

LAW LIBRARY OF CONGRESS**RUSSIAN FEDERATION****CHILDREN'S RIGHTS:
INTERNATIONAL AND NATIONAL LAWS AND PRACTICE***Executive Summary*

Protection of children's rights is a serious problem for Russia, particularly because of the worsening demographic situation and progressive involvement of youngsters in criminal and other underground activities. Several presidential programs, together with major pieces of legislation, address this issue, which is at the center of domestic public discussions; because of insufficient budget financing and restrictions on work of nongovernmental organizations, however, legislative declarations remain largely unimplemented. It is expected that the newly created institution of a Children's Rights Ombudsman and introduction of the long delayed juvenile justice system will improve the situation. This paper analyzes legislation that regulates the protection of children's rights and evaluates government attempts to enforce relevant laws.

I. Introduction

The Russian Constitution, which was adopted in 1993, provides for the state protection of childhood, motherhood, and the family.¹ According to the Constitution, hundreds of laws, presidential decrees, government resolutions, executive regulations of specific agencies, and legal acts of the constituent components of the Russian Federation are supposed to secure rights of children. The primary documents in this field are the Family Code of the Russian Federation² and the Federal Law on Basic Guarantees of the Rights of the Child in the Russian Federation of July 21, 1998.³ Child protection policy is also affected by the implementation of relevant provisions of such legislative acts, as the Civil Code, Labor Code, Housing Code, Criminal Code, Criminal Correctional Code, Fundamentals of Health Care Legislation, Federal Law on State Assistance to Individuals having Minor Children, Federal Law on State Support of Youth and Children's Organizations, Federal Law on Social Assistance, and many others.

It appears that from the legal point of view, such basic rights as the right to life, dignity, personal inviolability, housing, education, freedom of movement, social security, protection of health and health assistance, access to cultural values, and others are protected. All the typical problems, however, of the implementation of Russian legislation and the functioning of government institutions are inherent in the area of children's rights protection. Among these problems are that there is no separation of powers between the federal and regional levels of authorities; contradictions within the legislation; no defined division between federal and state budgets in regard to the payment of state subsidies to children; maintenance of social support institutions; and absence of working mechanisms that would provide for rehabilitation and integration of children with disabilities.

The economic and social crisis of the 1990s affected the area of children's rights substantially. Until 2003, payment of social assistance subsidies was constantly delayed, and even if money was received by children and parents having minor children, it did not have a positive impact on the economic

¹ Constitution of the Russian Federation, Article 38.

² Family Code of the Russian Federation, SZ RF 1996, No. 11, Item 939.

³ SOBRANIE ZAKONODATELSTVA ROSSIYSKOI FEDERATSII (official gazette, SZ RF) 1998, No. 31, Item 3802.

situation in the family because of its insignificant amount and inflation. The situation was complicated by the dismantling of the previously existing traditional structures of social protection. Difficulties in family relations impacted the health and welfare of children most. For example, between 1994 and 2003, the population of children in Russia decreased by 4.4 million; approximately eighty percent of all high school graduates have significant health problems.⁴

Several targeted programs aimed at creating opportunities for children's development and protection of their rights were developed by the federal government and the President of Russia. These programs are dedicated to such aspects as the development of gifted children, the organization of summer vacation for children, protection of children whose parents are refugees or forced migrants, treatment of Chernobyl catastrophe victims, family planning, counteraction to drug abuse, and some others. According to Russian tradition, issues included in government or presidential programs receive better financing; their implementation is better controlled by the responsible government agencies; and legislative support is provided.

The system of government authorities is responsible for assisting children in defending their rights and monitoring their implementation. It includes education, health, and youth affairs authorities, as well as interagency bodies, such as guardianship committees and commissions on affairs of minors. This system, however, is not able to respond to children's complaints effectively. Because all these institutions belong to the executive branch of power, the scope of their activities cannot be extended beyond the authority of the agency of which they are a part. Twenty-three out of eighty-seven constituent components of the Russian Federation have established the regional office of a Children's Rights Ombudsman, an office which advocates children's rights, addresses government authorities and courts on behalf of those children who have no other representation or are mistreated, and coordinates the activities of other government and public services involved in the protection of children. In most of the cases, such Ombudsmen are appointed by the Governor and are included in the executive system; during the last two years, however, the appointment, as a rule, is made by the regional legislature or requires its approval. That new procedure gives parliamentary status to the Ombudsman, increases his independence, and expands his authority. The UN Committee on Children's Rights recommended the expansion of this institution in all Russian provinces and the establishment of the federal Children's Ombudsman office.

Among other problems that await a legal solution are the adoption of laws on a specialized juvenile justice system; development of different forms of raising children without parental care; protection of children from mistreatment, commercial, and sexual exploitation; adoption of legal measures aimed at preventing parental kidnapping and illegal transfer of children throughout the state borders of Russia; the legal education of children, their parents, and officials working with the children; and further involvement of nongovernmental organization in work on the protection of children.

II. Implementation of International Rights of the Child

As a legal successor to the former Soviet Union, Russia became a party to the International Convention of the Rights of the Child (CRC), which was ratified on August 16, 1990.⁵ On February 15, 2001, Russia signed the Optional Protocol to the International Convention of the Rights of the Child on the Involvement of Children in Armed Conflict. After the Convention was ratified, Russia attempted to bring its domestic legislation in accordance with international obligations in the field of children's rights protection. The Federal Law on Basic Guarantees of the Rights of the Child in the Russian Federation of July 21, 1998 repeats all the provisions of the CRC.

⁴ Federation Council of the Russian Federation Federal Assembly. Analytical materials for parliamentary hearings on Protection of Children's Health in the Russian Federation, published in ANALITICHESKII VESTNIK [Analytical Bulletin], No. 7(324), Moscow, 2007, p. 35.

⁵ VEDOMOSTI VERKHOVNOGO SOVETA SSSR (then the official gazette) 1990, No. 26b, Item 497.

It appears that family law was among the most revised areas of legislation in regard to the care of children. In order to secure children's rights, the Family Code of the Russian Federation dedicates a special section to the rights of minors.⁶ Almost all provisions of the Code reflect the requirements of the CRC, except the right of the child to be reunited with his or her family. Despite the fact that the Federal Law on Exit from and Entry into the Russian Federation⁷ was amended numerous times, no provision regarding the protection of migrant children was included in this Law. Different pieces of Russian legislation do not follow the definition of children provided by the CRC uniformly. Despite the fact that article 1 of the CRC states that everyone under eighteen years of age is recognized as a child, most specialized health care programs in Russia do not include children older than fourteen, or older than sixteen, if a child is disabled. Parental consent for medical procedures is required for children under sixteen, and tax legislation treats minors under sixteen, and between sixteen and eighteen years of age differently.

Regardless of the declaration of children's rights in Russian legislation, provisions of Russian laws are not implemented and there is no mechanism that would make the existing legal provisions work. The growing number of orphaned children⁸ and the absence of an effective legal defense of children from domestic violence exemplify the non-implementation of declared rights. The Federal Law on Prevention of Orphanhood and Crimes Committed by Minors,⁹ which established local and regional government commissions on the affairs of minors to coordinate child protection activities, did not meet the expectations. The Law defines the rights of orphaned children who are the subject of police and other government authorities' activities, and protects the rights of children who have committed violations of law. The Law provides for different conditions in correctional institutions, depending on the severity of the violation, age and health of the child. The key problem is the absence of preventive care and work aimed at avoiding the violations. The existing system is aimed at punishment rather than improvement. For example, the termination of parental rights is the most often used form of punishment; it, however, can be applied in very serious situations. Similarly, the authorities usually address the violent behavior of personnel in child care establishments when it becomes aggravated and then is prosecuted as a crime.

Implementation of international legal norms in Russia is complicated by the fact that these norms are rarely publicized and popularized in the country. Educators and social workers involved in child affairs are often ignorant of basic human rights principles and international requirements in regard to the children's rights, and such issues are not taught in Russian universities.

III. Child Health and Social Welfare

The right to health care is one of the most important social and economic children's rights. Worsening conditions of children's health in Russia can be explained by social factors, environmental problems, and the increased role of behavioral risks, such as drug and substance abuse. The consequences of the Chernobyl catastrophe continue to influence the state of children's health. Since 2001, the sickness rate of children on the territories affected by radioactive pollution increases by about thirty percent annually.¹⁰ The spreading of AIDS and HIV among youth and young adults is also an alarming factor. It appears that the provisions of the Federal Law on Prevention of Spreading of Diseases

⁶ Family Code of the Russian Federation, SZ RF 1996, No. 11, Sec. 11.

⁷ Last amended on Jan. 10, 2003, SZ RF 2003, No. 2, Item 159.

⁸ According to various estimates, between 700,000 and three million children are orphans; however, only five percent of them have no parents. The rest of the children have parents whose parental rights were terminated because of their antisocial behavior. *See* note 4, p. 42.

⁹ SZ RF 2003, No. 28, Item 2880.

¹⁰ O POLOZHENII DETEI V ROSSIISKOI FEDERATSII [On State of the Children in the Russian Federation, National report], Moscow: Yurizdat, 2005, p. 13.

Caused by HIV¹¹ are not implemented. No measures of financial and humanitarian assistance were implemented, and no educational work has been conducted with the youth.

The basic legal principles of health care for minors were defined by the Fundamentals of Russian Federation Legislation on Health Care.¹² This legal act established federal guarantees of receiving free medical assistance by children in all state and municipal health care establishments. Free immunization of children is prescribed by law, and more than ninety percent of Russian children are immunized. Many regions legislated to create state legal norms that provide for additional protection of children's health. They extend the number of medical procedures and treatments provided without charge, in addition to those covered by mandatory medical insurance under federal legislation, allow for free distribution of medicines to children under three years of age, and require qualified medical assistance in all nursing and child care facilities. However, inclusion of these provisions in legislative acts does not secure their implementation because the responsible authorities do not fulfill their duties and obligations. In 2005, inspections conducted by the office of the Russian Prosecutor General found serious violations of a child's right to health care in more than twenty constituent components of Russia. Local and state authorities illegally decreased the amount and forms of health services which should be provided to children for free, approved the performance of paid medical services in state and municipal hospitals, and no region in Russia completely implemented the Government Regulation of June 21, 2003, under which all children under three years of age, and those who have more than three siblings under six years of age were to receive free medicines.¹³ Most of the problems exist because of insufficient budget financing, which demonstrates that the government cannot guarantee the implementation of rights which it has declared.

Substantial changes in the area of pediatric health care are expected with the implementation of recently proposed amendments to legislation on organs and tissue transplantation. In July 2007, the Ministry of Health Care and Social Protection of the Russian Federation submitted to the Council of Ministers the draft of a Regulation that permits, upon parental consent, the collection of organs from minors, whose brain death was confirmed by two independent medical panels. Additional safeguards and checks are provided by the Regulation in order to secure minors from medical errors and abuse. Presently, organs can be donated only by or collected from individuals older than eighteen years of age.¹⁴

An especially difficult situation exists with the implementation of the health care rights of disabled children and children with special needs. Until 1979, disabled children were not legally recognized in the Soviet Union because disability was defined as an inability to perform professional functions due to a sickness or trauma. People who had no labor experience could not qualify for disability benefits. Following the UN requirements, children under age sixteen could be recognized as disabled, according to the Ministry of Health Care Regulation No. 1265 of December 14, 1979. The regulation contained a very limited list of diseases, mostly genetic and incurable, for which children were allowed to receive social security benefits. In 1991, this list was expanded according to the World Health Organization recommendations, and, consequently, the number of those who were recognized as disabled children increased. Since 2000, this category includes minors under eighteen years of age. The number of such children is about 205 per 10,000 children. The primary legal act that provides for the definition of disability, establishes the duties of federal and regional authorities, and determines the economic, legal, and social measures aimed at supporting, compensating, and integrating people with disabilities is the

¹¹ SZ RF 1995, No.14, Item 1212.

¹² Vedomosti S'ezda Narodnykh Deputatov RF I Verkhovnogo Soveta (then the official gazette), 1993, No. 33, Item 1318.

¹³ N.E. Borisova, PRAVOVOE POLOZHENIE NESOVERSHENNOLETNIH V ROSSIISKOI FEDERATSII [Legal Status of Minors in the Russian Federation, in Russian], Moscow: Izdatelstvo MGSU, 2006, p. 164.

¹⁴ Svetlana Sukhaia, *Ochered za Zhiznyu* [Line for Life, in Russian], TRUD (daily newspaper), Jul. 24, 2007, No.129, p. 4.

Federal Law on Social Protection of People With Disabilities.¹⁵ The law is based on the concept of equal civil, social, and cultural rights of the disabled individuals, and provides for medical as well as social rehabilitation, including professional education and employment assistance. The rights of disabled children are specified in the Family Code of the Russian Federation, Fundamentals of Health Legislation, and about twenty federal and 800 state legislative acts; most of them, however, lack the norms which would secure the implementation of the adopted legislative decisions.¹⁶ One of the mistakes in application of the legislation was corrected by the Constitutional Court of Russia by its Ruling No. 231 of June 27, 2005.¹⁷ This ruling extended the right of mothers of disabled children to receive earlier retirement benefits than the fathers of such children, and made one of the parents eligible to receive the federal retirement benefit at fifty years of age, if they have paid social security tax for at least fifteen years and were involved in the upbringing of a child to eight years of age who had been disabled since birth.

According to the Constitution, social welfare is guaranteed to everyone because of age, for the upbringing of children, and in other cases established by law.¹⁸ Under the Federal Law on State Subsidies to Individuals with Children,¹⁹ monetary assistance is provided in the following forms:

- assistance during pregnancy and for childbirth;
- one-time assistance to the women who registered with medical institutions during the early terms of pregnancy;
- monthly assistance during the eighteen-month maternity leave period after the child birth; and
- monthly assistance for each child until the child reaches the age sixteen or graduates from an educational institution, but no later than eighteen years.

All these subsidies do not guarantee constitutional social welfare rights because they are minimal amounts, depend on the woman's family income, are paid irregularly, and do not meet the cost of living requirements. In violation of other legal norms, Russian legislation allows social payments to children until sixteen years of age, and only in exceptional circumstances until eighteen, despite the fact that all individuals under eighteen are minors. Following the 2006 amendments to the Federal Law on Social Protection of Population,²⁰ aimed at improving the demographic situation in the country, beginning in September 2007, women will receive a one-time payment in the amount of US\$10,000 after their second and each following child reaches the age of three years. This money cannot be cashed but can be contributed toward purchase of a home, or invested for education or retirement.

Social welfare policy is not limited to the distribution of monetary subsidies to particular groups in the population. It includes the system of social and psychological support to minors who find themselves in difficult circumstances. These include orphans; homeless children; children with disabilities; victims of armed conflicts, natural calamities, catastrophes, and domestic violence; children forced into prostitution; juvenile criminals; and children involved in drug use. Medical, social, and psychological support services have been established under each regional department of education. According to the Federal Statute on Educational Establishment for Children without Parental Care,²¹ such children are entitled to free living and studying at an institution of general and professional education. Special attention is paid to the creation of family style orphanages for five to fifteen children. A number

¹⁵ SZ RF 1995, No. 32, Item 3198.

¹⁶ Federation Council of the Russian Federation Federal Assembly, *supra* note 4, p. 42.

¹⁷ SZ RF 2005, No. 29, Item 3097.

¹⁸ Constitution of the Russian Federation, Article 39.

¹⁹ SZ RF 1995, No. 21, Item 1929.

²⁰ SZ RF 2006, No. 49, Item 4822.

²¹ SZ RF 1995, No. 28, Item 2693.

of Government Regulations were issued to secure the legal status, financing, and rights of the people who run such institutions.

Beside the Ministry of Education, which runs educational establishments for children with special needs, the social security system contains forty-five (thirty-four primary and eleven secondary) schools of professional education aimed at the rehabilitation of the disabled youth and providing these people with working skills. The integration of the disabled in the society is complicated by the lack of handicapped access in the majority of Russian buildings.

IV. Education, Including Special Needs

The right to education is secured by article 43 of the Constitution and is guaranteed by Federal Laws on Education,²² on Higher and Continuing Professional Education,²³ on Reimbursement of Food expenditures for Students of State and Municipal Institutions of Professional Education,²⁴ the Labor Code, and statutes of educational institutions. The Government Regulation of April 28, 1994,²⁵ on Urgent Measures to Support Education in Russia provided for a program of educational development and contained necessary mechanisms to guarantee social support for students. Administratively, the federal Ministry of Science and Education and its territorial branches is responsible for conducting state policy in the field of education. The first level of organized education consists of preschool institutions, called kindergartens, which cater for children from two months up to six years. Although they are heavily subsidized by the state, parents of children attending kindergartens have to pay a fee depending on family income and the length of daily stay of a child in the kindergarten. Although attendance in kindergartens is not obligatory, many regions legislate that attendance of the last year of kindergarten shall be obligatory in order to prepare the child for attending school. Primary and secondary education in Russian schools is combined, and children between six and eighteen years of age attend the twelve-year school. A ten-year school education is mandatory, according to the Federal Law on Education. Obtaining mandatory secondary education is a constitutional responsibility of each citizen. The obligation to attend school is to be enforced in regard to each individual under fifteen years of age.²⁶ Schools are designated to cover a certain district, and all children within the district must attend the district school if they are not attending a private or public magnet school. It is illegal to deny acceptance to a child into a public district school, although schools often circumvent this requirement by introducing entry tests and creating special classes with extended study of particular disciplines. Subsidized meals are provided by local authorities. The curriculum and program of schools are developed by the federal Ministry of Science and Education, but some regional variations, depending on local initiatives and/or specifics, are allowed. All students are subject to standardized testing. During the course of market reform, education in Russia became partially fee-based. Pre-school and mandatory secondary education, including professional, at public educational institutions remained free; the growing financial inequality of population, however, substantially limits equal opportunities declared by law. Legislation provides for the following basic principles of the Russian educational system: humanity, respect for universal human values, exclusion of religious influence, unity of the federal educational standards, consideration of ethnic and regional cultural specifics, and adaptation to the abilities of the students. Completion of a secondary school course gives the right to seek admission to institutions of higher education, where about one-fifth of the seats is reserved, according to the federal government plan, for tuition-free education of students with the best grades; the rest are fee based.

²² SZ RF 1996, No. 3, Item 150.

²³ SZ RF 1996, No. 35, Item 4135.

²⁴ SZ RF 1996, No. 32, Item 3847.

²⁵ SZ RF 1994, No. 2, Item 104.

²⁶ Federal Law on Education, art. 19.

Professional schools, which admit students who have completed a nine-year school course, are formally a part of the secondary education system. They offer a course of one to three years leading to a general secondary school diploma and necessary qualifications in industry or agriculture.

Mostly because of insufficient financing and weak law enforcement, the implementation of legal acts regarding education is not satisfactory. The ongoing concentration of educational institutions in towns and district centers leads to the elimination of elementary schools in villages and small settlements, complicating access to education for local children. Development of market relations transforms all education other than the standard basic education into paid services, making it out of reach for an impoverished population. According to news reports, on September 1, 2004 (the official day when school classes begin), 26,220 Russian children did not come into class, and 1,500 were never enrolled in a school. About 100,000 children being rehabilitated in special institutions do not have an education appropriate for their age.²⁷

Another great problem is providing education to children who happened to stay outside the established education system. These are children of refugees and migrants, children with deviant behavior, children with insufficient knowledge of the Russian language, and children with behavioral and/or mental problems. The schools try to eliminate such students, who after being excluded from schools remain without supervision. Legislation provides for placing such children into boarding schools.

According to expert evaluations, about 4.5 percent of Russian children (about 1.6 million) have different forms of disability and need special education.²⁸ Despite the fact that the principle of integrating children with special needs into the society was declared by relevant legal acts, as a rule, children with disabilities do not attend regular educational institutions. This occurs mostly because of a strong bias among the parents of healthy children that presence of children with special needs in a class will disturb teachers and other students. As an experiment, in 2006, several kindergartens in Moscow permitted admittance of a handful of disabled children. In the meantime, 450 thousand children with special needs under six years old attended the so called "compensatory kindergartens." In 2006, Russia had 1,373 boarding schools for 170,000 children with speech, hearing, and language pathology, vision impairment, mental retardation, skeletal diseases, and tuberculosis; and 1,946 day schools for 236,000 disabled students. Most of the children with disabilities are not able to attend schools, which are, as a rule, not accessible,²⁹ and are subject to home schooling performed by teachers of regular neighboring district public schools. The dropout rate among the disabled is much higher than among students of regular schools and only one percent of people with disabilities continue to study at institutions of higher education.

V. Child Labor and Exploitation

Under the Labor Code,³⁰ individuals under eighteen years of age are subject to certain limitations on legal capacity, special limitations, and certain protection in the field of labor relations. The usual age of employment is sixteen, although in special cases, a minor may start work at fifteen, and even at fourteen if additional requirements have been met. The procedure of receiving approvals and permits for hiring a minor under sixteen is cumbersome, and employers usually do not hire minors under sixteen in order to avoid bureaucratic problems. All minors can be hired only after a medical examination. An

²⁷ G. Kaelova, *V Rossii 473 Tysiachi Bednyh Semei* [There are 473,000 poor families in Russia], INTERFAX News Agency, Moscow, June 23, 2005.

²⁸ Federation Council of the Russian Federation Federal Assembly. Analytical materials for parliamentary hearings on Protection of Children's Health in the Russian Federation, published in ANALITICHESKII VESTNIK [Analytical Bulletin], No. 7(324), Moscow, 2007, p. 39.

²⁹ In Moscow, which has much better financial resources than the rest of the country, only about one-fourth of almost 2,000 public schools are accessible.

³⁰ SZ RF 2002, No. 1, Item 3.

annual medical examination of all employees under eighteen also is required. Labor law provides special protection to minors in its regulation of working hours and conditions; for instance, a minor's vacation cannot be less than thirty-one calendar days; it cannot be postponed to the next working year or commuted for cash. Article 265 of the Labor Code contains the list of work prohibited for minors because of negative impact on the health and moral development of a minor. This list includes work with hazardous materials, underground work, and work which requires moving heavy weights over the limits established by sanitary norms. This prohibition is mandatory and applies to all enterprises regardless of their legal status and possession. Minors cannot be sent on business travel, they cannot work overtime, at night, or during weekends and holidays.

Article 270 of the Labor Code contains two rules regarding the lessening productivity norms for minors. Because minors are working shorter business hours and have less professional skills, their productivity norms shall be established proportionally to their working time. The second rule affects minors who were hired after they graduated from vocational schools. Lower productivity rates can be established for them as well. Unlike old Soviet legislation, which provided for the same tariff rates for paying the wages of minor workers as for those who were older than eighteen, Russia's Labor Code specifies that the salary of a minor shall reflect his shorter length of work day.

Among other security measures, the legislation states that a minor may not be dismissed, except for cases when the company is liquidated, without the extra approval proceeding by the State Labor Inspection and local Commission on Juvenile Affairs, a state board made up of officials and specialists in juvenile health and upbringing. In all cases when a minor submits his request for employment termination, the employer is obligated to inform the Commission on Juvenile Affairs. The Law charges the Commission with the duty to find out real reasons for this move and assist the minor in staying at his previous place of work or in finding new employment.

Presently, because of numerous bureaucratic formalities and excessive obligations, employers prefer not to hire minors, especially those who are under sixteen, even for short term work during school vacation, or they do not formalize the actual hiring of a minor employee. Presently, the State Duma (legislature) of the Russian Federation is considering amendments to the Labor Code, which would introduce mandatory quotas on a number of positions reserved for minors. There are some problems with the implementation of other Labor Code provisions. In 2004, about 30,000 juveniles were employed in the field of construction, transportation, and communications; 2.8 percent of them worked under conditions which did not meet sanitary and hygienic norms. Because of violation of labor protection rules, twenty-nine individuals under eighteen years of age died.³¹ Exploitation of child labor often occurs in agriculture. As a rule, guest workers who are hired for agricultural work arrive with families, including minor children and all children are used as a labor force. Guest workers, especially illegal migrants, are usually not controlled by the authorities, and their children do not attend schools. It is also a widespread practice in rural areas that school students are summoned for agricultural works for several months, especially in autumn during harvesting; students, however, are not paid for this work, and they are not registered as employees of agricultural cooperatives during these periods.

In February 2003, Russia ratified the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.³² Following the obligations imposed by this Convention, amendments were made to Russian domestic laws. Provisions prohibiting forced labor were added to the Labor Code,³³ and the Criminal Code was amended with provisions prohibiting trade in minors, mercenary activities, recruitment of children to participate in the military, involvement of minors in antisocial behavior, and criminal activities. These crimes are punishable by imprisonment for an

³¹ O POLOZHENII DETEI V ROSSIISKOI FEDERATSII [On State of the Children in the Russian Federation, National report], Moscow: Yurizdat, 2005, p. 35.

³² SZ RF 2003, No. 6, Item 506.

³³ Labor Code of the Russian Federation, Article 4.

average term of six years; the enforcement of these provisions, however, remains inadequate, and orphans, children of migrants, and those from impoverished families are often objects of such crimes. A survey conducted by the International Labor Organization in St. Petersburg revealed that often, children start to work when they are ten to twelve years old, and girls are involved in prostitution at age fourteen. Three-fifths of the working street children are boys; they are usually involved in assistance in trade (cleaning, loading, guarding goods), construction, collecting things for recycling, and agricultural works. Only two-third of such children attend school periodically.³⁴

VI. Sale and Trafficking of Children

Russia has a unique role in the international sale and trafficking of children because it is simultaneously a resource for future victims and a recipient of trafficked persons from the former Soviet states. Despite attempts over the years to address the problem of sale and trafficking of children in the Russian Federation, this issue has developed into a cause for serious concern. According to police statistics between thirty and sixty thousand women, most of whom are minors, are transported out of Russia for purposes of sexual exploitation annually. In most cases, minors are taken in and out of Russia under the pretext of employment abroad.³⁵ In addition, approximately seventy thousand individuals, most of whom are young women, are recognized absent for unknown reasons annually.³⁶ There is a large chance that these women were abducted in order to use them for slave labor or prostitution in Russia or abroad. According to police information, criminal groups conduct abductions of young and minor women regularly, especially in economically depressed areas. Abducted women are usually brought to criminal bases where they are prepared for transportation to other cities or abroad.³⁷

There are no reliable statistics on crimes committed in this sphere due to the latent type of this phenomenon. According to the Ministry of Internal Affairs (police), since 2004, when human trafficking was criminalized in Russia, sixty-six crimes involving trade in humans were registered in Russia; however, only twenty-six criminal investigations were initiated, and twelve people were sentenced by the courts.³⁸ Russian officials attribute their inability to curb trafficking to the lack of legislation, complaining that prostitution and prostitution-related activities are not subject to prosecution. Also, Russian police cite problems with investigating such violations, because these crimes that begin in Russia are usually completed abroad. The Russian police propose to establish an exact definition of the term "slave trade" in domestic legislation. Presently, Russian authorities are focusing on strengthening control over commercial agencies that could be used as a cover for slave trade.

In 2002, Russia recognized the existence of trade in people in various regions and began to work on adoption of the extremely necessary law in this sphere. In April 2002, the investigation of trafficking-related crimes was transferred to the jurisdiction of police departments charged with combating organized crime,³⁹ and on October 30, 2002, a working group was created to draft the Law on the Fight Against Trafficking in Humans. The group included representatives from the Administration of the Russian Federation President, the Parliamentary Committee on Legislation, and from interested non-government organizations. The U.S. Department of Justice was to provide operational, technical, and financial

³⁴ ANALITICHESKII VESTNIK, *supra* note 28, p. 37.

³⁵ Nabi Abdulaev, *Lack of Laws Helping Sex Trade to Flourish*, THE ST. PETERSBURG TIMES, Aug. 30, 2002.

³⁶ Alexasnder Kolesnichenko, *Exportnyi Potok* [Export Stream], NOVYE IZVESTIYA (daily newspaper), No. 74, Apr. 27, 2006, p. 2.

³⁷ State Duma of the Russian Federation. REPORT ON FIGHT AGAINST HUMAN TRAFFICKING, Moscow, 2006, p. 74.

³⁸ Report of the Russian Ministry of Internal Affairs, published on May 16, 2006, available at www.mvd.ru/press/release/4165.

³⁹ ROSSIISKAIA GAZETA [Government owned daily newspaper], Apr. 29, 2002, at 2.

support to the working group;⁴⁰ all these activities, however, resulted only in amending provisions of the Criminal Code.

Before 2004, all Russian anti-trafficking legislation was confined to the presently void article 152 of the Russian Criminal Code, which dealt with trafficking in minors and article 240, which prosecuted the engagement in prostitution. By referring to trafficking in minors and going after the pimps rather than addressing the issue as trafficking in people in general, the focus of Russian police authorities seemed to be on age and gender issues rather than on the resolution of the problem in general.⁴¹

At least seven articles of the Criminal Code had some relation to this type of crime, envisaging criminal punishment for forcing one to perform sexual acts (art. 133), trade in minors (art. 152), swapping babies (art. 153), illegal adoption (art. 154), illegal deprivation of freedom not connected with abduction (art. 155), and drawing into the business of prostitution (art. 240). No single article, however, was dedicated to the trade in humans. Because these crimes are not usually committed by single individuals, they were primarily covered by article 210 of the Criminal Code, Organizing a Criminal Community or a Criminal Organization. This relatively large number of provisions did not adequately reflect the current situation and practice to combat these crimes. For instance, article 126, Abduction of People, required proof of the fact of violent detention in order to convict a person under this article. But trafficked people typically are not held forcibly. Understanding that they violate domestic laws of the country where they are present, they prefer not to go to the law enforcement agencies.

Amendments to the Criminal Code, adopted in December 2003, did not establish a comprehensive definition of human trafficking. The Code was supplemented with two new sections criminalizing trade in humans and usage of slave labor. The present version of Russian law follows the UN definition, which from a legal point of view, is extremely complicated. As stated in the Protocol on Trade in Humans, the trade in people is hiring, transporting, transferring, concealing, or receiving people either by threat or fraud, deception, or coercion, or by making or receiving illegal payments or benefits, for the consent of the person who controls another person for the purpose of sexual exploitation or forced labor.⁴² Despite the fact that most of these qualifying features were included in Russia's legislation, Russian laws do not distinguish between who is an offender and who is a victim, do not create a mechanism to prosecute recruitment, and do not defend specifically people in a dependent position. Proposals pushed by interested Russian non-government organizations to accept the definition adopted by the U.S. Victims of Trafficking and Violence Protection Act of 2000, which goes beyond the policy definitions used in the UN documents, were not accepted.⁴³

Because of gaps in Russian legislation, recruitment into prostitution and fraudulent employment in prostitution-related spheres of business are not covered by Russian law. Article 127-1 of the Criminal Code recognizes recruitment of a person as a preparatory step to commit a sale or purchase of a human individual. Recruitment is not considered an independent crime even if an agreement between a mercenary and an individual has been concluded, and because the Code prosecutes recruitment of each person individually, punishing group recruitment remains problematic. Russian law does not provide punishment for the seizure of minor's identification documents, an activity done in order to isolate minors and prevent them contacting police authorities. Seizure of the victim's document is just a qualifying factor, which makes the punishment of another crime (e.g., exploitation of slave labor) more severe if such a seizure occurred while another crime has been committed. Among the imperfect features of Russian criminal legislation is that the use of threat of force can be prosecuted only if the victim was the

⁴⁰ G. Ilyichev, *Bortsy s Aisbergom* [Fighters against the iceberg], IZVESTIYA, Oct. 30, 2002.

⁴¹ O. Yablokova, *Slavery in Russia*, MOSCOW TIMES, July 2, 2005.

⁴² UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, art. 3(a), G.A. Res. A/55/25, Annex III, 55th Sess., U.N. GAOR 56089, Jan. 8, 2001.

⁴³ P.L. 106-386, Oct. 28, 2000.

subject of trafficking personally.⁴⁴ If violence was used in regard to the relatives of the trafficked person, this action is considered as a regular crime unrelated to trafficking. Relatives still cannot bring charges against the traffickers on behalf of the victim, and have almost no rights, except for some coverage under the witness protection program.

VII. Juvenile Justice

In Russia, the system of juvenile courts was established in 1910, and proved to be very successful in correcting underage offenders. Up to seventy percent of young criminals were sentenced to supervision of foster parents instead of imprisonment. Juvenile courts were considered as a system of state oversight rather than the instrument of prosecution. In 1918, the newly established Soviet Government cancelled this practice, subordinating the courts to the politically appointed Commissions on the Affairs of Minors, and minimized the participation of lawyers in such cases.⁴⁵ In 1935, the age of full criminal liability was lowered to twelve years for all types of offenses, including minor and unintentional, and permitting courts to sentence to death twelve-year-old children.⁴⁶ This approach still affects the state and public attitude toward juvenile justice. In 1964, the USSR Supreme Court recommended the specialization of judges and ordered that cases with minors would be tried by designated judges only; however, the juvenile courts were not established.⁴⁷

Presently, juvenile justice does not exist as an independent branch of the judiciary. The existing Russian court system does not guarantee that all matters would be considered in the best interests of a child without delay by a competent, independent, and impartial authority, as required by Article 40 of the CRC. Because of the general workload increase and low number of judges, criminal cases in regard to minors, which make up approximately twelve percent of all criminal cases tried by the Russian courts, are usually resolved within several years, while the minors await their trials in detention centers. Proposals to establish family and juvenile courts are regularly introduced in the legislature but are not supported by the executive branch. As an experiment, since 1999, the St. Petersburg City Court has included social workers in its staff and involves them in the ongoing trials. The rate of repeated crimes among the youths tried under the new system became significantly lower. Since 2001, this experiment has been extended to two other regions. There was no further development, however, because of budget constraints.

VIII. Conclusion

The adoption of legislation that declares children's rights, as well as joining international legal instruments, did not improve the implementation of those rights automatically. It is unlikely that adoption of a few additional pieces of legislation will stop a wide-spread and long-term practice of child abuse and mistreatment. Together with many other related measures, however, such as developing policies to ensure the enforcement of existing laws, extending federal assistance to those who raise children, introducing new forms of care over children without parental oversight, adapting criminal procedures to the needs of minors, protecting victims during the criminal prosecution of traffickers, passing social legislation, and better funding for social, juvenile, and educational services, may change the situation and indicate that Russia has moved to a higher level of legal and political thinking.

In spite of the efforts of the international community and Russia's non-governmental organizations, there is no machinery yet for making Russia a country with a developed legal system and enforceable legislation aimed at the protection of children. It all depends on the degree of realization by

⁴⁴ Code of Criminal Procedure of the Russian Federation, Sec. 7.

⁴⁵ *Sobranie Uzakonenii RSFSR* (then the official gazette), Part 1, No. 62, Jan. 17, 1918.

⁴⁶ *Svod Zakonov SSSR* [USSR Collection of Laws, official gazette], Part 1, 1935, No. 19.

⁴⁷ *Biuletën Verkhovnogo Suda SSSR* [USSR Supreme Court Bulletin], 1964, No 9, p. 4-5.

Russia's leadership of the gravity of this problem and on its civilized standards for solving it effectively and protecting its underage population.

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