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Senior Thesis

**Legal Problems of International Children Adoption in  
the Kyrgyz Republic**

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## **Abstract**

The scandal over the adoption of children from the Kyrgyz Republic stirred up the country last year. Exposing of the officials involved in international children adoptions shocked many people. Down laws on the procedure of adoption of children from the Kyrgyz Republic by foreign nationals turned children into an object of a profitable business for some officials and international children adoption agencies. In this work legal problems of international children adoption in the Kyrgyz Republic was analyzed through national legal acts, interview and consultations with specialists were conducted. The results showed that there are a lot of legal problems in the sphere of international children adoption in the Kyrgyz Republic, but nothing that the state could cope with. First, the Kyrgyz Republic should make efforts for creating a state program for the realization the right of the child to be raised in the birth family. Second, it is surely to bring national legislation concerning adoption of children from the Kyrgyz Republic in conformity with the interests of children and international standards. Today's children are tomorrow's leaders of the state; therefore we should take care of them.

## **Introduction**

After the collapse of the Union of Soviet Socialist Republics (hereinafter referred to as the USSR), the independent Kyrgyz Republic faced with the problem of children left without parental care. The USSR used to take care of these children: boarding institutions were financed from the state budget of the hugest country in the world; educational programs let such children get a high education and be professionals. In principle, those who were raised in orphanages became respectable nationals of the USSR as well as those who had homes and families. When the Kyrgyz Republic stayed alone with its internal problems, children left without parental care were almost left without state care too. The outcome of this problem was in adoption of these children and latter – in international adoption.

Adoption is a legal act which consists of acceptance of children for a foster family with an establishment between the adoptive parents and the adopted child legal (personal and property) relations, existing between parents and children. To wide extent, adoption is a legal institute that gives the chance to bring up the children who have lost parental supervision and care or do not have parents, in the conditions of a family<sup>1</sup>. International children adoption is a type of adoption when an individual or a family couple becomes the legal and permanent parents of a child born in another country. The decision to adopt a child from foreign country or culture can be one of the most worthwhile that an individual or a couple can ever make. Those who wish to adopt a child from foreign country should not only welcome a new family member, but also they should deal with legal issues that foreign country prepared for them. Choosing the topic for the senior thesis, I paid my attention to the issue that was under the discussion by the Government of the Kyrgyz Republic, Jogorku Kenesh of the Kyrgyz Republic and by non-governmental organizations - the issue of international children adoption in the Kyrgyz Republic. I decided to do my own legal research of this issue and defend the graduation work. This topic is one of the issues that will take part in the construction of democratic state.

On 11 February 2009 the Government of the Kyrgyz Republic adopted a Resolution № 117 on the Issues of Children Adoption. The Resolution in fact declared the moratorium on the adoption of children from the Kyrgyz Republic. This measure had the aim to collate the procedure of the adoption of the children-citizens of the Kyrgyz Republic and to improve the regulatory framework of the Kyrgyz Republic on international children adoption. The Resolution included two main points:

1. From the Government Regulation on the Rules of Placement of Children Left without Parental Care for Adoption by Citizens of the Kyrgyz Republic as well as by Foreign

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<sup>1</sup> Bolshoi Yuridicheskii Slovar. 3-e izd., dop.i pererab. / Pod red.prof. A. Ya. Suhareva. – M. : INFRA-M, 2006. – VI, p. 791-792.

Citizens, №121 dated 22 February 2006 (hereinafter referred to as the Government Regulation) was excluded Part 3 "Adoption of the Children-Citizens of the Kyrgyz Republic by Foreign Citizens". Actually and legally, the Government stopped the practice of adoption of children by foreigners, because Part 3 of the Government Regulation was the only legal source of the procedure of international children adoption. With its exclusion international children adoption system disappeared.

2. The Resolution № 117 on the Issue of Children Adoption set that the adoption of children from the Kyrgyz Republic by foreign nationals has to be realized on the basis of international agreement.

Since that time, the legal issues of international children adoption in the Kyrgyz Republic have been discussed by the Government and Jogorku Kenesh for more than a year. On 18 March 2010 the Government elaborated several amendments to the Family Code of the Kyrgyz Republic, but they are not the sensational ones and will not change the situation essentially. Because of April events of 2010 the President Kurmanbek Bakiev had no time to sign the draft amendments to the Family Code. Now, taking into account the current political situation, these amendments will be unclaimed for unknown period.

So, the actuality of the issue of legal problems in international children adoption system in the Kyrgyz Republic is in its relevance and opportuneness. 65 children with mental and physical disabilities are waiting for their turn for adoption by foreign parents with whom they have already been matched. Too many children are also unable to be adopted by foreigners, because the Government has not decided yet how the legal procedure of international adoption should be undertaken. The destinies and the lives of orphans or abandoned children are depending on the measures and activities of the state bodies. Current laws and regulations on international children adoption are not ideal. The Government is still putting off the question of the ratification of Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 (hereinafter referred to as the Hague Convention) and the conclusion of international agreements with Receiving states to streamline the adoption. For these reasons the system needs to be reviewed as soon as possible, because in practice the adoption legislation is not exercised properly and does not serve for the interests of children.

This work deals with the legal issues of international children adoption system in the Kyrgyz Republic. It reviews how international and domestic legal measures can be combined to ensure that respectable standards are applied to international adoptions. Part I of the Senior Thesis introduces the history of the issue and reviews of international and national legal acts in respect of international children adoption. Part II gives an account of international children adoption procedure and the legal problems of the procedure. In particular, this Part consists of

the legal problems with the authorized body in the system of international children adoption; legal problems in the area of adoption agencies; in the process of matching and bonding of prospective adoptive parents with children, and in the procedure of children adoption in the court. Part III discusses the suggestions on solving the problems in international children adoption sphere in the Kyrgyz Republic. Especially, the suggestions will concern the preserving of existing families; ratification of the Hague Convention; bringing national legislation in the field of international adoption in line with the interests of a child and international standards; and creating a database of children to be adopted by Kyrgyz citizens as well as foreign citizens.

For the first time the data for the research was collected using the children adoption legislation and news on the topic. Then, the legislation and news were analyzed. In addition, the legislation was thoroughly studied and the contradictions of different provisions and the conflict of laws were discovered. Second, the interview was conducted by me: the interlocutor was the former deputy of Jogorku Kenesh Gulnara Derbisheva who was working in the committee on international children adoption. Third, I consulted with UNICEF and got the research on children adoption in the Kyrgyz Republic conducted by an international consultant in 2007. Fourth, I used case studies of foreign citizens who have already adopted children from the Kyrgyz Republic.

While writing, I confronted with some difficulties in accumulating the information. I faced with the problem that no research was conducted and no point of the issue was examined before. So I had no any material to start with. The decision was found when UNICEF kindly provided me the research on the children adoption from the Kyrgyz Republic of 2007. Next problem was happened when I was refused to look through the adoption cases in the district courts of Bishkek city. Nothing could be done with that, because the confidentiality of adoption is protected by the law: Article 160 “Divulgence of a Secrecy of Adoption” of Criminal Code of the Kyrgyz Republic provides for a criminal penalty of a fine of fifty index rates. Finally, it was complicated to interpret some provisions of law and understand what actually the legislators meant, while approving the rules of adoption and what the purpose was. Sometimes the provisions of the Family Code and the Government Regulation contradict to each other and there is no exact rule of state bodies’ responsibility. After overcoming all difficulties, this work was written.

## Chapter I

### Soviet Era of International Children Adoption's Legislation and Modern International and National Regulation of International Children Adoption

#### 1. Glossary

*Prospective Adoptive Parents* – is a family couple or an individual who is planning or wishing to adopt a child.

*Adoption Home Study* - is an evaluation process required by the state of residence of prospective adoptive parents to determine their preparedness to parenthood through adoption.

*Dossier* – the documents required by the foreign government to allow prospective adoptive parents adopting a child from its country.

*Referral* – is information about a child offered for adoption to prospective adoptive parents.

*Post-Adoption Period* - it is a submission of post-adoption reports on the child life with a new family.

*State of Origin (Sending State)* – is the country a child is adopted from.

*Receiving State* – is a country which accepts the children adopted by its nationals from other countries.

#### 2. History of the Issue

For the complete and thorough understanding of the analyzed issues we should refer to some historical facts of the matter, to the situation that was in the Soviet times, as the practice of the Soviet Union had a significant impact to the legislation of the states emerged after its collapse, in particular to the legislation of the Kyrgyz Republic. According to the Soviet law, the adoption of children was regulated by the Basis of the Legislation of the Union of Soviet Socialist Republics and Union Republics on Marriage and Family of 1968, and the republican Codes on Marriage and Family. With regard to the adoption of the soviet children by foreigners in the Kyrgyz SSR there was established a special permit procedure. It consisted of the following: usually, the adoption was completed by the request of the adopter and by the decision of the Council of Ministers of the Kyrgyz SSR. In the cases of adoption of a soviet citizen child living outside of the USSR, which was carried out usually in the Consulate of the USSR, the foreign adopter, in addition to all the conditions set by the Soviet Legislation, had to get the permission to adopt a child from the Ministry of Education of the SSR. Such an order of the adoption of the Soviet child by the foreigner, probably, was intended to serve an additional guarantee that the interests of a child are secured properly. Since the adoption of the soviet child



by the foreigners in the Kyrgyz SSR had been carried out by the Soviet law, the procedure had the same requirements as for domestic adoptions: the living conditions of the adoptive parents were investigated to be conformed with the interests of the child; solicited for the consent of the spouse of the adoptive parent if the child is adopted by one of the spouses; requested a parental or a guardian consent; if the child was 10 years old and older, it was necessary to ask his/her consent to be adopted<sup>2</sup>. Despite the fact that there was a legal framework, international adoption was not making known the cases when foreign nationals adopted a child from the Kyrgyz SSR. Later, after the collapse of the USSR, the Kyrgyz Republic, already as an independent state, started to place children for intercountry adoption. A few cases were reported in 1994 and 1995. Procedures were suspended from 1996 to 1999 as a way to prevent problems other Commonwealth of Independent States members were experiencing at that time<sup>3</sup>. In 1999 Cantwell Nigel, an international children protection consultant, visited the Kyrgyz Republic and reported to the UNICEF CARK Office that:

“Intercountry adoption, although not the subject of specific legislation at present, has apparently been allowed in a limited number of cases: 12 in 1996, 3 in 1997 and 2 in 1998, personally approved by the President of the Republic. The authorities are looking into the legal reforms necessary to permit and regulate this measure”<sup>4</sup>.

It is really so. There are several Government Regulations from 1999 to 2004 years. All these cases on international children adoption are, so called, “relative adoptions”, i.e. children were adopted by their stepfathers, stepmothers, uncles, aunts and grandmothers living abroad<sup>5</sup>. The majority of the adoptive parents were citizens of Germany.

In 2005 the legislators proved the amendments to the Family Code of the Kyrgyz Republic<sup>6</sup>. The amendments formalized international adoption procedure and set the legal basis for foreign nationals to adopt from Kyrgyzstan. In 2006 the Government Regulation entered into force. According to the Family Code and the Government Regulation, the Ministry of Education

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<sup>2</sup> Code on Marriage and Family of the Kyrgyz SSR dated 29 December 1969, last amended 5 September 2003, revoked 19 April 2005, Chapter 12.

<sup>3</sup> Boechat H. and Cantwell N., *Assessment of the Adoption System in Kyrgyzstan*, December 2007.

<sup>4</sup> Ibid.

<sup>5</sup> Government Regulation of the Kyrgyz Republic № 205-p dated 21 May 1999; Government Regulation of the Kyrgyz Republic № 266-p dated 24 June 1999; Government Regulation of the Kyrgyz Republic №509-p dated 15 December 1999; Government Regulation of the Kyrgyz Republic №4-p dated 9 January 2001; Government Regulation of the Kyrgyz Republic №6-p dated 9 January 2001; Government Regulation of the Kyrgyz Republic №143-p dated 30 April 2001; Government Regulation of the Kyrgyz Republic №267-p dated 20 July 2001; Government Regulation of the Kyrgyz Republic №384-p dated 11 October 2001; Government Regulation of the Kyrgyz Republic №442-p dated 27 November 2001; Government Regulation of the Kyrgyz Republic №117-p dated 15 March 2002; Government Regulation of the Kyrgyz Republic №212-p dated 21 April 2003; Government Regulation of the Kyrgyz Republic №424-P dated 7 June 2004.

<sup>6</sup> Law of the Kyrgyz Republic “On Introduction of Changes to the Family Code of the Kyrgyz Republic” dated 20 January 2005.

and Science of the Kyrgyz Republic and the district courts became the main authorities in international adoption system.

When Hervé Boéchat, a coordinator of the International Reference Centre for the Rights of Children Deprived of their Family, and Nigel Cantwell, mentioned above, were conducting the research on international children adoption in the Kyrgyz Republic, they presented the following data.

**Intercountry adoptions from Kyrgyzstan, by receiving country, 2004-2007<sup>7</sup>**

Receiving Country	2008	2007	2006	2005	2004	2001	Total
France			2		1		3
Israel	2	8	9	2			21
Italy		2					2
Sweden	5	10	5	1			21
USA	70	67	28	7			172
Switzerland		1	1				2
Germany		2	1				3
<b>Total</b>	<b>77</b>	<b>90</b>	<b>46</b>	<b>10</b>	<b>1</b>		<b>224</b>

So, 224 children were adopted by foreign citizens and taken off abroad. The United States of America is the most active country: its citizens adopted 172 children. Second place goes to Israel and Sweden: their citizens adopted 21 children each. France, Italy, Switzerland and Germany adopted only several children. A record-breaking year was a year of 2007: 90 children were adopted from the Kyrgyz Republic.

**3. Review of International and National Legal Acts in Respect of International Children Adoption**

There are international laws which declare children rights to grow up in a birth family. The Preamble of the Convention on the Rights of the Child describes the family as “the natural environment for the growth and well-being of ... children”<sup>8</sup>. The Convention on the Rights of the Child and the Hague Convention insistently recommend that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in

<sup>7</sup> Boechat H. and Cantwell N., *Assessment of the Adoption System in Kyrgyzstan*, December 2007.

<sup>8</sup> Convention on the Rights of the Child dated 20 November 1989, ratified 12 January 1994.

an atmosphere of happiness, love and understanding...”<sup>9</sup>. The Convention on the Rights of the Child provides that member states must give children deprived of parental care, adequate substitute care. It says that an unparented child “shall be entitled to special protection and assistance,...alternative care”<sup>10</sup>, and “such protection and care as is necessary for his or her well-being”<sup>11</sup>. It says that “every child has the inherent right to life,” and to “survival and development”<sup>12</sup>. It grants children affirmative rights to health, a standard of living adequate for appropriate development, and education<sup>13</sup>. It requires states to “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation”<sup>14</sup>. It provides that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment,” nor “deprived of his or her liberty unlawfully or arbitrarily”<sup>15</sup>. Accordingly, human rights principles propose that children have a right to be raised by parents who can provide true family care. Children left without parents have a right to be placed in international adoption. International human rights law proclaims that children’s best interests should be the main principle in cases of adoption. For example, Article 3 of the Convention on the Rights of the Child provides generally that “the best interest of the child shall be a primary consideration,” and Article 21 provides that in adoption it shall be “the paramount consideration”. Article 1 of the Hague Convention provides that “intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law.”

Constitution of the Kyrgyz Republic proclaims that:

“2. Family - is a source of the society; family, fatherhood, motherhood and childhood –are the subject of care of the whole society and preferential protection by law; concern for children and their upbringing – are the natural rights and civil duty of parents...

3. The state provides maintenance, upbringing, education of orphan children and children deprived of parental care.”<sup>16</sup> The Family Code of the Kyrgyz Republic does not stay aside from international legal acts and also includes the provisions of “best interests of children”. For instance, Article 126 says that the Department on Family and Children Support is authorized to act in the interest of a child; article 129(2) proclaims that a child can be placed in the other family if it corresponds to his or her best interests.

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<sup>9</sup> Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption dated 29 May 1993.

<sup>10</sup> Ibid., Article 20.

<sup>11</sup> Ibid., Article 3.

<sup>12</sup> Ibid., Article 6.

<sup>13</sup> Ibid., Articles 24, 27, and 28.

<sup>14</sup> Ibid., Article 19.

<sup>15</sup> Ibid., Article 37.

<sup>16</sup> Constitution of the Kyrgyz Republic dated 5 May 1993, last amended 24 October 2007, Article 16.

## Chapter II

### **The procedure and the legal problems of international Children adoption in the Kyrgyz Republic**

Before starting with the procedure of adoption, we have to know which children are allowed to adopt and which requirements prospective adoptive parents have to meet in order to get the permission to start the adoption procedure prescribed by the law.

#### **1. Who can be adopted?**

For the purposes of this Chapter, a child is a person under eighteen years (minor)<sup>17</sup>. Article 129(4) of the Family Code states that the adoption of children by foreign citizens or stateless persons shall be permitted only in cases if:

- 1) It is impossible to place these children in foster homes of Kyrgyz citizens, residing in the territory of the Kyrgyz Republic,
- 2) It is impossible to place the children in the relatives' families, regardless of citizenship and residency of a family.

Paragraph 2 of Article 129(4) of the Family Code says that children may be placed for adoption by foreign citizens or stateless persons, who are not the relatives of children, after three month from the date of receipt the information about such children by the state bank of data on children left without parental care. The Government Regulation also sets the criteria of the adoptable children: Paragraph 1.3 says that the adoption is permitted in respect of under aged children, whose one or both parents:

- died;
- are unknown, recognized missing by the court or declared dead;
- are recognized incapable by the court;
- are deprived of parental rights;
- gave their consent on adoption according to the established order;
- do not live with the child more than six months and deviate from the child up-bringing and up-keeping for the reasons recognized by the court irreverent.

The adoption of a found child (an abandoned child), whose parents are unknown, can be realized in the order established by the law of the Kyrgyz Republic if there is a relevant act issued by the bodies of internal affairs<sup>18</sup>. Article 129(3) of the Family Code does not allow

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<sup>17</sup> Family Code of the Kyrgyz Republic № 201, dated 30 August 2003, last amended 17 July 2009, Article 59(1).

<sup>18</sup> Kyrgyz Republic Government Regulation on the Rules of Placement the Children Left without Parental Care for Adoption by Citizens of the Kyrgyz Republic as well as Foreign Citizens (Положение о правилах передачи детей, оставшихся без попечения родителей, на усыновление (удочерение) гражданам Кыргызской Республики, а

adopting sisters and brothers separately by different adopters. However, if such a separation corresponds to the interests of children, the adoption of one of them is allowed.

## **2. Who can adopt a child?**

There are several eligibility requirements for adoptive parents. Article 133 of the Family Code sets that the prospective adoptive parents may be both male and female and they have to be of a full legal age. Both married and single people may adopt children; however, two people who are not married to each other cannot adopt a child together<sup>19</sup>. The age difference between the adoptive parent and the adopted child should be no less than 16 years, but if there are reasons that can be recognized by the court as reasonable excuse, the age difference can be reduced<sup>20</sup>. Both the Family Code and the Government Regulation state that prospective adoptive parents will not get the permission to adopt a child, if:

- 1) They are recognized by the court as incapable or restrictedly capable;
- 2) One of the spouses is recognized by the court as incapable or restrictedly capable;
- 3) They are deprived of parental rights or are limited in parental rights by the court;
- 4) They are dismissed from the guardian's obligations for improper exercising their obligations rested with the law;
- 5) They are the former adopters, if the adoption was cancelled by their fault;
- 6) They cannot realize parental rights due to health conditions;
- 7) They do not have a profit, providing the adopted child with normal conditions for life and progress on the moment of the adoption;
- 8) They have a conviction for an intended crime against life and health of people;
- 9) They abuse of alcohol and drugs;
- 10) They suffer from heavy chronic infectious diseases.

If foreign prospective adoptive parents meet all requirements set by the Kyrgyz law, they may start the proceedings of international adoption.

## **The Proceeding of International Children Adoption**

Article 172 of the Family Code states that the process of international adoption is exercised by means of the rules set for the domestic adoption but with several exemptions. The very first stage of those who want to adopt a child from the Kyrgyz Republic is to conduct a home study. This home study is carried out by a competent body in the state of residence of

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также иностранным гражданам) № 121 dated 22 February 2006, last amended 11 February 2009, version of 27 August 2007, Paragraph 1.3.

<sup>19</sup> Ibid. Paragraph 1.4.

<sup>20</sup> Family Code of the Kyrgyz Republic № 201, dated 30 August 2003, last amended 17 July 2009, Article 134.

prospective adoptive parents. The competent body does an assessment of prospective parents' living conditions, their physical, mental and financial ability to have a child.

The complete order of international adoption is included into Part III of the Government Regulation. The national law of the Kyrgyz Republic requires submitting the following dossier.

1) Of course, like any adoption, international adoption begins with *an Application on Intention to Adopt a Child*. When a child is adopted by spouses, they fill a joint statement; when a child is adopted by one of them, the written consent of the other spouse has to be attached. If the prospective parents seek adoption of a particular child, they need to specify the circumstances under which they got acquainted with the child. The application has to include a desired gender, age and other characteristics of a child. The applicants have to report that they undertake to create the necessary conditions for the child's up-bringing and development.

2) The copy (-ies) of the passport(s).

3) Now and further the real home study dossier begins. The prospective adoptive parents have to submit the *Inference* of the competent state bodies (organizations) of foreign countries *on the possibility of adoptive parents to provide an adopted child the necessary living conditions* at their place of permanent residence.

4) The competent state bodies (organizations) of foreign countries have to provide the *Petition on Adoption* of a minor-citizen of the Kyrgyz Republic by their nationals.

5) If the prospective adoptive parents are a married couple, they need to submit their *marriage certificate*.

6) Next stage requires the submission of medical information of the applicants:

a. *Medical report*, which reflects the health of candidates for adoption and no contraindications to perform the duties of child-rearing. Apparently, this medical analyze is carried out and the report is made by the doctors of a foreign country.

b. the *medical report of psychological, medical and educational guidance* of the Ministry of Education and Science of the Kyrgyz Republic.

7) The *documents on profit* for the previous year to adoption.

8) The competent state bodies of a foreign country of residence of the applicants provide the *inference* on the facts that the prospective adoptive parents are not recognized by the court as incapable or of limited competence, are not deprived of parental rights and are not restricted in their parental rights, are not held accountable for premeditated crimes, are not ex- adoptive parents, for whom adoption is set aside for their fault, as well as the availability of necessary living conditions and opportunities of candidates to adoption properly educate and provide financial maintenance of the adopted child.

9) The guardianship bodies have to provide *the inference on confirming the ability of candidates to be adoptive parents* (for each member of the adoptive family).

10) The prospective adoptive parents must see to admitting the child to an educational institution and registering him/her for medical records in advance, therefore, they have to present *the letter of guarantee* from these organizations.

11) According to the law of the Kyrgyz Republic, the adopters twice a year must submit the report on the living conditions of the child; his/her foster care and health until the child reaches the age of 14. Therefore, the competent state body of a foreign country gives *the letter of guarantee* where it assures the Ministry of Education and Science of the Kyrgyz Republic that the report will be submitted properly.

12) Finally, the dossier includes *a written permission* of the competent body of a foreign state of residence of the prospective parents *on arrival and the permanent residence of the adopted child*.

Further, all documents and the applicants' signatures must be notarized, legalized and translated into Kyrgyz and Russian languages.

Here the home study finishes and the work of the state bodies of the Kyrgyz Republic begins. Before the dossier reaches the Ministry of Education and Science of the Kyrgyz Republic, it goes to the accredited foreign body of the Kyrgyz Republic, most probably, to the embassy or consulate. This body confirms the correctness of the legalization of the documents submitted and in ten days sends the dossier through the Ministry of Foreign Affairs of the Kyrgyz Republic to the Ministry of Education and Science of the Kyrgyz Republic. When the latter receives the home study of the prospective adoptive parents, it examines the submitted documents and carries out work on child matching. The law requires that the interests of a child must be on the first place, not the interests of the prospective parents. The Ministry informs a guardianship body of the place of the residence of the child proposed for adoption about the applicants. In its turn, the guardianship body within one month submits to the Ministry a well-grounded *opinion on a reasonability of adoption* of a particular child. Along with the opinion, the guardianship body submits to the Ministry the following information about the child:

1) *Birth Certificate* of the child.

2) *The documents sustaining that the child has no parents*. It can be Death Certificate, Court Decision on Depriving of Parental Rights, Act on Abandoned Child and etc.

3) Notarized *act of a child abandonment* by biological parents.

4) *Written consent of a head of children institution or a guardian* under which guardianship the child is.

5) If the child has already reached a ten year age, he/she should write a *statement* that he/she agrees on adoption. The statement has to be notarized.

- 6) The *inference* on the health, physical and mental development of the child issued by the medical and health care committee at the place of residence of the child.
- 7) Information on the child's personality, background, social environment, family history, special needs, whether he/she has the siblings; and the inference that the child was never claimed for adoption by citizens of the Kyrgyz Republic. These documents are issued by the children home institution where the child is bringing up.
- 8) The *inventory* (if there any) of the child, specifying the place, location and actions taken on its safety.
- 9) The decision of the local state administration on the conservation of the child's living space, with its availability and other *documents confirming the right of children to living space*.

The Government Regulation does not allow heads of children boarding institutions to hand over such information about children to foreign citizens, to representatives of specially authorized foreign state authorities on adoption of children. To spread this data the heads should have the permission of the Ministry of Education and Science of the Kyrgyz Republic<sup>21</sup>.

Now, the Ministry of Education and Science should provide copies of the documents, received from the guardianship body, and its proposal for the adoption of a particular child to the competent body (organization) of a foreign state and to the adoptive parents. The competent body of a foreign state reviews the dossier on the child's health conditions. The prospective adoptive parents have to make a decision on adoption within one month. The representatives of the competent body of a foreign state and the parents are required personally meet with the child in residential care facilities. It will be the first trip of the parents and their first meeting with the child. Protecting children rights, the Government Regulation prevents the Ministry of Education and Science to offer one child to the other prospective adoptive parents before those parents who have applied for the child would decide on adoption or rejection<sup>22</sup>.

Once the adoptive parents have met a child and successfully matched with him/her, they send to the Ministry of Education and Science the *Petition on Adoption* addressed to the district court of the place of the child's residence. In addition, the Petition has to include the name that will be given to the child after adoption as well as information about the need to change the time and the place of birth of the child. Such a right is stated in Articles 140 and 141 of the Family Code. For all this, Article 140 of the Code says that if a child is 10 years old and older, the name may be changed only with his/her consent. Article 141 says that the date of birth may be changed

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<sup>21</sup> Kyrgyz Republic Government Regulation on the Rules of Placement the Children Left without Parental Care for Adoption by Citizens of the Kyrgyz Republic as well as Foreign Citizens (Положение о правилах передачи детей, оставшихся без попечения родителей, на усыновление (удочерение) гражданам Кыргызской Республики, а также иностранным гражданам) № 121 dated 22 February 2006, last amended 11 February 2009, version of 27 August 2007, Paragraph 3.4.

<sup>22</sup> Ibid. Paragraph 3.9.



no more than three months. The permission of changing the date of birth is allowed only in respect of children which under one year old. Such actions are aimed to protect the secrecy of adoption. Then the Ministry of Education and Science prepares its own *Inference on the Child Adoption*. In the Kyrgyz Republic the final decision on international children adoption is carried out by the court in the district where the child resides. So, the Ministry of Education and Science sends the dossier for the adoption to such a court. The legislation does not exactly mention which documents are to be submitted to the court. Most likely, the Ministry of Education and Science sends all documents received and issued during pretrial proceedings.

The legal procedure on children adoption is carried out by the court according to the legal procedure prescribed by the Civil Procedure Code of the Kyrgyz Republic. The Family Code requires the presence of only one of the adoptive parents or an authorized representative. So, there will be no second trip of the prospective adoptive parents to the Kyrgyz Republic, if they choose to delegate their representative for presenting the adoption case. The Government Regulation states that the court decision on a child adoption is the ground for the child's compulsory registration in the state registry office (ZAGS)<sup>23</sup>. After that the adoptive parents get the *Birth Certificate*, where the new name of the child is put and the adoptive parents are signed up as birth parents. A new Birth Certificate is subject to legalization in the Ministry of Foreign Affairs of the Kyrgyz Republic. At this stage the international children adoption process ends. Of course, from the very beginning of the international children adoption process foreign adoptive parents pursue their object to take a child out of the Kyrgyz Republic and to bring him or her to their state of residence. After adoption the adopters work together with the Embassy of their country in the Kyrgyz Republic. The new parents obtain *visa* for their new child to enter their state of residence according to national legislation of a foreign state. The Kyrgyzstani child obtains the *citizenship* of a foreign state also according to national legislation of that state.

Now that the child is out of the Kyrgyz Republic, his/her new parents have to fulfill the post-adoption requirements of the Kyrgyz Republic – to provide the *report* on the child's life in their state and in their family. The report must be provided twice a year as long as the adopted child turns 14 years old. The control over the periodic submission of the report is rested the responsibility upon the Ministry of Foreign Affairs of the Kyrgyz Republic and the Ministry of Education and Science of the Kyrgyz Republic<sup>24</sup>. The Government Resolution does not specify the role of the Ministry of Foreign Affairs at this stage, but it can be assumed that the reports are first submitted to the Ministry of Foreign Affairs and then the latter sends the reports to the Ministry of Education and Science. The Ministry of Education and Science within two weeks has

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<sup>23</sup> Ibid. Paragraph 3.13.

<sup>24</sup> Ibid. Paragraph 3.23.

to send the copies of the reports to the guardianship authority and to the child's boarding institution under whose tutelage the child was before the adoption.

Once the adoption is completed, the legal relations between the child and his/her new parents are created. Moreover, the adopted child loses personal interests and non-pecuniary rights and duties as regards his/her former parents and relatives. But on the other hand, the adopted children and their posterities receive personal interests and non-pecuniary rights and duties as regards to the adoptive parents and their relatives and vice versa. These legal consequences come even if the adoptive parents are not recorded as parents in the child's birth certificate. If one parent of the adopted child has died, the parents of this deceased parent (grandparents of the child) may request to retain personal interests and non-pecuniary rights and duties as regards to the relatives of the deceased parent, if this serves the interests of the child<sup>25</sup>. The child, who at the time of his/her adoption, had the right to pension and benefits, due to the death of his/her birth parents, keeps that right after being adopted by another family<sup>26</sup>.

There are few words about adoption disruption. In Article 172 of the Family Code it is only said that if in the result of adoption the rights of the child can be violated, the adoption can not be made regardless of the nationality of the adopter, and the completed adoption shall be the subject of disruption in legal form. If we may apply the rules of adoption disruption set for the domestic ones, it can be inferred that the birth parents of the child, the adopters, the adopted child (if already has 14 years), and the department of family and children support, as well as the prosecutor have the right to demand the adoption disruption<sup>27</sup>. The adoption may be withdrawn in cases if the adoptive parents deviate from their parenthood responsibilities, abuse their parental rights, cruelly treat the adopted child and suffer from chronic alcoholism or drug addiction. This list of the grounds is not exhaustive. The court may withdraw the adoption according to other reasons, on the assumption of the child's interests and in view of his/her opinion<sup>28</sup>. Article 149 of the Family Code does not leave the child to the mercy of fate. Although, it provides that after the disruption of adoption mutual rights and obligations of the adopted child and his/her adopters are ceased, but mutual rights and obligations of the child and his/her birth parents or relatives are renewed, if the interests of the child call for that. The withdrawal of adoption is not allowed if the adopted child has reached an adulthood, though, there is an exception: the withdrawal of adoption may be done if it is a mutual consent of the adoptive parent and adopted child, as well as birth parents of the adopted child if they are alive,

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<sup>25</sup> Family Code of the Kyrgyz Republic № 201 dated 30 August 2003, last amended 17 July 2009, Article 143.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid. Article 148.

<sup>28</sup> Ibid. Article 147.

not deprived of parental rights or not adjudged incompetent<sup>29</sup>.

The most important part in the adoption disruption is the question of further placement of the child. By the court decision after the withdrawal of adoption the child is transferred to his/her birth parents. In the absence of the parents, and if the transfer of the child to the parents is against the interests of the child, then he/she is transferred to the department of family and children support's custody. The court also decides whether the child's new name, middle name and surname are preserved. However, in order to change the name of the child reached the age of 10 years his/her consent is required. The court may oblige the former adoptive parent to pay maintenance for the child<sup>30</sup>. These are the whole procedure of adoption of children from the Kyrgyz Republic by foreign nationals. Below we will see whether such order and legal procedures correspond to "the best interests of children".

## **Analysis of the Legal Procedure of International Children Adoption in the Kyrgyz Republic**

### **1. Authorized Body in the Sphere of International Children Adoption**

As we already know from the Family Code and the Government Regulation, the Ministry of Education and Science carried out the most procedural stages of international children adoption. Frankly speaking, it was surprising, when the specialist from the UNICEF suggested that the Ministry of Education and Science was not a right body to place children to international adoption. Consequently, almost all international adoptions were illegal. Let us see how it was done.

On 7 August 2006 the Code of the Kyrgyz Republic on Children was adopted. According to the Code, a specially authorized agency in the area of protecting children's rights was established under the Government<sup>31</sup>. By the Law "On the Structure of the Government of the Kyrgyz Republic" № 12 dated 6 February 2007, the authorized body became the *State Agency on Physical Culture and Sport, Youth Affairs and the Protection of Children's Rights* (hereinafter referred to as the State Agency) under the Government of the Kyrgyz Republic. In compliance with section III of the Regulation on the Ministry of Education and Science, approved by the Government Decree № 125 dated 13 April 2007, the Ministry "shall serve for the preparation of procedures for international adoption, delegated by the Government of the Kyrgyz Republic, and also has the right to make necessary clarifications on international adoption of children - citizens

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<sup>29</sup> Ibid. Article 150.

<sup>30</sup> Ibid. Article 149.

<sup>31</sup> Code of the Kyrgyz Republic on Children № 151 dated 7 August 2006, last amended 27 April 2009, Article 13.

of the Kyrgyz Republic”.<sup>32</sup> It should be noted that the Regulation on the Ministry of Education and Science were approved on 13 April 2007, i.e. after the Code of the Kyrgyz Republic on Children’ provisions regarding specialized bodies dealing with protecting child rights and legal interests came into force.

At that time the Law “On Normative Legal Acts of the Kyrgyz Republic” dated from 11 January 2007 was effective. Article 6 of this Law set the hierarchy of legal acts. According to this Article, a Code has more legal authority than a Government Regulation. So, the Code of the Kyrgyz Republic on Children was higher in the hierarchy of legal acts than the Government Regulation on the Ministry of Education and Science. Therefore, *the Agency* was the central body in the area of protecting children rights and *is responsible for international adoption procedures*. However, although the Code of the Kyrgyz Republic on Children has come into force, the Ministry of Education and Science, guided by the Government Regulation on the Rules of Placement the Children Left without Parental Care for Adoption by Citizens of Kyrgyz Republic as well as Foreign Citizens, continued to implement its functions on preparing international adoption procedures and that contradicts to the Code of the Kyrgyz Republic on Children. Though, the subordinate legal act that regulates international adoption procedures in compliance with the new Code of the Kyrgyz Republic on Children was not developed.

The new Law “On the Structure of The Government of the Kyrgyz Republic” dated 22 October 2009 transferred the issues of children from the State Agency to the *Ministry of Labor, Employment and Migration* of the Kyrgyz Republic. So, this Ministry is a new state body concerning the questions of international adoptions. There is still no any subordinate legal act that will help the Ministry to carry out international children adoptions. The circumstances were such that we do not have a legal Government now. Therefore, it seems that adoption issues will not be paid attention at until the political situation becomes stable.

## **2. International Children Adoption Agencies**

International children adoption agencies play a big role in the international children adoption sphere in the Kyrgyz Republic. They claim that they help prospective adoptive parents to find and to adopt a child from foreign country. A considerable amount of international agencies have programs in the Kyrgyz Republic. Of course, prospective adoptive parents benefit from the collaboration with them, but such cooperation does not always do the system of international children adoption good. The provision of Article 132(1) of the Family Code that “Mediation with the commercial purpose of the adoption of children, meaning that any activities

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<sup>32</sup> Regulation on the Ministry of Education and Science of the Kyrgyz Republic, approved by the Government Decree № 125, 13 April 2007; last amended 2 October 2009, Section III (a).

of other persons of selecting and placing children for adoption on behalf of and for persons wishing to adopt children are not allowed” is doubtful. There is a criminal responsibility for brokering activities with the commercial purposes of the adoption of children in Article 124 “Trafficking of People” of the Criminal Code of the Kyrgyz Republic. So, the law clearly states that any intermediaries are prohibited. Moreover, Article 132(5) of the Family Code clearly states that the adoption procedure by proxy is prohibited.

In the adoption round-up and in deputies’ speeches it was stated that the majority of orphan children were adopted by the citizens of the United States of America. This statistics also mentions other states - Germany, Sweden, Israel, Italy, Switzerland, Republic of South Africa, France - but their nationals are not as active in international adoption as the American’s ones<sup>33</sup>. Since 2005, in consequences of the wish of the Kyrgyz authorities to have control over the future welfare of the adopted children, the Ministry of Education and Science started working with five adoption agencies. Latter, it was said about seven agencies and further even about eleven. Neither the former deputy Gulnara Derbisheva nor the UNICEF could provide me with exact quantity and names of these agencies. In this work I present seven agencies which had adoption programs in the Kyrgyz Republic for sure.

From one hand, everything is right and does not invite suspicions: the law allows prospective adoptive parents use the services or better say help of organizations of their own state to complete the adoption in the Kyrgyz Republic. From the other hand, there are a lot of questions arise: Doesn’t this allowance contradict to Article 132 (1) of the Family Code? Does Article 132(2) under “the organs and organizations of foreign countries” imply international adoption agencies, whose quantity in our state says not about charity, but about profit-making? Are “the organs and organizations of foreign countries” the mediators in their essence prohibited by Article 132(1)? And the last question, the most conflicting one, whether the Ministry of Education and Science has the authority to conclude agreements with international children adoption agencies?

There is a clause in Article 132 of the Family Code that the activities of specially authorized bodies of foreign states or organizations on the adoption of children, which act in the Kyrgyz Republic in accordance with international agreement entered into force or the principle of reciprocity, are not mediators pursuing commercial purposes. Let’s define questionable issues from this provision and examine them all together: first is an international agreement, second is the principle of reciprocity, and third are specially authorized bodies of foreign states or organizations on the adoption of children.

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<sup>33</sup> *Po Ofitsialnym Dannym, s 2006 Goda Inostrantsami Usynovleno 225 Detei iz Kyrgyzstana*, Pravo Rebenka Rasti v Semye №30, 6 April 2009 – 16 April 2009, available at [http://www.deti.kz/index.php?option=com\\_content&task=view&id=539&Itemid=138](http://www.deti.kz/index.php?option=com_content&task=view&id=539&Itemid=138) (accessed 16 March 2010).

The Government of the Kyrgyz Republic has never concluded any international agreement on adoption. Gulnara Derbisheva said that no Receiving state would conclude such an agreement with the Kyrgyz Republic, because these states are the parties to the Hague Convention, that is why there is no need for these states to do that. We only know that the Ministry of Education and Science concluded agreements with eleven international children adoption agencies from the United States of America, Israel and Sweden, but not with the respected Governments of these countries.

The principle of reciprocity means that the Kyrgyz Republic provides foreign nationals and legal entities certain rights and privileges on the understanding that Kyrgyz nationals and legal entities will enjoy similar rights and privileges, while being in such countries. For time being, we do not know any case when Kyrgyz national adopted a child from any foreign state or Kyrgyz adoption agency worked in a foreign state.

We cannot say with sure how the Ministry of Education and Science gave the permission to these agencies. In the Kyrgyz Republic there is no legal act that describes the criteria for accreditation of a professional adoption agency. Moreover, it is not the Ministry of Education and Science's competence to sign agreements with international organizations involved in international adoption. The document, which prescribes the general functions and authorities of the Ministry is, as we remember, the Regulation on the Ministry of Education and Science approved by Government Decree № 125 dated 13 April 2007. Section IV of the Regulation lists the authorities of the Ministry, however the authority to sign agreements with international organizations involved in international adoption is not given in the Regulation. According to Article 15 of the Code of the Kyrgyz Republic on Children, in order to ensure child safety and wellbeing, the state authorized body, i.e. the State Agency under the Government of the Kyrgyz Republic, is responsible for the accreditation of organizations providing child services. Thus, the Ministry of Education and Science had not had the right to grant such permission to international adoption agencies. We may assume that the Ministry of Education and Science used the same criteria as the Russian Federation did: the permission to open a representative office can be issued to foreign non-commercial organizations, licensed in their country and engaged in adoption activities for at least five years<sup>34</sup>. Here is the list of seven adoption agencies which I am sure were allowed by the Ministry of Education of Kyrgyz Republic:

1. Christian World Adoption<sup>35</sup> (the USA)
2. Nightlight Christian Adoption<sup>36</sup> (the USA)

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<sup>34</sup> Olga Kosova., *Osobennosti Mejdunarodnogo Usynovleniya*, 9 September 2009, available at <http://www.to-1.ru/articles/350/> (accessed 12 January 2010).

<sup>35</sup> Christian World Adoption, available at <http://www.cwa.org/index.htm>.

3. Frank Adoption<sup>37</sup> (the USA)
4. World Links International Adoption<sup>38</sup> (the USA)
5. Adoption Alliance<sup>39</sup> (the USA)
6. Adoption Centre<sup>40</sup> (Sweden)
7. TAF (Israel) – the web-site can not be found.

It is important to emphasize the fact that all these seven adoption agencies are non-profit organizations. The USA's agencies are accredited with the Council on Accreditation – the United States of America Body for Hague Convention Accreditation and Approval. The agencies have been accredited with the Council on Accreditation temporarily in 2008; their accreditation expiration year is 2013<sup>41</sup>. I can say nothing about Adoption Centre, because English version of the web-side is limited. The web-side of the TAF agency is not found. Probably, these two agencies are also accredited, because Israel and Sweden are the Hague Convention Parties.

The Hague Convention on Intercountry Adoption proposes in Article 11 that:

“An accredited body shall -

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.”

Even if the agencies which were allowed to work in the Kyrgyz Republic comply with provision a), the state has to pay attention on their compliance with provisions b) and c) especially.

So, what is the work of the notorious adoption agencies? The web-sites of the Americans agencies which are allowed to work in the Kyrgyz Republic are full of information about their activities. Generally, they submit parents' dossier to the Ministry of Education and Science of the Kyrgyz Republic; after the Ministry selects a child, the agency provides adoptive parents with child photo and medical information; when the court assigns the date of hearings, the agency notifies the parents about it. So, if the agency submits the documents to the adoption instances in the Kyrgyz Republic and sends the child information to the adoptive parents, is such an activity considered as mediation? Moreover, the agencies take money from adoptive parents

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<sup>36</sup> Nightlight Christian Adoption, Kyrgyzstan *International Adoption Programs*, available at <http://www.nightlight.org/adoption-services/international/kyrgyzstan.aspx>.

<sup>37</sup> Frank Adoption Center, *Kyrgyzstan*, available at <http://www.frankadopt.org/programs.html#Kyrgyzstan>.

<sup>38</sup> World Links, available at [www.wliaa.org](http://www.wliaa.org).

<sup>39</sup> Adoption Alliance, available at <http://www.adoptall.org/index.php?s=41&cat=2>.

<sup>40</sup> Adoptions Centrum, available at <http://www.adoptionscentrum.se/en/>.

<sup>41</sup> United States Department of State, *Accredited Agencies*, available at <http://adoption.state.gov/hague/accreditation/agencies.html> (accessed 5 March 2010).

for application and every document review. The prices vary from agency to agency. Remember that the Government Regulation does not allow heads of children boarding institutions to hand over any information about children to foreign citizens or to the representatives of specially authorized foreign state authorities on adoption of children. To spread this data the heads have to have the permission of the Ministry of Education of the Kyrgyz Republic.

It comes out that the adoption agencies are mediators between the Ministry of Education and Science and prospective adoptive parents under Kyrgyz law. In order to prove this, let us consider the cases of children adoption from the Kyrgyz Republic. These cases are available on the web-sites of those agencies that cooperate with the Ministry of Education and Science. I want to make a reservation that the adoptive parents are Americans and the adoption agencies are also American. Not all agencies' web-sites have adoption references of those parents who have already adopted a child from the Kyrgyz Republic. These responses were found on the web-sites of the Adoption ARK, which does not have the agreement with the Ministry of Education and Science supposedly, and Christian World Adoption agencies.

#### *Case № 1*

“In the fall of 2006, my husband and I began considering adopting again...A few weeks later we got an email that there was an initial list of children that were already waiting in Kyrgyzstan... Then one Friday in late September I glanced back over the list while bored at work and there was our daughter's face...My husband and I stared at Aylin's picture all weekend. On Monday, we accepted her referral... and put our homestudy in high gear. We were finally done with the paperwork by the end of November and on December 15 we were officially declared the parents of our precious daughter. However, in Kyrgyzstan the court ruling is not official for 30 days. So we waited, then we waited some more, while the Kyrgyz government worked out a passport glitch. Then, FINALLY, we left for Kyrgyzstan on February 23, 2007. We had our daughter in our arms on February 25.”<sup>42</sup> This case shows in reality how international children adoption was carried out in the Kyrgyz Republic. The parents were totally relied on their representatives in the Kyrgyz Republic. They submitted the dossier and in a half a month the court held in their favor. They left for Bishkek only after the child passport was ready.

#### *Case № 2*

“...I asked for permission to look at the list at the time and we fell in love with some of the children we saw. ...we received a referral for 2 children. ...those referrals though placed on our hearts were not meant to be ours. But we continued to wait and pray. It was a heart-wrenching journey as we received more referrals but our international adoption doctor advised us unless we wanted some significant developmental delays we should choose not to adopt the babies... Our

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<sup>42</sup> Christian World Adoption, *The Hatch Family*, available at [http://www.cwa.org/adoption\\_stories/hatch.htm](http://www.cwa.org/adoption_stories/hatch.htm) (accessed 2 March 2010).



social worker at home told us that in new programs often special needs children were referred first to see if someone would love them, but our hearts told us each time that this was not the one. On May 8th, 2007, Anya (facilitator) called with a little boy referral. ...the IA doctor this time ... called us instead of emailing us and said this one's a keeper!!!! We accepted our little Michael on May 11th, 2007. Our dossier had been submitted January 22nd...3 months 11 days from that time we were given a son, what a miracle!!! He was born on February 23rd, 2007... Two ½ months later we were on our way to pick up our son. On July 30th, 2007 we traveled to Kyrgyzstan to meet our boy and bring him home. On August 7th, 2007 we arrived home as a new family. We are now in the process of completing a second adoption in Kyrgyzstan<sup>43</sup>.” This family even did not make an attempt to travel to the Kyrgyz Republic to see their future child with their own eyes. As in previous case, the parents had the proxy to complete all adoption procedure in the Kyrgyz Republic. The agency had a list of children' photos the prospective adoptive parents were able to choose the prettiest face from. Also it is unknown where the agency took the medical information of every child. Did they take it from the Ministry of Education and Science or from the heads of the children institutions? The prospective adoptive parents submitted their dossier to the Ministry of Education and Science only after they have chosen a child. Though, the procedural order is opposite.

#### *Case № 3*

“...On November 19 we applied online with CWA and the process began. ... Then the call came in early spring. [The facilitator] told us of a little boy with blonde hair and blue eyes...The next day could not come soon enough so we could get the video DVD's. Right away we had our pediatrician review his medical records. He did have some medical issues but nothing that we could not manage. ... Next we had to wait for legal stuff and a court date in Kyrgyzstan. ... But the time did pass and we received news that we were approved to legally adopt him. On June15, 2007 we officially became parents for the first time and had a son!... After that time we received news that we would be traveling July 6 and meeting our little guy on July 9th. So there we were pulling up to the orphanage in Tokmok and we knew that behind the building walls was our son. After meeting the director and staff we were taken to the room Alexander was in. He was taking his morning nap when the director picked him up and put him in my arms. ... On July 17 we left Almaty and headed home to Atlanta<sup>44</sup>.” The agency disposes of the DVD and other child information before the parent submitted the documents to the Ministry of Education and Science. Again, parents did not take to be bothered by traveling to

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<sup>43</sup> Christian World Adoption, *The Collingham Family*, available at [http://www.cwa.org/adoption\\_stories/collingham.htm](http://www.cwa.org/adoption_stories/collingham.htm) (accessed 2 March 2010).

<sup>44</sup> Christian World Adoption, *The Renier Family*, available at [http://www.cwa.org/adoption\\_stories/renier.htm](http://www.cwa.org/adoption_stories/renier.htm) (accessed 2 March 2010).

their future son and to communicate with him in advance, before the court decision had been pronounced.

I do not claim that adoption agencies were illegal at all. On the contrary, they were legal and remain such till now until their Hague accreditation period expire. I do claim that adoption agencies are illegal on the territory of the Kyrgyz Republic. Considering adoption agencies activity in the Kyrgyz Republic which contradicts to Article 132 of the Family Code and the reports of the adoptive families which prove that the agencies are mediators, it turns out that they are not legal, because:

- 1) No international agreement with the Receiving state was ever concluded;
- 2) The Ministry of Education and Science has no legal capacity to sign the agreements with international children adoption agencies;
- 3) The Ministry of Education and Science is not competent to proceed international children adoptions.

The representatives of adoption agencies in the Kyrgyz Republic had an access to sensitive information. As they work in the sphere of adoption, they know all sources from which children can be taken for adoption: be it an orphanage or a maternity home. Per se, they take part and play role in the abandoned children' destiny. Therefore, they did not have and should not have a moral right to abuse such participation and benefit from the adoption. Otherwise, it may lead to trafficking in children. In order to prevent it, the state must strictly control the activity of the adoption agencies or their representatives and guard the interests of orphan children.

### **3. Financial Issue of International Children Adoption**

The legislation of the Kyrgyz Republic on adoption says nothing about fees during adoption process. Consequently, the adoption of child is free. Of course, there are state duties for obtaining a birth certificate and a passport for a child and there is a state duty for court expenses, but they are not so high and even altogether don't constitute even 10% of the costs declared by adoption agencies. This is the US State Department note on financial issues of international children adoption in the Kyrgyz Republic:

“The Kyrgyz government does not officially charge any adoption fees. There are, however, ‘unofficial fees’ that are paid to the Ministry of Education, the courts, the adoption committee and to obtain a new birth certificate and a passport for the child. These fees amount to approximately \$6,000 to \$8,500 per child.”<sup>45</sup>

Financial transparency in the adoption process is very significant for both parties: for adoptive parents and for the Kyrgyz Republic. Undoubtedly, prospective adoptive parents have

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<sup>45</sup> U.S. Department of State, *Kyrgyzstan*, available at [http://travel.state.gov/family/adoption/country/country\\_2808.html](http://travel.state.gov/family/adoption/country/country_2808.html) (accessed 7 December 2007).

right to know what they pay for and where their money go to. The Kyrgyz Republic's interest here is broader. First, once the state declared that it protects children and acts in their best interests, it has to keep its promise and does not let the felonious methods in respect of orphans. Second, the Kyrgyz Republic is interested in reduction of corruption in international children adoption sphere, because a lot of money passes by the state budget and can not be used for abandoned children' needs. As we have seven international agencies officially allowed to have international adoption programs in the Kyrgyz Republic, let's consider their fees and costs.

Christian World Adoption's application and "professional services" fees are totally compose \$ 5,350, plus "fees for post-adoption administration and document translation and authentication". Added to this is an "international fee": "parents send first half of the international fee when they accept a referral and the second half of the international fee when they receive a travel date."<sup>46</sup> The amount of the exact international fee for the program in Kyrgyzstan is not specified. But we see that first part of bribe went to the Ministry of Education and Science, as they found a child for adoption. The second part went to the court after the judge declared his decision in favor of the applicants – adoptive parents.

Nightlight Christian Adoptions agency put the following information on their web-site: "The program fee for Kyrgyzstan is \$18,000 for a child age 1 year or older and \$20,000 for a baby under 1 year old, at time of referral. Your additional costs will include airfare, hotel, meals, and coordinator fees of about \$1000. Gifts and other in-country expenses are comparable to Russia."<sup>47</sup> Different prices for children depending on their age suggest that the Kyrgyz Republic's state bodies involved in international adoption are too corrupt or there is a children trafficking or other illegal activities in respect of children.

Though, the Adoption ARK is not in the list of agencies provided above, supposedly it has the agreement with the Ministry of Education and Science and it is one of those unknown eleven agencies. It also provides children adoption program in the Kyrgyz Republic. Moreover, it even has a scheduled item of expenses. There is an agency and dossier documentation fee in amount of \$ 3, 000. Dossier preparation fee is \$ 2, 500, dossier translation and submission fee is \$ 2, 400. Country assignment fee is \$ 4, 100: the agency claims that this fee includes administrative overheads, operational cost, communications, publications, care for the child, medical cost, foster or orphanage care. There is a fee of \$ 1, 000 for intermediate city assistance which includes driver, translator, coordinator assistance, consulate, and medical appointments assistance. The last fee is the most expansive and a little bit repeats the previous item -\$ 12, 500 -

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<sup>46</sup> Christian World Adoption, *Expense & Fee Schedule*, available at <http://www.cwa.org/fee-schedule.htm> (accessed 2 March 2010).

<sup>47</sup> Nightlight Christian Adoption, *Kyrgyzstan International Adoption Programs*, available at <http://www.nightlight.org/adoption-services/international/kyrgyzstan.aspx>.

regional assistance fee including foreign fees, drivers, translation, and legalization of documents, personnel, legalization and translation of post adoption documents. Total Kyrgyzstan program cost is \$ 25, 500.<sup>48</sup>

Frank Adoption and World Links Adoption agencies have no information on fees and costs on their web-sites. Probably, prospective adoptive parents may obtain the price-list only after applying to these agencies.

Adoption Alliance honestly tells the truth that currently Kyrgyzstan program is on hold and they are not accepting applications. Moreover, the agency simply states that the cost for adopting a child from Kyrgyzstan is approximately \$35,000 which includes Adoption Alliance fees, country costs, dossier and translation fees, humanitarian aid, and 1 (one) trip for two people. The agency convinces that there is a benefit of such a high sum - in comparison to some other countries, processing time of adoption from the Kyrgyz Republic can be shorter. It is interesting that Adoption Alliance has discounts for special needs children, but they are not specified.<sup>49</sup>

The fees are extremely high. One of the agencies, as if justifying itself and other agencies, explains the reasons of such fees. First of all, there are many people in the child's birth country who help make the adoption possible. Case workers videotape and gather background information on each child; attorneys or officials present the case in courts; judges interview the Ministry of Education and Science, and approve each case. All of these services require money to pay expenses. Second, when parents travel to pick up their child, guides and translators accompany them wherever they are: settle them into hotels, escort them to their meetings, and assist them as they meet their child for the first time. Third, agency's staff or facilitators guide parents through the legal process and help them obtain the medical examination and paperwork necessary for their child's visa to take him or her out to the state of residence of newly-made parents.<sup>50</sup>

Nevertheless, the authorized state bodies in international adoption sphere in the Kyrgyz Republic have to pay attention to the amount of money charged by agencies as a "foreign" or "international" fee. It needs to be the subject of particularly close scrutiny. A hidden part of this fee is for paying in the Kyrgyz Republic as the honoraria of the local facilitators and also for other mainly unspecified remunerations. In order to stop corruption and exorbitant charges in international adoption sphere in the Kyrgyz Republic, the agencies have to prescribe the amount of money that should be paid in every stage. Such a price-list may be prepared and provided by

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<sup>48</sup> Adoption ARK , *Schedule of Adoption Fee*, available at [http://www.adoptionark.org/upload/aaprogramfeesbycountry\\_74400.pdf](http://www.adoptionark.org/upload/aaprogramfeesbycountry_74400.pdf) (accessed 2 March 2010).

<sup>49</sup> Adoption Alliance, available at <http://www.adoptall.org/index.php?s=41&cat=2>.

<sup>50</sup> Christian World Adoption, *Adoption Costs Explained*, available at <http://www.cwa.org/costs-adoption.htm> (accessed 2 March 2010).

the State Agency, for instance. It has to include all services, starting from translator and finishing with the child's passport receipt. For sure there is a big possibility to hide the truth and miss "bribes" clause. For that reason the state authorities must spread the information on how and where a foreigner may impart about corruption fact. Article 21(d) of the Convention of the Rights of the Child entrusts a state with responsibility to take appropriate measures to ban unwarrantable financial advantages by people involved in the adoption procedure:

"Member states that recognize and/or allow the existence of an adoption system ensure that the best interests of the child are taken into consideration in a priority order and they:

d) take all necessary measures to ensure that in case of adoption in another country, child placement would not result in an unwarrantable financial advantage by people involved in the adoption procedure."

The Kyrgyz Republic is bound by this Convention and, therefore, has to fulfill its obligations.

Article 32 of the Hague Convention states that:

"(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered."

Despite the fact the Kyrgyz Republic is still far from ratifying the Hague Convention on Intercountry Adoption, all the same, it is worth to follow, at least, its main principles.

#### **4. Bonding with the Child**

Bonding process can be considered the main stage of any adoption. It remains very significant for both prospective adoptive parents and children to be matched with each other. From one side, when spending time together, prospective adoptive parents, being the main motive power and initiators, have to understand whether they will be able to meet the needs of the child. Further life and destiny of the child will depend on them. From the other side, the child needs to get accustomed to his/her future parents, especially if he/she is in conscious age. For this purposes the legislators specified that the departments on family and children support have "to reveal the child's attitude toward prospective parents"<sup>51</sup>; prospective adoptive parents personally have to get know the child and to make contact with him/her<sup>52</sup>. However, no one of

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<sup>51</sup> Family Code of the Kyrgyz Republic № 201, dated 30 August 2003, last amended 17 July 2009, Article 130(1).

<sup>52</sup> Kyrgyz Republic Government Regulation on the Rules of Placement the Children Left without Parental Care for Adoption by Citizens of the Kyrgyz Republic as well as Foreign Citizens (Положение о правилах передачи детей, оставшихся без попечения родителей, на усыновление (удочерение) гражданам Кыргызской Республики, а

the legal acts says about concrete term of the bonding process. That is why it causes different application of this provision.

Every adoption agency provide their own interpretation of the approximate amount of matching and bonding days, suggest “convenience” options to prospective adoptive parents for traveling to the Kyrgyz Republic. Here is the Adoption ARK’s understanding of the bonding requirement: “...in Kyrgyzstan parents are usually required to have a minimum of seven days of personal contact with their referral. Please note that in certain circumstances this trip may be waived. However, Adoption ARK can make no guarantees as to whether one trip or two trips will be necessary to complete your adoption from Kyrgyzstan.”<sup>53</sup>

Frank Adoption agency, as most other agencies do, offers prospective adoptive parents two ways to complete the adoption in the Kyrgyz Republic. First way is to travel for one trip, lasting four to five weeks in length. Second way is to travel for two trips, the first trip consisting of ten business days, and the second trip lasting five business days.<sup>54</sup>

Adoption Alliance agency recommends prospective adoptive parents to make two trips. However, the agency states that one trip is allowed for a family adopting a special needs child.<sup>55</sup>

Holt International agency as well as Adoption ARK is not listed among those seven agencies, but probably also worked in the Kyrgyz Republic. It states that there are two trips. “Kyrgyzstan authorities require that both spouses travel to Kyrgyzstan to meet their child in one trip (10-15 days) and bring the child home in the second trip (7-10 days). Families must also travel to Almaty during the second trip to process the adoptive child’s U.S. visa.”<sup>56</sup> Holt International agency is the only agency that insists on the most lasting bonding period – 10 days. If consider the issue from the side of adoption, it is a good option for a child as well as for prospective parents. This period may be enough to match each other. If parents want to be with the child more, they may stay for the whole adoption process.

So, because of the reason that the bonding process is not described in details, the provision does not work properly. As was shown in previous three cases, prospective parents had been waiting for the completion of adoption process, being at their homes. Here are some more examples of violation of bonding requirement.

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также иностранным гражданам) № 121 dated 22 February 2006, last amended 11 February 2009, version of 27 August 2007, Paragraphs 1.5 and 3.9.

<sup>53</sup> U.S. Department of State, Bureau of Consular Affairs Office of Children’s Issues, *Kyrgyzstan Adoption Alert*, 10 December 2008, available at <http://www.adoptionark.org/public/pag186.aspx> (accessed 2 March 2010).

<sup>54</sup> Frank Adoption Center, *Kyrgyzstan*, available at <http://www.frankadopt.org/programs.html#Kyrgyzstan>.

<sup>55</sup> Adoption Alliance, available at <http://www.adoptall.org/index.php?s=41&cat=2>.

<sup>56</sup> Holt International, *Kyrgyzstan*, available at <http://www.holtinternational.org/kyrgyzstan/faq.shtml#travel> (accessed 2 March 2010).

“In November 2006, we submitted our initial application to [agency] online... We spent many long nights filling out paper work and many afternoons on the phone or at appointments. ... We received a referral in February 2007, and after accepting, we brought our 14 month old son, Matthew Marat, home in July 2007. Between March and July we got to know our son a bit through the DVDs and photos... July 9, 2007 was our very first day together...<sup>57</sup>” This letter says everything about bonding with the child, to be more precise, about non-bonding: the parents met their son only after the date the court decision was voiced. During four months the agency had been provided the adoptive parents with the child’s video and photo.

Hopefully, there are parents which approach to the decision to adopt a child with all responsibility. I have found only one response of parents who visited their future child to bond with him. “In September of 2007 we started our 2nd adoption with Adoption Ark to bring our son Jacob home from Kyrgyzstan. We said yes to adopting Jacob on September 21st of 2007; on October 9, 2007 we made our first trip over to Bishkek to meet Jacob. We bonded with Jacob for 2 days before we had to travel home to finish our paperwork...In March of 2008 my mother-in-law and I traveled back to Kyrgyzstan to bring Jacob home.”<sup>58</sup> Two days is not a lot, but it is better than nothing.

Disregarding the bonding procedure, prospective adoptive parents break the rules. The law requires the professional psychologist to examine the parents’ preparedness to adopt. It is necessary to see how they communicate, answer the questions and, finally, to see who the people which want to accept a little child to their family are. As the meeting of a psychologist and parents did not happen nearly, it also led to the violation of the adoption procedure. However, as we know, it did not prevent international children adoption to come about. Bonding process has to be no less than 10 days or even more. We may draw a conclusion that in most cases the procedure of children adoption, prescribed by the legal acts, is only a written formality that is not obligatory. The bonding-period requirement has to be compulsory, on the grounds of good practice as a necessary follow-up to matching and a safeguard for the future relationship between the adoptive parents and the child.

## 5. Court Proceedings

So, the law sets that in the Kyrgyz Republic international children adoption is carried out by the courts in the order of civil cases. International adoption cases are held in the order of

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<sup>57</sup> Christian World Adoption, *The Lehr Family*, available at [http://www.cwa.org/adoption\\_stories/lehr.htm](http://www.cwa.org/adoption_stories/lehr.htm) (accessed 2 March 2010).

<sup>58</sup> Adoption ARK, *Joanne & Andy Morley*, available at <http://www.adoptionark.org/public/press147.aspx> (accessed 2 march 2010).

special proceedings, because these cases are under the rules of establishment of legally important facts. Article 271(2) of the Civil Procedure Code requires the cases of special proceedings to be tried with the participation of applicants and interested parties, and, in the cases prescribed by the law, with the participation of the prosecutor. Article 172 of the Family Code permitted the adopters to delegate their representative for presenting the adoption case and nothing was said about the prosecutor.

The provision of Article 172 of the Family Code contradicts to Article 271(2) of the Civil Procedure Code in the sense that the provision of the Family Code did not reach the strict requirements of the Civil Procedure Code. This contradiction led to the fact that the prospective adoptive parents did not show up in the court hearings on their child adoption cases.

Irina Letova, the former deputy of Jogorku Kenesh, noted: “While verifying the courts, we were faced with the fact that most adoption cases were considered by copies of documents. The original documents were never requested. When one of the judges of the October District Court of Bishkek city requested the original documents, but they were not provided, she denied the claim. Then these children were moved to Tokmak orphanage, and the Tokmak’s court by its decision placed the children to adoption. But it is illegal...”<sup>59</sup>

So, the trial became a legal formality that considered as negligible. From all the adoption cases discussed above, we remember that no adoptive family presented at the court when the decision on the child’s adoption was passing judgment. In all cases the parents were sitting at home and waiting for the court decision to come into force. And only then they arrived in the Kyrgyz Republic. Here is one more case to see that prospective adoptive parents did the adoption on the distance.

#### *Case № 5*

“October 1, 2006 Gary and I made one of the largest decisions of our lives by pressing the send button to place our application saying we were interested in Adopting. ... Once we decided fully on the Kyrgyzstan program and chose our sweet little angel things moved faster than we could have ever imagined...Less than six months after we pressed the send button on our application, our court date and our 30-day wait was over and our son was just waiting on us to come get him. We did just that on March 12, 2007<sup>60</sup>.” It is the same situation as in four cases above. The parents persistently do not want to come to the Kyrgyz Republic and legally adopt their new children. It seems that the judges did not mind at all and closed their eyes on the absence of the applicants and violations of the civil procedure. The attitude to the legal

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<sup>59</sup> *Kyrgyzstan, siroty kaz`nyye, beznadzornyye*, Pravo Rebenka Rasti v Semye №30, 6 April 2009 – 16 April 2009, available at [http://www.deti.kz/index.php?option=com\\_content&task=view&id=539&Itemid=138](http://www.deti.kz/index.php?option=com_content&task=view&id=539&Itemid=138) (accessed 16 March 2010).

<sup>60</sup> Christian World Adoption, *Gary & Claudia Stewart*, [http://www.cwa.org/adoption\\_stories/stewart.htm](http://www.cwa.org/adoption_stories/stewart.htm) (accessed 2 March 2010).



procedure requirements must not be so disdainful especially from the judges' side. How did the judge decide the fate of the child even has never seen the adoptive parents? How did the judge give the child to the foreign family, being acquainted with them only by the documents they had submitted? It suggests about corruption or dishonesty of that judge.

Here is one more violation of civil procedure requirements. In the *Case № 1* the adoptive parents mentioned that "...We were finally done with the paperpurchase by the end of November and on December 15 we were officially declared the parents of our precious daughter." It means that approximately 2 weeks were needed for the Ministry of Education and Science and for the court to do all the things they are obliged to do. How it could happen? Article 148 of the Civil Procedure Code says that the judge carries out the preparation of the case to the trial within fourteen days. And before this stage a seven-day period of consideration of the application to the trial precedes. Here, evidently, the terms were shortened for some reason.

The courts have to pay much attention to international children adoption cases. The prospective adoptive parents' dossier has to be critically examined for ascertainment all the fact about the prospective parents' morality and convictions. No adoption case has to be tried without prospective parents. Judges should ask them several questions in order to make sure that these particular prospective parents are the family that the child needs. Finally, not only courts, but also other authorized state bodies, first, have to find out whether international adoption will be in the best interests of the child.

## **6. Post-Adoption Reports**

The Kyrgyz Republic's international children adoption legislation requires post-adoption reports from a social worker of the parents' state. The report has to be submitted twice a year until the adopted child is 14 years old.<sup>61</sup> This requirement is among the more precise fixed by the country, in regard to both the duration of the reporting period and, particularly, the frequency of the reports.

It is well-recognized that countries of origin should be able to access information as to the welfare and development of children adopted abroad at reasonable intervals and for a reasonable period. The reports can be useful in several aspects:

- 1) Indication the degree to which international adoptions appear to be beneficial to the adopted children;

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<sup>61</sup> Kyrgyz Republic Government Regulation on the Rules of Placement the Children Left without Parental Care for Adoption by Citizens of the Kyrgyz Republic as well as Foreign Citizens (Положение о правилах передачи детей, оставшихся без попечения родителей, на усыновление (удочерение) гражданам Кыргызской Республики, а также иностранным гражданам) № 121 dated 22 February 2006, last amended 11 February 2009, version of 27 August 2007, Paragraph 3.5(11).

- 2) Reassurance the general public as to the conscientious nature of foreign adoptions was undertaken;
- 3) Demonstration of the fact that the Kyrgyz Republic takes care of children left without parental and family care.

However, for the Kyrgyz Republic it is very difficult to reveal reality and trustworthiness of the facts stated in the report. There are no any methods to do that. Who knows whether that information is about that particular child? Is it true that the things really such are as written in the report? The Ministry of Education and Science can only believe and rely on these reports. The reports to date have not brought to light any specific problems. Moreover, when the deputies' committee on international children adoptions came to the United States of America to have the meeting with the parents and the adopted children from the Kyrgyz Republic, not all families presented on the meeting. So, the deputies could see only several children, the real life of others are only in the post-adoption reports.

Post-adoption reports cannot be seen as a preventive or protective tool for ensuring the well-being of the individual child concerned after adoption. This is best ensured preventively beforehand by respecting standards and good practice during the adoption process, including at the matching and bonding stages as mentioned above. Subsequent to the adoption, protection can only be effectively undertaken by the competent services of the receiving country, which clearly have an obligation to fulfill this role once the child is physically within their jurisdiction. Therefore, the current post-adoption reporting requirements have to be reviewed, especially as regards the data adequacy pointed out in the reports.

## Chapter III

### Suggestions of Problems Solving in the Sphere of International Children Adoption in the Kyrgyz Republic

Having signed the Convention on the Rights of the Child in January 1994, the Kyrgyz Republic committed itself to respect and ensure respect for the Convention rights of each child within its jurisdiction, without discrimination and regardless of any circumstances. The commitment of the Kyrgyz Republic to the fundamental principle of international law - the principle of good faith fulfillment of international obligations declared in the preamble of the Law "On international treaties of the Kyrgyz Republic".<sup>62</sup> Therefore, according to Article 20 of the Convention on the Rights of the Child, the states shall in accordance with its national laws ensure alternative care for the children temporarily or permanently deprived of their family environment, including adoption. The Kyrgyz Republic provides such care, placing some orphans or abandoned children to international adoption. The matter is that the way of placing the children in foreign families contradicts to the legal process prescribed by the law.

Placing of children left without parental care is the state importance task. Let us consider a group of young orphan children, for instance. It is clear without further ado that the start in life of those children could not be worse. There is no more humane task for the state rather than the organization of their protection and development in order to "turn" these children into citizens of the state. What if the state has no opportunities to bring up such children in the spirit of family within the territory of this state? The outcome is in international children adoption.

In recent decades there is a tendency of increasing the number of orphans and children left without parental care. Such children are placed in boarding institutions under the care of the state. The National Statistic Committee of the Kyrgyz Republic provides the data that from 2003 to 2007 the quantity of children left without parental increased on 15 %.<sup>63</sup> According to the data presented by the UNICEF in 2009, there are approximately 15 000 of officially registered orphan children. They are found in 64 children institutions.<sup>64</sup> These children are needed to be placed in families as soon as possible, even if the families are adoptive. In order to improve the situation of the children left without parental care and orphans, the state has to reform the whole system of

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<sup>62</sup> Law of the Kyrgyz Republic "On International Treaties of the Kyrgyz Republic" № 89 dated 22 July 1999, last amended 28 April 2007, Preamble.

<sup>63</sup> *Indeks Detskoi Bednosti*, available at <http://www.stat.kg/stat.files/tematika/бедность/Индекс%20детской%20бедности,%202003-2007.pdf>, p.12 (accessed 26 April 2010).

<sup>64</sup> *15 Tsyach Detei-Sirot Nahodyatsya v 64 Gosudarstvennyh I Chastnyh Detskih Uchrejdeniyah*, 16 October 2009, available at <http://www.tokmak.kg/nevkg/objkg/2789-15-tydach-detej-sirot-naxodyatsya-v-64.html> (accessed 25 April 2010).

placing children, including international adoption.

### **1. Government Program**

As was stated above, Article 16 of the Constitution of the Kyrgyz Republic proclaims that: “Family - is a source of the society; family, fatherhood, motherhood and childhood –are the subject of care of the whole society and preferential protection by law; concern for children and their upbringing – are the natural rights and civil duty of parents...” So, the primary task of the state should be to support the family in order to provide full children’ upbringing, protecting their rights, preparing them for a full life in the society, promoting physical, intellectual, mental, spiritual and moral development of children, as well as the implementation of the child’s personality in the public interest. For these the Kyrgyz Republic has to elaborate the government program that will prevent parents from deserting their children. It will take time, cost money and involve human resources. These are the proposals concerning the program:

- 1) Supporting of young families. The support can be expressed in providing of available dwelling.
- 2) Supporting of families with dependent children. This support may be financial and grant discounts on public services and medical services. Also, the support may be expressed in providing the educational benefits to the children from large families.
- 3) Family planning. Family planning is also one of the most effective ways of reducing maternal mortality. Family planning saves mother’s health, reduces the number of undesirable pregnancies and the appearance of children with impaired health. This is one of the most effective ways to preserve the health of the nation and overcome poverty. Actually, the Kyrgyz Republic has a family planning program, but it does not spread further than hanging up the posters on the walls of hospitals. The state may promote a slogan “Have as many children as you will be able to support by yourselves!”

The government program, if elaborated and implemented properly, will support families and help a lot of children to stay with their birth parents and avoid adoption. Then, abandoned children’ rate will decrease.

### **2. Ratification of Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 29 May 1993**

The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption was adopted on 29 May 1993 and entered into force on 1 May 1995. It has as its principal objectives:

“(a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law; (b) to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children; (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention”.<sup>65</sup>

The Hague Convention was designed to set up a mechanism for international cooperation to give practical effect to the provisions relating to intercountry adoption. It provides for responsibilities and tasks to be shared between the States of origin and the receiving States, according to their organizational diversities and national legislation. One of its basic premises is that adoption is a social and legal measure for the protection of children. Consequently, procedures for intercountry adoption should ultimately be the responsibility of the States involved, which must guarantee that adoption corresponds to the child’s best interests and respects his or her fundamental rights. Therefore, the Parties to the Convention are obliged to establish a Central Authority. The introduction of such a high-ranking and unique intermediary makes it possible to clarify the international children adoption procedure and, thus, to encourage international cooperation, so as to combat more effectively the trafficking of children. This cooperation between receiving States and States of origin is a real ground of the system implemented by the Convention, establishing joint responsibility of the two countries involved in an international adoption procedure. This cooperation also implies that an adoption issued in the country of origin is automatically recognized in the receiving country<sup>66</sup>. The table below shows how Central Authorities of Sending and Receiving States cooperate with each other.

First, the state of Origin establishes adoptability of the child according to its national law. Simultaneously, the Receiving state establishes eligibility of the prospective adoptive parents. Second, the state of Origin provides the prospective adoptive parents and the child a matching period. Third, the Receiving state persuades in suitability and positive match of the parents and the child. Fourth, the state of Origin takes a decision to place the child with the prospective adoptive parents and the Receiving state issues a visa and the residence permit for the child. Here the state of origin, according to its legislation, may transfer the child to the Receiving state for the probation period. If it is successful, an adoption follows on the territory of this state. The state of Origin will recognize this adoption. If the state of Origin does not require the probation

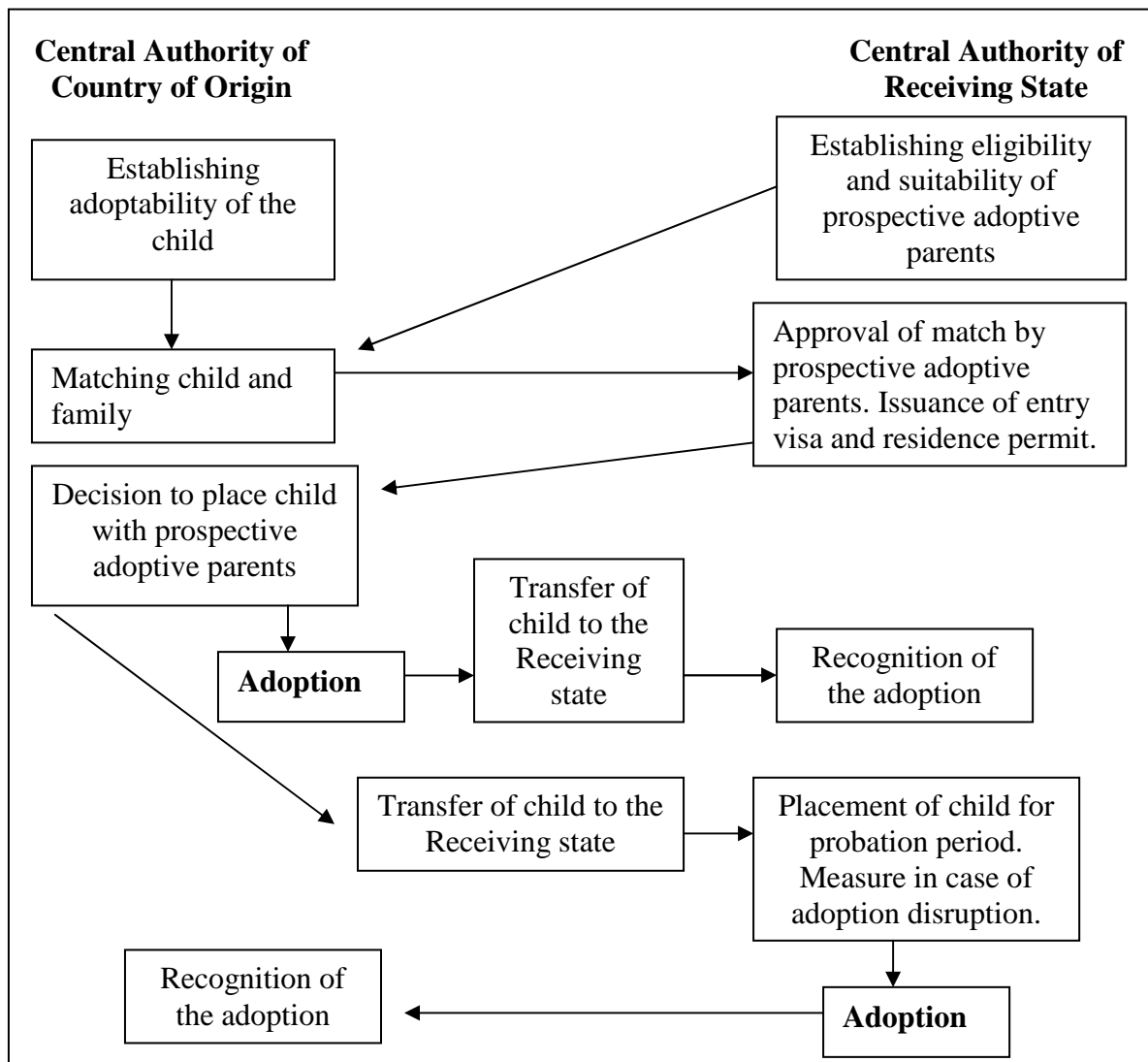
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<sup>65</sup> Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption dated 29 May 1993, Article 1.

<sup>66</sup> *Adoption Between Hague and Non Hague State Parties*, International Reference Centre for the Rights of Children Deprived of their Family, April 2007, available at <http://www.iss-ssi.org/2009/assets/files/thematic-facts-sheet/eng/34.Clh%20vs%20non%20clh%20eng.pdf> (accessed 26 March 2010).

period, the child is adopted on the territory of the state of Origin and the Receiving state will recognize the adoption.

**Role of the Central Authorities under the Hague Convention on Intercountry Adoption<sup>67</sup>**



It is very important that the Hague Convention foresees that if the adoption took place after the transfer of the child to the receiving State and it appeared to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child’s best interests, such Central Authority shall take the measures necessary to protect the child, in particular:

- “a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
- b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange

<sup>67</sup> UNICEF Innocenti Digest , *Intercountry Adoption*, dated from 1998, done in Florence, Italy.

alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;  
c) as a last resort, to arrange the return of the child, if his or her interests so require.”<sup>68</sup>

While the Central Authority is a compulsory body, the involvement of accredited bodies is optional. These bodies are private organizations to which a state delegates some of its responsibilities, for which they are officially accredited and should be periodically evaluated and supervised. These bodies should be non-profit organizations, acting in accordance with the basic ethics of the Hague Convention, managed and administered by people who are qualified in adoption matters and of high personal integrity. They must be accredited by their own state, and additionally, they must be authorized by their state and by the other state involved if they wish to organize adoptions of children coming from that other state.<sup>69</sup>

The Hague Convention essentially recognizes that “intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of Origin”.<sup>70</sup> This Convention reflects an internationally recommended policy concerning different child care measures and sets out the following hierarchy of options, generally held to safeguard the long-term “best interests” of the child:

- *Family solutions* - return to the birth family, foster care, adoption - should generally be preferred to institutional placement;
- *Permanent solutions* - return to the birth family, adoption - should be preferred to provisional ones (institutional placement, foster care);
- *National solutions* - return to birth family, national adoption - should be preferred to international ones.<sup>71</sup>

The Kyrgyz Republic was strongly recommended by international experts to ratify the Hague Convention. The deputy of the Jogorku Kenesh Gulnara Derbisheva commented upon this that the Government of the Kyrgyz Republic is not thinking of this Convention so far. The reason is trite – lack of money. The Convention requires creating a Central Authority which will demand financial inputs, human resources and other factors. Else, we need our national adoption legislation to comply with international standards and the Convention itself, what also needs expenses. The game is worth the candle and the Kyrgyz Republic may gain from joining the Convention.

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<sup>68</sup> Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption dated 29 May 1993, Article 21.

<sup>69</sup> Ibid., Articles 9, 10, 11 and 12.

<sup>70</sup> Ibid., Preamble.

<sup>71</sup> Ibid., Article 21.

### **3. Bringing National Legislation in the Field of International Children Adoption in Line with the Interests of a Children and International Standards**

If the Government of the Kyrgyz Republic chooses not to accede to the Hague Convention, it has to reform national adoption legislation as soon as possible. My proposals on reforming the legislation refer to:

1. Concluding international agreements on international adoption
2. Enforcing of the law on adoption agencies, their licensing and functions
3. Creating a database system

#### **3.1 Concluding International Agreements on International Adoption**

The Family Code of the Kyrgyz Republic and The Government Regulation on the Rules of Placement the Children, Left without Parental Care, for Adoption by Citizens of Kyrgyz Republic, as well as Foreign Nationals set that international children adoption has to be carried out if there is an international agreement between the Kyrgyz Republic and other state. It was said above that no agreement on adoption has ever been concluded, though the competent bodies had been placing orphans and abandoned children in foreign families for several years. Is it a crime? Let the Prosecutor Office to examine this issue. We have so many children leaving in boarding institutions and waiting for a surgery that is impossible to perform here and only foreign family can help such children. Also there are children who are just waiting for someone who will come and take them away in a new happy life. The Government of the Kyrgyz Republic must hurry and assist those children to make their dreams come true. As soon as possible, the state has to conclude an international agreement on children adoption with the United States of America, first, because Americans had been the most active adopters before international adoptions were suspended. Simultaneously, such agreements may be concluded with other states. Along with national adoption legislation, the agreements will be an additional legal basis for sending Kyrgyz children to adoptive families abroad. So, an international agreement on children adoption may include following provisions:

- State competent bodies involved in international children adoption. There should be an enumeration of all competent bodies and their capacity from both sides – from the sending state's and the receiving state's side. From the side of the Kyrgyz Republic they may be the Ministry of Education, the Ministry of Foreign Affairs, the Ministry of Public Health, the Prosecutor Office, the Department on Family and Children Support and the courts.
- Definition of those children who can be adopted internationally. Actually, the definition that is in the Family Code and in the Government Regulation is completely enough to identify those children who may find home abroad.



- Requirements for prospective adoptive parents. Along with the requirements which already have been set by national legislation, there may additional provisions to be included. For instance, prospective adoptive parents must to be married to each other at least 3 years at the time of application for adoption, if one of them had previously been married and divorced. This provision is practiced in China. It should be noted, that the provision makes sense, because no one can be sure about these parents stability in new family relationships.

- The procedure of children adoption. In this part both parties to the agreement have to specify all steps. The Kyrgyz Republic has such procedure and it should not be changed much. The only recommendations here are:

- to make prospective adoptive parents to come to the Kyrgyz Republic for bonding with the child for 10 day period; and

- to make prospective adoptive parents to come to the Kyrgyz Republic for the court hearings on adoption.

- Liability of adoptive parents for improper treatment of the child. This part should contain the provision that the adoptive parents are liable for abuse of their parental rights and bad treatment of the child according to national legislation of the state of their citizenship.

- Adoption expanses. This provision will include all state duties charged for completing adoption. The listed fees may be included into or attached to the agreement. It should prevent corruption in international children adoption sphere.

- Post-adoption reports. Both parties to the agreement have to think of the content of such reports and the bodies which will send and receive the reports on children life abroad. The content of the post-adoption reports may include video, photo, and other materials as well as reports from educational institutions and health services.

- Abolition of adoption. The state of origin has to insure that their children will not be left for the mercy of fate. For this purposes states-parties to the agreement may agree that the receiving state if find that the adoption is no more in the best interests of the adopted child, will take measures for protection him or her. Either of the following measures could be chosen:

- The receiving state must place children for adoption to other family or to transfer them to a foster family, or if it is impossible, to place them in boarding institution.

- The receiving state returns the children to their original jurisdiction, i.e. to the state of origin for placing them for adoption or in boarding institution.

The agreement will serve as a legal instrument for regulation the procedure of adoption and the post-adoption period. Even the Russian Federation, being a powerful state, can not protect their children adopted abroad without international agreement. Often Russian news informs that Russian children die or are killed by their adoptive parents in the United States of

America. The Russian Federation and the United States of America do not have this agreement. The last case with Artem Saveliev showed that the Russia has to conclude an international agreement on children adoption with this state. The boy has been living in the United States with his adoptive mother for six month. In the beginning of April she sent him to Moscow alone, handing him over “an accompanying letter”. In the letter she wrote that “...The child is mentally unstable. He is violent and has severe psychopathic issues/behaviors. I was lied to and misled by the Russian Orphanage workers and director regarding his mental stability and other issues...After giving my best to this child, I am sorry to say that for the safety of my family, friends, and myself, I no longer wish to parent this child.”<sup>72</sup> Alina Levitskaya, the director of the Department of state policy in the area of upbringing, additional education and social protection of children, considers that, probably, the American mother sent Artem to Russia, because she knew that if she refuses from the boy in America, she will pay him significant maintenance<sup>73</sup>. The Kyrgyz Republic as well does not have international agreement with the major Receiving state. It is terrible to think what may happen with our adopted children by American citizens. We can not let such situations to have place. The agreement on adoption will be binding for both parties. So, by concluding such an agreement the Kyrgyz Republic will comply with its own national adoption legislation and gain a confidence in the adopted children’ best interests.

### **3.2 Enforcing of the Law on Adoption Agencies, Their Accreditation, and Functions**

The activity of international adoption agencies is not regulated by national law of the Kyrgyz Republic. Moreover, as we have found out in Part II, they are mediators and are prohibited by Article 132 of the Family Code. But they do work in the Kyrgyz Republic by authority of the Ministry of Education and Science. So, the Kyrgyz Republic is standing before the choice of prohibiting any international adoption agencies’ activity or drafting and enforcing the law on adoption agencies. If the state is not going to stop international children adoptions at all, it should choose the second option. In order to elaborate this law, the Kyrgyz Republic may pay its attention to the practice of the Russian Federation. The Russian Federation, as opposed to the Kyrgyz Republic, has both international agreements on children adoption and the criteria for choosing those adoption agencies which will be allowed to work with their children.

The proposed law, first, has to include the criteria of those agencies that may be licensed in the Kyrgyz Republic.

- 1) The agency has to be a non-for-profit organization.

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<sup>72</sup> Mihail Smilyan, Mariya Rogacheva, *Posol - v Shoke*, 12 April 2010, available at <http://www.gzt.ru/topnews/society/-sudjboi-artema-saveljeva-zanyalisj-dva-/300847.html> (accessed 28 April 2010).

<sup>73</sup> Evgenii Fatkin, *Priemnaya Mat Mogla Otravit Artema iz SSHA v RF, Opasayas Alimentov*, 26 April 2010, available at <http://www.rian.ru/society/20100426/227025808.html>, (accessed 28 April 2010).

- 2) On the moment of application for a license, the agency should work in the sphere of international children adoption at least 3 or 5 years.
- 3) The agency should have a professional and qualified staff. The staff has to have a degree in the field of education, psychology, medicine, and law. Some of them should have an experience of working with children.
- 4) The staff, each separately, and the agency, as a legal entity, should never have been brought to justice for committing crimes against children. There should no be any complaints from the parents who adopted their children through this agency.

Second, the law has to content the functions of the agency. They may be the following:

- 1) Preparation of prospective adoptive parents regarding all aspects of adoption a child from the Kyrgyz Republic. It is especially important if a child is in conscious age. Prospective adoptive parents need to know the culture and the mentality in which their future child has been brought up. Being acknowledged with these, prospective adoptive parents will help a child to penetrate to another culture more easy.
- 2) In cooperation with the authorities of the Kyrgyz Republic, the agency may be involved in the accompaniment of the adoptive parents in the state. This accompaniment may include the services of driver, translator, and lawyer.
- 3) After adoption, the agency along with the social workers of the place of residence of the adopted children will reveal the facts of improper treatment of these children, if any, and immediately inform the Ministry of Education and Science.

Third, the law on adoption agencies has to foresee a liability for breaching national and international law on adoption, including this law and international agreement on children adoption.

By implementing such a law, the Kyrgyz Republic will gain assurance in the activities of the international children adoption agencies working on its territory.

### **3.3 Creating a Database System**

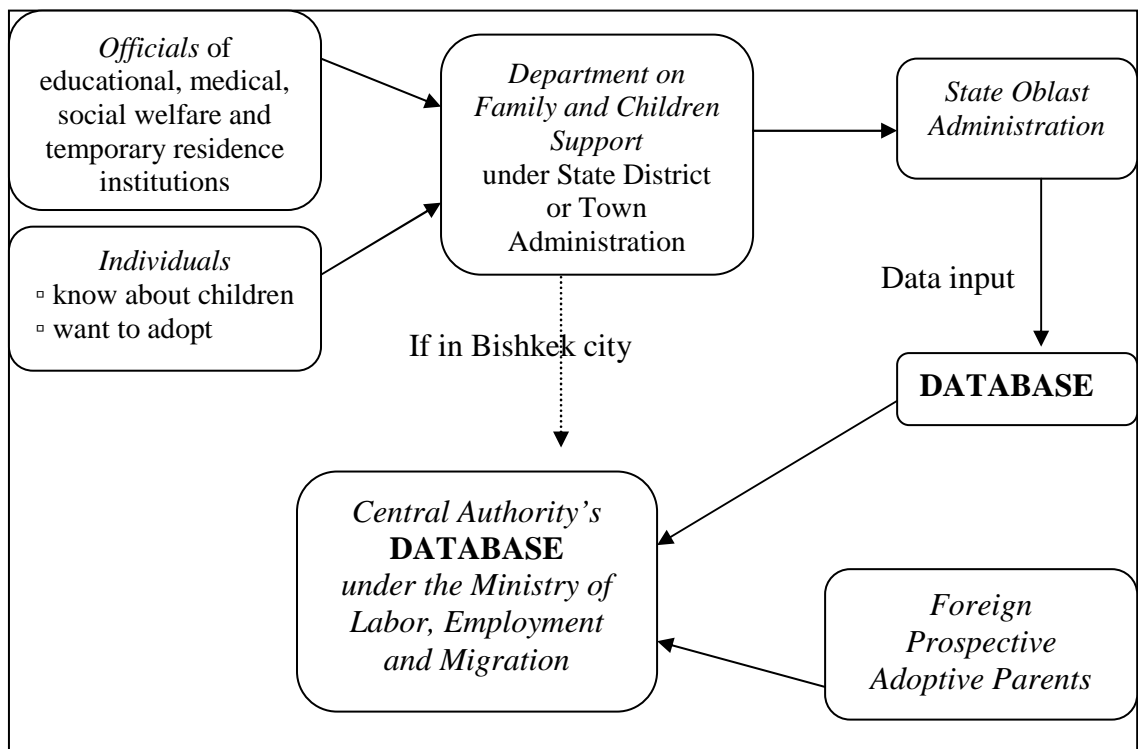
It is very important that a comprehensive system of data collection related to children left without parental care, children in need of adoption, and domestic as well as foreign prospective adoptive parents are put in place. Actually, the database is foreseen by national law<sup>74</sup>, but it still needs to be implemented. For these purposes we should know exactly how the data on children and prospective adoptive parents may be collected. Bellow is the scheme of the data gathering that was drafted by me.

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<sup>74</sup> Family Code of the Kyrgyz Republic № 201 dated 30 August 2003, last amended 17 July 2009, Article 127.

Let me explain how this scheme works. According to Article 127 of the Family Code, officials of educational, medical, social welfare and temporary residence institutions and individuals should impart the data about children left without parental care to the department of family and children support, which is situated on the place of finding of these children. Also, domestic individuals wishing to adopt a child may apply to the department of family and children support situated on the domiciliary of an adoptable child. If the department of family and children support is in Bishkek city, it transfers the data on children and prospective adoptive parents to the Central Authority's Database, at once. In the case if the department of family and children support is not located in Bishkek city, than it transfers the data to the state district or town administration. In its turn, the state district or town administration submits the data to the state oblast administration. The state oblast administration can only feed the data received into the Database system, it will not able to operate the system. On this stage the state oblast administration has a limited access to the Database. Consequently, if there are seven oblasts in the Kyrgyz Republic, there should be seven limited access Databases for each oblast. Finally, the data inputted by the state oblast administration will be reflected in the Central Authority's Database. Foreign prospective adoptive parents will apply for a child adoption directly to the Central Authority, i.e. to the Ministry of Labor, Employment and Migration.

### The scheme of collecting the data for Database



By creating the Database, the Kyrgyz Republic will always know exactly how many children left without parental care we have and how many children were adopted both domestically and internationally.

#### **4. Conclusion**

So happens in our society that the adoption of a child does not meet the approval of others. Adopting a child with disabilities or any other disease is not welcomed at all. Therefore, children left without parental or relative care are doomed to living in children boarding institutions until their adolescence. The Kyrgyz Republic ratified Convention on the Rights of the Child, where Article 21 stands for international adoptions, but only if it is appropriate for “the best interests of children”; promised in Article 16 of the Constitution that “...family, fatherhood, motherhood and childhood –are the subject of care of the whole society and preferential protection by law...”; and adopted the Code of the Kyrgyz Republic on Children, where Article 26 voiced that “Every child has the right to live in family...” It seems that in our state the area of children rights is perfect. Indeed, so it is: adoption legislation promotes the right of a child to be raised in family even if it is an adoptive one; but there are still some omissions in law, the imperfection of the adoption system and corruption do not allow needy children to be with new families as soon as possible.

In the light of the April events we would better stop relying on the state and start helping these needy children all together. Surely, the greatest help that may be is to place the children left without parental care in homes of the Kyrgyz citizens and give them care and love. The main priority in our society should be an inadmissibility of children abandonment and it has to be the main direction in the children rights protection area. For this purpose there should be a proper family upbringing. However, the main thing we should do is to start with our own families: humaneness, kindness, responsibility – these are the qualities that should be built into a man by his/her family. Children are to be raised understanding not only the meaning of these qualities, but also their true nature. Then, family ties will be stronger.

As regards international children adoptions as alternative care measure, the Kyrgyz Republic can and should regulate this system rejecting both a free market in this area and a complete ban on adoptions. Actually, we have the mechanism of international children adoptions; it just should be started correctly. We have found out that international adoptions often were carried out with significant violations of the rules prescribed by the law. First of all, the adoptions were undertaken by wrong state body. Second, international adoption agencies were involved, though they are prohibited by legislation. Third, prospective adoptive parents ignored the requirements of bonding with their future child and taking participation in the court

hearings. The outcome is that national legislation needs to correspond to those international adoption's provisions the state subscribed to. International agreement on adoption, the Law on adoption agencies, a database system and ratification of the Hague Convention – these are the ways for changing the lives of children left without parental care for the better. In conclusion, I would like to adduce the words of the Pope John Paul II which in the best way possible reflect the sense of this work: “As the family goes, so goes the nation and so goes the whole world in which we live.”<sup>75</sup>

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<sup>75</sup> Anyara-Aphorisms, *Family Life*, available at <http://koti.mbnet.fi/neptunia/relating/family1.htm> (accessed 3 May 2010).

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