

UNIVERSITY OF TARTU

European Master's Degree in Human Rights and Democratisation
A.Y. 2013/2014

THE COLD WAR OF INTER-COUNTRY ADOPTIONS

A Political Tit-for-tat or Best Interest of the Child?

Author: Marta Malucello

Supervisors: Katre Luhamaa & William Simons

Abstract

Every decision taken in matter of children should be in the light of the children's best interest and grant them the best solution as possible. Best interest of the child is the common denominator that crosscuts different aspects concerning children's welfare. Also in the adoption issue children's best interest should be always prioritised.

The purpose of the present research is to show how the best interest of the child has not been taken into account by the Russian ban to inter-country adoptions to the US but it is rather a political reaction to the American Magnitsky Act and a demonstration of power from Russia towards the US and the Western countries in general. The loss of transparency in the adoptions process and some cases of gone-bad adoptions in the US have brought to a disruption of the relationship between the two countries and to the immediate termination of the agreement existing on inter-country adoptions between the two nations.

Consequences to the termination of inter-country adoptions between the two countries are already noticeable and measures should be taken by the governments in order to support Russian families by offering alternative measures in order to avoid social orphanhood and increase transparency.

Table of contents

Introduction	1
Limitations, Sources, Methodology and Structure	3
1. Framework.....	6
1.1. Theoretical overview	6
1.1.1. Historical overview: from domestic to international adoptions	7
1.1.2. Definition of inter-country adoption and related problems.....	9
1.1.2.1. Inter-country adoption	9
1.1.2.2. Orphan status	12
1.1.2.3. Termination of parental rights and the rights of the legal guardian	12
1.1.2.4. Difficulties related to inter-country adoptions.....	14
1.2. International instruments regulating inter-country adoptions and best interest of the child	14
1.2.1. Convention on the Rights of the Child.....	15
1.2.1.1. The US and Russian Federation in the CRC.....	17
1.2.1.2. Values concerning inter-country adoptions in the CRC	19
1.2.2. The Hague Convention.....	20
1.3. Best interest of the child principle.....	21
1.3.1. Best interest of the child in adoptions	25
1.3.2. Balance of rights.....	29

Table of contents

2. Empirical overview of adoptions in the US and Russia	32
2.1. United States of America.....	32
2.1.1. Historical development of US adoption law	33
2.1.2. The growth of adoption practices in the US in 1900s-1950s	35
2.1.3. Liberalising adoption - 1960s-1990s.....	37
2.1.4. US current adoption regulation and family values.....	39
2.2. Russian Federation	43
2.2.1. Soviet times and the role of institutionalisation	44
2.2.2. Adoption law reinserted - 1926-1960s	46
2.2.3. Adoption regulations in the Family Code of 1995	48
2.2.4. Russian Federation current adoption regulation.....	50
2.3. The two countries in comparison	54
2.4. Adoption laws in comparison.....	56
3. Regulating inter-country adoption.....	58
3.1. Inter-country adoption agreement between the US and Russia.....	58
3.2. Antecedents: the Magnitsky Act	60
3.2.1. Background of the Magnitsky Act	61
3.2.2. Reactions to the Magnitsky Act	64
3.3. Reply to Magnitsky Act: the Yakovlev Bill.....	66

Table of contents

3.3.1. Background of the Yakovlev Bill.....	67
3.3.2. Reactions to the Yakovlev Bill.....	69
3.4. Legitimacy of the adoption ban between Russian Federation and the US.....	71
3.4.1. A.H. and Others v. Russia	73
3.4.2. Compliance of the Yakovlev’s ban with the international obligations of Russian Federation and the best interest of the child	75
3.4.3. Possible consequences of the adoption ban.....	77
3.4.3.1. The warning case of Romania	80
3.4.3.2. Going to the extreme - Kemerovo proposal	81
Conclusions	83
Bibliography	88

2014

The cold war of inter-country adoptions : a political tit-for-tat or best interest of the child?

Malucello, Marta

<https://doi.org/20.500.11825/393>

Downloaded from Open Knowledge Repository, Global Campus' institutional repository