перебування dytyny v simi patronatnoho vykhovatel'ia [Order of creation and activity of the family of patron educator, placement, stay of the child in the family of patron educator] approved by the Resolution of the Cabinet of Ministers of Ukraine 16.03.2017 №148 <<http://zakon.rada.gov.ua/laws/show/148–2017-%D0%BF>> accessed 10.11.2018 (in Ukrainian).
9. Typovi dohovir pro patronat nad dytynoiu [Model contract for patronage over a child] approved by the Resolution of the Cabinet of Ministers of Ukraine 16.03.2017 №148 <<http://zakon.rada.gov.ua/laws/show/148–2017-%D0%BF>> accessed 10.11.2018 (in Ukrainian).  
*Authored books*
10. Perhament A, Opeka y popechytel'stvo [Guardianship and trusteeship]. (Yuryd. lyt-ra, 1966) (in Russian).
11. Rozghon O, Dohovory u simeinomu pravi Ukrainy: monohrafiia [Contracts in Family Law of Ukraine: monograph]. (In Yure 2018). (in Ukrainian).  
*Edited books*
12. Bodnar T, Rol dohovoru v rehuliuванні simeinykh vidnosyn [The role of contract in governing family relations]. Simeine pravo Ukrainy: pidruchnyk [Family Law of Ukraine: Textbook] Ed. T. V. Bodnar ta O. V. Dzery. (Yurinkom Inter 2016) (in Ukrainian).

13. Zhylinkova I (Ed.), *Simeinyi kodeks Ukrainy: Naukovo-praktychnyi komentar* [Family Code of Ukraine: Scientific and practical commentary] (Pravo 2008) (in Ukrainian).
14. Borysova V, Zhylinkova I (Eds) *Simeine pravo: pidruchnyk* [Family law: Textbook] (Pravo 2012) (in Ukrainian).

*Articles*

15. Korotkova L, *Pravovoi status faktycheskykh vospytatelei detei* [The legal status of the actual tutors of children]. 1983 (3) *Pravovedenye*. 83 (in Russian).

*Thesis abstracts*

16. Borysova V, *Dohovir u simeino-pravovii sferi* [Contract in the sphere of family law]. Aktualni problemy pryvatnoho prava: dohovir yak pravova forma rehuliuвання pryvatnykh vidnosyn: mater. nauk-prakt. konf [Actual problems of private law: contract as a legal form of regulation of private relations: scientific and practical conference] (Pravo 2017) (in Ukrainian).
17. Tatarinceva E. A. *Reformirovanie sistemy institucional'noj zaboty o detjah, ostavshih'sya bez popechenija roditel'ej v Rossii, Anglii i Japonii* [Reforming the system of institutional care for children left without parental care in Russia, England and Japan] *Problemy tsyvilnoho prava ta protsesu: materialy nauk.-prakt. konf., prysviach. pamiati profes. O. A. Pushkina* [Problems of civil law and procedure: materials of scientific and practical conference in the honor of prof. Pushkin O. A.] (National University of Internal Affairs 2010) (in Russian).

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