

## A COMPARATIVE STUDY ON THE LEGAL ASPECTS OF ADOPTION IN RUSSIA AND GREAT BRITAIN

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Adoption is one of the oldest social and legal institutions that raises highly emotive issues because of its fundamental implications for the meaning of familial ties. Questions on whether adoption serves the best interests of children, who should be allowed to adopt and the role of governments in regulating such decisions are frequent subjects of debate.

Nowadays the political community of the world protests against Russian and British adoption policies, due to the ban on adopting children by same-sex couples and American citizens, imposed by the Russian government and forced adoption, practiced in Great Britain and leading to large numbers of parents fleeing the country every year.

Adoption law in Great Britain is governed by the Adoption and Children Act 2002, while adoption procedures in Russia are regulated by the Family Code of the Russian Federation. The legislation of both countries is very strict about who can be adopted, by whom and in what order. The relevant adoption acts set forth requirements regarding, among other things, the civil status of the applicants, their age, the procedure and other characteristics.

Under Russian and British law, only children under the age of 18 are eligible for adoption and only in their interest.

As a general rule, adoptive parents must be at least 18 years of age in Russia, whereas British legislation allows people over 21 years of age to become adopters. British law doesn't set fourth upper age limit for adopters, compared to Russian law which requires the age gap between an unmarried adopter and the adopted child not less than 16 years [1].

In practice, the age of the applicants is a very significant factor when assessing a couple's or an individual adopter's suitability to adopt. Adoption agencies are expected to find parents who are — with respect to their health and vigor — able to meet the various demands of growing children and be available for them into adulthood [4].

It is easier for relatives to adopt a child. That is because Section 11 of the Adoption and Children Act 2002 allows them to make arrangements for adoption of a child without the intervention of an adoption agency. A relative, for this provision, means a grandparent, brother, sister, uncle or aunt, whether of full blood or half blood [4]. Similarly, in the presence of several persons wishing to adopt one and the same child in Russia the preferential right shall be granted to the relatives of the child [1].

Moreover, when adoption agencies are looking for a child's most appropriate placement, the child's ethnic origin, culture, language, and religion are taken into account, as well as the child's previous family experience and any wishes of the child's parents as to the religious upbringing of the child. Even if it is not the decisive factor, placing the children with a family of similar ethnic origin and religion is most likely to effectively safeguard their welfare and to meet their needs as fully as possible [4].

In general, the law does not allow adoption where neither of the adoptive parents are domiciled in the United Kingdom, the Channel Islands or the Isle of Man. Domicile is defined as "the legal, and normally also the factual, relationship between a person and a territorial area subject to one system of law, which arises from his residence with the intention of making it his permanent home." In a case where the adoptive parent wishes to adopt through the English system but is working or living overseas, he or she must return to England on a regular basis to make the home study assessment possible. In contrast, according to the Family Code of the Russian Federation, the adoption of children by foreign citizens or by stateless persons can be admitted, but only in cases when it is impossible to give these children for upbringing into the families of citizens of the Russian Federation, who permanently reside on the territory of the Russian Federation, or for adoption to the children's relatives, regardless of the citizenship or the place of residence of these relatives [1].

Furthermore, pursuant to part 1, article 4 of the Federal law dated December 28, 2012 No. 272-FZ "On Measures of Influence upon Persons Involved in Abuse of Fundamental Human Rights and Freedoms, Rights and Freedoms of Russian Citizens", adoption of children being Russian citizens by citizens of the United States of America is prohibited. This piece of Russian legislation that has also come to be known as the Dima Yakovlev Law is named after a young Russian adoptee who died after being left in a hot car by his American adoptive father [6].

Due to the prohibition on passing children, citizens of the Russian Federation over for adoption by the citizens of the United States of America as imposed in Part 1 of this Article, on the part of the Russian Federation terminate the operation of the Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children that had been signed in Washington, DC on July 13, 2011.

One of the most significant and disputable differences in adoption rules of the compared countries is the adoption of children by lesbian, gay, bisexual and transgender persons.

The Equality Act (Sexual Orientation) Regulations 2007 states that "nothing in these Regulations shall make it unlawful for such a voluntary adoption agency or fostering agency to restrict the provision of its services or facilities to a person on the grounds of his sexual orientation" [3].

On the contrary, the Family Code of the Russian Federation deprives of the right to adopt a child "those in a same-sex union recognized as a marriage and registered an accordance with the law of states in which such marriage is allowed, and also citizens of such states who are not married." [9].

A child may be adopted both by a couple, and an individual, whether married or single. Single persons may not jointly adopt the same child.

The following persons may not be adoptive parents in Russia:

- recognized by a court as incapable or as partially capable;
- deprived of parenthood by the court or restricted in the parental rights by the court;
- dismissed from the duties of a guardian (a trustee) for improper fulfillment of the obligations, imposed upon him by law;

- who cannot perform parental duties because of the state of their health (respiratory tuberculosis (groups I and II), malignant tumors (stages III and IV), drug addiction; alcoholism; diseases and injuries leading to disability I group);
- having no permanent residence;
- having, a record of conviction for an intentional crime against the life or health of citizens [1].

In the Russian Federation, adoption procedure is complicated and starts with the preparation of documents (application, brief autobiography, a copy of the financial account etc.) to obtain conclusion on the possibility of being adoptive parents. These documents are valid for one year from the date of issue [2].

For the preparation of the conclusion about the possibility of the citizen to be adoptive parents, guardianship authority makes a survey of living conditions of persons wishing to adopt a child. At inspection, the guardianship authorities assess living conditions, personal characteristics and motives of the applicant, capacity to educate the child, the relationship established between the members of the applicant's family.

Guardianship authority within 10 days from the date of submission of the documents, shall take a decision on the possibility of citizens to be adoptive parents or a decision on the impossibility of citizens to be adoptive parents, indicating the reasons for refusal. After, the guardianship authority provides them information about the child (children), which can be adopted, and gives direction to visit the child (ren) at the place of residence (location) of the child (ren).

When a child is chosen, an adopter has to deliver an application to the court. An application for the adoption shall be considered in closed court session with an obligatory participation of the guardianship and trusteeship body, of the public prosecutor, of a child who has reached fourteen years of age, and if necessary, also of the parents or the other interested persons.

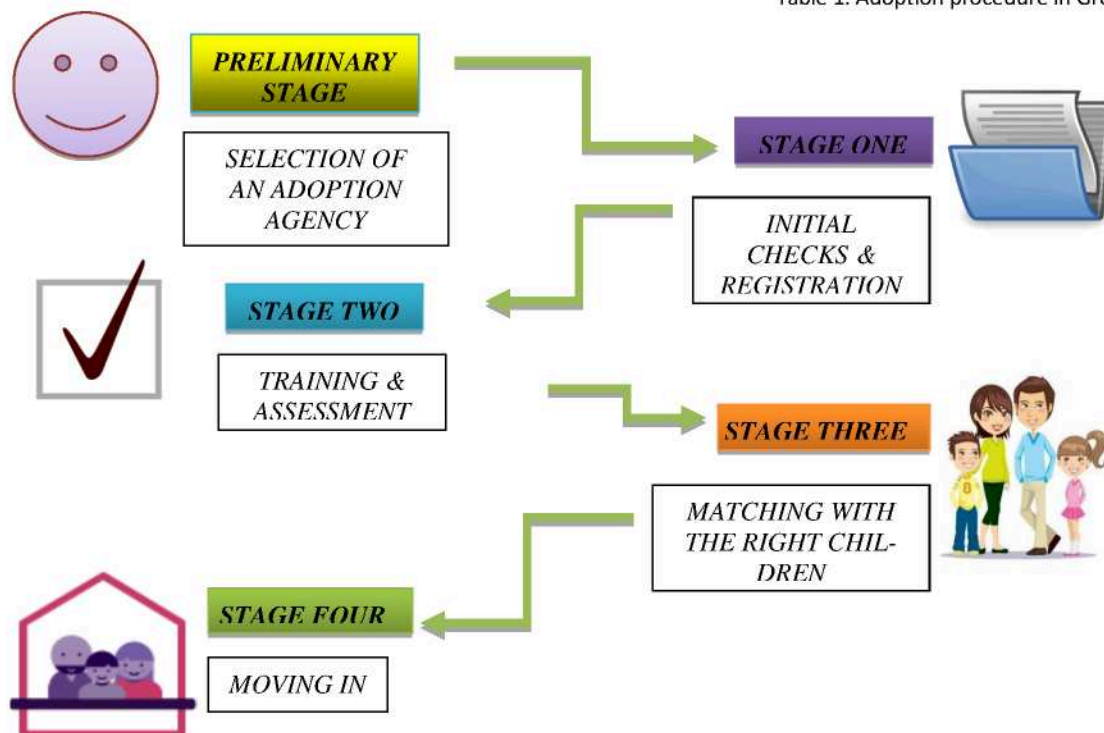
Having considered an application for adoption the court shall take the decision, in which it either satisfies the request of the adopters (of the adopter) for the adoption of the child, or refuses to satisfy such request [2].

In Great Britain the first stage of adoption procedure is to choose an adoption agency that's part of the local council or a voluntary adoption agency. After agreeing upon a Prospective Adopter Plan, the agency collects basic information from the person wishing to adopt child. An application form also has to include permission to take references and perform a medical and criminal background check (DBS) as well as contacting local authority [8].

The next stage is to assess prospective adoptive parents and make a decision if they can become adopters. Prospective adopters are invited to attend preparation groups, which help to explore the benefits and challenges of adoption. Moreover, they also have the opportunity to meet experienced adopters and talk to them about the realities of family life. The main part is a series of visits made by a social worker from an adoption agency to prospective adopters' home [8]. After, the social worker issues a Prospective Adopters Report, which is taken to the agency's independent Adoption Panel. The adoption panel's recommendation should be made within four months of the receipt of the formal application form, which is the basis for a decision on the possibility of being an adoptive parent [8].

The longest stage of adoption in Great Britain is matching with the right child. On average, it takes from 6 months to 1 year and more. Social workers are responsible for seeking a potential child among those who are currently waiting. When a child is chosen, information of the placement report is sent to the independent adoption panel of the child's agency [8].

Table 1. Adoption procedure in Great Britain



Under Section 16(1)(b) of the Adoption Act 1976, no adoption order shall be made unless each parent or guardian of a child freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order, regardless

of whether he knows the applicant's identity or not. However, a court can decide the adoption can go ahead without parent's consent if it thinks the child would be put at risk if they weren't adopted or the child's parents are incapable of giving consent, e.g. due to a mental disability [5].

Just as in Britain, to adopt a child in Russia it is necessary to obtain the consent of his parents or guardians (trustees), and in the absence of the parents or guardians (trustees) — the consent of the guardianship and trusteeship body. The parents shall have the right to withdraw the consent they have given for the child's adoption before the court decision on the adoption is passed [1].

Notwithstanding the fact that British legislation requires the consent for adoption, more than 25,000 children are removed every year from their parents, most of whom have not committed any crimes and who are not addicted to alcohol or drugs. Many are taken for 'risk' of future emotional harm; yet an average of 10,000 children in 'State care' go missing every year [10].

Young children are taken into care because of one unexplained bruise or fracture despite no previous history of injuries. Children in care are gagged and usually are not allowed to testify in court even when begging to do so. There are also cases when parents — especially those with complications in mental development — are told that their children will be removed even before they've given birth. With limited tools to fight the system, many UK families are choosing to flee to neighboring Ireland or other foreign countries to keep their children [10].

Thus, the analysis of legal aspects of adoption in Russia and Great Britain revealed that Russian adoptive law is stricter than British. This is due to a large number of circumstances under which a citizen may not be an adoptive parent. The procedures of adoption are almost similar in both countries. However the legislation of the Russian Federation tries to minimize the physical, psychological and moral impact on children left without parental care.

Russian multinational society with its mentality, religions, and historical memory expresses strong disapproval of the British adoption policy, allowing LGBT and forced adoption, threatening the health and protection of the legitimate interests of children.

Russia should not follow the European path of development, but taking into account our traditions and culture, needs to establish a mutual understanding between the people and the government.

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#### **FINANCIAL SUPPORT OF SMALL BUSINESS AT REGIONAL LEVEL**

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The development of small business in Russia has begun recently. Since that time, the state's policy in the field of small business as well as the legal framework regulating the activities of small business and medium-sized enterprise has been steadily