



Adoption of Children by Foreigners

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REPUBLIC OF GEORGIA:

ADOPTION OF GEORGIAN CHILDREN BY FOREIGNERS

The Marriage and Family Code of the Georgian Soviet Socialist Republic of 1969, was in force until November 1997, when it was repealed by the newly adopted Civil Code of the Republic of Georgia. Previously, all issues regarding the adoption of children in Georgia, including international adoption, was regulated by the Marriage and Family Code. In accordance with the Code, only children whose parents were unknown or deprived of parental rights were allowed to be adopted. If the child's parents retained parental rights, a notarized certificate of consent to adoption was needed from the parents or legal guardians. When the natural parents were deprived of parental rights due to negligence, the orphanage was obligated to take the case to court and to obtain a document indicating the court's decision. With this document, the orphanage had the right to issue the consent to adoption in lieu of the natural parents. The orphanage also had this right if a child had no surviving parents or guardians. In accordance with the Code of 1969, foreigners who wanted to adopt a child in Georgia had to apply to the State Council Advisory on Education and submit a declaration of intent to adopt a specific child addressed to the Prime Minister. In case of a positive decision, the Georgian government forwarded its approval of the adoption to the district government of the child's residence, where the adoption papers might then be issued. The local government might also provide a new birth certificate with the child's new name, or the adopting parents might choose to wait and obtain a birth certificate in the country of their residence.

Due to numerous violations of the Law in this field and negative public opinion, the Georgian government introduced a moratorium in 1996 on adoption of Georgian orphans by foreigners, and indicated that it intended to closely scrutinize the process.¹ In November 1997, the new Civil Code of the Republic of Georgia was approved by the Georgian Parliament.² This Act resolves family matters, and determines basic principles of the adoption process. It states that both foreigners and Georgian citizens may adopt children. However, the Law provides for the priority of citizens of the Republic of Georgia in the adoption of Georgian children. The Code stipulates that an adoption by foreigners is allowed only if it is impossible for a Georgian couple to adopt the child.³

The detailed adoption procedure is prescribed in the new Law on International Adoption, which was signed by Georgian President Shevardnadze on October 17, 1997.⁴ Even though the

¹ SAKRTVALO (bulletin of the Georgian Government, in Georgian), 1996, No. 23. Item 1437.

² VEDOMOSTI PARLIAMENTA GRUZII (bulletin of the Georgian Parliament, in Russian), 1997, No. 22, art. 8121.

³ *Id.* Chapter 11, Article 412.

⁴ PARLIAMENTIS UTSKHEBANI (Parliamentary official publication, in Georgian), 1997, No. 31, Item 8914.

Law ended a ten month *de facto* moratorium on adoptions, its implementation remained uncertain due to the Law's vague language and distribution of responsibilities for the adoption procedure among different ministries. Several implementing instructions were issued in the Spring of 1998.⁵ In accordance with these instructions, the mandatory condition for receiving an adoption permit is the registration of a child in the central registration databank of all orphaned and abandoned children in Georgia. The databank is maintained by the Ministry of Education, whose duty is to register children for adoption. Despite the fact that Georgian legislation prohibits discrimination on the basis of citizenship, under the new adoption regulations, foreigners are not allowed to adopt a child within the six-month waiting period following the registration of an orphan in the databank of the Georgian Ministry of Education. After the adoption is approved by the executive authorities, the case is transferred to the district court for the adjudication of the adoption decree by a judge. The Ministry of Justice, through its court system, adjudicates international adoptions. In such cases, the petitioner is exempt from paying the fee. The adopter must submit a petition to the court in person or via his legal representative. When adopters are married spouses, a joint application is submitted. The judge considers such cases in the presence of the adoptive parents within one month following the court's acceptance of the case. All cases are resolved with the participation of the local guardianship authorities. The presence of the petitioner during the trial is mandatory.

Prepared by Peter Roudik
Senior Legal Specialist
Eastern Law Division
Law Library of Congress
December 1999

⁵ *State Official on Guardianship Reform Concerns*. SVOBODNAYA GRUZIIA, in Russian, March 15, 1998, via FBIS.

Law Library of Congress**ROMANIA**

Adoption in Romania is regulated by the Family Code¹ and by Law Nr. 11/1990² as amended by Law Nr. 65/1995³.

The main provision in all the laws mentioned is that adoption must be made solely in the interest of the adoptive child. Adoption between brothers and sisters is not permitted, nor is adoption between spouses. Only one spouse may adopt a child, except when both the husband and the wife adopt concurrently or successively.

Courts of law have jurisdiction to rule adoption applications. The application shall be submitted to court of law where the adoptive parent(s) reside. In the case of an orphan committed to a child-care institution, application shall be submitted to the court where that institution is located. If application is made by a foreign citizen or by a Romanian citizen domiciled abroad, it shall be submitted to a court of law where the adoptive child resides. If the adoptive child is a Romanian citizen domiciled abroad, application shall be submitted to Bucharest city tribunal.

In order to supervise adoptions and aid minors during adoption and to promote international cooperation in this area, Law Nr. 65/1995 founded the *Romanian Committee for Adoptions*.⁴ Foreigners and Romanian citizens domiciled abroad may only adopt children registered with this committee, who have not been placed for adoption or have not been adopted in Romania for at least six months prior to registration.

The following documents pertaining to an adoptive child must be submitted with the adoption application: (1) a birth certificate of in the original form; (2) a marriage or death certificate of natural parents in a legalized form; (3) a notarized declaration of consent given by the natural parents or the legal guardians; (4) a medical certificate regarding the minor's health; and (5) a confirmation by the Romanian Committee for Adoptions that the minor has been registered in its register and will be permitted to enter and reside in adoptive state.

The following documents must be submitted by the adoptive parent: (1) authorized written declaration indicating whether adoptive parent(s) request adoption with total application (to the full extent of parental rights) or

¹: *Buletinul Oficial*, Nr. 4, (April 18, 1956).

²See *Monitorul Oficial*, Nr. 159, (July 26, 1991).

³See *Monitorul Oficial* Nr. 128/June 27, 1995.

⁴See Article 3 Law Nr. 65/1995.

one with restricted application; (2) birth and marriage certificates in legalized form; (3) certificates regarding adoptive parents criminal records; (4) certificates pertaining to adoptive parents' state of health; (5) for foreigners or Romanians domiciled abroad, a document issued by competent foreign authorities stating that such person may adopt child according to laws of foreign country, and (7) a social inquest from competent foreign authorities containing opinion regarding adoption.

The application will be heard in council before a panel of two judges, a representative from the Public Ministry, a prosecutor and -- in cases of international adoptions- a representative from the Romanian Committee of Adoptions.

If the adoptive parent or child is a foreigner, each is subject to their national laws concerning the basic conditions for concluding adoptions, provided they do not conflict with Romanian private international law.⁵

The adoptive child receives the name of adoptive parent(s). If spouses adopt child, the child will have their common name, and if spouses have different names they shall decide on the child's name.

The adoption is final on the date the court's ruling becomes final. Adoption creates civil kinship which differs depending on whether adoption with restricted application or with total application has been granted. For adoption with restricted application, civil kinship is established between the adoptive child, his/her descendants, and the adoptive parents. For adoption with total application, civil kinship is established between the adoptive child, the descendants of the adoptive child, the adoptive parents, and relatives of the adoptive parents.

Requests to nullify adoption may be submitted to a court if, in the best interests of the adoptive child, and requests may be made only by the adoptive child, the natural parents, or the pertinent child care institutions. If adoption is declared null and void, the adoptive child acquires his/her former name, or may keep the adopted name if a well-founded reasons exist.

Prepared by
Monica Vlad
Senior Legal Specialist
Eastern Law Division
Law Library of Congress

⁵See Law Nr. 245, (October 10, 1993).

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UKRAINE:

ADOPTION OF UKRAINIAN CHILDREN BY FOREIGNERS

The issue of adoption in Ukraine is regulated by the Code on Marriage and Family of the Republic of Ukraine which was passed by the Supreme Soviet of the Ukrainian Soviet Socialist Republic in 1969, and still remains in force. Due to the recent political and social changes in Ukraine, the Code was amended in 1991, 1992, and in 1996. Amendments of 1996 were significantly devoted to the adoption issue, and a national processing center for centralized registration of adoptions has been established. However, basic principles of the adoption are remained the same.

Article 101 of the CODE OF MARRIAGE AND FAMILY¹ provides for the definition of adoption. It states that the adoption is a legal act of acceptance by a family of a child with rights of a son or a daughter. Until 1996, local executive authorities had the right to issue an adoption order², and persons who had reached their majority might become adoptive parents, with the exception of persons deprived of parental rights as well as persons declared in the established legal procedure to be legally incompetent or of limited capacity to perform legal transactions³. There were no other restrictions, including the citizenship of an adoptive parent. The Law just said that citizens of Ukraine had priority before foreigners to adopt a child.

Amendments of 1996 introduced an additional requirements to those who want to adopt a child that the age difference between the adopted child and adoptive parent shall be at least sixteen years, and determined conditions under which a person cannot adopt an Ukrainian child. They are:

- person has been deprived of parental rights,
- person submitted intensively false documents,
- person adopts a child in order to be materially benefitted from that,
- persons who are registered at narcological and psychiatric hospitals and undergo related treatments,

¹ Vidomosti Verkhovnoi Radi Ukraini (official gazette of the Republic of Ukraine), 1996, No. 7, Item 26.

² *Id.* art. 102.

³ *Id.* art. 103.

- those who have no permanent work or other sources of regular income.

No other restrictions are stipulated by the Code.

Under the current Ukrainian Law, both foreigners and Ukrainian citizens can adopt children. However, the Law provides for the priority of citizens of the Republic of Ukraine in the adoption of Ukrainian children. The Law stipulates that an adoption by foreigners is allowed only if it is impossible for an Ukrainian couple to adopt the child. There are no preferences or limitations regarding the nationality of the adopting foreigners⁴.

Even though current Ukrainian legislation is not fully in accordance with the provisions of the 1993 Hague Convention on Intercountry Adoption, all executive agencies which are involved in this problem (Ministry of Foreign Affairs, Ministry of Public Health, Ministry of Education, and Ministry of Justice) are in favor of further liberalization of international adoption, joining the Hague Convention, and passage of the implementing legislation.

Prepared by Peter Roudik
Senior Legal Specialist
Eastern Law Division
Law Library of Congress
December 1999

⁴ *Id.* art.109.