RUSSIA'S NEW ADOPTION LAWS

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Abstract

The new adoption laws in the Russian Federation more or less adhere to six of the seven criteria set forth in a recent review of international adoption legislation: informed and voluntary parental consent; primary concern for the child's best interests; the substitution of an adoptive family for a biological one; confidentiality; permanence; and, at least for Russian citizens, a stress on early-age bonding. But the seventh criterion is subject to question: that of adoption's "donative nature." Article 98 of the 1969 Family Code had indicated that no fee could be involved in the adoption process; this stipulation is conspicuously absent from the new legislation. Indeed, American citizens who have involved themselves in adopting children from Russia are finding themselves paying not only hefty fees to international adoption agencies, but large "donations" to Russian orphanages.

This comparison of late Soviet and post-Soviet family legislation suggests that the fundamental principles of current adoption law were well in place by 1969. If we wish to witness a more fundamental shift in adoption law, we must look to the differences between the ambivalent legislation of 1926 and that of 1969. During that time adoptive parents altered their status from that of suspect exploiters to patriotic citizens. Over the last quarter century, however, the basic components of adoption have not changed. Provisions for the legal viability of the adoptive family, for its equality of rights with families linked by biology, and for its protection along with the protection of biological parents' natural rights, have been and remain guiding principles of Russian adoption legislation. The most notable development appears to be linked with the transfer from a one-party, soviet system to a society ostensibly adhering to the rule of law. Consequently, the courts, rather than Soviets of workers' deputies, are firmly in charge of the new Russia's adoption proceedings.

On December 8, 1995 the State Duma of the Russian Federation passed post-Soviet Russia's first comprehensive family legislation. The Family Code of the Russian Federation superseded the 1969 Code on Marriage and the Family of the Russian Soviet Federated Socialist Republic, which itself replaced legislation from the first decade of the revolution. The codes of 1918 and 1926 mirrored the Bolsheviks' determination to reshape society by undermining the "petit-bourgeois" family believed to be inherent to capitalism. (Until 1926, this included an outright ban against adoption.) Laws complicating divorce and outlawing abortion during the Stalinist period sought to re-legislate family stability. By 1969, however, both revolutionary fervor and Stalinist social engineering had subsided; the last family code of socialist Russia appears to have made peace with the complex realities of modern Soviet life.

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In relation to adoption law, the 1969 Code on Marriage and the Family marked a significant change from 1926, the year when the Soviet Union reintroduced legal adoption. Initially, adoption represented only a stopgap measure for helping to cope with the millions of homeless children who roamed Russia's streets and overflowed its orphanages in the turbulent 1920s. In keeping with Soviet lawmakers' ambivalence about adoption, the 1926 adoption laws maintained strict demarcations between biological and adoptive families in terms of rights, obligations, and family definitions. Successive rulings and policies, particularly after 1943, when the state first began to champion adoption as a way to care for the children orphaned and displaced during the Second World War, served to place the adoptive family on a closer legal footing with the biological one. For example, government decrees allowed adopters to register as their adopted children's parents of record, to give adopted children names of their choosing, and even to change birthplaces and dates in order to suit fictions about their children's origins.

By 1969, for all intents and purposes, adoptive families legally resembled families formed by birth ties. In conformance with the recommendations of numerous Soviet family law specialists, the law for the first time granted adoptees and their offspring full legal rights and obligations in relation to their entire adoptive relatives (siblings, grandparents, etc.), rather than to their adoptive parents alone. Correspondingly, all legal rights and obligations for members of their birth families ceased from the moment an adoption was finalized (Article 108 of the "Code on Marriage and the Family of the RSFSR," hereafter CoMF). The 1969 law also incorporated a new clause protecting

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3 See Alan M. Ball, And Now My Soul is Hardened: Abandoned Children in Soviet Russia, 1918-1930 (Berkeley, CA, 1994).


5 Contrary to trends toward openness about adoption in the West, most Russian experts consider it vital to conceal their adoptive status from children. See, for example, a 1980 work referring to the "grave psychological trauma" and irrevocable loss of family harmony caused by adoption revelations. Mikhail A. Ivanov and Rimma F. Kallistratova, Sem'ia. Obshchestvo. Zakon. (Moscow, 1980), p. 216.


7 Exceptions to this last clause could be made if the parents of an adopted child's deceased biological parent wished to preserve legal ties, and the adoptive parents did not object. An exception was also made (in Art.109) if an adopted child was receiving a deceased biological parent's pension or subsidy at the time of an adoption.
adoption’s confidentiality. Unless the adoptive parents had expressly given their permission, any individual who revealed that an adoption had taken place was liable to prosecution (CoMF Art. 110). The new law not only differentiated between abrogating an adoption and declaring it invalid, it also changed the procedures. Whereas earlier, abrogation rulings and decisions invalidating adoptions could be made by Soviet administrative organs, at the urging of many family law specialists, the procedures were now exclusively the province of the courts (CoMF Arts. 112 & 113). Finally, the 1969 Code stipulated that children from the Russian Federation were not eligible for adoption by citizens from outside the Russian Federation unless there was no possibility for a placement of these children with adoptive or foster families of other Russian Federation citizens (CoMF Art. 98).

For the most part, the current family legislation is very similar. The laws of 1969 and 1995 begin with a statement basic to all Soviet adoption legislation – that adoption is permitted only for minors and only in their interests (CoMF Art. 98; Art. 124, point 1 of the “Family Code of the Russian Federation,” hereafter FCRF). Just as importantly, adoptive families still retain all the legal rights and obligations of biological families. Both laws allow biological parents to withdraw their consent to an adoption until the moment it is finalized (CoMF Art. 100; FCRF Art. 129, pt. 2). Both laws also require the consent of children over ten to their own adoption (CoMF Art. 103; FCRF Art. 132, pt. 1). In both instances, a child’s consent can be waived if the child has been living with the adoptive family for a prolonged period of time and already considers them to be the biological parents (CoMF Art. 103; FCRF Art. 132, pt. 2). Also unchanged is a law requiring a spouse to consent to the adoption if his or her spouse is adopting as an individual. Consent, however, may be waived if the couple has ceased family relations, has not lived together for at least one year, and the other spouse’s whereabouts are unknown (CoMF Art. 104; FCRF Art. 133). As for professional input into adoption questions, both Soviet and post-Soviet Russia rely on recommendations from representatives of guardianship and wardship agencies [organy opeki i popechitel’stva] (CoMF Arts. 100 & 103; FCRF Art. 125, pt. 1).

8A decree of the Russian Supreme Soviet’s Presidium in 1970 established criminal penalties for revealing an adoption.

But adjustments and refinements to the 1969 Code reflect the State Duma’s attempts to smooth out problems that arose with the earlier laws, as well as reflect the post-socialist status of the Russian Federation. First and foremost, decisions finalizing adoptions had previously been in the hands of local soviets of workers’ deputies; in present-day Russia, adoptions fall fully under the jurisdiction of the courts (FCRF Art. 125, pt. 1).

Second, the language about the nature of family ties established by adoption has changed. In 1969, legislation spoke of “personal and property rights and obligations” [lichnye i imushchestvennye prava i obizannosti]. The current law underlines the fact that family relationships involve much more than financial entanglements by inserting a new word in the phrasing: “personal non-property [neimushchestvennye] and property rights and obligations” (CoMF Art. 108; FCRF Art. 137, pt. 1).

In the earlier law, excluded from the circle of adopters was anyone who had been deprived of parental rights by the courts or designated as legally disabled [nedeesposobnym] or of limited capabilities [ogranichenno deesposobnym] (CoMF Art. 99). In the new law, also excluded are individuals whose spouses fit into any of the above categories, whose parental rights were restricted by the courts, who had their guardianship or wardshipship responsibilities taken from them, who formerly had an adoption abrogated because of their guilt (as opposed to as a result of a mistaken procedure or technicality), whose state of health would prevent them from fulfilling their parental duties, and who suffer from one of the diseases in a special government list (FCRF Art. 127, pt. 1). The new law also articulates the longstanding policy that unmarried individuals may not adopt the same child (FCRF Art. 127, pt. 2). Interestingly, a 1969 clause that permitted the waiver of spousal consent if the consenting spouse was legally disabled has vanished from the new laws (CoMF Art. 104).

The new legislation is the first in Russia to stipulate a minimum age difference between an adopter and adopted child. Before 1995 it was (theoretically) feasible for someone just over the age of majority to adopt someone just under. Unless it is a stepparent who is doing the adopting or the court makes an exception, the adoptive parent must now be at least sixteen years older than the potential adoptee (FCRF Art. 128, pts. 1 & 2). For the first time in Russian adoption law, there is also specific reference to the impermissibility of separating siblings, except in extraordinary cases (FCRF Art. 124, pt. 2).

Parental consent to an adoption, central to all Soviet adoption laws, remains part and parcel of the new law, with one important addition: whereby the earlier laws said nothing about the age of the

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10 Various family law specialists have criticized shortcomings of the 1969 Code since its inception. See, for example, Natalia M. Ershova, Pravovoe voprosy vospitaniia detei v sem’e (Moscow, 1971), pp. 60-81.

11 Laws in several other Soviet republics did, however, specify an age difference. Several family law specialists called for a similar law guiding Russian adoption. See, for example, Iurburgskii, “Usynovlenie po sovetskomu pravu,” p. 5; Ershova, Pravovoe voprosy vospitaniia detei v sem’e, pp. 67-69.
consenting parent, the new law also requires the consent of the parent or guardian of any biological parent under the age of sixteen who wishes to give up a child for adoption (FCRF Art. 129, pt. 1). Yet the laws permitting waivers of parental consent have been softened to favor the adoptive parent. The 1969 law specified that consent could be waived after one year’s time if a biological parent failed to live with and support a child, and ignored warnings about parental duties from guardianship and wardship agencies (CoMF Art. 101). Under the new law, so long as the court does not consider the reasons for parental neglect valid, a child with absent and negligent parents can be eligible for adoption in just six months (FCRF Art. 130). The new law also specifies that parental consent can be waived when a child's parents are unknown or acknowledged as missing (FCRF Art. 130).

Parental consent, called for in written form in the 1969 law, must now be notarized as well (CoMF Art. 100; FCRF Art. 129, pt. 1).

Though both laws state that the adopter has the option to change a child's name, patronymic, and surname -- pending the child’s consent, if the child is over the age of ten (CoMF Art. 105; FCRF Art. 134, pts. 2 & 4) -- the new law now specifies that a female adopter may bestow on the child the patronymic of the person who will serve as the child’s father. Furthermore, when a married couple with different surnames adopts, they can choose which surname to give their adopted child (FCRF Art. 134, pt. 2).

The 1969 law permitted an alteration of birth date and place as part of its confidentiality clause (CoMF Art. 110). The current law separates these issues, devoting one entire article to the rules surrounding these changes. In 1969, a birth date could be altered by as much as six months in either direction; at present the change is limited to three months, and only for children adopted before they are one year of age (FCRF Art. 135, pt. 1). Additional haste regarding adoption's registration has been included in the new law. In 1969, local authorities had one month within which to inform civil registries -- known as “ZAGS” -- that an adoption had taken place (CoMF Art. 107); the new law allows the courts three days only (FCRF Art. 125, pt. 2).

Soviet legal literature often reflected confusion as to whether the adoptive parents' inclusion on the birth records affected the legal consequences of the adoption, with some family law specialists mistakenly asserting that a lack of registration indicated an abridgement of adoptive family rights. The new law states outright that adoption’s legal consequences are identical, regardless of whether the adoptive parents are listed in the birth registries (FCRF Art. 137, pt. 6). As before, children over the age of ten have to consent to the changes, unless they are unaware that their parents are adoptive (CoMF Art. 106; FCRF Art. 136, pt. 2).

Although the 1969 law drew a distinction between an adoption that had been annulled [недействительным], i.e., was totally invalid due to some mistaken or fraudulent representations in the adoption process (CoMF Arts. 111, 112 & 118), and abrogated [отменено] due to the adopters’ improper conduct or inability to care for their adopted child (CoMF Arts. 111 and 113-118), the new law speaks only of abrogation. Grounds for abrogation are now much more explicit. They include cases where the adoptive parents fail to carry out their parental obligations, abuse their parental rights, treat the adopted child cruelly, or suffer from chronic alcoholism or drug addiction. The court also reserves for itself the right to abrogate an adoption for other reasons deemed to be in the adopted child’s interests (FCRF Art. 141, pts. 1 & 2). For the first time, adopted children themselves, if they are over the age of fourteen, have the explicit right to levy an abrogation suit (FCRF Art. 142). One law has not changed; as before, the courts have the right to hold former adoptive parents liable for child support (CoMF Art. 117; FCRF Art. 143, pt. 4).

Finally, on April 1, 1996 the State Duma made some additions to the family legislation as it concerned foreign citizens. While the 1969 law referred to “foreign citizens” (CoMF Art. 98), the failure to ponder international law suggests that the lawmakers were only considering adoptions by citizens from the other Soviet republics. But one new statute deals exclusively with adoption by foreigners, setting forth the areas of legal competence for Russian and foreign jurisdiction. In the current law, there is now a specific time limit for international adoptions; an adoption can take place three months after an application is submitted (FCRF Art. 165, pt. 1). Generally speaking, the new law pays much closer attention to the issue of foreign adoption. Given the recent powerful demand for adopted children from the West and the legal complications that have arisen in many adoption cases, it is not surprising that the law would detail these issues more fully than in the past.

We can safely say that the new adoption laws in the Russian Federation more or less adhere to six of the seven criteria set forth in a recent review of international adoption legislation: informative and voluntary parental consent; primary concern for the child’s best interests; the substitution of an adoptive family for a biological one; confidentiality; permanence; and, at least for Russian citizens, a

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13 Apparently, there had been some confusion in the courts as to which designation was proper. See, for example, Konstantin K. Cherviakov, Ustanovlenie i prekrashchenie roditel’skih prav i obiazannostei (Moscow, 1975), pp. 75-78.

14 In both codes, an adoption could not be abrogated once an adoptee reached majority age, unless the adopters, adoptee, and biological parents (if they were still alive) who had not been deprived of their parental rights all agreed to the abrogation (CoMF Art. 116; FCRF Art. 144).

stress on early-age bonding. But the seventh criterion is subject to question: that of adoption’s “donative nature.” Article 98 of the 1969 Family Code had indicated that no fee could be involved in the adoption process; this stipulation is conspicuously absent from the new legislation. Indeed, American citizens who have involved themselves in adopting children from Russia are finding themselves paying not only hefty fees to international adoption agencies, but large “donations” to Russian orphanages.

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Although Russian citizens are encouraged to adopt newborn babies and infants, only toddlers and older children are usually available for foreign adopters.

See Bernstein, “Soviet Adoption Law.”