Children in Post-Communist Russia: Some Aspects of the Child’s Right to Protection

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Abstract
The main focus of this paper is the rights of children in post-communist Russia. With this in view I give a brief overview of child’s rights under the communist regime and after the Soviet Union breakdown. Further, I will examine in more detail the current situation with children’s rights and, particularly, the child’s right to protection. To make it more illustrative, after giving a legal framework, I will address the most acute and pressing problems in the field.

Keywords
rights of children; protection; Russia; vagrancy; institutionalization

Children’s Rights Protection in the USSR

The Code of Marriage and Family of 1969 defined protection of interests of mother and child as one of the key goals of the State politics. In spite of the formal separation of child’s interests from mother’s interests, protection of children's rights was traditionally understood as a consistent part of the protection of motherhood and principally took a form of various social allowances and privileges granted to a woman with children. In such an exclusively paternalistic situation there was practically no place left for the child to have his or her own rights and interests (Khazova, 1996: 213). No one could even imagine that the interests of a mother and those of her children could conflict or that the child could have his or her own rights independent on the parents’ rights. Based on this presumption the law authorised a child’s parents to represent their interests and to judge what falls within this interest. The child did not have a right to voice his/her own opinion on the matter and did not have procedural rights to apply to a judicial body to challenge the parent’s decision.

It was the view of the Soviet state that the upbringing of children should be in conformity with Soviet ideology in the state care institutions (Figes, 2007). “One way or the other we will force mothers to agree with the nationalization of children,” the Bolshevik A.G. Badayev said (Nechayeva, 2000: 89). This aim was not unachievable, bearing in mind that every person was obliged to work full-time...
under Soviet law and parents had to give their children to day care institutions from the age of one year or even earlier. In this way an average child in the overwhelming majority of families would start his/her education at the age of one year in the nursery, then continue to a kindergarten and, at the age of 7 years – to school, where after regular classes (from 9 a.m. till 1 p.m.) many children had to stay for “prolonged hours” (until 6 p.m.) in order not to be left at home without family supervision. By the time a child reached the age of 17 and finished school, he/she had limited contacts with parents and was largely influenced by the state/group values.

Repercussions of the “state child” idea still exist, with a consequence that a system of assistance/support measures to families at risk does not operate in Russia and children facing neglect in family are usually taken into the state care.

Another specific feature of child protection in communist Russia was an obligation of the authorities to follow not only the law but also Communist morality (“socialist beliefs”) while considering cases. For example judges had to “decide on cases on the basis of law in accordance with socialist legal consciousness” (Art. 7 of the RSFSR Civil Procedure Code (1964)).

Such a provision, though it undermined the rule of law principle, cannot be viewed as an unambiguously negative for the child’s interests since it allowed a decision to be taken in a child’s best interests even if this was against the law in force at the material time. For example “local councils” (mestkomy) – workers’ grievance commissions that existed in every Soviet factory or institution applied this rule in the child’s best interests to force a divorced father to support his children, or, if the child’s parents were not married, even convincing a child’s father to marry a child’s mother, to provide a child with a “proper” family.

Despite all the shortcomings of the Soviet regime, it did pay a lot of attention to protection of children and their upbringing, though, admittedly, it was strongly ideology-driven. The following period of perestroika and development of market economy rejected Communist morality – the only one available in Soviet society – but did not substitute anything instead. Moreover, in the beginning of 1990s the state fully excluded child’s interests from its politics, and thus aggravated the situation of children significantly.

The Key Legal Changes after the End of the Communist Regime

The end of the Communist era was marked by a change of perception of the state’s role in the child’s life on a political level. Russia ratified the UN Convention on the Rights of the Child in 1990 and thus undertook an obligation to respect

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and observe globally-acknowledged children's rights. During the following years legislators have undertaken significant efforts to bring the Russian legislation directly or indirectly concerning the rights of the child and their protection into compliance with the UN Convention.

The Constitution of the Russian Federation adopted in 1993 contains several articles on human rights protection. Article 2 provides for a general obligation of the state to “recognize, observe and protect rights and freedoms of man and citizen”. Article 38 directly relates to child's rights: “Maternity and childhood, and the family shall be protected by the State.”

Other key documents in this field are the Family Code of the Russian Federation (1995) and the Federal Law “On Basic Guarantees of the Rights of the Child in the Russian Federation” (1998). Child protection policy is also affected by the implementation of the relevant provisions of such legislative acts as the Civil Code, the Labour Code, the Housing Code, the Criminal Code and many other laws both on federal and regional levels.

The Family Code (1995) is the first Russian legislative act which regulates child's rights in detail. A separate chapter “Rights of minor children” includes such rights as the right to live and be brought up in a family, the right to express his/her opinion, the right to be protected, including against abuse and neglect, property rights as well as others. This way the child’s capacity to hold and realize rights, in particular a right to access to a court at the age of 14 years *inter alia* against his/her parents was acknowledged by Russia.

The Law of 1998 “On Basic Guarantees of the Rights of the Child in the Russian Federation” was aimed at underlining the obligations of the state to secure the realization of children's rights. However, it represents in itself just a duplication of the text of the UN Convention on the Rights of the Child. It does not provide for any mechanism for its implementation, or any sanctions for authorities which do not implement it, and thus it is of a purely declaratory nature.

The other law relating to the recognition of a child's rights – the Law “On additional guarantees on social protection of orphans and children, deprived of parental care” (1996) – sets out the principle, content and measures of the state support to these categories of children. This law concerns the forms of support and sets out a budget for its implementation.

However, in spite of the declared adherence of Russia to the children's rights concept, provisions of the Russian laws remain mostly declarations, are not implemented and there is no mechanism that would make the existing legal provisions work. Lack of general and consistent approach to children’s rights have been

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noted by Russian academics back in the middle of the 90s (Khazova, 1996: 211) when no comprehensive legislation on children’s rights was yet enacted. Adoption of the Russian Family Code and Law “On Basic Guarantees of the Rights of the Child” did not lead to any dramatic improvements. In spite of the existence of numerous laws regulating child’s rights and interests, there is still no comprehensive system of implementation of child’s rights. Moreover, new laws not protecting the interests of the child were adopted recently, such as the Russian Federation Housing Code (2004). The previous Law, the Housing Code of the RSFSR (1983), provided a space for numerous violations of children’s rights. It was expected that a new law would provide for a better regulation of children’s housing rights. However, the new Russian Housing Code (2004) contains a provision (Article 31) that allows an owner of a dwelling space (house or apartment) to evict “former members of his family” including children without providing them with any alternative housing. Implementation of this provision has increased even more a number of street children in Russia (which exceeded a number of 5,000 – 6,000 according to the official data in 2006).

The other major deficiency in the Russian legislation is absence of a law which would provide for procedural status of a child in court proceedings. The existing Civil Procedure Code also does not ensure the child’s access to justice. This makes the right for protection through the courts illusory.

Analysis of the current family legislation of Russia encourages one to conclude that it has been brought into formal compliance with Russia’s international obligations. Practically all standards that have to do with protection of children’s rights reflect the Convention’s requirements in one fashion or another. The problem however is the discrepancy between the law in books and the law in action as most of these provisions do not work in practice.

Child Vagrancy in Russia

Statistics describing the situation as regards juvenile neglect and vagrancy are ambiguous. The system of counting of street children in Russia is not effective, so the exact or even approximate number of vagrant children is unknown. While official sources refer to a figure of 5,000–6,000, the media reports mention “a bit less than 1 million”. Most of them are social orphans, i.e. their parents are alive but they have been deprived of their parental rights. The number of such orphans grows by 25-30% annually. For example, if in year 2000 approximately

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4) RSFSR - Russian Soviet Federal Socialist Republic, now Russian Federation.
5) In more detail see “Child Vagrancy in Russia” discussed below.
100,000 orphans and children left without parental care were registered, in 2001 this figure amounted to 128,000 and by October 2002 it has already been exceeded.\(^8\) By the beginning of 2009 around 140,000 children have been registered in the state bank of children, as deprived of a parental care.\(^9\)

The situation in Moscow is especially disturbing. Officials note that the percentage of Muscovites among homeless children continues to grow. If in the 1990s, children from the former Soviet republics and the places neighbouring Moscow predominated, today the number of Muscovite children who have fled their families and live in the streets is steadily growing: in 2004 the percentage of Muscovites among the homeless children constituted 21% whereas in early 2002 it was only 7%. Police officers working at one of the metro stations located close to three railway stations commented on the situation as follows: “We do try to oust them! They are not becoming any fewer—on the contrary, they are becoming more numerous every month. No programme will ever help them. We take them to shelters but a couple of days later they are back here again. Do understand: they love it.”\(^10\) The fact that police officers are of opinion that children are fleeing homes of their own accord is partly true. Children flee in pursuit of a better life because their existence in their own families is unbearable. According to estimates provided by the Ministry of Interior, 50,000–60,000 children run away from home and child care institutions annually in order to extricate themselves from domestic violence.\(^11\) According to the same source, there were 70,380 violent acts against children registered in 2007, including 8,805 acts of sexual harassment.

The majority of children whose parents are deprived of, or limited in their parental rights, are transferred to state care institutions where they find themselves in the same situation of violence yet again. As a result, children flee from orphanages and boarding schools as well. According to the Chief of the Moscow Department of Social Security, 12 per cent of street children who end up in shelters have run away from orphanages or boarding schools.\(^12\)

Another reason for child vagrancy is violation of children’s housing rights. The most widespread violations in this field are of two types: first, when parents sell the apartment where they resided together with their children in violation of children’s rights and, secondly, when the parents are deprived of parental rights,

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\(^9\) Country Rights Situation Analysis of Young People Ageing out of Care, SOS Children’s Villages - Russia, 2009.

\(^10\) Ibid.

\(^11\) “Concept of state politics in the field of ethical upbringing of children in Russian Federation and protection of their morals (draft)”. Moscow, Committee of State Duma on the Issues of Family, Women and Children, 2008.

\(^12\) “Over Half of Vagrant Children in Moscow Are Visitors.” Izvestiya (#19, February 4, 2004).
their children are not provided with housing. Both types of violations are impossible to commit without the connivance of the care authorities and other bodies authorized to protect children’s rights. For example, it happens that in order to sell property parents cancel the registration13 of their children in Moscow apartments and register them in some housing in another town. This is often unsuitable for decent living. According to law authorization by the guardianship and trusteeship authorities is required in order to do this. This means that these authorities are also implicated in the violation of the rights of children. Further, one of the courts in Moscow refused to nullify the contract of purchase and sale contract of the apartment, the result of which was that a girl lost her home and also the right to receive health care benefits and medical assistance in Moscow (these are linked to the place of residence in Russia).14

As far as the second type of violations of housing rights of the child is concerned, the law (RF Housing Code, s. 91) does provide for eviction of parents deprived of parental rights “if their living with children with respect to whom they have been deprived of the parental rights is recognized as impossible,” without providing them with alternative housing. However, care authorities often fail to fulfill their responsibility to protect children’s rights and either do not evict such parents justifying themselves by claiming that they also have the right to housing, or they place the child in housing unfit for living.15

Despite all the recent legislative measures aiming to prevent juvenile vagrancy, the situation has not become any better. For instance, the Federal Law “On Foundations of the System of Prevention of Underage Vagrancy and Juvenile Delinquency” (1999) has not lived up to expectations. The Law provided that commissions on affairs of the underage children and protection of their rights should be responsible for coordination and oversight of activities of the bodies that were established to facilitate prevention of child neglect and juvenile vagrancy. These commissions however are not effective. Moreover, attempts have been made in a number of regions to abolish them. For example, such commissions did not work in 23 cities and districts of the Republic of Dagestan although in each a third of all minors registered there were neither employed nor did they go to school.16

13 The system of registration on the place of residence in Russia substituted institution of “propiska” - a regulation in the Soviet Union designed to control internal population movement by binding a person to his or her permanent place of residence. The registration is used for economic, law enforcement and other purposes, such as accounting social benefits, housing and utility payments, protection of children’s rights etc.
In early 2002, the then President of the Russian Federation, Vladimir Putin, instructed the relevant authorities to develop proposals to facilitate the prevention of child neglect and juvenile vagrancy. State officials started to pay considerable attention to this problem. Inter-departmental headquarters were established under the RF Ministry of Internal Affairs to coordinate activities of federal bodies of executive power targeted at prevention of child neglect, juvenile vagrancy and delinquency.17 To facilitate implementation of the programme in Moscow only 270 million rubles was allocated from the municipal budget and another 150 million rubles from the federal budget. These funds enabled the increase of the wages of specialists working with vagrant and “difficult” children, as well as the setting up of a number of new social shelters. Unfortunately, despite considerable amounts of money spent on combating juvenile vagrancy, as well as activities undertaken by officials, the situation in this area did not improve.

According to the Chairman of the committee “For civil rights” (Moscow), the number of juvenile vagrants at Moscow railway stations is now larger than ever before. He is of the opinion that the main reasons why all the measures fail is lack of a system that would provide children who come out of children’s care institutions with care and support. In the opinion of another specialist, the police departments see their primary goal as removing minor vagrants from their respective “territories”. For example, the Kursky railway station is overseen by two police departments each of which makes a point of shoving a vagrant child towards the neighbouring department (Bogomolov, 2003: 7).

Officials admit that the existing system of bodies working with juvenile vagrants is not effective. Indicative is the example provided by director of the Moscow Temporary Isolation Centre who used the example of a boy from the city of Yegoryevsk in the Moscow region whom he had apprehended at least fifteen times. The boy’s step-father would beat him up; the boy would run away, get caught at a Moscow railway station, and be sent to the Centre. There he would say that his step-father was abusing him. The Centre communicated with the Yegoryevsk police but the latter, completely ignoring the information about step-father’s behaviour merely returned the boy home from which he soon ran away again.18

### Institutionalization

The number of children, deprived of the parental care, as already noted, is growing every year in Russia.19 All these children need attention and protection from

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17) Ibid.
the state, sometimes in a form of removal of the child from the family and further placement under care. The right to live in a family stipulated in the RF Family Code (Article 54) is listed as the first one among the other rights of the child. Thus, the state underlined its obligation to provide a child with a family type of placement, and only if this proved to be impossible, to put the child under the state care. In practice, however, significant number of children, deprived of parental care, more than 188,900, reside in state institutions.\(^{20}\) The number of such institutions increases every year: in 1989 there were approximately 900 of them in the country, but by 2004 there were 2,100 such institutions.\(^{21}\)

This increasing number of children in institutional care has raised concern in the UN Committee on the Rights of the Child. In several concluding observations in response to Russia’s reports the Committee has noted that not enough efforts were being made to promote alternative family care arrangements. In 2005 the Committee issued unusually detailed recommendations in this regard. In particularly, it recommended “the adoption of a comprehensive strategy and the taking of immediate preventive measures to avoid separation of children from their family environment and to reduce the number of children living in institutions, inter alia, by providing assistance and support services to parents and legal guardians in the performance of their childrearing responsibilities.”\(^{22}\) The Committee noted not only significant numbers of children in institutional care, but also the poor conditions of their lives. One of the main reasons for this is the insufficient funding of children’s institutions by the state. For example, the director of the Republican centre for social rehabilitation of minors in the Republic of Kabardino-Balkaria reported that his institution had received only 30% of funds allocated in the republic’s budget, the originally budgeted figure having been clearly insufficient. Due to lack of funding for child care institutions and embezzlement of allocated funds, children often live in deplorable conditions. Buildings require repair, their sanitary conditions are not satisfactory. Children do not receive clothing and footwear in a timely manner; there are no medications, children are not provided with a full healthy diet. For example, the Audit Chamber of the Rostov region published results of a selective audit of local orphanages and boarding institutions. The audit attempted to track the expenditure of only 20 million rubles and identified violations that resulted in loss of 6.96 million rubles. Every third ruble designated to benefit orphans was spent either ineffectively or for the wrong purpose.\(^{23}\)


Another serious problem is violence and sexual abuse in children's institutions. For example, nine pupils died in one of the orphanages of the Kurgan region during a five year period. Local authorities did not pay attention to the problem in this orphanage until three orphans had escaped from the institution and been apprehended by the police. In the course of the investigation initiated by prosecution authorities numerous facts were identified indicating that teachers had exercised violence when treating the children. It turned out that disobedient pupils were beaten with sticks; they were starved, and occasionally thrown into a correctional isolation ward.24

Numerous cases of violence are not the only violations of children's rights in state care. Institutions’ employees and management neglect their duties which affect children's health and material status in an extremely negative fashion. For example, in one of orphanages children became infected with dysentery because the sewage system had broken down and the administration of the orphanage had some of the children fix it. This was done by children and not by the staff though there were 26 staff members per 30 orphans in this institution.

Children placed in the children's state institutions often do not receive social benefits owed to them. It was reported, in particular, that through the fault of the director of the college several orphan-graduates of a professional training college were not paid benefits they were fully entitled to at the time of the graduation. The result was the underage graduates were left without a penny after graduation.

To be able to tackle the existing problems in the sphere of state care it is necessary to receive timely information about violations of children's rights. This is impossible without a periodic review of children's treatment. The right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement is provided for in Article 25 of the UN Convention. However, though review of living conditions of children placed in alternative care is provided for by Russian law,25 as far as children in state custody are concerned, law does not provide for such a possibility. In this regard the UN Committee expressed its regrets noting the recommendations it made after its consideration of the State party’s second periodic report26 have not been sufficiently addressed.

26) CRC/C/70/Add.2.
Violation of Child’s Rights by State Bodies

As it has been demonstrated above, the children’s rights are violated not only by the children’s parents, but often also by state authorities and, particularly, those that are specifically, authorized to protect children. Thus, in addition to violence children face at home and in state care institutions, “common” Russian police practices, notoriously known by human rights groups’ reports, affect children as well. There are lots of examples where police officers in the course of a so-called “prophylactic conversation” with detained school children at the police station beat up these children and abused them. However attempts to initiate criminal proceedings against the officers as demanded by the victims and their parents have been repeatedly refused. The behaviour of prosecution authorities in such cases is outrageous. According to statistics, in 80 per cent of cases prosecution officials refuse to initiate criminal proceedings on facts of violence against children. It means that in the overwhelming majority of cases the police officers escape responsibility.27

Violations of the rights of children committed by courts can be provisionally divided into two categories: refusal to accept petitions from minors who have a right to seek a protection in court, and unjustified procrastination that allows courts to avoid addressing claims submitted by minors at all.

The actions of a judge of the Moscow regional court may serve as an example of the first type of violation. A teenager D. Tarasov, who was under state care, submitted a petition to the court indicating that he wanted to live in the family of S. Shalygin, but the director of his orphanage would not return his documents to him. Because of this, inter alia, he was unable to go to a school next to his new home and had to spend more than two hours a day travelling to his current school for a year. In violation of the law in force (RF Family Code, Article 56 – the right of the child to protection and RF Civil Procedure Code, Article 37 – legal capacity on civil cases) the judge refused to accept his petition referring to his age. Only after his third attempt, when S. Shalygin, showed the relevant article in the Civil Procedure Code to the judge, did the judge accept the petition.

Examples of the second type of violations are numerous. These are the cases when guardianship and trusteeship agencies – the state bodies specifically designed to protect the children’s rights – refuse to remove a child from the family where his/her wellbeing is jeopardized and to initiate proceedings aimed at deprivation of the child’s parents of parental rights. In such cases courts do everything they can to protract the hearing of such cases. It may take years and it is not rare that by the time of the decision, children have reached the age of 18 (the age of majority)

and are unable to obtain social and housing benefits to which they were entitled whilst being minors.

Violations of child’s rights are ignored by the administrations of educational and health care institutions, as well as pre-schools and state guardianship and trusteeship authorities which should be the first to notice that a child requires state protection. For example, teachers who know that their pupils live in terrible conditions usually fail to inform authorities about it. In one case such inaction resulted in the fact that the boy required urgent hospitalization due to having become physically exhausted and mentally retarded. Only immediate surgery saved his life. Another example is the case of a child who became an orphan in March 2003. Somehow authorities discovered the child only one year and two months after his parents had died.

By not reporting about child’s rights violation officials and ordinary citizens violate their duty under the law. In accordance with the Family Code (art. 56), all individuals who have become aware of a threat to a child’s life or health, or of violation of the child’s rights and interests, must report this to the appropriate authorities. This provision is supported by Article 122 of the RF Family Code which states that officials (of pre-school, secondary educational, health care, and other institutions), as well as other citizens aware of children deprived of the parental support, are obliged to report about such children to care authorities which must examine the child’s living conditions and ensure protection of their rights and interests within three days of receipt of such information. Unfortunately, this article does not provide for any particular sanction for noncompliance and authorities simply ignore this provision.

Conclusion

The UN Convention on the Rights of the Child provides in Article 4 an obligation of the state “to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights of the child.” This article shows that adoption of legislation declaring children’s rights and ratifying international legal instruments, does not improve the implementation of those rights automatically.

It is unlikely that adoption of new legislation or amendments to the existing ones will stop a wide-spread and long-term practice of child’s rights violations/neglect by state authorities. Efforts of the international community and Russia’s non-governmental organizations have not led to any significant improvement in this field. The change of state policy in combination with many related measures such as development of alternative forms of child care, better funding of child related programmes, extending federal assistance to those who raise children and reform of the system to ensure the enforcement of existing laws are needed to make Russia a more child-friendly society.
References