Foreign Law Brief: Human Trafficking– The Need for a Comprehensive Legislative Approach in the Russian Federation

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Trafficking in human beings is the recruitment, transportation, transfer, harbouring, or receipt of persons by means of force or the threat of force. It may also involve abduction, fraud, deception, abuse of power or the giving and receiving of payments for the purposes of sexual exploitation, forced labour, slavery-like practices, servitude or the removal of organs.


**Introduction**

Despite attempts over the years to address the problem of human trafficking in the Russian Federation, this issue has developed into a cause for serious concern. In April 2002, a special task force was established by the Ministry of Internal Affairs to prepare conclusions on the legislative development in this area, and the investigation of trafficking related crimes was transferred to the jurisdiction of police departments charged with combating organized crime.² It is expected that the draft Law on the Fight Against Trafficking in Humans will be submitted to the State Duma (the lower house of the Russian legislature) before the end of 2002. On October 30, 2002, a working group was created to draft this bill. The group includes representatives from the Administration of the Russian Federation President, from the State Duma’s Committee on Legislation, and from interested non-government organizations. The U.S. Department of Justice is to provide operational, technical, and financial support to the working group.³

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¹ This paper is based on the talk given at the training session entitled “Women Leaders Combating Human Trafficking” at Georgetown University on October 30, 2002.


³ G. Ilyichev, Bortsy s Aisbergom [Fighter against the iceberg], IZVESTIA, Oct. 30, 2002.
Russian officials attribute their inability to curb trafficking to the lack of legislation, complaining that according to Russia’s legislation, prostitution and the selling of women for prostitution are not subject to prosecution. Also, Russian police cite problems with investigating such violations, as these crimes that begin in Russia are usually completed abroad. The Ministry of Internal Affairs proposed to establish an exact definition of the term “slave trade” in domestic legislation and introduces prohibition into the Criminal Code. Presently, Russian authorities are focusing on strengthening control over commercial agencies that could be used as a cover for slave trade.

There are no reliable statistics on crimes committed in this sphere due to the latent type of this phenomenon. The only information available is that in 2001, throughout Russia, only 24 criminal cases were opened under article 152 of the Criminal Code (trafficking in minors) and 52 cases under article 240 (involvement in prostitution). There is no information on how many of these cases were closed before trial.

International Agreements on Trafficking

Even if Russian police authorities merely define trafficking as the illegal export of women and children abroad for the purpose of sex exploitation, this very narrow definition allows trafficking to be considered a contemporary form of slavery.

Slavery was the first human rights issue that gave rise to grave international concern. The desire to overcome it was recorded in the Slavery Convention drafted by the League of Nations in 1926 and in the subsequent legal instruments. Today, being the legal successor to the USSR, Russia has joined more than 20 international agreements and treaties in this sphere. They include the Universal Declaration of Human Rights of 1948, the Convention to Combat People Trafficking and Exploitation of Prostitution by Third Persons of 1949, the Convention on the Political Rights of Women of 1952, and the Convention on the Rights of the Child of 1989. Trafficking can rightly be considered as slavery because the UN confirmed (in 1956 and then in 1991) that slave-like practices and contemporary manifestations of this phenomenon are recognized as slavery despite the fact that traditional slavery as a legitimized system of labor was abolished everywhere.

A significant step toward legislative development in this area occurred in 1993, when the UN Commission on Human Rights called upon all countries to amend their legislation so that nationals guilty of the crime of cruel treatment and exploitation of children in prostitution and pornography abroad could be brought to justice in their own countries and in the countries of commission of the crime.

Illustrative Legislative Approaches to Trafficking in Some Other Countries

While many countries have such laws, their enforcement is generally lax. Most countries use criminal laws embodied in their penal codes against traffickers.

National legislation usually depends on whether the country is an exporter of victims of trafficking or a recipient of trafficked humans. As a rule, legislation of the recipient countries is more developed. Some countries have laws that directly address the problem of trafficking (e.g., Brazil, China, and the United States). Other countries prosecute prostitution, such as Thailand where prostitution remains illegal even though the laws are designed to punish the procurers and customers rather than prostitutes. Thailand’s law offers women protection from trafficking and it has extraterritorial scope. Bangladeshi law punishes trafficking and

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forced prostitution with death or life imprisonment.

Greece has recently adopted new legislation on trafficking. According to Greek law, human trafficking is included in the list of organized crime activities and is added to the list of crimes included in the money laundering law. Punishment of this crime in Greece is provided even if it was committed abroad. Stricter penalties for human trafficking and sexual exploitation are imposed when minors are involved.

In recent years, CIS countries have also been trying to intensify the struggle against slavery and coordinate their efforts in investigating related crimes. Ukraine’s parliament, for example, passed an amendment to the Criminal Code in 1998 that makes trade in people a crime punishable by imprisonment for up to eight years and confiscation of property. A government program was adopted for the prevention of trade in women in Ukraine. Moldova is drafting an amendment to its Criminal Code to recognize trade in humans as a crime. The new Criminal Code of Belarus provides for the punishment of the trade in humans for the purpose of sexual or other exploitation. Belarus is the only former Soviet Union republic that prosecutes the recruiting of prostitutes.

The Baltic states have not made significant progress in this field. They follow the tentative European Union agreement to punish trafficking with imprisonment of no less that eight years and have some legal provisions which are specific for each particular country. For example, Latvia imposes a 15-year imprisonment for organized smuggling of underage girls, and Lithuania has a 4-year Government program against human trade.

Adoption of tough laws alone does not solve all the problems. Quite the contrary, it can escalate them with all the ensuing consequences – rising crime, corruption, and spread of violence. A case in point is Ukraine, where a severe law on prostitution has been adopted but apparently is not effective. Ukraine ranks high in the per capita number of prostitutes and in the spread of the HIV epidemic. Ukraine is one of the main suppliers of prostitutes to the Russian market.

**Defining Trafficking Under Russian Law**

Even though Russia has a unique role in international human trafficking because it is simultaneously a resource of future victims and a recipient of trafficked persons from the former Soviet states, there are at least three reasons why this problem is not in the center of public and legislative interest:

- Trafficking is a relatively new phenomenon, and legal and criminological studies have not kept up with its development.
- Trafficking is a latent phenomenon with a very low level of reporting and limited statistics, possibly because of police corruption.
- Public opinion is not yet sufficiently aroused to give the problem priority attention.

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Because no intensive legal and criminological research in this area has been done, Russian lawyers have not developed a joint approach toward the accepting of a legal definition for trafficking. Recently, the Ministry of Internal Affairs drafted a Criminal Code provision dealing with trafficking after article 152 of the Russian Criminal Code, which deals with trafficking in minors and called this article “Trafficking in Women.” By referring to trafficking in women rather than addressing the issue as trafficking in people in general, the focus of Russian police authorities seems to be on gender issues rather than on the resolution of the problem in general.\(^7\)

In 1994, the UN ruled that trade in people means the illegal and clandestine transportation of people across national and international borders for the purpose of subjecting of women to social or economic suppression and exploitation for the benefit of criminal syndicates. Additionally, the International Commission on Crime Prevention proposed to differentiate between trade in people and illegal transportation of migrants as well as to emphasize that trafficking is not limited to sexual exploitation of women. It includes forced labor, household slavery, forced marriages, trafficking of children, etc.

However, in Russia a comprehensive definition of human trafficking has not been adopted. There is no legal definition for the trade of human beings either. Russian laws do not distinguish between who is an offender and who is a victim. The presently proposed draft of Russian law follows the UN definition, which from a legal point of view is very 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. It appears that all these qualifying features will be included in Russia’s legislation.

There are 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 and defines trafficking as either:

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

**Russian Trafficking Related Legislation**

Russia has recognized the existence of trade in people in various regions and is beginning to work on adoption of the extremely necessary law in this sphere. However, the fact is that there is no legislation appropriate to the situation involving human trafficking.

At the same time, Russian legislation has a considerable legal basis regulating the problem which envisages criminal punishment for trafficking related actions (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). At least seven articles of the Criminal Code have some relation to this type of crime. However, no single article is dedicated exclusively to the trade of humans. Because these crimes are not usually committed by single individuals, they are primarily covered

\(^7\) O. Yablokova, *Slavery in Russia*, MOSCOW TIMES, July 2, 2002.
by article 210 of the Criminal Code, Organizing a Criminal Community or a Criminal Organization. This relatively large number of provisions does not adequately reflect the current situation and practice to combat these crimes. For instance, article 126, Abduction of People, requires 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.

An interesting example of ineffective Russian legislation is article 241 of the Criminal Code, which provides for the punishment for organizing and keeping brothels for prostitution. The disposition of this article states that this crime consists of organizing and maintaining brothels for prostitution. The word “brothels” is used in this provision in plural, and law enforcers interpret this article literally. If there are several brothels, the owner/manager may face criminal responsibility. If there is one brothel, then based on literal interpretation of this article, the owner/manager is exempt from criminal responsibility. According to current court practice, this interpretation is correct and is the only one which is used. Recently proposed amendments to the Code suggest to rename this article into “organization of and assistance to the business of prostitution.” Focusing on receiving profit from conducting this kind of business, the bill proposes to eliminate the qualification of this activity as conducted systematically. It states that offering premises for conducting prostitution more than once, entails criminal responsibility without specifying whether or not this is the same place, unlike the provision currently in force, which stresses the systematic involvement in this activity. Systematic involvement means that if someone uses one place today, and another place tomorrow and the day after tomorrow yet another place, this is not a systematic activity each time he/she uses different places. Other articles have similar weaknesses.

Because of gaps in Russian legislation, recruitment into prostitution and fraudulent employment in prostitution-related spheres of business are not covered by Russian law. Russian law does not provide punishment for the seizure of women’s identification documents, an activity done in order to isolate women and prevent their contacting police authorities. Attempts to break up child sex related crimes are hampered by legislation that makes sex acts with children 14 and over legal. It is proposed now to increase this age limit up to 16 years. Another legal discrepancy is that the Criminal Code does not cover child pornography but refers only to pornography in general. 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 subject of trafficking personally. If violence was used in regard to the relatives of the trafficked person, this action is considered as a regular crime not related to trafficking. Relatives still cannot bring charges against the traffickers on behalf of the victim.

In most cases, people are taken out of Russia under the pretext of employment abroad, but tourist firms are not empowered to do this. They must have clearly stated functions, and the tasks they should perform determined by the Law on Licensing of Particular Activities. Strong enforcement of the existing legislation could lessen the risk of trafficking.

The Code of Criminal Procedure, which entered into force on July 1, 2002, provides for some protective measures (art.166.9), including the right of the victims, witnesses, their relatives, and/or representatives to hide data on his/her person. This allows an individual to testify in the trial without revealing his/her name, place of work, residence, etc. Another new provision is presentation of an individual for identification in conditions that rule out visual contact of the identified person with the person who does the identifying. It is important to enable the person to identify another without fear. Also, the interrogation

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of witnesses shall be conducted in a way that eliminates the observation of the witnesses by other parties to the criminal process, and that avoids announcing the data by which the witness can be identified. These norms of the Code require implementation and shall be added with other security measures, such as resettlement of the persons being protected to a different place of residence, change of appearance, place of work, personal bodyguards, the guarding of the home and property, temporary sojourn in a safe place, etc. A federal law on state protection of witnesses, which would elaborate norms that will implement these provisions and specify financing of these measures, is needed.

**Legal Measures Proposed to Fight Trafficking**

Recognition of human trafficking as a crime shall entail the introduction of administrative and criminal responsibility for individuals and legal entities engaged in, assisting in, and/or benefitted from human trafficking. That requires trafficking to be considered a form of organized transnational criminal activity. Consequently, the legislative approach should be changed in order to fight this crime, which may be committed in one country but the corpus delicti is abroad.

Measures proposed by Russian authorities are focused on political issues rather than on the building of a legal mechanism to fight trafficking. For example, the program on protection of children against sexual exploitation was included in the federal Youth Policy Program developed by the administration of the President and prescribes social and administrative activities aimed to improve situations in this field. Proposals related to changes in legislation are within the framework of old concepts and definitions. They provide for the extension of the list of activities considered as a crime, however, specifics of organized crime are not taken into account. Laws on immigration, labor force migration, study abroad should also be amended. No trafficking related amendments to these laws have been discussed in Russia.

The proposed new edition of article 240 of the Criminal Code (engagement in prostitution) appears to be better because it is much more specific in determining ways of such engagement. However, these mostly cosmetic changes do not improve the essence of the provision and do not make it enforceable because they do not prosecute engagement in prostitution as it is prescribed by the International Convention, which requires the prosecution of anyone who forces another person to commit prostitution even if this person has agreed. Both versions of article 240, the current and proposed, impose criminal responsibility only when engagement in prostitution is done with the use or threat of force, by damaging victim’s property or by other fraudulent means. However, the practice shows that sold women are not forced into prostitution by the use or threat of force only. More often, other methods are used against them, such as taking away their identification documents, threatening to report them to police, threatening to use force against their relatives, a category completely not protected by Russian legislation. Because most of these crimes are committed outside of Russia, these acts are not included in the jurisdiction of Russian law enforcement authorities and are not prosecuted in Russia.

Proposed measures can be effective if they will establish provisions aimed not only at punishing the wrongdoers, but at helping the victims by allowing them to bring a personal cause of action against their abusers and to be protected by the state.

**Conclusion**

Regardless of efforts of the international community and Russia’s non-governmental organizations, there is no machinery yet for making Russia a country with developed legal system and enforceable legislation against trafficking. All depends on the degree of realization by Russia’s leadership of the gravity of this problem and on its civilization standard to solve it effectively.
Of course, it is unlikely that the adoption of legislation to make the buying and selling of human beings a crime in Russia, increasing penalties for pimping and for the trafficking of women, and allowing for the confiscation of assets of traffickers and pimps will solve the problem and stop this shameful practice. However, together with many other related measures such as developing policies to ensure the safety of women during criminal prosecution of pimps, adoption of social legislation, better funding for social services, and assistance to victims of trafficking may change the situation and indicate that Russia has been moved to another level of legal and political thinking.

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