

UDC 327.8; 347.61

## Generally Recognized Norms and Principles of International Law: The Greatest Threat to the Traditional Russian Family

**Rabinovich Marcella**

Juris Doctor Candidate,

Pennsylvania State University, Dickinson School of Law,

P.O. Box 16802, University Park, Lewis Katz Building, Pennsylvania, USA;

e-mail: MGR150@psu.edu

### Abstract

This essay explores the possible consequences which implementing generally recognized norms and principles of international law into the Russian legal system may have on the traditional Russian family. The 1993 Russian Constitution confers upon generally recognized norms and principles of international law and international treaties a critical role in the Russian legal system. The Russian Federation, guided by various norms and principles of international law and international treaties, seeks to implement a new juvenile justice system concerning child rights protections. The Russian population, including various non-governmental organizations and the Russian intelligentsia, has shed light on the dangerous consequences of implementing these policies, which emulate foreign concepts of human rights. More specifically, these groups argue that international law has fallen victim to small interests groups. These groups are beginning to enjoy greater roles in the international legal arena, allowing them to use their influence on international organizations to forward their own agendas. Although these groups claim their views to be those of the consensus, they are not. Rather their policies often run contrary to the principles of nations and their sovereign people. These policies fail to take into account the unique nature of Russian culture and, as a result, are detrimental to the traditional Russian family. This essay traces Russian family policy from the fall of the Russian Empire

to the rise of the Russian Federation, examining the important role that family has, and continues to play, in Russian society and how such policies may bring about its demise.

### Keywords

Convention on the Rights of the Child, International Law, Russia, Russian Parental Authority, Russian Family Policy, Russian Legal System

## Introduction

The myriad of international treaties and laws the Russian Federation is currently faced with encourage them to develop and implement a new legal framework for the protection of children's rights and the promotion of child-friendly justice. President Vladimir Putin, by Edict 761 of 1 June 2012, approved the National Children's Strategy for 2012-2017, whose provisions are in accordance with the Convention on the Rights of the Child, in order to shape State policy to improve the children's situation in the Russian Federation.<sup>1</sup> Russia's National Children's Strategy relies heavily on international ideas of child-friendly justice in remodeling State policy and establish-

ing a new juvenile justice system. This new "juvenile justice system" is in the preparatory stages; however, it has already attracted opposition from the Russian population.<sup>2</sup> Those opposed to the new system argue that it poses a serious threat to the traditional Russian family.

The traditional Russian family and the relations between parent and child have played a pivotal role in Russian history. The role that the traditional Russian family plays in Russian society grew as the country transitioned from an autocracy to a socialist State and then, finally, to a fledgling democracy. In understanding how critical it is for the Russian population to preserve this traditional family structure one must first understand what the traditional Russian family is by examining how its role in

1 "European Network of Ombudspersons for Children. Unofficial Translation of National Children's Strategy for 2012-2017 (2012)", available at: [www.crin.org/docs/Summary\\_of\\_Russian\\_National\\_Children's\\_Strategy\\_2012-2017.docx](http://www.crin.org/docs/Summary_of_Russian_National_Children's_Strategy_2012-2017.docx)

2 Stenin, A., "Activists Oppose Big Brother Snooping on Families", *RT*, available at: <http://rt.com/politics/juvenile-justice-family-rights-554/>

Russian society has evolved throughout Russian history.

The evolution of the Russian family can be divided into three stages: (1) pre-revolutionary period up to 1917; (2) Soviet Union, 1917 – 1989; and (3) Russian Federation, 1990-present. Prior to examining the international obligations of the Russian Federation and their implications for Russia's future, we examine each of these three stages in Russia's history.

During the *first stage*, prior to the 1917 revolution, parental authority was almost unlimited. Although "conflicts between the older and younger generations were a frequent phenomenon", parents were afforded complete control over every aspect of their child's life.<sup>3</sup> This unlimited control was most apparent amongst the peasantry. Parents controlled their child's discipline, religion, education, and even their wages. Parents continued to exercise significant authority over their children until the beginning of the revolution.

The *second stage*, the beginning of the revolution and the rise of the Soviet Union until its dissolution, can be separated into three distinct periods of

3 Tietelbaum, S.M. (1945), "Parental Authority in the Soviet Union", *American Slavic and East European Review*, No. 4, p. 54.

Soviet policy: (1) birth of Soviet Russia; (2) industrialization of the Soviet Union; and (3) the aftermath of World War II. Each period can be categorized by different viewpoints on the role of the family and parental authority in the Soviet State. Soviet family policy varied from period to period; however, the State continued to enjoy absolute control over the family affairs of its citizens from the foundation of the USSR to its collapse in the late twentieth century.

The *third stage*, the Russian Federation, began after the fall of the Soviet State. "Russia's political transition from a totalitarian system to a fledgling democracy has brought Russian families new legal rights, at least on paper".<sup>4</sup> Under the Russian Federation, the State no longer enjoyed absolute control over an individual's family life. The 1996 Family Code "changed the character of State intervention in Russia from one of significant State oversight to one of considerable parental discretion in the rearing of the children".<sup>5</sup>

Russia has undergone substantial changes. In approximately a century it has transformed from an all-powerful

4 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 195.

5 Ibid.

empire to a world super power and finally to a democratic State attempting to free itself of the customs and habits of its Soviet predecessors. The Russian family has continued to thrive throughout all these drastic changes to State and government policies. It is a symbol of Russian identity which has remained constant through each of the country's regime changes.

### **Evolution of the Traditional Russian Family. Tsarist Russia: Ultimate Parental Authority**

Under the Russian Empire, relations between parent and child varied greatly amongst the different social classes of the Russian population. The older generations of the nobility frequently found themselves clashing with their descendants.<sup>6</sup> Toward the end of the nineteenth and the beginning of the twentieth centuries, children began adopting philosophical views different from those of their parents. These disagreements between the older and younger generations of the nobility were illustrated in various literary works.<sup>7</sup>

6 Tietelbaum, S.M. (1945), "Parental Authority in the Soviet Union", *American Slavic and East European Review*, No. 4, p. 54.

7 Ibid. Teitelbaum provides a brief explanation of *Fathers and Sons*, a literary work

Turgenev's novel, *Fathers and Sons*, represents one of the best known reflections of these conflicts. The conflicts illustrated in the novel deal with "the clash between the 'idealist' father and the 'nihilist' children."<sup>8</sup> Many have praised Turgenev's novel as an iconic piece of literature which successfully illustrates the anger and radicalism of the younger generations. One cannot discuss Russian history during the mid-nineteenth century without referring to Turgenev's novel: "*Fathers and Sons* reflects the historical realities of its age."<sup>9</sup> It is a fictional depiction of the disagreements arising between fathers, those who upheld the old order, and their sons, those who desired revolution and change.<sup>10</sup>

These generational disputes did not concern the majority of the Russian population. The Russian peasantry con-

recognized for its reflection of the social conditions prior to the Russian revolution. The author additionally discusses S. Naidenov's *Vanyushin's Children*, a popular play, which deserves mention, though not in detail, because it further illustrates "the struggle between the traditionally conservative old Russian merchant and his simple and religious wife on the one hand, and his children who are dissatisfied with the old way of life on the other". Ibid.

8 Ibid.

9 Cornwell, N., Christian, N. (1998), *Reference Guide To Russian Literature*, Fitzroy Dearborn Publishers, Chicago, p. 32.

10 Ibid.

stituted approximately 75% of the country's population prior to 1917.<sup>11</sup> In Tsarist Russia, those who resided in the villages and country districts were afforded almost unlimited parental authority over all aspects of their children's lives.<sup>12</sup> For instance, parents controlled who their child married; "[t]he choice of the bride, the matchmaking, the betrothal – all was arranged by the parents".<sup>13</sup> Moreover, this authority was not limited to the village, for parents continued to enjoy substantial control over their children's lives even in the city. If, for instance, a child worked in a factory in the city, the parents could request that the child's wages be paid to them.<sup>14</sup>

Furthermore, parents controlled every aspect of their child's upbringing, including discipline. They alone would decide how their child was to be disciplined. If a child was to be punished, the father would determine the severity of that punishment. "In the peasant family before the revolution 'the father used to flog children not only of eight and ten years, but of eighteen and

sometimes twenty. If he was not able to do it himself, he applied to the village administration."<sup>15</sup>

In *Village Life in Late Tsarist Russia*, Olga Semyonova Tian-Shanskaia illustrates just how critical of a role a parent played in the life of a young child growing up in the village. She writes, "A child's conception of the world differs little in essence from that of adults, with the exception that, for a child, parental authority plays a big role".<sup>16</sup> A child's understanding of God, community, and tradition all come from their parents. This unlimited authority, however, ceased to exist during the revolutionary period.

### **Soviet Union: Changing Roles of Parental Authority in a Socialist Society. Birth of the USSR**

The 1917 Russian Revolution only further divided the younger and older

11 Tietelbaum, S.M. (1945), "Parental Authority in the Soviet Union", *American Slavic and East European Review*, No. 4, p. 54.

12 Ibid.

13 Ibid. Pp. 54-55.

14 Ibid. P. 55.

15 Ibid. See also Tian-Shanskaia, O.S., Ransel, D. (1993), *Village Life in Late Tsarist Russia*, Indiana University Press, Bloomington, p. 33 (describing the various forms of punishment children face as a consequence for theft or any other offenses which either threaten the well-being of the child or result in damaged household items. "They are punished mainly with beatings by means of a rope, cattle switch, nettles, fists, feet, or pulling on the ears and hair").

16 Ibid. P. 32.

generations, in all classes of the Russian population.<sup>17</sup> The two generations found themselves on opposing sides during the Civil War. Children rose against their parents, fighting to ensure the success of the Soviet Revolution. While parents, on the other hand, fought against the Soviet Army to preserve the old order. The beginning of the revolution marked the death of parental authority; children were required to recognize only one figure of authority: the Soviet State.

In his book *Red Calvary*, Isaac Babel illustrates this opposition amongst the generations. In "A Letter", one of his short stories, Babel tells the tale of a young Russian boy, stationed in the Red Calvary regiment, writing home to his mother to inform her of recent events.<sup>18</sup> In his letter, the young boy describes how his father, who fought against the Soviets, had captured and killed his own flesh and blood, a son who had been a soldier in the Red Army. The short story illustrates the severity of these generational clashes, and provides an understanding of what the Russian family had become during the revolutionary period. The Soviet Revolution pitted parent against

their child, resulting in significant bloodshed and, ultimately, lead to, what many believed, would be the breakdown of the Russian family.

After the revolution, the older generations of the Russian population continued to oppose the Soviet regime.<sup>19</sup> In response to this opposition, the policy of the Soviet government and the Communist party was directed at eliminating parental authority. Several Communist members and Soviet educators understood that nationalizing child rearing was a critical in ensuring the existence of future generations of truly socialist human beings.<sup>20</sup> Parents, who were not socialist human beings themselves, could not possible be capable of raising their children to be the kind of individuals "who would make contributions to the social collective."<sup>21</sup>

Furthermore, the Bolsheviks sought to bring women into the work force.<sup>22</sup> In order to accomplish this, a woman's household responsibilities, such as child rearing and housework, had to be transferred outside of the family.<sup>23</sup> Wom-

---

17 Tietelbaum, S.M. (1945), "Parental Authority in the Soviet Union", *American Slavic and East European Review*, No. 4, p. 57.

18 Ibid.

---

19 Ibid.

20 Ibid.

21 Ibid.

22 Ibid.

23 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Impli-



en, however, were not prepared to give up their children to the state. Alexandra Kollontai, a Bolshevik feminist, understood that if women were to continue to fear the destruction of the nuclear family they would not become active participants in society. She states, "let women of the working class cease to worry over the fact that the family as it is presently constituted is doomed to disappear. They will do much better to hail with joy the dawn of a new society that will lighten the burden of motherhood for women."<sup>24</sup> Kollontai's concerns illustrate how critical family stability was in ensuring the well-being and productivity of the Russian population. The USSR depended on its continued existence in ensuring political, economic and social prosperity.

The myriad of roles that a parent undertook during the Tsarist regime slowly began disappearing. Prior to the revolution, children depended on their parents for food, shelter, discipline, education, religious guidance, and affection. At the close of the revolution and the birth of the Soviet state, children began to depend on their state to provide them

with food, shelter, discipline and education-leaving parents responsible only for the emotional needs of the child. However, from changes in Soviet policy toward family and parental influences in the following decades, it is evident that the destruction of the family was not a realistic goal.

*Industrialization of the Soviet Union.*

Regardless of how many communist members or soviet educators argued for its destruction, the family unit remained intact. The Soviet government's failure to abolish the family can be attributed to several factors. First, the state lacked the resources necessary for replacing the family with an "elaborate network of child-care centers and communal dining rooms."<sup>25</sup> Natalia Al'medingen-Tumin, in response to the state's shortcomings, concluded that:

Russia is a country of social upbringing; in practice she remains a country of family upbringing and will remain that way for many years...In the circumstances of our Russian culture this means that the large masses of our young gen-

---

cations for Families and Professionals", *Social Services Review*, No. 75, p. 198.

24 Farnsworth, B. (1980), *Aleksandra Kollontai: Socialism, Feminism, and the Bolshevik Revolution*, Stanford University Press, Stanford, pp. 148-49.

25 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 198.

erations will remain without systematic upbringing.<sup>26</sup>

Al'medingen-Tumin understood that it was far more beneficial for children to be raised by their parents than by the state, whose poorly run facilities could never replicate the nurturing and comforting setting of a child's home.

Additionally, as a result of war and revolution during the beginning of the 20th century, the state was left to deal with a devastating famine and a large number of abandoned children who were in dire need of public assistance. Unable to provide state run facilities to care for these children, in 1926 the state adopted an official policy known as *patronirovanie*, "calling fostering out orphans from children's institutions to peasant and urban households."<sup>27</sup> Furthermore, the "heavy demands of industrialization called for the stability and order that only the traditional family could provide."<sup>28</sup> Toward the end of the 1920's "the revolution went into a new 'conser-

vative' phase."<sup>29</sup> It was during this time that the Soviet government established and sought to implement the first Five-Year Plan. "Economic reasons, inherent in the Five Year Plans, and demographic reasons, due to the growing danger from Nazi Germany, made consolidation of the family imperative."<sup>30</sup>

The Soviet Union drastically altered its attitude towards family in response to their lack of resources and the rapidly changing economic and political atmosphere both inside and outside the Soviet Union. Communist members and soviet educators, who initially advocated for its destruction, conceded that it is far more beneficial to work with the family than against it.<sup>31</sup> By the mid-thirties, the Soviet government slowly began to focus their efforts toward strengthening the family. For instance, the state passed a decree on May 31, 1935, significantly altering the parental authority in the Soviet Union. The decree, which was passed in response to the rising incidents of hooliganism of children and juveniles,

---

26 Glass, B.L., Stolee, M.K. (1987), "Family Law in Soviet Russia, 1917-1945", *Journal of Marriage and Family*, No. 39, p. 894.

27 Bernstein, L. (2001), "Fostering the Next Generation of Socialists: Patronirovanie in the Fledgling Soviet Union", *Journal of Family History*, No. 26, p. 67.

28 Ibid.

---

29 Tietelbaum, S.M. (1945), "Parental Authority in the Soviet Union", *American Slavic and East European Review*, No. 4, p. 59.

30 Ibid.

31 Glass, B.L., Stolee, M.K. (1987), "Family Law in Soviet Russia, 1917-1945", *Journal of Marriage and Family*, No. 39, p. 894.



held that parents were responsible for their children's actions, and were now required to pay fines for their children's misdeeds. This decree granted parents authority over their children that had not previously existed in the Soviet Union.<sup>32</sup>

This new parental authority represents a significant turning point in soviet policy. Parents took on a role similar, although not identical, to the one they enjoyed prior to the revolution. Parents were tasked with raising their children to be truly socialist human beings, a task many communist members and soviet educators once believed them to be incapable of doing. Parents no longer posed a threat to the state. Rather, they had become a useful tool for ensuring the continued existence of true communists; a task the state was incapable of performing itself. The state soon realized

that strengthening the family was fundamental in ensuring the continued success of the Soviet Union. This emphasis on family solidarity became even more prevalent after World War II.

## Aftermath of World War II

World War II had a significant impact on the Soviet Union. Russia suffered a catastrophic number of casualties, resulting in a significant reduction in the country's population. Still suffering from a relatively high divorce rate, the government focused all its energy on implementing laws aimed at enforcing and incentivizing family solidarity.<sup>33</sup> The 1944-45 Family Law Code is one example of the state's countless efforts towards promoting family unity. "The 1944-45 decree abolished unregistered marriages as the legal equivalent to registered marriages; it was decreed that only registered marriages afforded the rights and obligations of marriage to the spouse."<sup>34</sup> Moreover, in addition to incentivizing registered marriages, the state created various obstacles to prevent individuals from obtaining a divorce.

33 Glass, B.L., Stolee, M.K. (1987), "Family Law in Soviet Russia, 1917-1945", *Journal of Marriage and Family*, No. 39, p. 899.

34 Ibid.

32 Ibid. P. 60.; It is important to note that parental authority under the Soviet Union is not equivalent to the parental authority which existed under pre-revolutionary Russian legislation. Parental authority, as legal concept, does not exist in the Soviet Union. Instead parent's ability to exercise parental rights, or authority, over their children was dependent on whether exercising such rights benefits the child. If a court determines that a parent has misused these rights, they have the authority to deprive that parent of any or all of their parental rights. Antokolskaia, M.V. (2000), "The New Aspects of Family Law", *California Western International Law Journal*, No. 31, p. 35.

These obstacles included increasing the cost of divorce and charging the courts, instead of the ZAG, with handling divorce proceedings. Before granting the divorce, lower courts were required to try and attempt to reconcile the couple. If the lower court failed in its attempt to reconcile the couple, it would then refer the case to a higher court. Even if they were able to pay the excessive fees imposed by the government and managed to get their case referred to the higher courts, couples were never guaranteed a divorce.<sup>35</sup>

Although decreasing the divorce rate was at the top of the state's to-do list, maintaining and strengthening spousal relationships was not the only item on the state's agenda. In response to the country's lagging birthrate, the state began creating even greater for child birth. Mothers were provided with significant government benefits and assistance for having children. The form of assistance or benefit a mother would receive depended on the number of children she had. Although government assistance and benefits incentivizing child birth had already existed, the new law made it possible for women, regardless of their marital status, with fewer children to enjoy the same awards previously restrict-

<sup>35</sup> Ibid.

ed to married mothers of larger families. For instance mothers of three or more children were now entitled to the same benefits and assistance that would usually be reserved for mothers of seven or more children. Additionally, "further encouragement of reproduction was provided by 'mother's medals,' which were awarded by the state to both married and unmarried women of large numbers of children."<sup>36</sup>

One of the most significant of the state's efforts in reestablishing and strengthening family solidarity is the implementation of a new inheritance law. The idea of inheriting property was greatly contested after the revolution and so its reinstatement in 1944 reflects how Soviet policy has evolved since the revolution. The idea was that the "socialist family" consisted of "mainly cost-free personal relations devoid of any material considerations."<sup>37</sup> The law stipulated that individuals were "permitted up to 10,000 rubles worth of private property to be inherited, with the possibility of greater amounts in special circumstances."<sup>38</sup> In implementing this new law, the state

<sup>36</sup> Ibid.

<sup>37</sup> Antokolskaia, M.V. (2000), "The New Aspects of Family Law", *California Western International Law Journal*, No. 31, p. 35.

<sup>38</sup> Glass, B.L., Stolee, M.K. (1987), "Family Law in Soviet Russia, 1917-1945",

hoped to provide families with a "vested interest in maintaining their relationships with one another."<sup>39</sup> These new laws, incentivizing marriage, child birth, and family solidarity and continuity represent law makers' shift from revolutionary idea of family structure and relationships to the traditional concept of the Russian family.<sup>40</sup>

These changes in Soviet family policy, which occurred during the earlier decades of the Soviet Union, are embodied in the 1969 Marriage and Family Code.<sup>41</sup> A general overview of the general principles of the 1969 Marriage and Family Code is critical in comprehending the key differences between Soviet family policy and family policy of the Russian Federation. General principles are an important component of the legal codes. "When gaps in the law exist, judges turn to the general principles contained in the first chapters of the codes as a basis for their decision."<sup>42</sup> The 1969 Marriage and Family Code emphasized the importance

of adhering to principles of "communist morality" and the welfare of the Soviet state. Parents were required to raise their children to put the collective interest above the interests of "one's own family and personal concerns."<sup>43</sup> For instance, photos of Pavel Morozov, an iconic communist figure, were hung in every school for all the children to see. Every child knew of Pavel's heroic actions, how he had turned over his father to the state when he failed to turn over all his property to the collective. Pavel's father was executed for his actions against the state. This angered the town's villagers, who sought retribution for Pavel's actions by killing him.<sup>44</sup> Pavel was a symbol which represented the state's increasing authority over its population and the grim reality that parent's had no true authority or control over their own children.

The code further emphasized the importance of unity amongst the soviet population, the collective, by discouraging the rearing of children in any fashion that would expose them to religious or ethnic traditions. The code's main objective was to eradicate such harmful traditions.<sup>45</sup> "Ethnic traditions were considered harmful because they highlighted

---

*Journal of Marriage and Family*, No. 39, p. 899.

39 Ibid.

40 Ibid.

41 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 198.

42 Ibid.

---

43 Ibid. P. 200.

44 Ibid.

45 Ibid.

differences and thus could raise conflict among people."<sup>46</sup> The ultimate goal of the Soviet state was to eliminate the endless diversity which had previously existed and instead establish one single common identity: the Soviet identity.

State principles represented a how to guide for parents to follow in rearing their children. Parents had no true authority in the Soviet family policy. A popularly consulted Russian parenting guide written by Anton Semyonovich Makarenko, a Soviet educator, successfully reflects this "limited" authority:

"Our parents are not without authority, ... but *his authority is only the reflection of social authority*. In our country the duty of a father toward his children is a particular form of his duty toward society. It is as if our society says to parents, ... "It is not at all a matter of indifference to society what kind of people (your children) will be. In handing over to you a certain measure of social authority the Soviet state demands from you correct upbringing of future citizens."<sup>47</sup>

Parents were nothing more than soviet educators, exercising the same,

<sup>46</sup> Ibid.

<sup>47</sup> Makarenko, A.S. (1967), *The Collective Family: A Handbook for Russian Parents*, Anchor Books, New York, pp. 27-28.

if not less, discretion and authority over their child's life as did their child's teachers. Parents, like teachers, are given a curriculum based on communist morality, which provides them with standards and guidelines for raising their child. Moreover, just as teachers were subject to review by their superiors, parents, too, were subject to review by teachers and other professionals. For instance, "if a parent did not follow the instructions of teachers and other professionals, they would be brought into line through various mechanisms of social control, such as peer oversight."<sup>48</sup>

"The development of parental rights after the Russian Revolution was rather contradictory."<sup>49</sup> Parents were afforded legal rights over their children; however, parents were to exercise these rights in performing their parental functions, which were thought to be mainly societal duties. Towards the fall of the USSR, the future of parental authority was looking bleak. However, the end of the Soviet Government and Russia's transition towards a full fledging de-

<sup>48</sup> Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 201.

<sup>49</sup> Antokolskaia, M.V. (2000), "The New Aspects of Family Law", *California Western International Law Journal*, No. 31, p. 36.

mocracy brought an end to government intervention and state control of child rearing. The 1996 Family Code and the Country's new emphasis on human rights represented a turning point in Russian family policy.

### **Russian Federation: A New Era of Family Rights and Restrictions**

Political changes in Russia brought about significant modifications to Russian law. Part of this comprehensive reform was the 1995 adoption of the new Russian Family Code.<sup>50</sup> "The main concepts of the 1996 Family Code illustrate the enormity of the change that has taken place in the objectives of the Russian state with regard to family life."<sup>51</sup> The 1996 Family Code demonstrates a shift from communist morality towards nonintervention of familial affairs. Where the 1969 Marriage and Family Code not only permitted, but encouraged outside intervention into the family, the new Russian Family Code prohibits the arbitrary intervention by anyone into the family. "The purpose of family legisla-

<sup>50</sup> Ibid.

<sup>51</sup> Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 202.

tion is to strengthen the family, structure family relations of mutual love and respect, mutual assistance and responsibility to the family of all its members, to ensure the inadmissibility of arbitrary interference of anyone in the affairs of the family, and to ensure the unobstructed effectuation by members of a family of their rights and the possibility of judicial defence of these rights."<sup>52</sup> The 1996 Family Code provided parents with new legal rights which, unlike those afforded to them under the 1969 Marriage and Family Code, they were permitted to exercise as they saw fit, as long as they did not conflict with the child's interests.

One of the major differences between the 1969 Marriage and Family Code and the 1996 Russian Family code was in the area of child welfare. The 1996 Family Code afforded children a significant number of rights that had not previously existed under the USSR. These new rights included a child's right to live in a family, right to legal protection, right to express opinion, and property rights. Of these new rights, the child's right to live in a family, stipulated in Article 54 of the 1996 Russian Family Code, best reflects the drastic changes which have taken place in Russian family policy

<sup>52</sup> Butler, W.E. (2009), *Russian Law*, Oxford University Press, N.Y., p. 457.



since the Russian Revolution. By the end of the revolution and the beginning of the Soviet Union, prominent communist members and soviet educators were calling for the nationalization of childrearing. Soviet policy focused on tearing the child out of their mother's arms and placing them in state run facilities. Although these plans of nationalizing childrearing were short lived, the state still retained the authority to remove children from their homes if parents were determined unfit to raise their children in accordance with communist principles. Under Article 54, a child retains the right to be raised by and live with their family. The only limitations placed on this right are based upon the child's interests. Meaning the only way in which the state can deprive a child of this right is if living with and being raised by their family conflicts with the child's best interests.<sup>53</sup> "This means that courts should not make quick decisions about depriving parents of their parental rights and removing the child from the home."

The Code also expanded several previously existing rights. Article 52, of the 1969 Marriage and Family Code,

---

53 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 206.

held that parental rights were limited in that they could not be exercised if they conflict with the child's interests.<sup>54</sup> However, the 1969 Code fails to elaborate any further on this right. Unlike its predecessor, article 65 of the 1996 Russian Family Code, provides, in addition to the limitations placed on parental rights which conflict with the child's interests, the objective of parental care and the various ways in which parental rights will not be recognized under this article. Additionally, the 1996 Family Code provides that, upon separation or divorce, conflicts concerning the way in which a child is raised will be settled by the court. The article lists the factors a court must take into account when determining how to resolve such disputes. These factors include the child's relationship with each parent, the child's age, the parent's relationship with each other and each parent's moral and characteristics.<sup>55</sup> Family policy, under the Russian Federation, was focused on maintaining the family structure. The 1996 Family Code permits the deprivation of parental rights in situations where such rights conflict with the child's interests; however, the state intervention only occurs in severe or obvious cases of child abuse. More-

---

54 Ibid. P. 207.

55 Ibid.

over, when intervention is appropriate it is aimed at "correcting the problem rather than institutional placement."<sup>56</sup>

Parental authority under the Russian Federation resembles an amalgamation of parental rights under both pre-revolutionary and post-revolutionary Russia. It is not as unlimited as the authority afforded parents under the Russian Empire; however, it is not as limited as the authority afforded to them under the USSR either. The 1996 Family Code brought about a plethora of legal rights for both parent and child; however, these rights were not limitless. A significant limit placed on parental rights is the state's ability to terminate these rights. The termination of parental rights represents the most used form of punishment in protecting children's rights.<sup>57</sup> Authority for the deprivation of parenthood can be found under Article 69 of the 1996 Russian Family Code. Article 69 states that a parent may be deprived of their parenthood if they avoid their parent duties, including failing to pay alimony, if they abandon the child, refuse to take them home from a list of various institutions, abuse their parental rights,

physically, mentally or sexually abuse their child, suffer from a severe drug or alcohol addiction, or have committed a premeditated crime against either their spouse or their child.<sup>58</sup>

In 2011, former President Dmitry Medvedev met with the Presidential Commissioner for Children's Rights Pavel Astakhov, to discuss the role parental rights terminations play in protecting children's right in the Russian Federation. During the meeting, Medvedev questioned the need for such harsh and tragic sanctions, noting the importance of parental rights and how depriving parents of such rights could have a devastating impact on the child.<sup>59</sup> In response, Astakhov assured Medvedev that such sanctions were indeed necessary, given the nature of child abuse cases in Russia. Astakhov explained that, in severe cases, termination of parental rights proved to be the only effective measure in protecting the child from future harm. As the Children's Ombudsman, Astakhov has encountered countless terrible and tragic cases. He states, "I saw a two-year-old

<sup>56</sup> Ibid P. 209.

<sup>57</sup> "Library Of Congress. Children's Rights: Russian Federation", available at: [www.loc.gov/law/help/child-rights/russia.php](http://www.loc.gov/law/help/child-rights/russia.php)

<sup>58</sup> Butler, W.E. (2006), *Russia & The Republics: Legal Materials (looseleaf service)*, Juris Publishing, Inc., Huntington, Article 69.

<sup>59</sup> "Kremlin. Working meeting with Presidential Commissioner for Children's Rights Pavel Astakhov", available at: [www.eng.kremlin.ru/news/2026](http://www.eng.kremlin.ru/news/2026)

girl in Khabarovsk who was returned to her mother three times, the authorities did their best to keep the family together, they tried to treat the mother with understanding, gave her back the custody of the child, until in the end she broke her daughter's skull and now this two-year-old girl needs major surgery."<sup>60</sup>

Astakhov further argues that the 1996 Russian Family Code is not specific enough, and provides little guidance to courts in determining when orders to terminate parental rights are appropriate. There is too high a price to pay when courts are unable to apply the law properly. Medvedev then touched upon the application of restrictions on parental rights, stating that "perhaps it should be used more widely than terminating parental rights."<sup>61</sup> Russian legislation, unlike USSR legislation, provides for such remedies when they are necessary. Both men agree that this form of punishment is more publically acceptable; it provides an effective measure in protecting children's rights which does not result in the complete deprivation of parental rights.

The conversation between Medvedev and Astakhov reflects the grim realities of trying to balance state intervention and protecting children rights

60 Ibid.

61 Ibid.

in a country desperately trying to break away from the totalitarian habits of their Soviet predecessors. Lack of resources poses a significant obstacle for the state in both preventing the arbitrary intervention of the family and ensuring the rights of the child are protected. Under the USSR, authorities were able to exercise a significant amount of discretion in determining whether parents were inadequately performing their parental duties and if they were, whether placing the child in an institution was appropriate. Under the 1996 Family Code authorities are required, by law, to preserve family unity and to correct the problem rather than turn to institutional placement.

However, the government does not have the resources to train authorities to understand their new role under the 1996 Family Code. For instance, if a parent is charged with any crime pertaining to the neglect or abuse of their child, then local guardian and adoption committees become responsible for that child's well-being. "The committee is now required by law to find any possible way to keep the child in the home rather than recommend to the court that the parents lose custody of the child."<sup>62</sup>

62 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 216.

Although, in theory, this presents an effective tool for ensuring that the family remain intact, in reality committee members are ill equipped to handle such situations and are unable to effectively and efficiently perform their duties. The language of 1996 Family Code may call for specialized intervention; however, Russia does not have the resources for the implementation of such services. In order to function properly, committees tasked with repairing family relationships and providing solutions for family conflicts require specialized training in areas of psychology and parenting. The government simply does not have resources to provide for such training in helping committees understand their new role. "As a consequence, guardian and adoption committees in many areas simply did what they did before the new law: they remove maltreated children from their homes and place them in orphanages."<sup>63</sup>

The language of 1996 Family Code is useless if the government is unable to ensure that authorities adhere to its provisions. This inability to implement the new provisions of the 1996 Family Code and the legal rights they provide is one of the central reasons why the Russian population currently opposes the state's plans to implement a new

<sup>63</sup> Ibid.

juvenile justice system. Many fear that a more stringent juvenile justice system, especially one modeled after existing western systems, will result in the kind of government intervention the legislature hoped the 1996 Family Code would eradicate.

### **International Obligations of the Russian Federation. International Law & the Russian Constitution**

The collapse of the Soviet Union marked the birth of Russia as an independent nation. The 1993 Russian Constitution guaranteed to the Russian population civil and human rights. In addition to these rights, the 1993 Constitution places a new emphasis on the generally-recognized principles and norms of international law and international treaties.

The "Federal Law of the Russian Federation on International Treaties of the Russian Federation" elaborates on the role of international treaties in the Russian legal system. The documents preamble illustrates just how critical it is that Russia fulfill its obligations under its various international treaties.<sup>64</sup> Inter-

<sup>64</sup> Butler, W.E. (2009), *Russian Public Law*. 2nd ed., Oxford University Press, N.Y., p. 59.

national treaties are an integral part of an international legal system; compliance is a critical component of ensuring order and stability under such a system. Furthermore, failure to comply with such obligations can have a devastating impact on Russia's relations with various foreign nations.

In addition to fulfilling its obligations under international treaties, Russia has provided, in its Constitution that "generally-recognized principles and norms of international law" are an integral part of the Russian legal system. "This is a formulation without precedent in Imperial Russian and Soviet law and legal practice insofar it, first, accepts generally-recognized principles and norms of international law as a part of Russian law and, second, places such norms and principles side by side with norms of municipal Russian law."<sup>65</sup> In the "Decree on the Application by Courts of General Jurisdiction of the Generally-Recognized Principles and Norms of International Law and International Treaties of the Russian Federation," the Plenum of the Supreme Court provided guidance to lower courts in applying "generally-recognized principles and norms of international law."<sup>66</sup> During the cold war, the Soviet

Union's vied with the United States for control and political influence over various territories, resulting in various proxy wars, treaties and military alliances. The Decree's preamble reflects Russia's new attitude towards international relations; conferring a new importance upon general-recognized norms and principles of international law expands and strengthens relations with various foreign nations and non-governmental organizations.<sup>67</sup>

Additionally, the Court expands upon the notion of generally-recognized norms and principles of international law by providing:

By generally-recognized principles of international law should be understood the basic imperative norms of international law adopted and recognized by the international community of States as a whole, deviation from which is inadmissible.<sup>68</sup>

The court further elaborates on its definition by providing that examples of such imperative norms may be found in documents of the "United Nations and its specialized agencies".<sup>69</sup> These instructions provided by the Plenum of the Supreme Court are extremely broad and requires courts of lower jurisdiction

---

67 Ibid.

68 Ibid.

69 Ibid.

65 Ibid. P. 112.

66 Ibid. P. 59.



to take into account the countless documents and treaties released by the United Nations and its myriad of specialized agencies. Courts are required to take into account various international treaties and resolutions, many of which are modeled after western concepts of human rights, child care, and justice, for example.

### **The Convention on the Rights of the Child**

In 1989 the world's leaders came together to establish a convention which focused specifically on the special needs of the child. It was evident that children, under the age of the eighteen, required special protections that adults did not. The Convention on the Rights of the Child (CRC) is a legally binding international instrument which requires participating member states to protect full range of children's rights – civil, social, economic, political and social rights.<sup>70</sup> The Russian Federation signed and ratified the Convention in 1990. Under the 1993 Constitution, the CRC has a direct and express operation in the Russian legal system; the 1996 Russian Family Code was modeled after the CRC, "which it-

self did not define a number of important terms."<sup>71</sup> This failure to provide either concrete definitions for important key terms or guide lines in determining how to define them represents a significant obstacle in successfully implementing the CRC in Russia. Furthermore, given that the CRC represents a critical component of the country's National Children's Strategy for 2012-2017, it is likely that the Government, in its effort to implement the new National Children's Strategy, will face this same obstacle.

The CRC does not define a significant number of key terms. "This lack of clarity, however, was based on the recognition by the ratifying countries that the definition of terms such as 'abuse,' and 'neglect,' 'best interest of the child,' and 'dignity' will necessarily vary across countries."<sup>72</sup> Russia has yet to define such terms, and has provided little guidance to courts and government officials. It is critical that the Russian Federation provide such guidance through federal regulations in order to prevent teachers, school administrators, and other professionals who work with families and their children, from inappropriately interpret-

---

70 "Convention on the Rights of the Child, 20 November 1989", available at: [www.unhcr.org/refworld/docid/3ae6b38f0.html](http://www.unhcr.org/refworld/docid/3ae6b38f0.html)

71 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 217.

72 Ibid. P. 217.

ing these terms. Failure to provide narrow definitions or guidelines concerning the implementation of the provisions of the CRC afford government officials and courts unlimited discretion in their determinations, allowing for child protection to come at the cost of parental rights.

### **Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities**

The Russian Federation became a member of the Council of Europe on February 28, 1996. The aim of the Council of Europe is to achieve greater unity among member states, in particular by promoting the adoption of common rules in legal matters. In October of 2011, the European Committee on Legal Co-Operation (CDCJ) of the Council of Europe discussed a draft recommendation, submitted by the Committee of Ministers of the Council of Europe, on the rights and legal status of children and parental responsibilities. The draft recommendation, submitted by the Committee of Ministers, is a revised version of the initial draft recommendation drawn up by the Committee of Experts on Family Law of the Council of Europe. Many

States, including the Russian Federation, have taken issue with the initial draft's provisions and the possible impact they may have on the moral foundation and structure of the traditional family.

Edict 761 of 1 June 2012 directs officials, tasked with drafting the new National Children's Strategy, to model federal regulations aimed at achieving child friendly justice after existing international standards of children's rights protection.<sup>73</sup> Furthermore, Article 6 of the 1996 Family Code, "Family Legislation and the Norms of International Law," stipulates that if any of the provisions of the Code are in conflict with regulations set forth in international treaties of the Russian Federation, international regulations apply.<sup>74</sup> Consequently, if the Council of Europe was to adopt the proposed initial draft recommendation, the draft's provisions would have a significantly impacted both the new National Children's Strategy as well as the Russian legal system.

---

73 "European Network of Ombudspersons for Children. Unofficial Translation of National Children's Strategy for 2012-2017 (2012)", available at: [www.crin.org/docs/Summary of Russian National Children's Strategy 2012-2017.docx](http://www.crin.org/docs/Summary_of_Russian_National_Children's_Strategy_2012-2017.docx)

74 Butler, W.E. (2009), *Russian Public Law*. 2nd ed., Oxford University Press, N.Y., Article 6.

The initial draft contains several highly controversial articles, whose provisions not only contradict the natural foundation and morals of the traditional Russian family, but threaten their very existence as well. The purpose of the initial draft recommendation was to create soft-law aimed at promoting the moral acceptability among member states of certain controversial concepts, such as the recognition of the parental responsibilities and legal rights of same-sex couples. These articles aim to push member states' to both recognize a more modern family structure and to provide members of these families with legal rights and parental responsibilities.

Articles 9, 10, 11, 12, and 17, which focus on expanding parental rights and responsibilities outside the traditional family structure, are among the most controversial principles of the initial draft recommendation. Article 9, "Presumption of paternal affiliation," stipulates that "a child conceived during the marriage of his or her mother should be presumed to be the child of the mother's husband."<sup>75</sup> This article deviates greatly

from traditional notions of family structure which have existed throughout Russian history and continue to exist in Russian society today. Unlike traditional principles of Russian family structure, where child rearing represented an exclusive right held by the biological parent, the presumption of paternal affiliation standard diminishes the role biology plays in determining parental rights. The presumption shifts the focus of paternity from the parent's biological relationship with the child to other factors, which include the parent's emotional relationship with the child, the length of that relationship, and the parent's relationship with the child's mother. This presumption bestows upon non-biological parents a legal status which they had not previously enjoyed. Article 10, "Time limits for the separation of the presumption of paternal affiliation," further expands that right by providing that individuals can obtain such rights and responsibilities even if the child was conceived at the end of the marriage, if that conception occurred within a time limit specified by national law<sup>76</sup>. It is important to note that neither of these articles require that the

---

75 "Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities of the Committee of Experts in Family Law, CJ-FA-GT3 2. rev. 4 (2010), available at: [---

\[GT3%20\\\_2010\\\_%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf\]\(http://www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-GT3%20\_2010\_%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf\).](http://www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-</a></p></div><div data-bbox=)

76 Ibid. Art. 10, Para. 1.

husband take part in the child's conception to obtain legal parental rights and responsibilities. However, the individual is required, under articles 9 and 10, to be the husband of the child's mother.

Articles 11 and 12 extend the presumption of paternal affiliation to registered partnerships and cohabiting different-sex couples.<sup>77</sup> Under the Soviet Union, Russia employed various campaigns focused on promoting marriage and the stability of the family unit. The structure of the traditional Russian family has been and continues to be a critical component of Russian society. It has provided the Russian population, during periods of turmoil and rapid industrialization, with stability and order that only such a structure can provide. Legal rights play a pivotal role in incentivizing marriage and promoting the traditional family structure. In expanding these legal rights, the draft recommendation is creating a favorable legal landscape for individuals to further promote various policies aimed at breaking down the walls of the traditional family unit.

Article 17, "Medically-assisted procreation," is the most controversial of these principles in that, it promotes the legal recognition of same-sex partners. Article 17 § 3 provides that, where such

<sup>77</sup> Ibid. Art. 11-12.

unions are permitted, women who are the spouse or registered partner of the mother of a child conceived through medically assisted procreation are deemed the legal parent of that child.<sup>78</sup> Additionally, such rights may be extended to cohabiting same-sex couples upon the receipt of written consent from both partners prior to treatment.<sup>79</sup> The initial draft's authors have argued that this document does not legally bind states to recognize same-sex unions or surrogacy; however, in adopting such international documents which promote the acceptance of such unions and medical procedures, they are providing a foundation upon which future generations can build and expand in order to make such policies legally binding.

Although revisions have been made to the initial draft, its provisions provide useful insight into the current state of international law. International law has fallen victim to various interests groups, who manipulate authoritative international law making bodies into recognizing new norms and principles. These groups, under the guise of human rights, forward their own interests in establishing new legal rights. International organizations should keep in mind generally recognized norms and principles of in-

<sup>78</sup> Ibid. Art. 17, Para. 3.

<sup>79</sup> Ibid.

ternational law and international treaties when drafting documents, for these concepts are critical for maintaining stability and order in international law. However, international organizations should not promote such norms and principles if they infringe upon a nation's ability to protect the interests of its sovereign people.

### **The Impact of International Obligations on the Russian Population. The Russian Opposition**

Russia is a unique nation, both geographically and culturally. "Russians love to discuss the "Russian mentality" – the Russian soul – and to talk about Russian traditions."<sup>80</sup>A significant portion of the Russian population has risen in opposition to the implementation of Western ideas and institutional arrangements in the Russian Federation. Russian non-governmental organizations (NGO) and the Russian intelligentsia have made efforts in preventing harmful policies which threaten the core principles of Russian culture. Both groups have released

documents highlighting the devastating consequences of implementing universal norms and standards in Russian law.

In the "Resolution on the 'Draft Recommendation on the rights and legal status of children and parental responsibilities' of the Committee of Ministers of the Council of Europe", "80 Russian and 10 Ukrainian NGOs adopted a resolution that requested the Council of Europe respect the natural and traditional family."<sup>81</sup>The resolution focused on the initial draft recommendation, prior to its revision by the European Committee on Legal Co-Operation. This strong opposition towards adopting the initial draft recommendation reflects the important role the traditional family plays in Russian society. The opposing resolution submitted by the NGOs demonstrates the dangers which exist in placing such great emphasis in Russian law on generally recognized norms and principles of international law and international treaties. The authors of the opposing resolution argue that, in recent years, international organizations tasked with creating policies and resolutions aimed

---

80 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 218.

---

81 Puppinc, G., "Council of Europe to Impose a New Definition of Family, Parents and Children?", *European Center for Law and Justice*, available at: <http://eclj.org/Releases/Read.aspx?GUID=d298cd04-c82b-4dfb-a2b7-a7adf455c27b>.



at promoting human rights, have begun to manipulate the term "human rights" to forward their own agendas and establish new rights, not previously recognized under international law.<sup>82</sup> They further argue that it is evident, from the activities of several smaller groups, that these groups have misrepresented their own ideals as being those of the whole civil society; disregarding the fact that "their interests contradict the genuine interests of the sovereign peoples."<sup>83</sup>

These small groups pose one of the greatest threats to the structure and morals of the traditional Russian family. They utilize resources of influential international organizations, such as the European Council and the United Nations, to create international resolutions to advance their own agendas aimed at destroying the traditional family.<sup>84</sup> As previously noted, the Plenum of the Supreme Court of the Russian Federation held that documents of the United Na-

tions and its specialized agencies constitute "generally recognized norms and principles of international law." Furthermore, the court noted that such documents are an integral part of the Russian legal system. In influencing the substantive drafting procedures of various authoritative international organizations, these small groups are able to influence the substantive drafting procedures of federal regulations of individual sovereign nations, such as the Russian Federation. "Using opaque and far from genuinely democratic procedures, and making their true designs with the eloquent words, they attempt to induce authoritative international organizations into approving documents that worsen the condition of the natural family in the various states, leading to the family's (and by extension the states') gradual destruction."<sup>85</sup>

The Russian intelligentsia has taken steps in protecting the Russian identity as well. In an open letter, it has "urged the government to drop plans to introduce juvenile justice, which, they believe, may ruin the traditional Russian family and hurt the country's lagging birth rate."<sup>86</sup> The letter, which reflects the

85 Ibid.

86 Stenin, A., "Activists Oppose Big Brother Snooping on Families", *RT*, available at: <http://rt.com/politics/juvenile-justice-family-rights-554/>.

82 "Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities of the Committee of Experts in Family Law, CJ-FA-GT3 2. rev. 4 (2010), available at: [www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-GT3%20\\_2010\\_%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-GT3%20_2010_%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf).

83 Ibid. Para. 6.

84 Ibid. Para. 7.

author's concerns over implementation of a new juvenile justice system, emphasizes the detrimental impact the system will have on Russian culture. The authors argue that the government's new policies are a reflection of Western ideas and institutional arrangements which have no place in Russian society.

First, the new system provides for stricter state control over Russian families. It has been a few decades since Russia denounced its totalitarian ways and moved on to a more democratic attitude; however, certain aspects of Soviet policy continue to exist in the Russian Federation. The country, due to a lack of resources, has been unable to properly train government officials and other professionals, such as teachers and health-care providers, to "understand respect for the rights of parents and children and how that respect is demonstrated in everyday practice."<sup>87</sup> As a result, state officials, in their effort to protect children's rights, focus on institutional placement rather than providing solutions to the issues at hand.<sup>88</sup> The authors fear that the increased state control will result in harsh and impudent interference into the lives of Russian families.

---

87 Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, p. 213.

88 Ibid. P. 209.

Second, certain aspects of Russian society are contradictory to key provisions contained in a Western model of child rights protection. As mentioned previously, the CRC left several key terms undefined based on the understanding that definitions for these terms will vary from country to country. This lack of clarity reflects the inappropriate nature of implementing a system which applies Western concepts in a non-Western society. Russian childrearing practices are just as unique as its culture. Russians believe certain forms of discipline and punishment necessary for childrearing; however, under the new system these forms of discipline and punishment constitute violence. In criminalizing traditional practices, the new system is, ultimately, criminalizing Russian childrearing. Furthermore, the system promotes "whistle-blowing," a concept considered to be immoral in Russian society. Children are encouraged to speak out against their parents, which will detrimentally impact trust within the family. Moreover, such "snitching" will only further hamper normal traditional childrearing practices.

Finally, the new system promotes poverty as a basis for the termination of parental rights. The authors note that punishing parents for their economic situation is contrary to the culture and

morals of the Russian population.<sup>89</sup> As a result, "[t]he new regulations would hit normal families rather than '*monster-parents*' who have already been deprived of parental rights."<sup>90</sup> Implementing such a system will only result in an increase in orphans, the deprivation of parental rights, and the degradation of the Russian identity.

### Conclusion

The Plenum of the Supreme Court of the Russian Federation held that examples of generally recognized norms and principles may be found in the documents of authoritative international organizations such as the Council of Europe, the United Nations and its specialized agencies. If the lower courts of the Russian Federation follow these guidelines, they will find themselves applying norms and principles generally recognized, not by international law, but by foreign states and various interest groups. The Russian Federation must take into account the vulnerability of international documents and their susceptibility to various outside influences. It is critical that the

Russian government keep in mind these outside influences in their approach towards applying norms and principles of international law into state legislation. Furthermore, the state must take into account the Russian culture in restructuring Russian family policy.

Child rights protection is a pressing matter in the Russian Federation; however, the state should focus its efforts on implementing a system which focuses on protecting children's rights through strengthening the Russian family. In order to ensure an effective and efficient system which promotes both the protection of children's rights as well as those of their parents, the state must emphasize the stability and order of the intact family. The new system's provisions should reflect the country's present social, economic, and political conditions; keeping in mind Russia's lack of resources, susceptibility to corruption and harmful and impudent government control, poverty rates, and traditional notions of child rearing. The system's objective should be to provide a solution to child right's violations rather than an avenue through which officials can impose harsh punishments on parents. Moreover, the state should focus on creating a system tailored to fit Russian society, rather than tailoring Russian society to fit into an existing foreign model of child rights protection.

89 Stenin, A., "Activists Oppose Big Brother Snooping on Families", *RT*, available at: <http://rt.com/politics/juvenile-justice-family-rights-554/>.

90 Ibid.

## References

1. Antokolskaia, M.V. (2000), "The New Aspects of Family Law", *California Western International Law Journal*, No. 31, pp. 35-38.
2. Bernstein, L. (2001), "Fostering the Next Generation of Socialists: Patronirovanie in the Fledgling Soviet Union", *Journal of Family History*, No. 26, pp. 66-89.
3. Butler, A.C., Kuraeva, L.G. (2001), "Russian Family Policy in Transition: Implications for Families and Professionals", *Social Services Review*, No. 75, pp. 195-224.
4. Butler, W.E. (2006), *Russia & The Republics: Legal Materials (looseleaf service)*, Juris Publishing, Inc., Huntington, 6434 p.
5. Butler, W.E. (2009), *Russian Law*, Oxford University Press, N.Y., 824 p.
6. Butler, W.E. (2009), *Russian Public Law. 2nd ed.*, Oxford University Press, N.Y., 860 p.
7. "Convention on the Rights of the Child, 20 November 1989", available at: [www.unhcr.org/refworld/docid/3ae6b38f0.html](http://www.unhcr.org/refworld/docid/3ae6b38f0.html).
8. Cornwell, N., Christian, N. (1998), *Reference Guide To Russian Literature*, Fitzroy Dearborn Publishers, Chicago, 972 p.
9. "Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities of the Committee of Experts in Family Law, CJ-FA-GT3 2. rev. 4 (2010), available at: [www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-GT3%20\\_2010\\_%202%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-GT3%20_2010_%202%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf).
10. "European Network of Ombudspersons for Children. Unofficial Translation of National Children's Strategy for 2012-2017 (2012)", available at: [www.crin.org/docs/Summary of Russian National Children's Strategy 2012-2017.docx](http://www.crin.org/docs/Summary%20of%20Russian%20National%20Children's%20Strategy%202012-2017.docx)
11. Farnsworth, B. (1980), *Aleksandra Kollontai: Socialism, Feminism, and the Bolshevik Revolution*, Stanford University Press, Stanford, 432 p.
12. Glass, B.L., Stolee, M.K. (1987), "Family Law in Soviet Russia, 1917-1945", *Journal of Marriage and Family*, No. 39, pp. 893-902.
13. "Kremlin. Working meeting with Presidential Commissioner for Children's Rights Pavel Astakhov", available at: [www.eng.kremlin.ru/news/2026](http://www.eng.kremlin.ru/news/2026)
14. "Library Of Congress. Children's Rights: Russian Federation", available at: [www.loc.gov/law/help/child-rights/russia.php](http://www.loc.gov/law/help/child-rights/russia.php).

15. Makarenko, A.S. (1967), *The Collective Family: A Handbook for Russian Parents*, Anchor Books, New York, 368 p.
16. Puppinc, G., "Council of Europe to Impose a New Definition of Family, Parents and Children?", *European Center for Law and Justice*, available at: <http://eclj.org/Releases/Read.aspx?GUID=d298cd04-c82b-4dfb-a2b7-a7adf455c27b>.
17. "Resolution on the 'Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities' of the Committee of Ministers of the Council of Europe", available at: <http://eclj.org/PDF/Draft-recommendation-rights-legal-status-children-CDCJ-2011-15.pdf>.
18. Stenin, A., "Activists Oppose Big Brother Snooping on Families", *RT*, available at: <http://rt.com/politics/juvenile-justice-family-rights-554/>.
19. Tian-Shanskaia, O.S., Ransel, D. (1993), *Village Life in Late Tsarist Russia*, Indiana University Press, Bloomington, 208 p.
20. Tietelbaum, S.M. (1945), "Parental Authority in the Soviet Union", *American Slavic and East European Review*, No. 4, pp. 54-69.

## **Общепризнанные нормы и принципы международного права: наибольшая угроза для традиционной русской семьи**

**Рабинович Марселла**

Кандидат юридических наук,

Университет штата Пенсильвания, Школа права Дикинсон,  
16802, США, Пенсильвания, Университи-Парк, Корпус Льюиса Каца;  
e-mail: MGR150@psu.edu

### **Аннотация**

В данной статье исследуются возможные последствия, которые могут отразиться на традиционной русской семье при реализации общепризнанных норм и принципов международного права в правовой системе России. Тща-



тельное изучение эволюции традиционной русской семьи со времени падения Российской империи до возникновения Российской Федерации делает очевидным, что семья сыграла и продолжает играть ключевую роль в русском обществе. Тем не менее Россия продолжает принимать меры по внедрению новых форм правосудия по делам несовершеннолетних, пагубно влияющих на сохранение традиционной русской семьи. Конституция России 1993 года признаёт общепризнанные нормы и принципы международного права и международных договоров, имеющих важную роль в правовой системе России. Последние изменения на международной правовой арене привели к внедрению новой политики в отношении общепризнанных норм и принципов международного права. Эти изменения не приняли во внимание уникальный характер русской культуры, и их реализация будет оказывать пагубное воздействие на традиционную русскую семью.

#### **Ключевые слова**

Конвенция о правах ребёнка, международное право, Россия, родительская власть России, семейная политика России, российская правовая система.

#### **Библиография**

1. Antokolskaia M.V. The New Aspects of Family Law // California Western International Law Journal. – 2000. – No. 31. – Pp. 35-38.
2. Bernstein L. Fostering the Next Generation of Socialists: Patronirovanie in the Fledgling Soviet Union // Journal of Family History. – 2001. – No. 26. – Pp. 66-89.
3. Butler A.C., Kuraeva L.G. Russian Family Policy in Transition: Implications for Families and Professionals // Social Services Review. – 2001. – No. 75. – Pp. 195-224.
4. Butler W.E. Russia & The Republics: Legal Materials (looseleaf service). – Huntington: Juris Publishing, Inc., 2006. – 6434 p.
5. Butler W.E. Russian Law. – N.Y.: Oxford University Press, 2009. – 824 p.
6. Butler W.E. Russian Public Law. 2nd ed. – N.Y.: Oxford University Press, 2009. – 860 p.
7. Convention on the Rights of the Child, 20 November 1989. Available at: [www.unhcr.org/refworld/docid/3ae6b38f0.html](http://www.unhcr.org/refworld/docid/3ae6b38f0.html).

8. Cornwell N., Christian N. Reference Guide To Russian Literature. – Chicago: Fitzroy Dearborn Publishers, 1998. – 972 p.
9. Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities of the Committee of Experts in Family Law, CJ-FA-GT3 2. rev. 4 (2010). Available at: [www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-GT3%20\\_2010\\_%202%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/FAMILY/CJ-FA-GT3%20_2010_%202%20Rev%203E%20-%20draft%20instrument%20October%20meeting%20LA.pdf).
10. European Network of Ombudspersons for Children. Unofficial Translation of National Children's Strategy for 2012-2017 (2012). Available at: [www.crin.org/docs/Summary of Russian National Children's Strategy 2012-2017.docx](http://www.crin.org/docs/Summary of Russian National Children's Strategy 2012-2017.docx)
11. Farnsworth B. Aleksandra Kollontai: Socialism, Feminism, and the Bolshevik Revolution. – Stanford: Stanford University Press, 1980. – 432 p.
12. Glass B.L., Stolee M.K. Family Law in Soviet Russia, 1917-1945 // Journal of Marriage and Family. – 1987. – No. 39. – Pp. 893-902.
13. Kremlin. Working meeting with Presidential Commissioner for Children's Rights Pavel Astakhov. Available at: [www.eng.kremlin.ru/news/2026](http://www.eng.kremlin.ru/news/2026)
14. Library Of Congress. Children's Rights: Russian Federation. Available at: [www.loc.gov/law/help/child-rights/russia.php](http://www.loc.gov/law/help/child-rights/russia.php).
15. Makarenko A.S. The Collective Family: A Handbook for Russian Parents. – New York: Anchor Books, 1967. – 368 p.
16. Puppinck G. Council of Europe to Impose a New Definition of Family, Parents and Children? // European Center for Law and Justice. Available at: <http://eclj.org/Releases/Read.aspx?GUID=d298cd04-c82b-4dfb-a2b7-a7adf455c27b>.
17. Resolution on the 'Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities' of the Committee of Ministers of the Council of Europe. Available at: <http://eclj.org/PDF/Draft-recommendation-rights-legal-status-children-CDCJ-2011-15.pdf>.
18. Stenin A. Activists Oppose Big Brother Snooping on Families // RT. Available at: <http://rt.com/politics/juvenile-justice-family-rights-554/>.
19. Tian-Shanskaia O.S., Ransel D. Villiage Life in Late Tsarist Russia. – Bloomington: Indiana University Press, 1993. – 208 p.
20. Tietelbaum S.M. Parental Authority in the Soviet Union // American Slavic and East European Review. – 1945. – No. 4. – Pp. 54-69.