



Russian Federation: Adoption of Russian Children by Foreigners

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**RUSSIAN FEDERATION:
ADOPTION OF RUSSIAN CHILDREN
BY FOREIGNERS**

Abstract

Due to the growing number of foreigners going to adopt Russian children, issues concerning international adoption have recently become an acute problem in Russia and were used by the Parliament in the nationalistic rhetoric. The issue is regulated by the Family Code of the Russian Federation, executive regulations, decrees of the Russian subunits' authorities and court rulings. The paper contains commentaries to the existing legislation, determines rights and legal obligations of all participants of the adoption process, and analyzes established procedures and the implementation practice.

Compliance with International Standards

The current Russian legislation is not fully in accordance with the Hague Convention of May 29, 1993, on the Protection of Children and Intercountry Adoption. Russia does not yet have the appropriate regulations, and the regulations in force do not foresee the establishment of a particular central authority in charge of adoption as is required by the Convention. Russia is not a party to the Convention but is intent on complying with its provisions. During the period between December 1992 and March 1995, a moratorium on intercountry adoptions was in effect due to many legal violations in that area. Since the new legislation was passed, such adoptions have been allowed for foreigners who wish to adopt Russian children.

Even though Russia as a legal successor of the USSR is a party to the 1989 UN Convention on the Right of the Child, the key principle of the Convention, namely that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration" (Article 3.1) is not included in the Russian Family Code. Nevertheless, the primacy and direct effect of international law in Russian law means that the "best interest" principle must be a key aid to interpretation and decision. Drafters of the Code made extensive studies of international experience, including and especially the 1989 English Children Act as the most up-to-date codification of public and private law relating to children then available. The provisions on fostering and adoption are relatively in line with English and other international practice.

Legislative Background

The protection of families, childhood and social security is included in the area of the joint competence of the Russian Federation and its subunits. Article 76.2 of the Constitution states that this area is regulated by Federal and state laws. State regulations cannot contradict Federal law. The issue of adoption is regulated by the RUSSIAN FEDERATION FAMILY CODE which was passed by the Russian Parliament

on December 26, 1995,¹ and by the Statute on Adoption of Children, Who Are Russian Citizens, by Citizens of the Russian Federation and Foreigners. This latter statute was approved and signed by the Chairman of the Russian Government on September 15, 1995.² While the drafting of the Law on International Adoption is in process, the existing family Code was amended in June 1998, with provisions which seriously complicate adoption of Russian children by foreigners.

The present legal requirement relating to international adoption is contained in Article 124.3 of the Code: *“The adoption of children by foreign citizens or persons without citizenship is permitted only in cases where there is no possibility of placing such children to live with families who are citizens of the Russian Federation, permanently resident on the territory of the Russian Federation, or for adoption by relatives of the child irrespective of citizenship or place of residence of those relatives. Children may be transferred for adoption by citizens of the Russian Federation permanently resident outside the territory of the Russian Federation, or by foreign citizens or persons without citizenship, who are not relatives of the child, on the completion of three months from the day the child was placed on the central register.”*

An important step in the development of Russian adoption legislation was the introduction of centralized registration of orphans and establishing of the court procedure for adoption in 1996.³ Provisions for administrative and criminal liability for illegal adoption and trade in children were included in the law.

In September 1997, the State *Duma* of the Russian Federation (lower house of the Parliament) almost unanimously passed the Resolution on Urgent Measures for Increase of the State Control Over Adoption.⁴ Russian legislators recommended in this document that the Government increase its control over the work of Russian consular offices abroad which shall be in charge of the protection of rights of Russian citizens abroad, and suggested the elaboration of bilateral treaties between the Russian Federation and foreign states on cooperation in the field of adoption. The State *Duma* Committee on Problems of Women, Families and Youth was charged with the drafting Federal laws which would increase the effectiveness of state participation in the adoption process. Later, these proposals were included as amendments in the Russian Family Code.

¹ SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [Collection of Legislation of the Russian Federation, official gazette, SZ RF], No. 1, Item 16 (1996).

² *Id.*, No. 39, Item 3768 (1995).

³ *Id.*, No. 33, Art. 3995 (1996).

⁴ ROSSIISKAIA GAZETA [official newspaper of the Russian Federation Government], Oct. 10, 1997, at 11.

Under the current Russian Law, both foreigners and Russian citizens can adopt children. Meanwhile, the Law provides for the priority of citizens of the Russian Federation in the adoption of Russian children. The Law stipulates that an adoption by foreigners is allowed only if it is impossible for a Russian couple to adopt the child (art.124.1 of the Russian Family Code). However, the statistics show that only a small proportion of children are adopted by Russians. Today in Russia there are at least 678,000 without parental care and guardianship. Only 25 percent of these children are cared for in public institutions, and just about one-third of them could be adopted. The central register of children needing new families, however, contains only 40,000 names. The remaining orphans have not yet found their way onto register.⁵ The Russian press reports that there had been a sharp drop in the number of adoptions principally because most of the children are disabled, have chronic illnesses, or are children of alcoholics and mentally ill parents. In 1998, the final year for which statistics were available, 30,000 Russian children were adopted by Russians, of whom 18,000 were adopted by relatives, and 12,000 by other citizens. The number of children adopted by foreigners is growing steadily from 678 in 1992 to almost 4,348 in 1999, amounting to over 15,000 during this period.⁶

Despite the fact that Russian legislation prohibits discrimination on the base of citizenship, under new adoption regulations, foreigners are not allowed to adopt a child within a three-months waiting period following the registration of an orphan at the data bank of the Russian Federation Ministry of Education. For Russian adopters, this waiting period continues one month only. There are no preferences or limitations regarding the nationality of the adopting foreigners. However, the Law takes into account the child's ethnic, religious, cultural and language background to maintain succession in the child's education. The Law does not allow for the adoption of brothers and sisters by different persons.⁷ Such can be allowed as an exclusion in cases when children never lived together, and do not know about their relationships, or if one of the siblings is in need of special medical or educational treatment.

Adoption Procedure

According to the legal procedure for adoption, the person who wants to adopt a Russian child shall be registered with the executive authorities of guardianship of the Russian Federation subunit. This person addresses the adoption statement signed by the petitioner and his/her spouse to the Department of Education in the component of the Federation (state) where the child resides. The Department of Education then makes an enquiry for confirmation to the Russian Federation Ministry of Education where the information about orphan children is maintained. Tatarstan, due to the particular legal status of this republic, is exempt from that procedure. All such decisions in Tatarstan are made at the state level. The regional Department of Education accepts applications and other documents so that the names of foreign prospective adoptive parents may be placed on the list of candidates of those who wish to be adoptive parents. The Department of Education is also obliged to sanction the preparation of findings submitted to the court concerning the possibility of the adoption of Russian children by foreigners.

After the adoption is approved by the executive authorities, the case is transferred to the federal district court for the passing of the adoption decree by a judge. In such cases the petitioner is exempt from paying the fee. The adopter shall submit a petition to the court in person or via his legal representative.

⁵ A. Kozyreva. *V Ochered' za Sirotai* [In the Line for Orphans], ROSSIISKAIA GAZETA, Nov. 3, 2000, at 7.

⁶ *Id.*

⁷ *Supra*, note 1, art. 124.

When adopters are married spouses, a joint application shall be submitted. All documents coming from foreign states and institutions in foreign countries are to be submitted in the official language of the country of origin with a Russian translation and must be certified in accordance with established procedure. Territorial jurisdiction is based on the place where the child resides. 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 shall be resolved with the participation of local guardianship authorities. The presence of the petitioner during the trial is mandatory. The court has the final decision in cases of adoption, under procedures which are similar to those operating in the Western countries. Even though Russian is the official language, the petitioner is allowed to speak in the court as well as submit requests and explanations in his mother language and use translation services. The adoption is effective on the day the court decision enters into legal force. Within the three following days, the court is obliged to send a copy of the adoption order to the state authorities of the civil registration. All rights and duties regarding the adoption can be established in accordance with the adoption decree issued by the judge. The so-called *factual adoption* does not entail any legal consequences because such relationship cannot be recognized by the court. The court is able to recognize just the fact of registration of an adoption if the document confirming adoption cannot be provided by some other way.

The Statute on Adoption⁸ provides for two conditions where the court can revoke an adoption. These include the violation of the child's rights determined by Russian laws or international treaties, and the nonconformity of the adoption with the child's interests. Foreign institutions responsible for the organization of an adoption, according to Russian law, must submit to Russian state adoption agencies detailed information on the life and health of an adopted child every six months. However, this provision is apparently not currently enforced.

Specifics Related to Foreigners

Although the Russian FAMILY CODE stipulates that "the adoption of children who are Russian citizens and who reside on Russian territory by foreigners shall be effected under legislation of the country of the adoptive parent citizenship, or of the country of their permanent residency if the adopter is a stateless person"⁹ some necessary conditions shall be executed, including:

- the age difference between the adopted child and adoptive parent shall be at least sixteen years; and
- the child shall be registered for at least three months at the Federal Bank of Information on Children Without Parental Guardianship and no Russian citizens have shown interest in adopting the child.

Russian children can be adopted by foreigners after the expiration of the three-months period following the child's registration at the Information Bank. The same procedure applies to Russian citizens permanently residing abroad. The exclusion can be made for the child's relatives only. If adoptive parents have different citizenship, the legal requirements of both countries shall be honored. Also, unmarried people

⁸ *Supra*, note 1, art. 44.

⁹ *Id.*, art. 165.

cannot jointly adopt the same child. In addition to the usual information required from prospective adopters, the following items shall be submitted by the Russian local child welfare representatives to the judge in case of international adoption:

- the child's consent, if the child is ten years of age or older;
- the consent of his parents or legal guardians unless they are unknown as recognized by the court, or if they are legally incapable or have been deprived of parental rights;
- the consent of the spouse, if the child is adopted by one of the spouses;
- a statement concluding that adoption is in the child's best interests;
- the child's birth certificate;
- a medical assessment of the child's health and development; and
- a statement of consent from the director of the institution in which the child lives.

Citizenship Problem

The Law on Citizenship of the Russian Federation determines that if the child who was a citizen of Russia was adopted by the citizen of another country, the child can keep Russian citizenship. The adopter may appeal to change the citizenship of the adopted child if the child will obtain another citizenship.¹⁰

Several citizenship related restrictions were introduced by the 1997 Parliamentary resolution.¹¹ It is suggested that children keep their Russian citizenship until they reach the age of eighteen, and Russian consular offices abroad receive more rights to interfere in the lives of adopted children. They are obliged to verify the information submitted by the adopters to the Russian authorities, regularly inspect living conditions of children in their new families, and to initiate cases on the violation of children's rights in Russian courts demanding to make the adoption invalid. Because of lack of funds needed to implement this provision, the Administration of the Russian Federation President opposes the enforcement of the requirement to increase consular control, and the Russian Federation Ministry of Foreign Affairs prohibited the involvement of Russian consular offices abroad in adoption cases.¹²

Health Issues

The law does not directly determine the health conditions of adopted children. Healthy children and children with illnesses or departures from the norm in their development can be adopted equally if the child's illness is not included in the List of Illnesses When a Child may Not Be Adopted. The List was approved by

¹⁰ Law on Citizenship of the Russian Federation, passed Nov. 28, 1991, amended June 17, 1993, Ved. No. 29 (1993), art. 1112.

¹¹ *Supra*, note 4.

¹² Vestnik MIDa [Bulletin of the Foreign Affairs Ministry], No. 3, 2000, at 17.

the Regulation No. 542 of May 1, 1996 of the Russian Federation Government. This List includes:

- Tuberculosis;
- Illnesses of internal organs, neurodiseases, and diseases limiting moving activities;
- Malignant oncological diseases;
- Drug abuse, Toxicomania, Alcoholism;
- Infectious diseases;
- Psychiatric diseases under which children are recognized legally or partially incompetent; and
- All illnesses and traumas which entail a permanent disability which would prevent one from working.

In accordance with the Law, adoptive parents shall be informed about the health conditions of the child and possible consequences of his/her illness. The mandatory medical examination of both the adopted children and prospective parents before adoption is required, and is prescribed by the Order No. 369 of December 25, 1995, of the RF Ministry of Public Health Protection.¹³ Adoptive parents may request an additional independent medical expert to determine the physical and mental development of the child. The adoption of a child with a severe illness may be allowed to foreigners only if the adoptive parents will voluntarily and deliberately accept all responsibility.¹⁴ The previous Russian legislation allowed foreigners to adopt Russian children with severe disabilities, venereal diseases, and developmental delay only.¹⁵ Presently, these restrictions are lifted. However, local authorities try to provide children in poor health to foreigners who wish to adopt a child. Depending on the nature and severity of the illness in any particular instance, prohibitive laws of the foreign couple's nation may be applicable in one way or another.

Additional Legislative Restrictions

In accordance with the amendments to the FAMILY CODE OF THE RUSSIAN FEDERATION which were signed into law by President Yeltsin of Russia on June 27, 1998,¹⁶ international adoption is permitted only after the conclusion of a bilateral international treaty on adoption between the Russian Federation and another state. While the treaty is not concluded, a moratorium on adoption shall be introduced. International law experts estimate that the process of drafting and concluding of a bilateral international adoption treaty will take no less than five years. Presently, Russia has no such treaties at all. In the interim,

¹³ Bulletin of Regulations of the Russian Federation, No.15, Item 1045 (1996).

¹⁴ Ruling No. 9 of the Plenum of the Supreme Court of the Russian Federation of July 4, 1997, on Implementation of RF Adoption Legislation by Courts, Bulletin of the Supreme Court of the Russian Federation, 1997, No. 8.

¹⁵ Decision No. 4132-I of the Supreme Soviet (then the Parliament) of the Russian Federation of December 18, 1992, Ved.1992, No. 52, art. 3061.

¹⁶ SZ RF, No. 26, Item 3014 (1998).

prospective parents use the services of foreign adoption organizations registered through the special procedure with the Russian Federation Government.

Another newly implemented restriction which obviously extends the cost and duration of the adoption procedure is the requirement that all participants in the adoption process (adoptive parents, relatives of a child, representatives of the guardianship authorities and state prosecution) be present at all stages of the decision-making process.¹⁷ The requirement of direct contact and established personal relations between the prospective parents and child to be adopted, and proof of such relations in the court¹⁸ complicates the adoption process. The process is made time consuming and depends on subjective decisions because there are no legal criteria to determine whether these relations exist. The exclusion of adoption agencies from the process and total ban on their activities¹⁹ will cause additional difficulties for those who want to adopt a Russian child, and it seems that the temptation to work illegally will force adoption agencies to charge more for their services. Dr. William Pierce, a former head of the U.S. National Council for Adoption, said it is still difficult to adopt from Russia because of the higher expenses involved. At average, an adoption through the registered agency can cost anywhere from 15,000 to 22,000 dollars. Pierce also said that Russia does not provide for an escort to travel with the child during its first few days in the new country of the adoptive family.²⁰

Under the new Law, all adoption cases are transferred from the jurisdiction of district courts to the regional courts which will have the right to issue adoption orders. Even though Russian regional courts sometimes have more qualified and professional judges, the waiting period for hearings in such courts are much longer than in district courts because of greater caseloads.

Legal Status of Adoption Agencies

Even though there is no evidence that children suffer from the current practice of international adoption, Russia banned all intermediary activities in the adoption process. Any activity on choosing, selecting and transferring children for adoption on behalf of persons who want to adopt a child in Russia is considered as an intermediary activity. A search for orphans, the selection of prospective parents and transfer of children without guardians to adoptive families is permitted to Russian federal and state authorities of guardianship only. Any participation of a middleman in the process makes the adoption invalid even though provisions prohibiting participation of adoption agencies in the process contradict provisions both of the Constitution and of the Civil Code permitting anyone, citizen or foreigner, to be represented by a third party.

¹⁷ *Supra*, note 1, art. 125.1.

¹⁸ *Supra*, note 1, art. 125.2.

¹⁹ *Supra*, note 1, art. 126*.

²⁰ V. Bekker, *Red Tape and Secrecy Mar East-West Adoptions*. ST. PETERSBURG TIMES, March 31, 2000, at 3.

Pledging to crack down on middlemen trafficking in orphans for adoption in the West, Russia barred all middlemen in adoption cases, which means “any person involved in the selection and transmission of children on behalf of future adoptive parents.” Some foreign organizations are allowed to help in adoption cases if they are registered with the newly created Commission on Issues of Adoption of Children who are Citizens of the Russian Federation by Foreign Citizens which was established by a Government Regulation of March 28, 2000,²¹ is chaired by the Russian Federation Minister of Education, and includes Deputy Ministers of Health Protection, Labor and Social Services, Foreign Affairs, Interior (police), and other agencies. The duty of the Commission is to coordinate activities of federal and regional executive authorities in charge of adoption, to elaborate and implement major principles of the state policy in regard to international adoption, and to resolve all issues related to the activities of foreign adoption organizations accredited with the Russian Federal Government.

The same Resolution has established the guidelines which determine rules and regulations applicable to foreign adoption organizations in Russia and establish control over their activities. They have to be accredited by the Government, pay annual accreditation fees, use services of Russian proxies and interpreters, and report back on the well-being of the children. Among those barred from acting as intermediaries are Russian officials dealing with orphans, their spouses and relatives. They cannot be employed by foreign adoption organizations. Foreign organizations may be involved in the adoption process if they are specially appointed by respective foreign state authorities, and work in Russia in accordance with the bilateral treaty or agreement. Such organizations shall not be commercial in nature.

The Law prohibits all preliminary adoption contracts. Even though parental agreement is now a mandatory requirement for adoption, the parents of a child have no right to determine or recommend adoptive parents and to establish contact with them. In order to prevent the so-called contractual births, such agreement may not be made before a child is born.²²

Conclusion

The analysis of the Russian legislation on adoption allows for a conclusion that although Russian society is still endangered by the growing commercialization of international adoptions and lack of state control over the realization of rights of Russian children abroad, Russia and its states where children are born and reside recognize the adoption of children by foreigners. There appears to be no obstacle if such a child acquires the adoptive parent's citizenship, if all formal procedures are executed. There are no additional rights or significant restrictions regarding foreigners who wish to adopt a child from the Russian Federation.

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²¹ ROSSIISKAIA GAZETA, April 13, 2000, at 3.

²² *Supra*, note 1, art. 129.3.