

**POLITICS OF CHILD ADOPTION: COMPARATIVE ANALYSIS OF
RUSSIA AND KYRGYZSTAN**

By

Kaukhar Asylbekova

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THIS SENIOR THESIS IS DEDICATED TO THE MEMORY OF MY FATHER
ASYLBEKOV BAKTYBEK 1961-2010

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ABSTRACT

The importance of orphans' future has been a believe it or not topic among political scholars. While some argue that there should be an inter-country adoption, due to globalization and liberalization, others claim that there should be a strict control over institution of adoption and there should be restrictions over inter-country adoptions. Despite the fact that the problem of child abandonment has not yet been solved in Russia and Kyrgyzstan, in recent years the issue of prohibition or temporary restriction on international adoption of children has been constantly raised. During the research about institute of adoption, I have set myself a task to understand whether the imposed restrictions and bans on the institute of international adoption in Kyrgyzstan and Russia were developments of the institution or on the contrary, deterioration of orphans' situation. This paper provides comparative analysis of the institutions of adoption in Russia and Kyrgyzstan, as well as analysis of bans on inter-country adoption. The international adoption bans as well as some restrictions associated with long procedures and adopters checks will limit adoption of children by foreigners, but it does not guaranteed that it will increase the number of domestic adoptions. But today prohibitions and restrictions imposed on international adoptions are necessary measures as control over the procedure of international adoption can prevent corruption and criminal acts against children - orphans.

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INTRODUCTION

The actuality of the subject is in fact undoubtful. In conformity with international, Russian and Kyrgyz laws and legislations, promotion of the interests of children is the main task of Family law. Recently foreign adoption has been ebulliently debated throughout the Internet, newspapers and television. It is primarily due to the detected violation of children's rights and transgressions of adoption procedures. International adoption is one of the most controversial issues in Russia and Kyrgyzstan. Many questions arose, for example, how were international adoption procedures conducted in practice or why was the fate of children not been monitored? According to the research of Rachel Stryker, sociologist and psychologist from Berkeley University of California, there had been sales of children-citizens of Russia and Kyrgyzstan into the United States and other foreign countries. These acute social problems need solution. The proper measures to combat corruption in work of officials responsible for preparation of adoption process and decision – making are required. Unfortunately, today many children are left without parental care for various reasons. In this case the protection of their interests rests with a government. The government through its public bodies should promote the right of every child to grow up in a stable and intact family. Both Russia and Kyrgyzstan faced problems with inter-country adoption, therefore comparison of two is a good way to understand the processes as well as to research what is “behind the curtains”. As both Russia and Kyrgyzstan put a ban on inter-country adoptions, it is interesting to research those restrictions and more over the period after the prohibitions were raised.

Research Question: Can the prohibitions of International adoptions be considered as the prospect development of the institution of adoption in Kyrgyz Republic and Russian Federation?

Hypothesis: Bans on Inter-country adoptions can bring positive change in domestic adoption and development of social sphere, preventing children to be left by parents.

Along with the short description of general overview of international adoption, the first chapter covers the history of international adoption in Kyrgyzstan and Russia bringing the difference between the two, the chapter lets a reader to learn the background of the issue and make it easier for him to understand the following chapter, where several comparative analyses were made.

As mentioned, the last third chapter demonstrates the result of comparative analysis through the prism of bans on inter-country adoption. The government tries to implement a coherent and coordinated policy aimed to providing the survival, protection and development of children. But, the prohibitions of adoption, on the one side, make adoption institute develop in the sphere of legislation and supervision, but on the other side, it inhibits improvement of children's conditions because the internal mechanism of the country is not well – developed.

LITERATURE REVIEW

Today problem of social orphanage is typical not only for Kyrgyzstan but also for many other developed and developing countries. Charles Ragin, *The Comparative Method: Moving beyond Qualitative and Quantitative Strategies*. This is one of the most authoritative texts on the problem of how to compare in the social sciences. In particular the strategy for selecting cases and its consequences is elaborated. The questions about legal regulation of relations occur in the result of the adoption were overviewed in different ways by James Simon and Howard Altstein, Elizabeth Bartholet, Dyuzheva O.A. and other scientists. Their works were theoretical base for further research issues of adoption. However, despite undoubted importance of these researches, there is a wide amount of issues in the sphere that required solutions due to the changing of socio-economic situation in a country, growing number of orphans and children who remains without parental care and the newly introduced restrictions for adoption by foreign citizens. Based on this we must consider the problems arising in the result of international adoptions in Kyrgyz Republic and in Russian Federation. The work by Rita James Simon and Howard Altstein "Adoption across borders" provides an invaluable source of data on inter-country adoptions. Bogatyreva G.V. in her book "The rights and responsibilities of parents and children" proposed alleviation of family access for guardianship officials, social workers and NGO representatives for early prophylaxis and detection of family troubles. Dyuzheva O.A. in her work "Problems of international adoption laws" conducted a comparative – law analysis of the application of Russian law and international contracts that regulate the institute of adoption. During the research we identified gaps in the legal system that regulates procedure of adoption by foreign citizens who have Russian citizenship and which regulates the rights and interests of

an adopted child in foreign country's territory until the adulthood; Kabyshev O.A. in his nonfiction " The adoption, custody and guardianship of children ," analyzed child's adaptation in a new family and assumed during the adoption by foreign citizens who have Russian citizenship to establish an adjustment period for adoptive parents for 3 to 6 months in a form of cohabitation to determine compatibility of characters and effectiveness of the adoption .This refers to the Russian legal system where it is necessary to bring laws into line with today's international agreements.

Due to the lack of sufficient information on inter-country adoption in Kyrgyzstan in the books, many internet recourses were used for this research and analysis. All resources in combination gave a firm ground for conducting this research.

CHAPTER I. ADOPTION OF ORPHAN CHILDREN BY FOREIGN CITIZENS: THEORETICAL AND METHODOLOGICAL ASPECTS

1.1. Analysis of the reasons for the increasing amount of children orphans in Kyrgyz Republic and Russian Federation

Legislators, executors of law, politicians and the scientific community pay great attention on issues of children's rights, protection of families, childhood, motherhood and fatherhood. The care for the younger generation is a primary direction of activity for today's government. It is well known that the most comfortable place for the child upbringing is family. However, many facts including a steady trend of leaving children without parental care are evidences of family crisis. Since 2002, the number of children in Russia decreased from 31.6 to 25 millions. Scale of insecurity child's right for family is huge - more than 700 thousand orphans and children are left without parental care. 130 thousand children of that amount are remained without any family care. They have no parents or guardians, they are deprived of the most important which is family. In modern Russia there are about 1,500 orphanages, 240 children's homes, more than 300 boarding schools for orphans , more than 700 social shelters and 750 rehabilitation centers for children and adolescents.¹

The main reasons for increasing the number of children orphans and children who were left without parental care - social orphans are falling social prestige of family, its material and housing problems, ethnic conflicts, growth of illegitimate births, high percentage of parents whose lifestyle is antisocial. In 2011, 57.4 thousand parents were deprived and limited of parental rights.² Children who were left without

¹ Dyuzheva O.A. Some problems in legislation of international adoption. Family Law in Russia: problems of development. Collection of reviews and articles. Moscow, 2010. - P. 35

² Bartholet, E. (1993). International adoption: Current status and future prospects. Future of Children, 3,89–103.

parental care were mainly transferred to organizations for children orphans and children that were left without parental care and only 7.4 thousand were passed for adoption, 56.7 thousand - under guardianship (trusteeship), including 15.9 thousand – for onerous form of guardianship (trusteeship).

As it rightly pointed out in scientific literature, the situation of children in modern Russia is one of the saddest results of reforms in the country, in the result of which the sphere of childhood had become the most affected. This indicates of inefficiency of the government institutions of social support for children and their legal protection. To correct the situation a series of measures were taken in 2012: improvement of the National Plan of Action for the Children Interests , the edict of President of Russian Federation from 28th December, 2012 № 1688 "About some measures for the implementation of government policy in the sphere of protection of orphans and children without parental care ", inclusion of amendments to the Federal law from December 30, 2012 " About Principles of System Foundation of Neglect Prevention and Offences by Juveniles", the development of laws aimed at reducing foreign adoptions of Russian orphan children and promoting national adoption, etc. These measures demonstrate that the government tries to implement a coherent and coordinated policy aimed to providing the survival, protection and development of children, which did not actually exist in the last decade.

Orphanhood was widespread during the collapse of the traditional polygenerational family both in Kyrgyzstan and in Russia. Cohabitation of several generations, involvement of older children in the education of younger ones practically excluded the possibility of children remaining without relatives' care in

case of parents' death.³ There are two reasons for the growth of social orphanhood in modern Russia. The first reason is crisis of family institution, which is common to Western countries. The crisis is manifested in increasing age of registered marriage, the increasing number of divorces, high prevalence of unregistered marriage relationships, childbirth decline. Today In Kyrgyzstan we also have similar problems such as an increase amount of divorces, poverty, reducing the authority of the family institution and traditions , financial independence and emancipation of women , alcoholism , unwanted illegitimate pregnancy, etc. ⁴

There is a situation happens when society creates a whole generation of orphans both in Kyrgyzstan and in Russia. Many of them have no living parents: alcoholics, drug addicts, thieves, prostitutes. They are decayed, immoral, unscrupulous individuals.

Children get into orphanages from children's homes when they are left by their mothers in maternity hospitals. They are from families of alcoholics and drug addicts, parental rights deprived, or children are from mothers who did not want their children to be born extramarital.⁵ This situation is particularly common for Kyrgyzstan, where women who become pregnant illegitimate, are afraid of their relatives' judgment, that they will be burdened with a child; they are afraid to bring up a child alone, that makes them leave their babies in maternity hospitals.

There is evidence about the crisis condition of the family in Kyrgyzstan and Russia. It is steady increase of a number of parents deprived of parental rights,

³ Provision on the order of transfer of the children left without parental care by the citizens of the Kyrgyz Republic and foreign nationals. Approved by the Resolution of the Government of Kyrgyzskoy Republic on August 27, 2011, number 522

⁴ Kirillova A.P. Adoption Questions: questions and answers. - Tomsk, 2011. -P. 90

⁵ Jacot, M. (1999). Adoption: For love or money? The UNESCO Courier, 52, 37–39.

especially in Russia. Deprivation of parental rights is a major cause of social orphanhood. Thus, half of the children without parental care that were being detected during a year are children whose parents are deprived of parental rights or they are limited of it.

The situation of social orphanhood in modern Russia (its prevalence, location forms for children left without parental care) is determined by factors that had been formed during the Soviet Union

Communist ideology considered the priority forms of education as public forms, the family was seen as outmoded institution that does not have big influence on developing individuality of a child. Consequences of this approach were: firstly, majority locations of orphans and children without parental care were in boarding buildings and, secondly, rejection of the active social intervention in trouble families and solving the crisis situation. During the Soviet Union period and until now government instead of preventing family trouble (social support for families, early prevention of dysfunctional relations in a family) its main focus is on the placement of children who were left without parental care.

In Kyrgyzstan the spread of social orphanhood is caused by complex of special conditions and processes in society which are characterized the development of the country in the 20s - 30s, as well as by consequences of the restructuring of Soviet Union in the late 80's - early 90th of XX century. This historical process had led to what today we consider as normal to give a child to an orphanage or boarding school and go to work abroad.⁶

⁶ Researches "Analysis of the situation in residential institutions of Kyrgyz republic" conducted by the Ministry of Social Protection of the Kyrgyz Republic in 2011. - P. 34

Significant spiritual, economic, political, social crisis which boomed both in Russia and in Kyrgyzstan, led to an increase of a number of families with different level of social, psychological or structural disorganization. In Kyrgyzstan there is still being practiced situation when children are not given in orphanages but into relatives' families who have an ability to provide a child with food and bring him up. However, in Russia this practice has not been developed. In Kyrgyzstan, there are still rudiments of traditionalism and collective education of children, especially in villages.⁷

For the first time an abrupt fall of living standard has caused such phenomenon as waiver of the child due to inability to provide him with food. The crisis of the modern family stated by specialists had a negative impact on situation with childhood in the country, had led to the growth of social orphanhood and increased a number of specific institutions such as boarding houses.

Noteworthy it is extremely unfavorable situation with sources of income and closely connected to it material sufficiency of abandoned. Only 18 % of them before their pregnancy had permanent job, and the rest of all did not work because of various reasons (were looking for a job, referred to bad health condition, etc.), and 12% honestly said they did not have any degree. Most abandoned had no particular occupation or profession. About half of them were dependent on their parents, relatives and friends. They got a temporary job when it was possible and 5 % of them resold clothes and food. However, 45% said that although they did not starve but did not have money for clothes 35 % reported, 20% of abandoned described their financial situation is below average in the country, and no one rated it above average

⁷ Torpedina E.E. Adoption as a form of the realization of child's right to live and grow up in a family: Jurisprudence PhD. Moscow, 2009. - P. 89

, and as it is well-known, the average level allows you not to starve, but nothing beyond that. In this situation, a baby birth will inevitably lead to further decline in living standards. Here we see that the motive of financial insecurity takes an important place among other motives. 50 % of respondents referred on it.⁸

Thereby we can conclude that the main cause of child abandonment in Russia is poverty, dysfunctional families and decline prestige of the family institution. Similar situation is in Kyrgyzstan. After gaining independence, the Kyrgyz Republic has failed to develop and activate a consistent, stable and forward-looking development strategy. As a result, due to the randomness and lack of a unified government policy ,unsolved problems in all areas of country's life (political , economic, social , cultural, educational) are still remaining , but the most important indicator of the country's development is unquestionably level of younger generation's education, which can be formed only in the family. Because of that government endure big loss in current policy. On other side, critical economic situation in families forces them to leave the country for work, had led to growth of social orphan's amount that increases every year. Along with that there is degradation of the population. The consequences of migration flows, spiritual decay of society and economic instability led to social orphanhood as we can see from the following statistics, which was conducted by UNICEF.

UNICEF Regional Office for CEE / CIS

DATABASE TransMONEE 2012, published in April, 2012⁹

Number of children in formal care in 2010, the year-end

⁸ Bogatyreva G.V. The rights and duties of parents and children. - Moscow., 2009. – P.52

⁹ www.transmonee.org

| | | |
|------------|---|----------------------------|
| | Total number of children in formal care | In boarding schools/houses |
| Kyrgyzstan | 25 387 | 20 483 |

The number of children who were left without parental care, during 2000-2010

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Kyrgyzstan | 2 696 | 2 709 | 2 562 | 2 288 | 2 668 | 2 926 | 2 655 | 2 539 | 1 809 | 2 538 | 2 726 |

The number of street children, including the so-called social orphans, is growing despite the measures taken by the authorities and civil society organizations. Among the main reasons for increasing the number of orphans besides anti-social behavior of parents, there are such as inflation, unemployment, economic instability, crime increase, poverty. Progressive crisis situations in family as in a social institution, the weakening of educational work with children and parents makes the situation with orphans more complicated.

As a way to overcome this tragic social phenomenon which has become widespread, researchers usually take into attention stabilization of socio-economic and political processes in society, creating system of economic, legal, social support of family, motherhood and childhood, revival, development and propaganda of the best educational traditions based on humanism, love and respect to a child, the reorganization the system of institutions for orphans, care improvement.

In connection with the collapse of the USSR and difficult economic situation in Kyrgyzstan migration flows has intensified. The first stage (1991 - 1994) is

characterized by abrupt increase of crisis activities in the socio-economic development of the country and led to a precipitous increase of migration processes , which had negative effect on the situation of family , especially on children, who had to go to residential houses.

During the second stage (the second half of 1995 - 2005) migration situation in the country was stabilized, due to elaboration of priority directions of migration policy in Kyrgyzstan and creation of system designed to implement the policy on domestic and international levels. As the result of this was a definite improvement of migration situation in Kyrgyzstan that was manifested through a significant reduction of emigration in comparison with the previous period which affected the number of orphans.¹⁰

Labor migration abroad became a significantly wide, as the number of unemployed increased every year. For example, in September 2006 there were 73.8 thousand officially registered unemployed that was for 17.3% more than in September 2005. By early 2008 the number of unemployed reached 270 thousand people (11.5 % of the economically active population).¹¹ Compared to the previous year the unemployment level was decreased, in 2009 it was 203.7 thousand people, and in 2010 it was 212.3 thousand.¹² In 2011, the unemployment rate reached 12% that is 298 thousand people.¹³ This dynamics of migration affected the situation of orphans, the amount of children who had parents but at the same time lived in residential houses had been increased.

¹⁰ Anastasiya Bengard. "Spravilas li Roza Otunbaeva s obyazannostyami prezidenta perehnogo perioda" (24.kg, 2011) <<http://www.24kg.org/community/113764-spravilas-li-roza-otunbaeva-s-obyazannostyami.html>

¹¹ http://www.kyrgyzstan.russian-club.net/spravka_economic.html

¹² <http://212.42.101.112/pxlocal/Dialog/varval.asp?&lang=14>

¹³ <http://www.paruskg.info/2011/04/06/42026>

New educational institutions for orphans and children left without parental care, non-governmental institutions, innovative forms adoption by family began to emerge. For example we can name Children's Villages «SOS» (which are also in Kyrgyzstan) , pension family education , parish orphanages (Kovalevsky diocesan orphanage shelter at the convent of Kostroma , Children's Christian community Chita region . , Charity shelter " House of St. Nicholas " Novosibirsk region , etc.) , foster family (in Moscow, Vladimir, Perm , Rostov, Tula and Kaliningrad regions, the republics of Mari El and Karelia) . There are a huge number of public organizations such as foundations, centers that help in solving problems of orphans and children left without parental care, and sponsors - organizations and private individuals.¹⁴

Thus, the main conclusion is that the reasons for increasing amount of orphans who have living parents are: low living standards of the majority of Russian families, the loss concept of the family as the basic unit of society and understanding the concept of family as moral values, increase of illegitimate birth rate, increasing number of parents who have antisocial life, newborns abandonment, as well as ethnic conflicts, etc.

Thus, we see that reasons of social orphanhood are numerous and very different. Therefore, the solution of such serious problem seems to us lingering and complicated. This is a matter of government, society and every person. Moreover, these actions must be consistent and well thought out to solve not the consequences of the problem, but its roots. If parents 'responsibility for their children does not become bigger , it would led not only to growth of social orphans number but also to degradation of whole society , as children who left without parental care and grew up

¹⁴ Akulenko G.I. Legal regulation of adoption in family law of Russia: Abstact. Jurisprudence PhD. Sciences. - Rostov na - Dony, 2010. - P. 76

out of a family and deprived of care and love , will also be such irresponsible to their own children. To prevent social orphanhood there must be given lessons at all levels of local government in Kyrgyzstan and Russia because in all regions of Kyrgyzstan, offices that involved in work of the family institute are incompetent due to the lack of financing and well – defined HR policy. They provide mainly statistical data at the request of the higher state bodies that is where their authority is limited.

Information vacuum is formed in the regions due to the situation. While the institution of family is being created, goals and tasks are remained only in paper. The family itself forms a child's outlook; submissions of social relations and family subjoin him to the basic social values . Orphan's link with the environment has been interrupted as orphan deprived of communications with children of ordinary families, as he lives in an orphanage or in boarding – school. Also they are at risk. They form uneducated, criminogenic subculture that negatively affects their peers and whole society. That is why it is important to develop responsibility of future generations. That is why this topic is political and significant in development of the whole country.

1.2. Reasons for the adoption of children by foreign citizens in Kyrgyz Republic and Russian Federation

International adoption in Russia started rapidly developing since the collapse of the Soviet Union and the fall of the "Iron Curtain" at the turn of 1980-1990s. In 1992 there was officially allowed adoptions by foreign citizens.

Reasons for that were: the growing number of children without parental care in Russian Federation and Kyrgyz Republic, many of whom were disabled; social and economic upheavals that prevented proper provision of the normal life to these

children, etc. On the other hand, the number foreign citizen who cannot have children for some reason and cannot adopt a child in their country is increasing. One of the reasons is more strict conditions of adoption than in Russia and Kyrgyzstan. For example, in Netherlands adoption permitted only for married couples with marital age of no less than five years. In Spain, a person who wants to adopt a child must be at least 25 years old. Besides, the number of children left without parental care, in developed countries significantly less.¹⁵

On the last place among the reasons why foreign citizens are willing to adopt a child from Russia or Kyrgyzstan are purely moral reasons, when mercy to abandoned child with difficult life needs no explanation. Institute of International Adoption (or, not in politically correct form “the adoption market”) does really exist. It has its own specific features; its own mechanisms and ideology .There are several main actors. U.S., Italy, Spain, and a little bit Germany provide demand. Every year there are fewer proposals. The reason is that today's world believes that the lighter a country let its children out, the less respect it gains on international level. It is nonpublic foreign policy criterion of national image.

In developed countries it is not customary to give their children for adoption by foreigners. In Kyrgyzstan orphanhood is not as developed as in Russia because in Eastern countries it is not customary to give their children out of the family. There will always be relatives.

Today there is a development of prohibitions for orphan adoption by foreigners (which include Russia and Kyrgyzstan). Such dynamics depends on a country's economic growth. For example, 10 years ago the question about child adopting in

¹⁵ Lysenko I.M. Legislation of adoption and adoption practice:. Jurisprudence PhD. -Moscow, 2008. - P. 68

China could be solved in few months, and children (especially girls) were exported abroad by huge batches. But after "Chinese economic miracle" the government no longer gives their young citizens to foreigners. Anyway, it does not do it so easily.

In practice of foreign adoption (it began in the late 1980s), in Russia was a period, as it was once in China, when it was not any records on adopted children at all. In the 1990s there was possibility in Russia to just come there, choose a child by agreement with a particular orphanage house and quickly with the help of some people get agreement of a court and take a child abroad. The whole operation could take up to 2 weeks. It was called independent adoption. According to official data, about 60,000 children were adopted. According to experts, it was more than 100 thousand children.¹⁶

In fact, the Russian market of international adoption is the largest supplier with unique proposition - the "white European child." And if a foreign family has decided to adopt a white child, they could do it only there. In Ukraine the legislation had been toughen long before. In Baltic countries adoption is even tougher. You can adopt child who only over 9 years old and wait in queues for 2-4 years and so on.

Foreign families want their children to know their roots, to know the country and culture where they are from. That's why adoptive parents take the children to different national holidays in the Embassy of Kyrgyzstan or Russia in their countries.¹⁷

In any case, a significant complication of procedures and definitive review of the conditions in questions of international adoption are steps through which need to go all countries that retain the status of "suppliers". These are necessary steps that will

¹⁶ Makarenko I.V. Controversial law issues in the adoption process. - Moscow, 2012. - P. 56

¹⁷

give an opportunity to avoid corruption moments during the adoption and criminal acts against children of the receiving side.

Also other reasons of adoptions from Kyrgyzstan and Russian by foreign citizens are need to be marked. For example, in most states of U.S. if a family adopts a foreign child in future it will almost not pay any taxes and receive a big discount on health insurance for the whole family.¹⁸ Another reason - the adoption of a foreign child costs to a U.S. citizen twice cheaper than at home (an average of \$ 35,000 versus \$ 65,000). In fact, it will partly " pay off " by government subsidies and incentives.

Besides Adoption Tax Credit connected with IRS, there are Federal Adoption Expense Tax Credit that is more than 10 thousand dollars, if the annual income of an adopter is less than \$ 199,450 . In addition, in many states there are additional tax and financial benefits in amount of \$ 2000.¹⁹

Children with "special needs" also receive subsidies (for example, in South Carolina adoptive parents receive \$ 1,500 per child because there is no information about his own father) . Families who adopt children have a right for compensation of the costs associated with home schooling , travel and the cost of a lawyer.²⁰

Perhaps foreigners often take children with disabilities i.e. those who are taken less in Kyrgyz Republic and Russian Federation, but maybe there is intent not to pay taxes and receive benefits, that's why adoption of children from Kyrgyzstan and Russia by foreigners needs to be controlled well. Another question is that it is better and easier to live and take rehabilitation for a disabled child there. Foreigners adopt

¹⁸ <http://adoptiontaxcredit.org/>

¹⁹ Matytsyna L.V. Is it always warranted the secrecy of adoption. – Moscow, 2009.

²⁰ Rita J. Simon and Howard Altstein, Adoption Across Borders, 2000

our children with disabilities knowing very well what they are doing. In European countries and in America it is easier to live with a disabled child. Nevertheless, bringing up a disabled child is work that requires fortitude, inner wholeness, certain system of values. Of course, in Kyrgyzstan and Russia adoption of someone else's child is great responsibility, as there is corruption everywhere, from kindergartens, hospitals, ministries and departments, the level of economy and living standards are lower than in America. In Russia now the issues about tax incentives of adopters, increasing the size of social pension for disabled children and the size of a lump sum, simplifying the adoption procedure and so on is being addressed. This is good because there are ways to solve such problems. The easiest is following China's way, and while the government tries to solve other problems, we have to make foreign adoption much liberal and let foreigners take children out. We have to do it if we realize that cannot deal with orphan hood problems for now. Another is developed European option. Prohibition of foreign adoption at all, but only after a serious reform of family placement and removal of the traditional orphanage houses.²¹ There are also intermediate options that Kyrgyzstan and Russia implement today. These are adoption restrictions, strict control of adoption procedures to avoid corruption and thorough checkups, as well as control over the child's future. It is possible to create and develop such system, especially in Russia as the amounts allocated for orphans are spectacular high enough (from 350 thousand rubles per year in the most depressed region it is up to two million rubles per child). Figuring the real budget of Russian families (including those that are willing to take orphans to their families,

²¹ Deputat Aitmatova prosit deputatov vnesti popravki v semeiniy Kodeks dlya resheniya voprosa usynovleniya detei inostrancami" (Central Asian News, 2011) <<http://www.cas-news.org/news:656641/>>

but cannot do it because of financial reasons), it is easy to imagine (even by "depressed standards") how it can help to change the situation.²²

According to the Commissioner of Human Rights in Russia Vladimir Lukin, to put an end to dispute about adoptions of Russian children by foreigners "such living conditions for orphans are need to be created in their own country, so the question of their adoption by foreigners will stop being popular". Besides, the death of children from parental violence does not differ in the U.S. and Russia. In both countries about 0.1 % of adopted children die because of that.

It is noteworthy that absolute majority is against the amendment of the foreign adoption. They are those who work with children - orphans or provide charitable help for them. Those who go to the orphanage houses organize treatment and trainings; support them in psychological and financial ways, those who seriously deal with children - orphans are against it. However, deputies-theorists support the law. It makes us wonder whether we need adoption ban for foreigners and whether or not will that led to more orphans in orphanage houses. Maybe the problem is not foreigners but social, economic and political problems in Kyrgyzstan and Russia.

1.3. Basic mechanisms of adoption by foreign citizens in Kyrgyz Republic and Russian Federation

Today in Kyrgyzstan a question of foreign adopters is settled. Procedure of adoption by foreign citizens - candidates (adoptive parents) do not need to be conducted by themselves. The procedure should be done in representations of foreign authorities and organizations that have received permission (accreditation) to conduct such activities on the territory of Kyrgyzstan for the period until the question of which

²² Shepelyov M.L. Law regulation of family relations. - Moscow, 2010. - P. 78

organizations will be dealing with the procedure of foreign adoption is resolved, adoption of children - orphans by foreigners will be paused.

Adoption of children from Kyrgyzstan by foreign citizens should be allowed only in cases when it is not possible to give these children in to family citizens of the Kyrgyz Republic who live on the territory of the Kyrgyz Republic constantly or to their relatives for adoption regardless of nationality and residence of the relatives.²³

In Russia in 2008 up to 80 % of international adoptions were made by accredited organizations, others were independent adoptions.

Those who want to take children in to their families have the right to ask for information about the remaining children without parental care in any regional or federal operator state data bank of children. When choosing a child corresponding operator gives to potential adopter - foreigner the direction for a visit and informs the guardianship authority or regional operator about actual location of the child. A foreign citizen is obliged to inform the operator of his decision about adoption or rejection based on the results of visit, as well as to bring a package of necessary documents. Pre-trial preparation of the case for international adoption is carried by the federal or regional operator of government data bank, cooperator of custody and guardianship.

The adoption procedure in Kyrgyzstan and Russia has similar moments. However, Kyrgyzstan follows changes in Russia, being slightly behind. Thus, the Ministry of Social Development of Kyrgyzstan has already begun accepting applications from

²³ <http://deti.org/document.php?id=198658&topic=r68>

foreign organizations to undergo accreditation for the implementation of international adoption of children - citizens of the Kyrgyz Republic.

“Acceptance of applications with the accompanying documents is carried out by the Office for Family and Child Protection of Ministry of Social Development within 45 calendar days”, has been explained in the department.

According to the Ministry of Social Development, a new amendment has passed anti-corruption expertise. Responsibility of state authorities' chiefs was significantly enhanced. They control companies that have submitted documents. Only court is able to make a decision about international adoption in Kyrgyz Republic.

We put in remembrance that in July 2012 in Kyrgyzstan had been paused work of 10 previously accredited foreign organizations involved in international adoption.

There is no fee for adoption procedure. However, foreigners pay for the services of licensed adoption organizations (the survey of family, documents preparation etc.) in accordance with the legislation of their country. Establishment of adoption is made by the court by the place of residence or the actual location of an adopting child at the request of prospective parents.

The Adoption application is examined in a closed court session. Court either satisfy the request of the adoptive parent, or refuses to satisfy it . The court's decision came into force is the basis for state registration of adoption.

Starting with five months after a child leaves, the regular multistage system survey of living conditions of children comes into effect and all data is sent to Russia where the

child was taken from. The procedure of reporting acts is activated until the child's adulthood.²⁴

In a situation when an adopted child for any reason feels uncomfortable in the adoptive family, organizations or social services according to the new place of residence of the child make a decision about his transition to another family. Among the most common causes of children's transition are incompatibility of the child and parents when parents are not well prepared to adapt and socialize the child to life in new conditions. According to the head of a major U.S. adoption agency, European Adoption Consultants Margaret Cole, one of many problems is the lack of formed psychological affection between a child and the adoptive family members, which is caused by a mismatch of mutual expectations.

On average, according to data from 2010 and global practice, about 4% of all adopting children are those who are not able to adapt in a new family and need to move. Only in cases where it is not possible to move him or if a child refuses to move to another family, he is returned to his homeland, but this practice is not well-developed. Cases of cancellation of international adoptions of Russian children and their return to their motherland are extremely rare. There have not been any such cases in 2007-2008. However, there are cases of refusal of Russian children. In September 2009, American Torry Hansen adopted a 7-year-old citizen of Vladivostok, Artyom Savelyev, and in April 2010 she sent him on a plane to Russia with a note about the refusal of the child. This story was continued in 2012. The City Court of Lynchburg (Tennessee) decided that Hansen must pay alimony to Artem because adoption has not been formally annulled. Hansen sued the courts in Moscow to the children's

²⁴ Research of "Analysis of the situation in residential institutions of Kyrgyz Republic" conducted by the Ministry of Social Protection of the Kyrgyz Republic in 2011. - P. 74

ombudsman Pavel Astakhov (with the requirement not to call her "adoptive mother") and to "Rossiyskaya Gazeta" (demanding to refute the information in the article "Lucky Artyom Savelyev has found the family"). In April 2010 Pavel Astakhov took out from the Dominican Republic 12-year-old Dennis (Diego) Hohriakova abandoned by his adoptive parents but a few weeks later Denis told to "Moskovsky Komsomolets" that Pavel Astakhov had forgot about him too. According to opinion of the children's ombudsman, the boy just needed time to adapt to new life conditions in the new for him country.

Foreign adoption organizations in Russia are divided into public and non-profit, non-governmental. The last ones need recommendation from the state and professional experience of at least 5 years in their home country. Until now, the permission to work in sphere of preparation for the adoption in Russia have two government organizations (from Italy and France); the number of representative offices of foreign non-profit agencies are periodically changed: in July 2008 there were 69 from ten countries, in July 2010 there were about 70 of them and in December 2012 – 77 countries.²⁵

In 2008 work of two (American and Spanish) representative offices of foreign adoption organizations was paused at first and shut down later. In 2009 work of six more offices (five American and one Canadian) was shut down.

The main reasons for that were untimely informing the Ministry of Education and Science of Russia about reorganization of children in other families, changes in the structure of the organization and accidents where children were injured. In autumn 2009, Russian Federation Council ratified the Russian-Italian agreement on

²⁵ Prytkina S.I. Adoption of citizens of Russian Federation by foreign citizens and stateless individuals: author's abstract. Jurisprudence PhD. Rostov - na - Dony, 2013. - P. 49

cooperation in children adoption. This document was the first of its kind in the Russian practice. In the document was stated that the transfer of the child for adoption in to another country should be considered only in cases when in the country of his origin it is impossible to find a suitable family for him. The agreement also obligate two sides of taking measures to prevent and combat illegal activities against adopted children , including benefiting on the adoption , as well as kidnapping , substitution, child trafficking , child labor and sexual abuse of children. Agreement guaranteed to an adopted child the same protection and possession of the same rights that have citizens of a host country. According to the first vice-speaker of the State Duma Oleg Morozov , the agreement between Russian Federation and Italy was called to " become the example" for other countries.

State Duma Deputy Speaker Svetlana Zhurova marked the need for the quickest conclusion of bilateral agreement between United States and Russian Federation in the sphere of adoption, to make positions of two countries more close. According to the deputy speaker, the activities of Russian government agencies in the sphere of the rights and interests safeguarding of Russian children adopted by Americans should be developed in two main directions. First is improving the practice of acting Russian legislation with respect to international adoption , the second is creation international legal framework foundation to ensure the proper adoption procedure and subsequent monitoring of residence of Russian children in the U.S. adoptive families.

Head of Russian Foreign Ministry Sergei Lavrov said that Moscow supports the strengthening of measures to ensure the rights of children adopted by foreigners. According to him the U.S., however, has a tough position against the bilateral agreement and if the U.S. does not make concessions, Russia will not do this either.

After American adoptive parents refused Artyom Savelyev in April 2010 and sent him alone on a plane from Washington to Russia, children's ombudsman Pavel Astakhov declared the advisability of pausing the adoption processes by U.S. citizens until the bilateral agreement between the two countries is been signed on the federal level and not by every state separately on terms of the possibility of mutual children adoption by citizens of both countries. All the more so the case of Artyom, by Astahov words, was not the first one.

First two similar refusals were hushed by officials as the situation reveals too many problems and defects in work of many departments. The story would be hushed for the third time and very many wanted it to be hushed because they did not want to resume negotiations on an international adoption agreement by not willing to show gaps in their work.²⁶

Astakhov was supported by Russian Foreign Minister Sergei Lavrov and adoption by U.S. citizens was paused. Quickly following Russian- American consultations led to the decision of tightening control over the agencies - now only companies accredited on the territories of both countries were allowed to help. Independent adoption was stopped. The development of a new adoption agreement has begun. The agreement was expected to sign up no later than January 2011.

Bilateral adoption agreement between Russia and the United States was signed in July 13, 2011 in Washington. The agreement provides for mandatory psychological testing of potential parents, the possibility of adoption only by accredited agencies, more regimented control over the conditions of children's life after the adoption. The agreement came into force on 1 November 2012. It prohibited

²⁶ Prytkina S.I. Adoption of Russian Federation citizens by foreign citizens, stateless individuals: Author's abstract. Jurisprudence PhD. Rostov - na - Dony, 2013 - P. 45

independent adoption and guaranteed Russian child citizenship of Russian federation until a child 18 years old and a U.S. citizenship is guaranteed since the moment of entry into the United States.

However, the agreement that had just come into force was stopped by the "law of Dima Yakovlev". Russian Foreign Minister Sergei Lavrov called it a necessary measure, but it did not cancel the work on the Agreement. In 2013 two countries began work on a system for monitoring of well-being of adopted Russian children by Americans. The Russian government announced that it does not plan to extend the moratorium similar to one for the United States for other countries. At the same time, in January 11, 2013 "RBC Daily» announced about suggestion of United Russia party to make amendments in the Family Lawbook about prohibiting of Russian children adoption by citizens of the countries with which Russia does not have bilateral agreements.

In January 2013, The New York Times reported about decrease in the number of international adoptions in the United States. The reason for that was legal bans of Russia , China and South Korea (in these countries were set the priority domestic adoption) , as well as the U.S. refusal to adopt Vietnamese , Cambodian and Guatemalan children (here Americans are worried about fraud and human trafficking under the guise of adoption) . However, the decline in the number of adoptions at the same time had happened in France, Fresse Thierry , the head of Foreign Adoptions Office at the Ministry of Foreign Affairs of France has told. The reason for that he saw in strengthening the control procedures over work with children by donor- countries. An agreement with France began to discussed in 2010, it was signed in November 2011 , ratified by Russia in 2012 , it awaits of ratification by the French side in 2013. The agreement forbids independent adoption , putting all

procedures under the control of public authorities of both countries . According to Thierry Fresse , one of the main difficulties in dealing with Russia is bureaucracy . “I would like the procedures to be simplified”, said the head of International Adoption Services at the French Foreign Ministry.²⁷

Today there are negotiations with Great Britain, Israel, Ireland , Slovenia , Cyprus, New Zealand and Malta in Russia. An agreement with Spain is being negotiated. The British side supported the Russian suggestion despite the fact that the adoption of British children is not so frequent compared to the adoption of Russian citizens by citizens of Great Britain. “Offences in the sphere of international adoption in Russian Federation and Kyrgyz Republic have acquired internal corruption signs. State Duma deputies stated that adoption process that is controlled by the Ministry of Education is "impregnated with corruption and incompetence " that can actually lead to the " sale " of children”, writes The Christian Science Monitor. International adoption both in Kyrgyzstan and Russia produces the most ugly and even monstrous forms of corruption. Officials responsible for the adoption and other forms of orphans' placement in to family are ready to do anything for money. This is the deformity of the procedure.²⁸

Chapter II. International adoption as a social practice in Kyrgyzstan and Russia: main trends of the development.

2.1. Evolution of the adoption problem from the personal to the political: reasons and corollaries.

²⁷ Veytsel R.V. The essence of adoption and its consequences // “Vestnik” of Moscow State University. - Moscow, 2012. - № 5. - p. 67

²⁸ Laurie Rich. “Kyrgyzstan: Adoption Reform Leaves Kyrgyz orphans, American families, in Limbo” (Eurasianet, 2009) <<http://www.eurasianet.org/departments/insightb/articles/eav091009.shtml>> (Accessed February 3, 2012)

International adoption is a social problem that constantly attracts a lot of attention in the information space, and sometimes it becomes a political mechanism. Such attention may be dictated by interest to the personal on the one hand, and on the other hand, by the fact that, firstly, it becomes more political than personal, secondly, more public than private and, thirdly, more social than private. Let us examine into the reason why the international adoption turns to political from private. Noteworthy that it is a fairly new phenomenon in modern Russian and Kyrgyz society. Adoption by foreign citizens in Russia appeared in 1991 during the “perestroika” as a result of the "Iron Curtain" removal and difficult economic situation in the country. In Kyrgyzstan it was the same.²⁹

The fall of the “Iron Curtain”, democratization, liberalization of relations had led to the popularization of the international adoption as a part of international political relations. As we can see, international adoption is not only linked with the political context, it turns from a private to public matter. Famous actors, singers, politicians openly adopt children throughout the world: “Angelina Jolie wants to adopt Gleb from Moscow”, “Schroeder acquires Russian children.”

Let us examine in what sense the international adoption turns to a public matter from private. The increase of the number of adoptions by foreign citizens reflects to public discussion. Our post-soviet union conception of the adoption and especially of the international adoption can be divided into its main areas: child abuse; children murder and debate about loss of the gene pool. In period between 2000 to 2005 media announced two or three cases of children murder that were adopted every year, eight boys and four girls of which were from one to eight years

²⁹ R.K. Velner The nature and legal consequences of adoption // Legal issues of family and children upbringing. - Moscow, 2011

old . Russian media focuses readers' attention to identified vivid dramatic cases, whereas fortunate children placement in foreign families is often glossed over, but still there are such articles.³⁰

Foreign discourse along with the negative aspects of the international adoption show placement of children in foreign families as their release or new life. But certainly media in Russia and Kyrgyzstan interpret international adoption more often from the negative side as a "criminal act", surrounded by people who are interested in making a profit. According to these representations, the fate of children remains unknown, they can be sold for the organs or they can be treated with contempt. The appeal to the child's story and details of his adoption occurs only after the media coverage of the dramatic details of a child's life in his adoptive family and sometimes even after his death.

In connection with that, results of the research conducted by Fund " Public opinion" on the issue of " Orphanages and adoption problem " is very interesting. It illustrates the effect of predominance of negative representation about the international adoption in media , " according to 40 % of respondents, children adopted from Russia by foreigners are often treated tough, 32 % - believe that such cases are rare , 1% think it does not happen at all. Respondents answered similar question about the situation in Russian families differently: 22 % believe that adopted children are often treated cruelly , 38 % think it happens rare, 5 % - that this does not happen. 36% of respondents in Russia had trouble in answering the question about abundance of cruelty in children treating ; in foreign adoptive families - 26% had trouble in answering that question". Unfortunately, such researches have not been conducted in Kyrgyzstan. There is the dedicated website of the Ministry of

³⁰ Yu.D. Krasil'nikov Juridical facts in the family institution . - Moscow, 2008

Education and Science Department of children education and socialization that contains information about individuals who are not eligible to adopt a child. Analyzing the data presented on the site , it should be noted that the basic restrictions are about the adopters' age, their health , material well-being and the consent of every adoptive parent, Russian law states that adults of both sexes who had reached adulthood can become adoptive parents. Nevertheless, in public discus adoption is being interpreted in inseparable connection with political situation. In modern society, the shifts of recognition of same-sex couples to adopt children are foreshadowed. In most of countries it is forbidden by law. However, in February 2002 an authoritative American Academy of Pediatrics had published a report that endorse adoption by families where both partners are representatives of sexual minorities. By the conclusion of the Academy , such families are able to provide children with a peaceful , healthy and emotionally stable childhood. This conclusion is based on the results of special research, which showed that life in same-sex families does not cause any harm to children.

Thus, the present stage of adoption is characterized by toughening of implementation of the international adoption process. Tightening control is characterized by adopters abuse regarding to the rights of adopted children, that became possible because of the imperfection of the legal framework and selfish motives that agencies, private intermediaries followed in assisting of an adoption process. They were concerned not by orphans welfare but by making the profit from the adoption process. The result of such activity were identified facts of "purchase of children by married couples on foreign "markets "such as Romania , Paraguay,

China." At this stage four important international documents were adopted. They establish protection standards of children's rights and interests, including orphans.³¹

First of all, it is the "Convention of Child's Rights", adopted by the UN General Assembly in 1989. By recognizing vulnerability of children because of their age, the Convention proclaims the right of childhood to special protection by countries that had ratified it.

Hague Convention of 1993 by establishing unified standards for countries interested in international adoption encourages them to create the Central Authority that would be charged by adoption measures aimed in ensuring the fulfillment of adoption based on the interests of the child, to prevent kidnapping, sale, trafficking and other abuses of the child's rights. Thus, the Hague Convention of 1993 paramount interests of child in exercise of international adoption as well as in the "Convention of Child's Rights" where it focuses on the inadmissibility of anyone getting undue financial or other benefit from the activities in the sphere of international adoption.³²

In 1996, at the 27th World Congress of ICSW (Swedish National Committee) in Hong Kong have been adopted Guidelines for national and international adoption practice and foster family care (hereinafter - the Directives). More than 200 practitioners, experts, public service employees from 30 countries took part in the Directives drafting. The Directives are aimed in improving the quality of work of employees of the central authorities and other competent bodies (organizations) that work in sphere of international adoption.

³¹ Kuzmina «Declaring adoption as invalid «and «cancellation of adoption" // Informational materials of the Soviet Unionwide Scientific and Practice Conference "Problems of Family Law." - Moscow, 2010.

³² Hague Convention" (Intercountry Adoption: Bureau of Consular Affairs – U.S. Department of State) <http://adoption.state.gov/hague_convention.php>

It should be noted that the developers of the Directives paid enough attention to the biological parents of a child that did not characterized previous normative legal acts regulating relations that occurred from international adoption sphere. Thus, as we can see, a given stage of international adoption development is characterized by different approach to relations existing between subjects of the international adoption. If on previous stages the legislator tried to protect an adopted child from contacts with his biological parents, in the 21st century there is a different trend . The legislator devote the triad of participants in legal relations arising out of international adoption: biological parent, adopted child, adopter.

This approach is common in the U.S. where in the last twenty years have been practicing not only contacts between adopted children and their biological parents but the assistance to adoptive parents in children upbringing. A similar trend is seen in England.

Thus, Kyrgyzstan and Russian Federation had tightened international adoption procedure and established strict control over the process of children adoption in the country of citizenship or permanent residence of adopters. Hereby, international adoption is a multi-faceted question that involves lately changing idea about private and public, traditional conceptions of parents' social roles, modern trends of parenting among same-sex couples. All these and many other political and social issues had positively affected on the institute of international adoption.

2.2. “Magnitsky law” and its influence on the adoption problem in Russian Federation.

Today Russia stands for strengthening of measures to protect the rights of children adopted by foreigners.

When in April 2010 American adoptive parents refused of Artyom Savelyev and sent him alone on a plane from Washington to Russia, children's ombudsman Pavel Astakhov stated about expediency of suspension adoption processes by U.S. citizens until the signing of a bilateral agreement between the two countries . Astakhov was supported by Russian Foreign Minister Sergei Lavrov and U.S. citizens adoption was suspended. Quickly following after Russian- American consultations had led to the decision of control tightening over agencies. Since then only accredited companies in both countries are eligible to assist in adoption process. Independent adoption was terminated. New agreement elaboration process had begun. It was expected to be signed up no later than January 2011.

Bilateral agreement of adoption between Russia and the United States was signed on July 13, 2011 in Washington. The agreement provides mandatory psychological testing of potential parents , possibility of adoption only with assistance of accredited agencies , more regimented control over life conditions of children after adoption. The agreement entered into force on 1st of November 2012. It forbids independent adoption and guarantees to Russian adopted child Russian citizenship until the age of 18 and a U.S. citizenship from the moment of entering into the United States.

However, the agreement that recently entered into force was terminated by the "law of Dima Yakovlev". Russian Foreign Minister Sergei Lavrov called it necessary measure that did not cancel, however, the agreement elaboration. In particular, in 2013 the parties began to work on a system for monitoring welfare of Russian children adopted by Americans. The Russian government announced that it did not plan to extend the moratorium like the one for the United States to other countries. Thus, as we can see, the problem is already refers not to social or legal

level but is based on the political aims and is about permanent confrontation between the U.S. and Russia which had already reflected on the international adoption institute.

At the same time on January 11, 2013 "RBC Daily» reported about the suggestion of "United Russia" party supporters to make amendments into the Family Code of prohibiting adoption of Russian children for citizens of those countries that do not have bilateral agreements with Russia. In January 2013, The New York Times reported about decrease in the number of international adoptions in the United States. The reason for that was legal bans of Russia, China and South Korea (in these countries were set the priority for domestic adoption) , as well as the U.S. refusal to adopt Vietnamese , Cambodian and Guatemalan children (here Americans are worried about fraud and human trafficking under the guise of adoption) . However, the decline in the number of adoptions at the same time had happened in France, Fresse Thierry , the head of Foreign Adoptions Office at the Ministry of Foreign Affairs of France has told about that. The reason for that he saw in strengthening the control procedures over work with children by donor- countries. If the trend of tightening restrictions on international adoptions occurred only in one country, we would have considered it from law point of view but as this trend is everywhere it is needed to look at it from a political point.

An agreement with France began to be discussed in 2010, was signed in November 2011 and ratified by Russian Federation in 2012. According to Thierry Fresse , one of the main difficulties in dealing with Russia is bureaucracy . "I would like procedures to be simplified", the head of International Adoption Services of French Foreign Ministry expressed his wish.

Today negotiations with Great Britain, Israel, Ireland , Slovenia , Cyprus, Malta and New Zealand are going on. An agreement with Spain is being negotiated.

From 1993 to 2008 foreign citizens adopted more than 80 thousand Russian children who were left without parental care. At the same time, according to the Department of children education and socialization of Ministry of Education and Science from 2005 to 2010 the number of foreign adoptions in Russia had decreased by 60%. Let us consider the distribution of adoptions by foreign citizens by countries (number of children)³³:

| Country | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|----------------|-------------|-------------|-------------|-------------|-------------|-------------|
| USA | 3468 | 2012 | 1773 | 1432 | 1016 | 956 |
| Spain | 1294 | 947 | 904 | 826 | 792 | 685 |
| Italy | 704 | 438 | 496 | 745 | 686 | 798 |
| Canada | 92 | 101 | 63 | 65 | 54 | 68 |
| France | 408 | 392 | 325 | 278 | 304 | 283 |
| Germany | 188 | 234 | 188 | 158 | 150 | 215 |
| Others | 535 | 412 | 376 | 311 | 353 | 395 |
| Total | 6689 | 4536 | 4125 | 3815 | 3355 | 3400 |

The Head of foreign adoption department of the MFA of France Thierry Fresse confirmed that children adopted from any country are sick as a rule. He named most common diseases that Russian biological and social orphans have: in Russian case

³³ "Adoption in Russia", the official website of the Ministry of Education and Science of Russia

these are diseases caused by alcoholism or drug addiction of biological parents. Fetal alcohol syndrome can be diagnosed very often.

Offences in the sphere of international adoption in the Russian Federation had gained characteristics of internal corruption in the beginning of 2000s. State Duma deputies stated that the process of Russian children adoption which is under control of Russian Ministry of Education had been saturated with corruption and incompetence that actually can lead to the "sale" of Russian children. To understand in what way the problem of international adoption has more political part than social, we will make a comparison.

According to the U.S. National Adoption Committee in period from 1996 to 2008 in the U.S. was killed 15 Russian children adopted by U.S. citizens and one more was killed in Canada. According to information provided by " Rossiyskaya Gazeta "in period from 2006 to the first half of 2010 in the U.S. had died 17 Russian children adopted by American parents. However , the newspaper " Novye Izvestia " provided a comparison: from 1991 to 2006 from total number of children adopted by foreigners were killed five and 16 more had became victims of accidents . In Russia for the same period 1220 adopted children had died, 12 of them were killed by adoptive parents. But despite the fact that the problem has both political and social aspects, imposed bans had more positive than negative effect as were aimed to improving the rights of adopted children and eradication of corruption, violence in the international adoption institute.³⁴

For example, after death of several young Russians killed by their new parents, in 2005 the Russian Prosecutor General's Office had tested nearly 900 organizations

³⁴ V.V. Ryaztsov Legal relationships of adoption in the Russian Family Law: Author's synopsis

that operated through the country. According to " Rossiyskaya Gazeta ", "the scene appeared was horrifying ". Many agencies either did not have permission to work in Russia or its validity had expired long ago. In many agencies prosecutors did not find any information of children who have left the country and thereby it was impossible to check what happened to them. In December, 2011 PKC announced that it planned to verify the legitimacy of international adoptions of Russian children abused in adoptive foreign families.

Most of cases of adopted children abuse were found out after an independent adoption. Positions of the relevant committee of the State Duma and the Russian Prosecutor General's Office are similar: adoption through accredited agencies protects the interests of a child much better.

Ministry of Education and Science of Russian Federation proposed toughening of domestic adoption process by foreigners and prepared a bill that presupposed to cancel the independent adoption. According to the bill, those foreigners who wish to adopt Russian orphans will be required to provide information about themselves to regional or federal operator of government data bank of children- orphans only through accredited agencies of foreign adoption. But nothing has changed until in April 2010 children's ombudsman Pavel Astakhov raised a question about the danger for children's life. In February 2013 was announced that Yegor Shatabalov adopted by American Marcia Ann Brandt in 2007 in Kemerov oblast was placed in to same – sex family , although in adoption documents this fact was not showed so obvious. In 2009 the women decided to divorce and began a trial for custody of the child. Vladimir Putin instructed the

government and the Supreme Court to make amendments about banning of international adoptions from Russia for same – sex families before July 1st, 2013.³⁵

As a result, since the second half of 2000s in Russia, primarily by Duma deputies a question about lifting the moratorium for international adoptions had raised. In 2005, a representative of the LDPR fraction Alexei Chernyshev suggested to declare the United States as "non grata" country because most of adopted Russian children died there. Besides him, the deputy chairman of the Duma Committee of Labor and Social Policy Catherine Lakhova had spoke in favor of such decisions. In March 2009, the State Duma deputy Nina Ostanina also stated that "it is necessary to suspend adoptions of young Russians by Americans."

Federation Council Committee of Social Policy suggested to impose a moratorium for adoption of Russian children by U.S. citizens. But the initiative was not supported by the majority of members of parliament and State Duma rejected the corresponding appeal to the Prime Minister of Russia Vladimir Putin. The newspaper "Izvestia" states that U.S. has the largest number of adoptions from Russia that is why the number of occurring incidents with them in the country is so large. Perhaps the best option for international adoption would be the conclusion of bilateral agreements that would gave the country ability to control how adopted children of Russia live abroad. But if we talk about Canada and the United States, the federal structure of these two countries makes it necessary to conclude an agreement with each country separately.³⁶ Federal countries' system of bilateral agreements without action of Hague Convention (Russia had signed it but had not ratified the Hague Convention of Children's Rights Protection, that is why it does not work in Russia)

³⁵ R.V. Veytsel The essence of adoption and its consequences // Vestnik. MSU- Moscow, 2012.- № 5

³⁶ A.M. Nechayeva Protection of children - orphans in Russia (history and modern times). - Moscow, 2004.

can simply means termination of adoptions from Russia. Imagine how much time and efforts it would take to conclude 50 such bilateral agreements with each government of 50 states of America, while each of them has its own legal system, its court, and its own laws.³⁷ Significant slowdown of international adoption processes in Russia is caused by dangerous and very loud bureaucratic war that makes government liberals and agencies working with children and nationalist politicians who claim that children are being "illegally trafficked " abroad, confront with each other. If the requirements of these politicians are satisfied, the changes could seriously cut back the possibility of potential foreign parents to adopt Russian children.³⁸

Commentators see the way Russian lawmakers curtail international adoption processes as confrontation of Russian vectors of development. These vectors are liberal openness to the West and opposite to that - isolationism policy. It makes it absolutely political problem and the political game of the highest level where children became hostages. Some influential forces in Russia want to undermine Putin's course for closer cooperation with the West. Not everyone agrees with accusations of the Russian Prosecutor General's Office. Many commentators, primarily Western ones believe that all investigations of the Prosecutor General Office is an attempt to "raise new wave of national hysteria" and forbid foreigners to adopt children. The Newspaper "Novye Izvestiya" states that the clear trend for premeditated reduction in number of foreign adoptions is been foreshadowed. It is reported that public opinion is been deliberately oriented to the "patriotic adoption".

³⁷ The Convention on the Protection of Children and Cooperation in the sphere of International Adoption of May 29, 1993. Hague.

³⁸ E.D. Borisovets Adoption ascertainment through the court. // Vestnik. Moscow State University. 2008 . – p.58

Ex – President of Italia Francesco Cossiga claimed that Russian government tried to turn adoption by foreigners into a problem. He called the story about Italians who had adopted a Russian child, the "farce". In 2005 in Moscow Italian couple was detained on charges of beating an adopted child from Russia. The spouses has adopted a boy in Siberia and were going to come back to Italy but were detained by police .The child was taken by the police. Later, the charges were refuted but the boy was unable to return to his new parents though. Today, the Russian Prosecutor General's Office very closely controls the number of adopted children by foreigners.

Adoption problems certainly exist but still they are faded out in front of the children's fate in Russian orphanages. Today everyone knows about children from Russia who had died in adopted American families but no one knows about the hundreds of thousands of children "killed" by the Russian orphanage system long before their adoption.

It should be noted that Americans often quite deliberately take Russian children with serious health problems and mentality: those who have AIDS, Down syndrome , those who suffer from cerebral palsy (CP), tuberculosis, hepatitis, etc. These children have almost no chance to find a family in Russia.³⁹

Thus, the prohibitions of adoption, on the one side, make adoption institute develop in the sphere of legislation and supervision, but on the other side, it inhibits improvement of children's conditions because the internal mechanism of the country is not well - developed.

³⁹ A.M. Nechayeva Protection of children - orphans in Russia (history and modern times). - Moscow, 2004.

Let us study another incident. On February 21, 2008 in the Pskov oblast Americans had adopted 1.5 - year-old Dima Yakovlev. The legitimacy of the documents for adoption was subsequently confirmed by many tests.

On July 8, 2008 the boy had died forgotten by adoptive father in the 32 degree heat at 9:00 in a closed car. 4 years later in the midst of discussions about international adoption and trials about abusive treatment of Americans in regard to Russian children, President Vladimir Putin on December 28, 2012 had signed a law "About measures against individuals involved in violations of fundamental human rights and freedoms and rights and freedoms of Russian Federation citizens " which is also called the " law of Dima Yakovlev ". Meanwhile media drew a parallel between the last one and the enacted in the U.S. on December 2012 so-called " Magnitsky law" (or " Magnitsky Act ") that prohibits the entry into the U.S to those Russians who were involved in the death of Hermitage Capital lawyer Sergei Magnitsky .

On January 2, 2013 the U.S. Senate had condemned the " law of Dima Yakovlev" and reminded that 740 thousand children live without parental care in Russia and accused the Russian authorities in using the adoptions theme as " a pawn in political game " and also in non-compliance of the US-Russian bilateral adoption agreement that had recently started to function.⁴⁰ A few days later President Barack Obama had signed up the law about necessity of accreditation for each American agency of international adoption regardless of whether the agency works with

⁴⁰ What the Magnitsky Act Means David j. Kramer, Lilia Shevtsova, 2012

member-countries of the Hague Convention or with the countries that have not signed it.⁴¹

"The law of Dima Yakovlev" entered into force on 1st of January 2013 and from that day it banned adoptions of Russian children by Americans. At the same time Vladimir Putin signed up a decree #1688 about support of adoptions and other forms of guardianship of Russian children by the government. Experts called this act populist and gave negative forecast because the policy of this sphere is not well-developed.

The president of the Foundation "Volunteers to help orphans" Elena Alyshanskaya listed several discrepancies in the Russian legislation that may be able to slow down the adoption process. In general, she considers the government's commitment priority of domestic adoptions as positive idea but called simplification of requirements for adoptive parents negative because it can lead only to increase in the number of children returns to orphanages.

The "law of Dima Yakovlev" has 22% of support among the population of Russia as FOM survey showed in December 2012. 22% of people supported the total ban on adoptions of Russian children by foreigners, while 53% were for legislation tightening and 11% would rather facilitate the procedure.⁴²

There are many active supporters of the law in the State Duma. Vladimir Putin called the "law of Dima Yakovlev" emotional but adequate response to the "Magnitsky Act." Wherein according to sociologists, the absolute minority of Russians knows about who is Sergei Magnitsky (according to Russian center of public opinion research only 6%).

⁴¹ N.V. Ershova Adoption legal regulation. – Moscow, 2013. P. 73

⁴² What the Magnitsky Act Means David j. Kramer, Lilia Shevtsova, 2012

According to experts, the raise of awareness of the problem could unpredictably affect the situation.⁴³ For example, Leonid Merzon who had worked more than twenty years with American adopters gave to "Novaya Gazeta" many examples of happy adoptions. He believes the interests of a child, his physical and mental health are needed to be developed in family, and it happens very often that foreign house can be better than a Russian orphanage particularly in case of children with disabilities.

Jean Mercer believes the American media tries to associate "law of Dima Yakovlev" or particular Russia's ban on adoption with " Magnitsky Act "in vain, and the Russians are right in the willing to solve the problem of adopted children abuse. In two weeks after the law had entered into force , "Levada - Center" made a survey about the orphanhood. In January 2013 the ban on adoption in the United States was supported by 10 % of Russians and prohibition of foreign adoptions in general by 6%. 51 % of Russians positively estimated adoption of the "law of Dima Yakovlev" and 30% negatively . 43 % considered the law to be adopted in the interests of children, and 43 % in some abstract political interests including the revenge for " Magnitsky Act ". Herewith, 75 % of Russians admitted that they personally are not ready to adopt a child from an orphanage house and more than 60 % did not consider the "law of Dima Yakovlev" as the government step in improving of Russian orphans' situation.

According to Deputy Prime Minister Arkady Dvorkovich, most of the government members do not like it, it is considered to be too severe and does not contribute to the solution of practical problems in helping children.

⁴³ The history of Adoption” (Research ETC., Inc. 2009)
<http://www.researchetcinc.com/historyofadoption.html>

In April 2013 pravorossy basing on hundred thousands gathered signatures by “Novaya Gazeta ” offered to cancel the "law of Dima Yakovlev " but the State Duma rejected the proposal explaining it as the government’s course in support of domestic adoptions . BBC gave a number of expert opinions supported the idea that "Magnitsky law” was merely a pretext for restriction of international adoptions which have been" irritated the Kreml for a long time", "because adoptions showed out the civilizational inferiority of Russia." Thus, the prohibitions related to problem of violation child’s rights adopted by citizens of another country have more political part, and therefore not all of the bans can be considered as development of adoption institute because some of them are absolutely political.

Chapter III. Bans on inter-country adoption as a development subsequently

3.1. Comparative analysis of the institution of adoption development in Kyrgyz Republic and Russian Federation

As it has already been mentioned in the previous paragraph, at the meeting the State Duma of Russian Federation adopted the " law of Dima Yakovlev" with amendments which, in particular, introduced the ban on the adoption of Russian children by U.S. citizens and extend validity of the document for any countries, not only for America, where the rights of Russians are been violated.

It should be noted that adoption of the "law of Dima Yakovlev" impact on reputation of Russian authorities, in particular in front of international community but , however, the law may lead to strengthen of domestic adoption institute and may have positive impact on the fate of Russian orphans. Today mechanisms of the adoption institute development in Russia are directed on the domestic adoption, but still they are being developed. Nobody knows how long it will take to reduce the

number of children in orphanages especially those who have various illnesses. It is known that Russians prefer to adopt healthy and small children meanwhile many Americans and adopters from European countries adopt both healthy and sick children because they do not afraid of difficulties knowing that they have ability, energy and money to cure children at their countries .

First positive and forced steps that had been made in the connection with restrictions on adoptions by foreigners are the order of the State Duma to develop a complex action plan on strengthening of the adoption institute that acts on the territory of Russia and about development of complex of measures to support families with children. It is expected that these measures will involve some tax relief for families that adopt children, adoption secrecy and others.

Another positive moment of international adoption restrictions is the fact that Dmitry Medvedev has suggested to United Russia party followers to develop a party project on solving orphans' problems , in particular, problems occurring in the connection with the adoption.

It should be noted that not only the consequences of the law about international adoption banning had the most positive impact on the fate of Russian orphans, but also the public's attention which had arisen after the “Dima Yakovlev law” was enacted.

Therefore, on the one hand this solution is quite correct because this problem has been noticed. Now it needs to be understood how the adoption will be stimulated. A structure of completely new type, a maintenance program, new methods of control over adoptive parents and new methods of integration and socialization of adopted children are needed.

For the past few years adoption in Russia was flabbily stimulated - the whole system was directed on adoption by foreigners, therefore enactment of the “Dima Yakovlev law” may lead to the fracture in the trend. At the regional level potential adopters were not well stimulated. It was believed that adequate parents can be only foreigners. Although, if we look at the statistics recently the number of children with disabilities adopted by the Russians has increased, but certainly it is not on the same level as foreign adopters are. But still it says that society is willing to take responsibility. As surveys show, the main obstacles are absence of material component or lack of awareness about the adoption process. These are domestic Russian problems but still they can be solved.

In the conditions of modern development of Russian society, the government activity is characterized by the ongoing law-making work aimed at improving the legislation in the sphere of the children’s rights and interests’ protection in the social sphere. A number of legal acts that contain norms guaranteeing the children’s interests protection in almost all areas of their lives had been enacted.

But there are still problems within the country that may have the opposite effect to the adoptions bans. We have to contend with stagnant poverty (only in Altai region 19 % of the population lives below the poverty level), the de-socialization of entire population and territories. There is the exact massive source of social orphanhood. The real orphans’ problems should be solved. For a long time they have been pressing for allotment of apartments for orphans , but , unfortunately, as orphans reach adulthood, they are been lied everywhere, and been given only dugouts , especially in the regional districts and small towns of Russia. In Moscow this problem had been quit solved. The everyday, real work of helping orphans is the solution for the problem. Therefore, international adoption bans must be

accompanied by anti-corruption measures, renewal of destroyed social systems and government institutions, otherwise our children – orphans would be left without both foreign and domestic guardianship.⁴⁴

Now we look at situation in Kyrgyz Republic. Among the issues of concern there is trafficking that is generally for the purposes of international adoption. Investigation conducted in 2008 by the General Prosecutor's Office revealed serious irregularities and corruption practice in the system of international adoption; it was noted that from 2004 to 2008 235 children were adopted by foreign adoptive parents , despite the fact that most of them could be adopted by domestic adopters.⁴⁵ In addition, there were some particular indications that some children had been deliberately diagnosed as disabled and court decisions were made on an expedited basis in a few days. This situation had led to a moratorium on the system of adoption in 2009.⁴⁶ Furthermore, the investigation ultimately led to the initiation of 197 criminal proceedings and dismissal of many judges and government officials involved in the decision-making of the investigated proceedings.⁴⁷ After the moratorium was imposed by the government, there were taken measures to prevent such situation from occurring again, but it is not always possible, because in Kyrgyzstan as well as in Russia, we see more social and political gaps in legislation than law ones. It means that the government and society does not pay attention to the problems of orphans, and employees of specialized agencies conduct illegal

⁴⁴ S.K. Pertsov Adoption cancellation and invalidation/ / Man and the Law. - Moscow, 2014.№ 8 p. 53

⁴⁵ Anastasiya Bengard. "Gulnara Derbisheva: Esli Mezhdunarodnaya Organizaciya po Usynovleniyu Kyrgyzstanskikh Detei Budet Dumat o Pribyli, to Lishitsya Akkreditacii" (24.kg, 2011)
<<http://www.24kg.org/community/112032-gulnara-derbisheva-esli-mezhdunarodnaya.html>

⁴⁶ Farangis Najibullah and Gulayim Ashakeeva. "Kyrgyzstan Lifts Ban on International Adoption" (Radio Free Europe Radio Free Liberty, 2012)
<http://www.rferl.org/content/kyrgyzstan_lifts_ban_on_international_adoptions/24094372.html

⁴⁷ Laurie Rich. "Kyrgyzstan: Adoption Reform Leaves Kyrgyz orphans, American families, in Limbo" (Eurasianet, 2009)
<<http://www.eurasianet.org/departments/insightb/articles/eav091009.shtml>>

adoptions for their own benefit. In the connection with it, the control over future children's lives is not been carried, the clear procedures of international adoption do not exist at all and there are more other political and social issues.⁴⁸

It should be noted that the raise of attention of authorities and society to this problem in Kyrgyzstan was caused by political tendency of international adoption bans in many countries.

But due to the fact that in Kyrgyzstan there were not taken any measures for improving orphans' life conditions, after moratorium imposing some of them who were in need of treatment, had died. 65 American families that had almost completed all the necessary procedures, did not have time to take adopted children to their homelands because of the moratorium.⁴⁹ Nearly 90 percent of these kids were in need of expensive treatment and two of them had already died because of its non-availability. We will continue to see such consequences if do not start working on the development of the adoption institute. The moratorium for international adoption was repealed and in 2012 the government approved the Commission on Accreditation of adoption agencies.⁵⁰

The Commission consists of representatives of the Ministry of Social Development, the Ministry of Education and Science, the Ministry of Health, Ministries of Domestic and Foreign Affairs, National Security Committee and two local non-governmental organizations.⁵¹ In 2012 the Commission accredited ten

⁴⁸ <http://www.paruskg.info/2011/04/06/42026>

⁴⁹ Laurie Rich. "Kyrgyzstan: Adoption Reform Leaves Kyrgyz orphans, American families, in Limbo" (Eurasianet, 2009)

⁵⁰ <http://www.for.kg/ru/news/160306/>

⁵¹ "Mejdunarodnoe Usynovlenie v Kyrgyzstane budet tolko cherez Sud" (KG inform, 2011) <<http://www.kginform.com/ru/news/20111029/05154.html>>

adoption agencies and denoted the recommencement of the international adoption. Despite the fact the authorization document was meant that the Commission will have the final word in deciding which of agencies will be given accreditation, this course was changed by the Government at last minute and the Ministry of Social Development was empowered to make final decision about the accreditation. Since this fundamental change was made, the new document was undergone with repeating official checks for anti - corruption measures by the parliamentary committee of anti - corruption program and the Ministry of Justice. By August 2013 the new legal instrument of accreditation of foreign organizations working in the international adoption sphere, had been developed and spread among ministries for consideration and approval.⁵²

Thus, we can conclude that the international adoption bans as well as some restrictions connected with long procedure and adopters' checks will limit adoption of our children by foreigners, but it does not guaranteed that it will increase the number of domestic adoptions. So, it is the double - edged sword. These prohibitions may lead to the forced development of the domestic adoption institute by cost of life and health of orphans, or vice versa – they can worsen their condition. Time will show what is right.

⁵² <http://www.kyrtag.kg/?q=news/8193>

CONCLUSION

So, today the imposed bans on the international adoption institute are compulsory measures for both Kyrgyzstan and Russia. Recently there has been a lot of information about increasing number of violations of the children' rights and evidences of abuse and even death of children adopted by foreign families. In addition, adopted children often have psychological problems related to their adaptation to a new country, family and children's groups. Child usually does not know language, traditions and culture of a foreign country; he needs warmth and care.

The fact that total ban on adoption by foreigners may increase the numbers of orphans , the following steps of limiting and controlling in the international adoption sphere that can lead to the adoption institute development are seen reasonable:

- Establishment of international adoption monitoring system that protects a child till his adulthood;
- Conclusion of bilateral agreements with all countries in the sphere of international adoption for monitoring;
- Providing support to domestic and biological families so single mothers do not need to write applications with the request to take their children to orphanages due to their difficult life situation.
- Development of informal foster care that will give a chance for children with disabilities because it will be triple custody i.e. government, parents and guardianship authorities will be responsible for the child.
- Proper support to adoptive family. When we will have a queue of adoptive parents from domestic countries willing to adopt children, these nuances of foreign adoption will disappear by themselves.

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