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FORMS AND REGULATION OF THE PLACEMENT OF CHILDREN DEPRIVED OF PARENTAL CARE IN INTERNATIONAL FAMILY LAW

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Abstract:

The article examines key international legal standards and protection mechanisms for children deprived of parental care, as well as the main forms of their placement — adoption, foster care, guardianship, and institutional measures. Special attention is devoted to the provisions of the 1989 Convention on the Rights of the Child, the Hague instruments on cross-border aspects, and regional approaches. The paper explores the correlation between universal standards and national-cultural practices (including kafala), while analyzing examples of foreign practice and national regulation, with particular focus on the Republic of Uzbekistan. The author concludes that further deinstitutionalization and strengthening of family-based care remain essential to ensuring the child's best interests.

Keywords

International family law; child rights; adoption; guardianship; kafala; best interests of the child; intercountry adoption.

"Adopting children in times of war is not merely an act of mercy; it is the realization of a fundamental principle of international law — to act in the best interests of the child, regardless of borders and conflicts." — René Cassin, one of the drafters of the Universal Declaration of Human Rights

Introduction

According to UNICEF statistics, during World War II alone, over ten million orphans were recorded. This tragic figure reflects the immense human suffering and devastation caused by global wars and cataclysms, which tore apart countless families and led to widespread violations of human rights. From war-torn territories, trains carried thousands of orphaned children to safer regions. Compassionate families around the world began taking these children under their care, regardless of nationality.

In the aftermath of this global tragedy, humanity reexamined its values and united efforts to protect human rights — particularly the rights of the child. Gradually, international provisions aimed at safeguarding children's rights and regulating cooperation between states in the field of intercountry adoption were codified. Declarations, conventions, and

other legal instruments emerged, setting universal standards for child protection and adoption procedures.

As of March 2025, 196 states have signed and ratified the Convention on the Rights of the Child, and 104 countries are parties to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

Key Concepts

In both international and national legal doctrine, the term "children deprived of parental care" refers to minors who, due to certain circumstances, are unable to remain under the care and responsibility of their biological parents. Such circumstances include the death of parents, deprivation or restriction of parental rights, illness, prolonged absence, abandonment, or other situations where a parent is unable to fulfill their duties.

When referring to "forms of placement of children deprived of parental care," one means the various methods of ensuring care, upbringing, and legal protection for these children, with the aim of creating a safe, stable, and nurturing environment conducive to their physical, mental, and emotional development [9].

According to the classification proposed by N. S. Antsukh, family-based forms of child placement include: adoption, guardianship, foster families, family-type orphanages, and children's villages. These forms are founded on the principle of priority of family upbringing, which requires that, whenever possible, a child should be raised in an environment as close as possible to a natural family.

Non-family forms of placement include various institutional mechanisms that provide for the maintenance and upbringing of children in specialized facilities — such as residential institutions, children's homes, boarding schools, therapeutic and educational centers, social and pedagogical centers, shelters, and vocational institutions that offer both accommodation and socialization support. In some states, this category also includes patronage care — a temporary placement of a child in a family under the supervision of guardianship authorities.

Despite the diversity of national models, the general logic of legal regulation remains unified: the placement of a child must be carried out in accordance with international standards, above all — the principle of the best interests of the child, enshrined in Article 3 of the 1989 Convention on the Rights of the Child. Thus, national systems, regardless of cultural distinctions, are built on common humanistic principles that guarantee every child the right to care, upbringing, and protection in conditions most favorable for their development.

International Standards and Mechanisms for the Protection of Children.

The international regulation of issues related to the placement of children deprived of parental care is based on a system of universal instruments that enshrine the general principles of childhood protection. One of the first such documents, which laid the foundation for the international standardization of children's rights, was the Declaration of

the Rights of the Child, adopted by the UN General Assembly in 1959 [1]. This Declaration articulated the fundamental rights of children to protection, education, medical assistance, housing, and adequate living conditions. Although it was declarative and lacked binding force, it served as a moral and legal foundation for the subsequent formation of treaty norms in the field of child protection.

The Convention on the Rights of the Child (1989) remains the cornerstone document in this field, as it established legally binding standards for the first time. Articles 20 and 21 of the Convention define the obligations of states to ensure appropriate care for children deprived of parental support. The paramount principle is the protection of the best interests of the child, which must guide the choice of placement. The Convention provides for a variety of substitute care forms — adoption, foster care, placement in a specialized institution, and the kafala system, derived from Islamic law, which implies guardianship without severing the child's connection with the biological family.

An important feature of the Convention is the emphasis on taking into account the cultural, ethnic, and linguistic background of the child, as these factors directly affect the child's psychological and moral well-being [3].

The Committee on the Rights of the Child (UN) monitors the implementation of the Convention's provisions by analyzing state reports, evaluating national legislation and practices, and issuing concluding observations — recommendations aimed at improving the realization of the Convention's norms [3]. This mechanism provides ongoing feedback between states and the international community, thereby enhancing accountability and promoting compliance with accepted obligations.

A significant role in the development of international family law has also been played by the Hague Conventions, elaborated under the auspices of the Hague Conference on Private International Law. The 1980 Hague Convention on the Civil Aspects of International Child Abduction seeks to ensure the prompt return of children wrongfully removed across borders and to protect their right to a stable family environment [4]. Complementing it, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children regulates questions of international jurisdiction, cooperation between states, and recognition of decisions in matters of custody and guardianship [5].

Regional Legal Instruments

Alongside universal mechanisms, various regions of the world have developed specialized agreements that further elaborate international standards at the level of intergovernmental cooperation. Within the Commonwealth of Independent States (CIS), a key role is played by the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993), which provides for mutual recognition and enforcement of decisions related to guardianship, adoption, and child maintenance, as well as procedures for the provision of legal assistance [1].

In Europe, an important instrument is the Lugano Convention of 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, which

ensures the harmonization of procedural rules among the member states of the European Economic Area. Although its scope extends beyond family law, it contributes to the formation of a common legal space, which is of particular importance in matters related to the protection of children's rights [2].

Thus, the international and regional architecture of child protection forms a multi-tiered system, where universal UN norms are complemented by regional agreements providing concrete procedures for cooperation and mutual recognition of decisions.

Authorized Bodies in the Field of Child Placement Regulation

The effective implementation of international and national standards is impossible without a well-structured system of authorized institutions operating at both the domestic and international levels.

At the national level, the key actors in the field of child placement include courts, which issue decisions on adoption, guardianship, and custody; civil registry offices, which register changes in a child's legal status; and guardianship and trusteeship authorities, responsible for monitoring the living and upbringing conditions of minors [9]. Alongside these bodies, childcare institutions, relevant ministries and agencies, as well as private and public organizations involved in the selection and support of substitute families, play a significant role.

At the international level, the system of authorized bodies includes the United Nations General Assembly, which adopts international declarations and conventions governing child protection and adoption; the UN Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child; the United Nations Children's Fund (UNICEF), which runs programs supporting childhood and developing systems of alternative care; and the World Health Organization (WHO), whose work encompasses children's health and well-being [3,9].

The coordinated interaction of these institutions — from national courts to global organizations — forms an integrated legal and institutional framework aimed at ensuring the protection of children and the observance of their fundamental rights.

Foreign Practice

In the Russian Federation, a distinctive approach has developed concerning the conditions and requirements for adoption. Although Russia signed the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, its domestic legislation has not fully aligned with the Convention's principles, primarily because the Convention was never ratified.

Article 4 of Federal Law No. 272-FZ of December 28, 2012 (as amended on August 8, 2024) stipulates:

"It is prohibited to transfer children who are citizens of the Russian Federation for adoption by citizens of the United States of America, as well as to carry out within the territory of the Russian Federation any activity of bodies or organizations aimed at selecting and transferring such children for adoption by U.S. citizens."

This provision imposes restrictions that, to a certain extent, contradict the Constitution of the Russian Federation, yet the Russian government maintains that no violation of international law has occurred, given that the state did not ratify the Hague Convention after signing it.

The German Constitution, on the other hand, emphasizes that every child possesses inherent human dignity and enjoys guaranteed rights. Society and the state are obliged to supervise the fulfillment by parents of their duties of care and upbringing and to intervene when necessary.

The placement of children in foster families or educational institutions in Germany is regulated by the Child and Youth Welfare Act (1991). The country places greater emphasis on foster care, as adoption is considered a complex and time-consuming legal process. Numerous childcare institutions are organized by non-governmental organizations, such as the Federal Working Association "Youth Construction Organization", as well as the SOS Children's Villages system.

The idea of these villages was proposed by Hermann Gmeiner, an Austrian scholar, who envisioned the creation of SOS Villages — community-based homes for orphaned and vulnerable children. Today, the international charitable organization SOS-Kinderdorf International unites more than 500 such villages in 132 countries, all sustained exclusively by voluntary donations.

In the United States of America, the practice of foster care dates back to 1853, when the Children's Aid Society was founded in New York City by the clergyman Charles Loring Brace. The organization's mission was to relocate orphaned and homeless children from the overcrowded streets of the East Coast to foster families in the western regions of the country. No formal contracts were concluded with receiving families — the Society retained full guardianship authority, meaning that it could reclaim a child at any time if necessary.

This initiative proved highly successful and gradually became deeply rooted in American social policy. Today, foster families represent the predominant form of child placement in the United States, while in many post-Soviet countries the system still relies primarily on state-run orphanages.

Families from whom children were removed were, in some cases, obliged to compensate the foster family for the child's maintenance according to established standards. During the early decades of the twentieth century, foster care in the U.S. was highly diverse: some families took in children out of altruism and later adopted them; others, particularly farmers, viewed foster care as a form of labor assistance. A third group, often referred to as "working families," accepted adolescents to help them earn their own income, part of which was used to support the host family.

In England, both temporary (respite care) and long-term residential care facilities operate to accommodate children who, according to reports from neighbors, schools, or social services, are found to live in unfavorable or dangerous environments. If no suitable relatives can be located, volunteer guardians are sought to provide care.

By the twentieth century, the United Kingdom had developed a comprehensive foster care system, and the responsibilities of foster parents are now clearly regulated by law. The Arrangements for Placement of Children Regulations and the Foster Placement (Children) Regulations govern the procedures for placement and supervision. In 1999, the National Foster Care Association of the United Kingdom published the National Standards for Foster Care, covering virtually all aspects of foster care organization [7]. In addition, two further documents were adopted — the Report and Recommendations of the UK Working Group, and the Code of Practice on the Selection, Assessment, Approval, Training, Management and Support of Foster Carers, which established detailed professional and ethical standards for foster care throughout the country.

In Finland, the concept of *"social orphanhood"* simply does not exist. A child is legally recognized as an orphan only in the absence of both parents, and the law does not provide for the deprivation of parental rights [7]. Even if a child is temporarily removed from the family, the parents retain their legal rights and can reunite with the child once the concerns of social services are resolved.

A decision to appoint a guardian against the will of the parties — including the guardian and the child (if aged 12 or older) — may be made only by a juvenile court, ensuring judicial oversight and protection of the child's interests.

Transnational Adoption and Jurisdictional Issues

In addressing intercountry adoption, the first step is to determine which national court has competent jurisdiction. It is unsurprising that the diversity of national approaches often leads to jurisdictional conflicts.

In most international treaties, the competent forum is determined either by the nationality of the adopter (forum patriae) or by their habitual residence (forum domicilii). For instance, this approach is reflected in the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

However, in certain bilateral agreements — such as the treaty between Italy and the Russian Federation — jurisdiction is determined by reference to the personal law of the adoptee, underscoring the complexity and variability of international practice in this domain.

Conflict-of-Law Regulation of Intercountry Adoption: Comparative Overview.

Regardless of the chosen jurisdiction, full protection of the child's rights requires that the law of the child's habitual residence be taken into account. This connecting factor is recognized in the 1993 Hague Convention on Protection of Children and Cooperation in

Respect of Intercountry Adoption, the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.

After determining jurisdiction, the court proceeds to identify the applicable law governing the legal relationship. At this stage, the concept of lex adoptionis becomes relevant — that is, the legal order most closely connected to the adoption relationship, taking into account its specific objectives and nature.

Traditionally, national laws regulate matters such as intercountry adoption procedures, the requirements for adoptive parents and adoptees, the necessity and procedure for obtaining consent from all interested parties, the maintenance or termination of ties between the child and biological parents, and the legal consequences of the adoption itself.

Almost all states subject the adoption relationship as a whole to one legal system, while specific aspects may be governed by another. In practice, this means that several national laws may apply simultaneously to intercountry adoptions. For example, compliance with the requirements of both the adoptive parents' and the adoptee's personal law is almost always mandatory.

The personal law of the individual (lex personalis) occupies a central position in the system of private international law governing intercountry adoption. This concept encompasses a person's civil capacity and legal competence, as well as personal rights in family, succession, and related matters. It may appear in several forms — primarily as the law of nationality (lex nationalis) or the law of domicile (lex domicilii).

The personal law of the adoptive parent (lex nationalis or lex domicilii) serves as the primary connecting factor, since the child typically moves to the adoptive parents' country of residence.

Under German law, adoption is governed by the law of the adopter's nationality. If the adopters are spouses, the applicable law is the one determining the general consequences of marriage — forming part of the so-called "Kegel's ladder" (*Kegel'sche Leiter*) of subsidiary connecting factors. Where both the adopters and the child share the same nationality, the matter is decided under their common personal law. Subsidiarily, where it serves the best interests of the child, the relationship may be governed by a unilateral conflict rule applying German law.

In the French Civil Code, the personal law of the adopter is likewise the primary connecting factor in matters of intercountry adoption. Such adoption is not permitted if it is prohibited by the law of either spouse. The adoption of a foreign minor is also inadmissible if the child's personal law prohibits adoption, unless the child was born and habitually resides in France.

In Spain, a special act governs intercountry adoption. Chapter II of that act specifies the scope of the adoption statute. If the adoptee habitually resides or will reside permanently in Spain, the Spanish court applies Spanish law to issues such as adoptability and consent requirements. If the adoptee is a foreign national who neither resides nor intends to reside

permanently in Spain, the applicable law is that of the country where the child will reside after the adoption. Where a foreign child residing permanently in Spain does not acquire Spanish nationality upon adoption, the court applies the law of the child's nationality.

Under the Civil Code of Lithuania, matters related to intercountry adoption are also governed by the law of the adoptee's habitual residence. Similarly, Article 3092 of the Civil Code of Quebec (Canada, 1991) provides that the child's habitual residence determines adoptability and the consent requirements of all interested parties, whereas the consequences of adoption are governed by the law of the adopter's habitual residence.

In addition, the principle of lex fori in foro proprio — the application by the court of its own substantive law — is often used as a general connecting factor.

According to Article 77 of the Swiss Federal Act on Private International Law No. 291 of 18 December 1987, intercountry adoption established in Switzerland is governed by Swiss law. The requirements imposed on both the adopters and the adoptee must also comply with Swiss law. A foreign adoption may be annulled in Switzerland only if a corresponding ground for annulment exists under Swiss law. Otherwise, the legal relationship between the child and the adoptive parents is governed by the law of the child's habitual residence.

When intercountry adoption is governed cumulatively by the personal law of both the adopter and the adoptee, the principle of lex nationalis is applied. For instance, the Thai Conflict of Laws Act of 1938 provides that in intercountry adoption both the adopter and the adoptee must satisfy the legal requirements of their respective national laws. Where the adopter and the adoptee share the same nationality, that common law applies. The consents of all interested parties must be given in accordance with the adoptee's national law, while the consequences of adoption are governed by the adopter's national law.

The Principle of *Lex Domicilii* and the Emerging Concept of *Lex Benignitatis*

In Venezuela, cross-border adoption is governed by the law of the habitual residence of both the adopters and the adoptee, following the principle of *lex domicilii*.

Another noteworthy principle provides that cross-border adoption is cumulatively regulated by the principle of the most favorable law for the adoptee (*lex benignitatis*) and by the personal laws of the parties involved.

The most recent and increasingly flexible principle, *lex benignitatis*, allows the application of the most favorable law for the individual and for the legal relationship as a whole. According to this principle, the choice of applicable law should remain at the discretion of the court [8].

Case Analysis: *Linda and Eyal Nezer v. Belgium and Israel*

One of the illustrative examples of the application of international mechanisms for the protection of children's rights is the case of Belgian citizen Linda Nezer and her husband, Israeli citizen Eyal Nezer. While staying in Belgium with their children, Linda Nezer refused to return to Israel, citing political instability and security risks. The father, considering her actions a violation of his parental rights, appealed to the Belgian courts

seeking the return of the children to Israel under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, to which both countries are parties.

According to Article 3 of the Convention, any removal or retention of a child in breach of custody rights granted to one of the parents under the law of the child's habitual residence is considered unlawful. Article 12 obliges competent authorities to ensure the child's prompt return to the country of habitual residence, except in cases covered by Article 13(b), which allows refusal if there is a grave risk that the return would expose the child to physical or psychological harm.

Additionally, the provisions of the 1989 Convention on the Rights of the Child, particularly Articles 3, 9, and 11, were applicable in this case, emphasizing the best interests of the child, the right to maintain personal relations with both parents, and the obligation of states to prevent the illicit transfer of children across borders [3]. The Brussels II bis Regulation, in force in Belgium, also applied, governing recognition and enforcement of judgments in family matters, including international child abduction. Nationally, the Israeli Law on the Return of Abducted Children (1991) and relevant provisions of the Belgian Civil Code on parental responsibility were taken into account.

The Court of First Instance in Brussels dismissed the father's claim, invoking the exception provided by Article 13(b) of the Convention and reasoning that returning the children to Israel could cause them psychological distress due to the unstable situation in the region. However, the Brussels Court of Appeal overturned this decision, finding that the mother's claims were not substantiated by objective evidence and that "general political instability" could not be regarded as a concrete risk to the children. The Belgian Court of Cassation subsequently upheld the appellate ruling, emphasizing that the application of Article 13(b) requires a high standard of proof of a *real and specific* threat to the particular children involved, rather than an abstract or generalized risk.

Ultimately, the court ordered the return of the children to Israel, subject to safety guarantees and monitoring mechanisms, including the participation of social services and regular reporting on the children's well-being.

The decision of the Belgian courts demonstrates a rigorous and balanced approach to the application of exceptions to the rule of immediate return. Judicial practice highlights that general political conditions or instability in the country of origin cannot, in themselves, justify refusal to enforce the Convention unless a concrete and serious risk to the child is proven. This approach aligns with the spirit and purpose of the 1980 Hague Convention, which seeks to balance the child's right to safety with the right to maintain stable family relationships.

Conclusion

The study of international standards and practices in the field of the placement of children deprived of parental care demonstrates the necessity of a systemic and comprehensive approach to regulating this area. International instruments, including the 1989 Convention on the Rights of the Child and the 1993 Hague Convention on Protection of Children and

Co-operation in Respect of Intercountry Adoption, establish the legal foundation for ensuring the best interests of the child and for preventing abuses related to cross-border movement of children.

The experience of foreign states confirms that child placement forms vary significantly depending on legal traditions. In the United States, the foster care system predominates; in Germany and the United Kingdom, foster upbringing is institutionalized; whereas in Finland, the very notion of "social orphanhood" is absent — public policy is directed toward preserving the child within the biological family whenever possible. These differences emphasize the need to adapt universal international standards to national realities and cultural contexts.

For the Republic of Uzbekistan, which possesses a solid normative framework in the field of child protection, an urgent task remains the improvement of mechanisms for monitoring and transparency in the activities of guardianship and custody authorities. As noted by the UN treaty bodies, including the Committee on the Rights of the Child, many countries still lack effective systems for external monitoring and independent evaluation of institutions responsible for orphans. Therefore, it would be advisable to incorporate into national legislation the institution of independent public inspections of child care institutions, which would ensure genuine transparency and prevent violations of children's rights.

Thus, international practice and legal standards confirm that sustainable development of the child protection system requires not only normative harmonization but also the implementation of mechanisms of accountability, civil society participation, and effective coordination between national and international institutions.

In the long term, Uzbekistan may become an example of successful adaptation of international approaches if the state's efforts to strengthen family-based forms of child placement are combined with the development of independent monitoring, improvement of professional training of guardianship officials, and the expansion of public participation. Only through such a comprehensive approach can every child be ensured not merely a legal status, but genuine care, safety, and respect for human dignity.

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