
Modern Slavery in Russia: Exploitation without Chains

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Abstract

This article is devoted to the study of the modern slavery phenomenon in Russia and the problems associated with the protection of citizens. Drawing from the experience of Interregional Public Movement «Alternative» against trafficking in human beings and modern forms of forced labour, and analysis of the Russian case-law under Article 127.1 of the Penal Code («Human trafficking») and the relevant jurisprudence of the European Court of Human Rights, the authors come to conclusions on measures that need to be taken at the state level to create an effective system to combat «modern slavery». These measures should be both of legal and organizational nature. In particular, the authors substantiate the need for the Russian authorities to recognize the depth of the problem, to urgently adopt a national plan of action to combat trafficking in human beings, to create a system for the protection of victims of this crime that meets the requirements of international instruments signed by Russia, and to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings.

Keywords: Modern slavery; Forced labour; Exploitation; Vulnerability; the ECtHR.

1. Introduction.

In 2019, the Russia ratified the Protocol of 2014 to the ILO Forced Labour Convention. This protocol required the member states to develop a national policy and plan of action for suppression of forced or compulsory labour and take effective measures for the identification, release, protection, recovery and rehabilitation of all victims, as well as the

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provision of other forms of assistance and support. These obligations are very much in line with the norms of the so called Palermo protocol¹ which was ratified by Russia a decade before.² The latter ratification was preceded with criminalization of human trafficking and the use of slave labour in Russia.³ Scholars correctly note that international influence constituted the most significant pressure to adopt anti-trafficking legislation in Russia.⁴ However, this international influence, unfortunately, was not sufficient to change the situation in substance. The Russian legislator did not go further, refraining from making steps to create an efficient mechanism for revealing the victims of human trafficking and for their protection.⁵ Unsurprisingly, since 2013, Russia continues to be placed in Tier 3 of the U.S. Trafficking in Persons (TIP) report (TIP, 2013, 2019).⁶ According to Global Slavery Index report 2019 Russia is in the list of 10 countries taking the least action to respond to modern slavery, between Congo and Somalia.⁷

The recognition of the problem by the international community does not affect the state authorities in Russia.

Russian press is almost silent on the topic of modern slavery: there are only a few publications in the press about the use of the labour of illegal migrants, about the recruitment of people in the “Three railway stations’ square” in Moscow and sending them to the south of Russia for further exploitation.⁸ Surprisingly there are more studies dedicated to this problem in English⁹ rather than in Russian.¹⁰

In the present paper, we have combined the efforts of those directly involved in rescuing people from modern slavery with those of specialists in criminal and international labour law. Our tasks were to determine the actual content of the term «modern slavery», primarily

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

² Federal law №. 26-FZ of 26.04.2004, Federal law №. 395-FZ of 12.11.2018 "On ratification Of the Protocol to the Convention on forced labor of 1930 (Protocol to Convention №. 29)".

³ Federal law «On amendments and additions to the CC of the Russia» dated 08.12.2003 № 162-FZ.

⁴ Shelley, L., *Russia's law against trade in people: A response to international pressure and domestic coalitions*, in Feldbrugge F., Sharlet R. (eds.), *Public Policy and Law in Russia: In Search of a Unified Legal and Political Space*, Brill, Leiden, 2005, 291–305.

⁵ Dean L. A., *The Diffusion of Human Trafficking Policies in the Post-Soviet Region: A Comparative Analysis of Policy Adoption in Ukraine, Latvia, and Russia*, in *Journal of Comparative Policy Analysis: Research and Practice*, 19, 5, 2017, 403-418

⁶ Molodikova I., *One Step Forward and Two Steps Back: Migration Policy and Human Trafficking in the Russia since the Palermo Protocol of 2020*, in *Journal of Human Trafficking*, 6, 2, 2020, 141-155

⁷ <https://www.globalslaveryindex.org/2019/findings/executive-summary/>

⁸ News release on Russia 24 channel from 02.06.2016 <https://www.youtube.com/watch?v=13Scrs4RdcI> (accessed 20.05.2019).; Zhukova L., *The Slave pays off in a week. How slave markets work in Russia*. <https://ria.ru/20170726/1499156143.html>; <https://regnum.ru/news/1202002.html> (accessed 20.05.2019).; Murashev A., *Slavery in Russia: from babies to Nigerian prostitutes*, <https://s.Neb.ru/entry/163911/> (accessed 20.05.2019).

⁹ Buckley M., *The Politics of Unfree Labour in Russia: Human Trafficking and Labour Migration*, Cambridge University Press, Cambridge, 2018, 115; Churakova I., van der Westhuizen A., *Human Trafficking in the Russia: Scope of the Problem*, in *The Palgrave International Handbook of Human Trafficking*, 2020, 1071-1092 (1079).

¹⁰ It is worth noting the interest of some researchers to certain aspects of this issue: Vardanyan, A. A. features of investigation of crimes related to human trafficking: criminal procedure and criminalistic aspects: author's abstract of the thesis Rostov-on-don, 2012 -26 c; Volkov, K. A., *Counteraction to human trafficking as a direction of modern criminal policy*, in *Russian investigator*, 2, 2006,65; Dzyaloshinsky I. M., Tyuryuknova E. V., *Human trafficking: mass media as a resource of public counteraction to modern slavery*, ZAO “city Press Service”, Moscow, 2008, 368;

referring to the practice of the Public Movement «The Alternative» (Part 1), to analyze the possibilities and difficulties of bringing to justice for crimes related to the use of «modern slaves» (Part 2) and the experience of international bodies to protect people from this crime (Part 3).

2. The concept of modern slavery and the contribution of the NGO “The Alternative” to the fight against it.

2.1 The concept of modern slavery.

To define the concept of modern slavery, let us refer to the research work of the UN and ILO, who note the dynamic changes and diversity of forms of slavery. In particular, the UN report lists nine types of dependency of a person used for exploitative purposes. In particular, traditional slavery, debt bondage, serfdom, forced labour, sale of children and the worst forms of child labour, trafficking for sexual exploitation and forced labour, sexual slavery and other forms.¹¹ It is clear that, for international organizations, contemporary slavery is a generic term that unites both classical forms of slavery and the phenomenon of exploitation of human beings under various forms of coercion or dependency. Based on the experience of the Public Movement «The Alternative» discussed below, namely, forced labour in various sectors of the economy, in forced begging and exploitation in the criminal sphere, which in the overwhelming majority of cases have become a consequence and purpose of trafficking in human beings, are the most frequently encountered forms of contemporary slavery in Russia, so they will be the subject of further analysis.

2.2. Analysis of the experience of the Interregional Public Movement «The Alternative» in rescuing people.

Every day the hotline of the Public Movement «The Alternative» receives calls with requests for help. Individuals, partner NGOs and the International Organization for Migration know that 'The Alternatives' volunteers have ten years of experience in combating modern slavery and assisting victims. Forced labour, labour exploitation - related or unrelated to human trafficking - have become a pandemic in Russia. The simplest question about— the amount of victims of human trafficking, exploitation and forced labour in Russia today - seems to be unanswered. There are only official statistics that are ridiculous in their

¹¹ The human faces of modern slavery. UN Voluntary Trust Fund on contemporary forms of slavery, UN. <https://www.ohchr.org/Documents/Issues/Slavery/UNVTCFS/UNSlaveryFund.pdf>; Global estimates of modern slavery: Forced labour and forced marriage International Labour Office (ILO), Geneva, 2017.

inconsistency with reality - for example, 6 crimes in 2017 under Article 127.2 (use of slave labour) of the Criminal Code (CC) of the Russia.¹²

Monitoring of criminal cases that may be related to trafficking in persons, conducted in accordance with the requirements of the Program of Cooperation of the CIS Member States in Combating Trafficking in Human Beings by the Research Institute of the Academy of the General Prosecutor's Office, reveals a completely different picture: over five years, 13,977 cases of sexual exploitation, 101,487 cases of forced labour and 10,577 cases of exploitation in the criminal sphere were registered. In 2017 alone, the total number of crimes potentially related to trafficking in persons was up to 43,618.¹³

This disparity in statistical data is a consequence of the poor definition of the crimes of human trafficking and slave labour in the CC of the Russia (comparing with the internationally accepted definition) and reflects a fragmented approach to trafficking in human beings, its components being dispersed in a variety of articles of the Criminal Code.

The high prevalence of these crimes is also due to the huge number of people from vulnerable groups. These are millions of people - those who are very likely to become (and often become!) victims of criminals and may end up in modern slavery. These are the unemployed (4,6 million estimated by ILO methodology)¹⁴ people living below the poverty line (about 13 percent of Russia's population¹⁵), children from dysfunctional families, social orphans, pupils and graduates of boarding schools, young people in economically depressed regions, single mothers, single old people, disabled people (of any age), people formerly involved in sex work, drug addicts and alcoholics, people simply in a difficult life situation, refugees and internally displaced persons, labour migrants, especially those who have lost legal residence status, and children of migrants.

Russia is more a country of destination and transit than the country of origin of trafficked persons. In 2017, 15.7 million foreigners were registered for migration, of whom 7.7 million were Central Asian citizens. Of those, approximately 3.5 million indicated work as the purpose of the visit.¹⁶ At the same time, 1.5 million patents were granted and another 150,000 work permits were issued. Consequently, 1,350,000 people remained outside the legal framework. However, even obtaining patents does not guarantee protection against exploitation.

In the practice of «The Alternatives» there are plenty of modern slavery victims - holders of patents and migration cards. Thus, having a legal status does not protect against employers-criminals today. Russian citizens are not protected either, they constitute the majority of victims - internal trafficking for the purpose of labour exploitation has become a

¹² Report of S. I. Vinokurov (research Institute Of the Academy of the Prosecutor General's office of the Russia) in the Council of Europe Handbook *Combating human trafficking and protecting victims of human trafficking*, 2018, available on the Council of Europe website <https://www.coe.int/web/help/home> (subject to registration as part of the HELP course).

¹³ *Ibid.*

¹⁴ Employment and unemployment in the Russia in June 2020: https://rosstat.gov.ru/bgd/free/B04_03/IssWWW.exe/Stg/d05/140.htm (accessed 26 July 2021).

¹⁵ Data provided by Rosstat for the year 2019: <https://www.rbc.ru/economics/27/03/2020/5e7e19859a7947ecaed5ae1>.

¹⁶ Ministry of internal affairs. Selected indicators of the migration situation in the Russia for January-December 2017, distributed by country and region, 29 January 2018 <http://mva.pf/Deljatennost/statistics/migracinnaya/item/12162171/> (accessed August 10, 2020).

dominant feature of this criminal business. Here are some examples from the activities of “The Alternative”.

The resident of St. Petersburg came to Dagestan 4.5 years ago and returned only now, thanks to the help of volunteers. He was sedated at the train station where he was promised employment, his documents were stolen on the way. He got sick on the trip, and in the Kizlyar district police took him off the bus. One of them offered to work in his father's cafe. So, the victim ended up in labour slavery. He was not paid anything in the cafe and was not permitted going home. As a result, the man ran away and ended up with the next owner. The same story repeated there. Some of the owners beat him, others did not, some fed him garbage, and others gave more or less tolerable food, but none of them ever paid their “employee”.

In Kursk region, volunteers saved the victims of the «beggars’ mafia». They were forced to beg in Zheleznogorsk. At his «workplace» one of the victims was forced to portray a disabled wheelchair user, and not far from him there was his fellow - unfortunately also a disabled wheelchair user, but a real one. In Moscow, a Ukrainian citizen was saved from such a situation. These are just examples – a few out of numerous- to illustrate various forms of exploitation. The list of specific cases of forced labour will take many pages. Exploitation is practiced all over the country, because all its prerequisites remain: a high demand for cheap and unskilled labour, and in return - an inexhaustible supply of unprotected labour, for a penny, for a bowl of food, for a shelter.

Social and economic vulnerability pushes these people to seek livelihoods and they find themselves in a situation close to slavery. A recent report by the European Fundamental Rights Agency concludes that trafficking for labour exploitation is increasing throughout Europe and is becoming more prevalent than «traditional» forms, such as sexual exploitation.¹⁷

The key factors in all cases of modern slavery in which the NGO The Alternative contributed to the victims' release were the victim's dependence on the «master», their fear of punishment and the inability to contact the authorities due to the lack of language skills, remoteness or corruption factors. It should be noted that in Russia, unlike many countries (including Turkey, Ukraine, Moldova, and many others), there is no state hotline through which one might report the facts of modern slavery. The volunteers are essentially engaged in the work that the State should do. At the same time, the possibilities of public organizations are significantly limited, due to the fact that there is no clearly shaped anti-trafficking public policy, investigation of crimes is ineffective, protection of victims from prosecution for offences committed under duress does not exist, and protection as such (including state rehabilitation programs and compensation for the harm suffered) is not available, etc..

Below we will analyze the practice of prosecution for human trafficking and use of modern slaves and outline the main problems of law enforcement in this area.

¹⁷ See, FRA. "Severe labour exploitation: Workers moving within or into the European Union. States' obligations and victims' rights", 2015. Available at: <https://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>

3. Accountability for crimes related to modern slavery.

Until 2003, the criminal legislation of the USSR and later the Russia did not provide for criminal liability for trafficking in adults and the use of forced labor. During this period, only trafficking in minors was criminalized.

In December 2003, Articles 127.1 «Trafficking in Human Beings» and 127.2 «Use of Slave Labour» were included in the CC of the Russia. These norms appeared because of the planned ratification of the United Nations Convention against Transnational Organized Crime of 2000 and its Protocols (in particular, on trafficking in persons), which required Russia to criminalize trafficking in persons.

Analysis of the Russian case law under the articles 127.1 and 127.2 of the CC confirms the thesis presented in Part 1 that any person from socially unprotected groups can become a potential victim of these crimes. As a rule, the victims are irregular migrants¹⁸, citizens who have lost their homes as a result of crimes committed against them¹⁹, persons suffering from alcohol or drug addiction²⁰, persons without a certain place of residence and employment²¹, usually without higher education²², but the list of such categories is open-ended. Victims generally lack their own sources of income, property and support from relatives. Our research has shown that the victims are most often Russians (38%), Uzbeks (26%), Tajiks (12%), Ukrainians (12%), Kyrgyz (8%), Vietnamese (6%).²³

Persons are sought by criminals for the purpose of their subsequent exploitation in places of mass presence of the unemployed and homeless, in public places²⁴, at employment centres²⁵, as well as through the dissemination of job advertisements and assistance to people in difficult life situations.²⁶ As a rule, the offenders persuade the victim to go with them, offering them paid work, food and accommodation.

At the next stage of criminal intent, the victim is taken to the place of destination, where the documents and means of communication are taken away. As a rule, the transportation of the person for the purpose of subsequent exploitation is carried out on the personal transport of criminals, on intercity buses or specially ordered transport, and/or under the

¹⁸ Resolution №. 5-2/2016 of January 14, 2016 in case №. 5-2/2016 of the Uchalinsky district court of the Republic of Bashkortostan. Reference system «Consultant Plus».

¹⁹ Verdict №. 1-179/2013 of February 12, 2014 Novousmanskyy district court of the Voronezh region. Reference system «Consultant Plus».

²⁰ Verdict № 2-29/2017 of December 28, 2017 in case # 2-29/2017 of the Nizhny Novgorod regional court; verdict № 1-20/2015 of February 11, 2015 Monchegorsk city court of the Murmansk region. Reference system «Consultant Plus».

²¹ Verdict № 1-2/2014 1-83/2013 June 2, 2014 in case №. 1-2/2014 of the Karabash city court of the Chelyabinsk region

²² Verdict №. 2-29/2017 of December 28, 2017 in case № 2-29/2017 of the NizhnyNovgorod regional court. Reference system «Consultant Plus».

²³ In the course of the study, the authors of this article examined 27 sentences of criminal courts on crimes under articles 127.1 and 127.2 of the CCof the Russia. Reference system «Consultant Plus».

²⁴ Verdict № 1-31/2016 1-541/2015 dated April 25, 2016 in case No. 1-31/2016 of the Sverdlovsk district court of Kostroma. Reference system «Consultant Plus».

²⁵ Verdict № 2-101/2013 2-8/2014 from June 9, 2014 The Rostov regional court. Reference system «Consultant Plus».

²⁶ Verdict №. 2-103/2013 of October 28, 2013 in case №. 2-103/2013 of the Rostov regional court. Reference system «Consultant Plus».

influence of psychotropic substances, which makes it possible to conceal his or her location even from himself or herself.

The victim is subsequently subjected to various forms of labour exploitation, depending on his or her gender, age, physical capacity and other circumstances. Attempts to assert their rights are often suppressed through threats, blackmail or physical exposure²⁷. As a rule, no salary is paid to the victim. Those using slave labour usually explain that the money earned by victims is spent on their maintenance or used to pay off their debts. Often, during the period of servitude, the victims are systematically given alcohol, narcotic or psychotropic substances as a means to keep them under control. The main forms of exploitation of victims are:

- Use as workers in various types of industrial or agricultural production;²⁸
- sexual exploitation of women;²⁹
- Exploitation of persons with disabilities for the purpose of generating criminal proceeds from their forced begging.³⁰

The disposition of article 127.1, paragraph 1, of the CC is defined as «The purchase or sale of a person, other deals in relation to a person concerned, or recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation»; exploitation of a person means «the use of prostitution by others and other forms of sexual exploitation, slave labour (services) or servitude».

The main problems encountered in providing evidence of this crime are related to proving the fact of slave labour (services) and the lack of certainty in the concept of servitude. The concept of slave labour is enshrined in article 127.2 of the Criminal Code, «Use of slave labour», which defines «use of the labour of a person in respect of whom powers inherent in the right to property are exercised when a person, for reasons beyond his or her control, cannot refuse to perform the work or services». Thus, labour will be deemed slave labour only if the victim, for reasons beyond his control, could not refuse to perform the work or service concerned. It is very difficult to prove this circumstance, since its main proof is the testimony of victims, who are often unwilling to give it due to fear of the perpetrators, material dependence on them, unwillingness to participate in criminal proceedings and for some other reasons.

It should be noted that the exploitation is often not related to the deprivation of liberty and the defendant usually claims that the victim could leave the place of residence at any time if he was not satisfied with the conditions of work and therefore there was no

²⁷ Verdict №. 1-244/2017 of October 6, 2017 in case No. 1-244/2017 of the Millerovsky district court of the Rostov region. Reference system «Consultant Plus».

²⁸ Verdict № 1-2/2013 1-2/2013(1-56/2012;) 1-56/2012 dated April 22, 2013 Makaryevsky district court of the Kostroma region; Verdict № 1-4/13 of February 28, 2013 of the Leninsky district court of Kostroma. Reference system «Consultant Plus».

²⁹ Verdict № 1-4/2014 1-63/2013 from February 12, 2014 Novousmanskyy district court of the Voronezh region; Verdict № 1-15/2017 1-175/2016 dated September 4, 2017 in case No. 1-15/2017 of the Caspian city court of the Republic of Dagestan. Reference system «Consultant Plus».

³⁰ Verdict №. 1-316/2016 of November 12, 2015 Kirovsky district court of St. Petersburg. Reference system «Consultant Plus».

exploitation. For example, accused K.³¹, who adhered to the above position, was acquitted of committing a crime under Article 127.2 of the CC. The court motivated its decision by the existence of an opportunity for the victims to leave their places of detention and work. In our opinion, such approach of the court is rooted in the imperfection of the CC Articles 127.1 and 127.2. It also explains the small number of persons convicted under these articles, as well as the fact that criminal cases on crimes under Article 127.1 are initiated more often than those on crimes under Article 127.2.

A significant proportion of criminal cases concerning offences under article 127.1 CC have been initiated on the simple facts of the sale or purchase of children³² or other persons who are in a helpless state³³ and not connected with their subsequent exploitation. There are currently only few cases in which the “recruitment, transportation, transfer or reception for the purpose of exploitation” were qualified under article 127.1 CC. In our view, this is also due to the fact that, in order to accuse a person of committing this crime, it is necessary to prove that he was aware of the purpose of his or her actions - the subsequent exploitation of the person. Taking into account that proving exploitation is in itself a considerable difficulty, it is even more difficult to prove awareness of the purpose of exploitation during recruitment, transportation and other actions against potential victims.

Due to the above-mentioned circumstances, at present criminal cases involving offences under articles 127.1 and 127.2 CC are predominantly initiated in connection with the exploitation of persons for the purpose of prostitution, as a more legally defined phenomenon. Less frequently, criminal proceedings are instituted for the use of slave labour (services) or servitude.

Russian scholars proposed various measures for optimizing the fight against crimes related to exploitation of people³⁴, but at present it is possible to state that there are unresolved problems that significantly complicate bringing to criminal responsibility for these crimes. It should be noted that since the inclusion of articles 127.1 and 127.2 CC, the wording of article 127.1 has been changed 5 times and the wording of article 127.2 has been changed 3 times, which makes it possible to conclude that the original wording of these norms was significantly imperfect. It seems to the authors of the present paper that the current versions of the said articles will also be changed in the future due to the obvious need to correct them.

Plenum of the Supreme Court of the Russian issued on December 24, 2019 the resolution № 58 on judicial practice in cases of kidnapping, unlawful imprisonment and human trafficking. It contains interpretations of the concepts of purchase and sale, recruitment, transportation, transfer, person, and also expressed the legal positions of the Supreme Court

³¹ Verdict № 1-137/2014 of September 16, 2014 in case № 1-137/2014 of the Caspian city court of the Republic of Dagestan. Reference system «Consultant Plus».

³² Verdict № 1-15/2017 1-175/2016 dated September 4, 2017 in case № 1-15/2017 of the Caspian city court of the Republic of Dagestan. Reference system «Consultant Plus».

³³ Verdict № 1-37/2017 1-971/2016 dated January 31, 2017 in case № 1-37/2017 of the Lyubertsy city court of the Moscow region. Reference system «Consultant Plus».

³⁴ Arzhanova T. M. *Criminal law counteraction to the use of slave labor*, PhD thesis, Russian University of peoples ' friendship (RUDN). Tambov, 2011.

regarding the problems arising when qualifying these crimes and bringing those responsible to criminal liability for committing them.

This resolution of the Supreme Court introduces greater certainty in the criminal law legislation, it does not eliminate the shortcomings of the CC and the case law listed above.

There are also a number of other factors preventing effective counteraction to the said crimes:

1) Lack of effective mechanisms to protect witnesses and victims of crimes under articles 127.1 and 127.2 of the Russian Criminal Code.

Practice shows that at present the application of the security measures provided for in the article 6 of the Federal Law «On state protection of victims, witnesses and other parties to criminal proceedings» is rather limited and, as a rule, these measures are not applied to victims of crimes under articles 127.1 and 127.2 of the CC.

It should be noted that the said federal law provides for measures of social support for protected persons, but these measures are to be applied solely if there is a risk of death or bodily injury or other harm to health of a protected person. The Law does not envisage such measures of social support as provision of food, accommodation, treatment, purchase of clothes, means of communication and other needs. As a result, victims remain open to the influence of criminals and are quite easily inclined to give evidence necessary for suspects (accused), which in turn leads to the impossibility of bringing the latter to criminal liability.

2) Corruption among law enforcement officials

Police and other law enforcement officials might receive bribes from traffickers for declining to hold the latter accountable under the law. In some cases, public officials have been linked to larger trafficking operations. In one such case, a lieutenant colonel in the Russian Foreign Military Intelligence Directorate was convicted and sentenced to 12 years' imprisonment for involvement in a trafficking scheme.³⁵ Employers sometimes bribe Russian officials to avoid enforcement of penalties for the recruitment of irregular migrant workers.³⁶ Moreover, there have been media reports of police officers returning escaped victims to exploiters, who subsequently beat them in front of other exploited workers.³⁷

3) Insufficient legal basis and state commitment for combating human trafficking and forced labour.

Despite the adoption of the Model Law on Combating Trafficking in Human Beings by the Inter-parliamentary Assembly of the CIS Member States (adopted in St. Petersburg on 03.04.2008 by Decision 30-11), the Russia has not yet adopted a relevant national law. A national plan of action to combat forced labour is not adopted either in spite of the

³⁵ Human Trafficking and Public Corruption. A report by the IBA's Presidential Task Force Against Human Trafficking. 2016. <https://www.ibanet.org/Document/Default.aspx?DocumentUid=E34FFA1D-8038-4AEC-A631-E0E2A7E0AD86> (accessed 20 August 2020).

³⁶ Trafficking In Persons Report. June 2018, Department of the State, USA. <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf> (accessed 20 August 2020).

³⁷ 18 thousand rubles per person How labor slavery works in Russia. The story of "Medusa" - <https://meduza.io/feature/2016/11/17/18-tsyach-rublej-za-cheloveka>. (accessed 26 July 2021).

provisions of the ratified ILO 2014 Protocol to the Forced Labour Convention N 29. The system of interaction of different authorities is lacking both on the federal and regional levels. In 2013 the Red Cross Centre reported the creation of a working group to develop an interdepartmental model of interaction to provide comprehensive assistance to individuals vulnerable to trafficking, including victims of labour and sexual exploitation in St. Petersburg and Leningrad Region.³⁸ However, there is no further information about the creation of the interdepartmental commission or its activities.

4) The elimination of units for combating organized crime in the structure of the Ministry of Internal Affairs and the interregional investigative units of the Ministry's territorial bodies at district level also has had a negative effect. These organizational measures have resulted in a significant decline in the quality of operational and investigative work aimed at combating trafficking in persons and the use of slave labour.

The abovementioned arguments make us conclude that Russia does not pay sufficient attention to the problems of combating crime associated with the use of forced labour, that investigative bodies are unable to prove exploitation and that there is no clear understanding of this phenomenon.

We believe that the recourse to the case law of the European Court of Human Rights (ECtHR) is a valuable source for understanding the criteria of exploitation. The legal positions of the ECtHR provide clear guidelines on what human trafficking is and what should the state do to combat this crime and protect victims. Since the European Convention on Human Rights is part of Russia's legal system (article 15 of the Constitution), the ECtHR's interpretation of the prohibition of forced labour and related positive obligations of states should determine the activities of Russian authorities in this field.

4. The ECtHR's experience in protecting victims of modern slavery.

In the first two parts of the paper, we have considered the problem of modern slavery in Russia describing the experience of the NGO, which provides assistance to victims of human trafficking, and the analysis of the relevant criminal cases. It was pointed out that the «exploitation» was one of the features of the crime stipulated by Article 127.1 of the Criminal Code. In the absence of a legal definition of «exploitation» Russian courts have elaborated a particular approach to such cases: there is no exploitation if it is proved that the victim was not deprived of liberty.

In this context one of the cases considered by the ECtHR is of a particular importance. In 2017, the ECHR considered the application of «workers» who could leave their place of work and move freely in the area, but these factors did not prevent the court from

³⁸ Strengthening Measures To Combat Human Trafficking in St. Petersburg and the Leningrad Region. St. Petersburg Center for International Cooperation of the Red Cross. September 2017.
http://ombudsmanspb.ru/files/13102017_OO_Vilnus/13_10_2017_rekomendacii_krasnyi_krest.pdf

recognizing a violation of Article 4 of the ECHR (prohibition of slavery, forced and compulsory labour).

The application in this case³⁹ was made by 42 Bangladesh citizens who were gathering strawberries on the farm under the supervision of armed guards. They voluntarily entered into an employment relationship, were provided with food and accommodation and were able to move freely around the territory. The employer did not pay them for six months and warned them that they would only receive their earnings if they continued to work.

This case is extremely interesting because the Court has broadened the interpretation of forced labour and human trafficking. In fact, the ECHR does not provide the definition of human trafficking. However, the Court in its earlier decisions concluded that trafficking in human beings falls under the prohibition of Article 4 of the ECHR as it is one of the forms of forced labour and constitutes modern slavery.⁴⁰

The difficulty in qualifying the actions of the «employer» in this case was due to the fact that the plaintiffs voluntarily agreed to do the work and were free to leave the place. The Court held that the original consent to employment «is not sufficient to exclude the qualification of the relationship as forced labour».⁴¹ It was noted that voluntary consent is only one factor to be taken into consideration in light of all the circumstances of the case. The ECtHR further drew attention to the vulnerable situation of Bangladeshi workers, as they were illegal migrants and could not avail themselves of legal remedies to protect their rights, as well as to the appalling working and living conditions described in the Greek court's decision. They had lived in makeshift huts made of cardboard, nylon and bamboo without a toilet or water supply; their employers had not paid them and had warned them that they would only receive their wages if they continued to work.⁴²

Traditionally, the concepts of forced or compulsory labour have been interpreted by the ECtHR on the basis of the provisions of the ILO Convention⁴³, which defines this phenomenon as any work or service required from a person under the threat of any penalty and for which that person has not offered his services voluntarily. Moreover, in this case, the Court analyzed the provisions of the Convention on Action against Trafficking in Human Beings adopted by the Council of Europe and not yet signed and ratified by Russia.⁴⁴ The ECtHR held that if an employer abused its rights or exploited the vulnerability of its employees, it meant that they did not accept voluntary employment.⁴⁵

This judgment demonstrates that the concept of forced labour is now interpreted by the Court to include also non-payment of wage arrears when «workers» are in a vulnerable position. The vulnerability of the applicants was established by several factors: they were deprived of any recourse; they could have been deported as illegal immigrants; and they were

³⁹ ECtHR, *Chowdury and Others v. Greece* (21884/15) 30.03.2017. Reference system «Consultant Plus».

⁴⁰ ECtHR, *Rantsev v Cyprus and Russia* (25965/04) 07/01/2010, Pati R., *States' Positive Obligations with Respect to Human Trafficking: ECtHR Breaks New Ground in Rantsev v. Cyprus & Russia*, in *Boston University International Law Journal*, 29, 1, 2011, 141.

⁴¹ *Chowdury and Others v. Greece*, par 96.

⁴² *Ibid*, par. 93.

⁴³ See about the earlier case law: Cullen H. *Siliadin v France: Positive Obligations under Article 4 of the European Convention on Human Rights* // *Human Rights Law Review*. 2006. T. 6. №. 3. C. 585-592.

⁴⁴ <https://www.coe.int/ru/web/conventions/full-list/-/conventions/treaty/197> (accessed 26 July 2021).

⁴⁵ *Chowdury and Others v. Greece*, par. 96.

deprived of any means and housing. In our opinion, the combination of these factors in their entirety have led the Court to conclude that the employer's actions were forced or compulsory labour.

Having established that the actions against the claimants amounted to human trafficking, banned under the Art. 4 ECHR, the Court continued to assess whether the national authorities had fulfilled their positive obligations providing due protection for the victims and the effective investigation of the case. Greece was found to have substantially fulfilled its obligation to establish a legal framework to combat trafficking in persons, but the measures taken by the authorities to prevent trafficking were insufficient. The Court considered that the local police station was aware of the employers' refusal to pay the applicants' salaries, but had not taken timely measures to protect them, and that the national court had interpreted the concept of trafficking in human beings in a narrow manner, thus acquitting the defendants. The Greek Court found that the fact that the complainants had freedom of movement showed no signs of forced labour. Namely this position is the pain point of Russian case law on human trafficking.

The importance of this solution for Russia cannot be overestimated. It should be reminded that the ECtHR emphasized the need to create a legislative and regulatory framework for the prohibition and punishment of forced or compulsory labour, slavery and servitude. The study of the Russian case law set forth in part 2 of this article makes us conclude that in situations similar to the case “Chowdouri and others against Greece”, the elements of human trafficking would not be established. Russian courts do not interpret the provisions of Article 127.1 of the Russian CC in the light of the acts adopted by the Council of Europe.

The case, similar in circumstances to that of *Chowduri v. Greece*, was heard by the court on the basis of article 127.2 of the Russian CC (slavery), and the Russian court concluded that, despite the lack of remuneration, the presence of «workers» in vulnerable and dependent on the «employer», there was no crime.⁴⁶ If this case was considered in light of the described ECtHR approach to trafficking, the Russian court could and should have qualified the actions of the «employer» as a crime under article 127.1 of the CC.

5. Final remarks.

The reports from international organizations and national experiences from other countries as well as of the U.S. reports on human trafficking over the past few years demonstrate that improvement in the fight against modern slavery is possible, and active government policy in this area is a key factor for success.⁴⁷

The practice of the social movement «The Alternative» is a living proof of the need for change in Russia. Faced every day with defenseless victims of modern slavery, volunteers are

⁴⁶ Verdict № 1-137/2014 of September 16, 2014 in case № 1-137/2014 of the Caspian city court (Republic of Dagestan). Reference system «Consultant Plus».

⁴⁷ In particular, the situation in Romania has improved significantly in recent years. Trafficking In Persons Report. June 2018, Department of the State, USA.
<https://www.state.gov/wp-content/uploads/2019/01/282798.pdf> (accessed 26 July 2021).

more aware than anyone else of the need for Russia to effectively comply with the ratified international instruments. In particular, the adoption of a national plan to combat trafficking in human beings, ensuring the protection of victims and the effective investigation of such crimes is urgently needed.

Our paper demonstrated Russia's failure to comply with its positive obligations arising, inter alia, from Article 4 of the ECHR. We believe that the following measures should be taken in order to address the problems discussed in this work:

- to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings as the most advanced European treaty prioritizing the protection of human rights of trafficked persons and permitting the Russia to interact with other Parties to the Convention in protecting the Russian victims of trafficking abroad;

- to develop, adopt and implement a federal law on combating trafficking in human beings and providing assistance to victims of trafficking. Similar laws have been adopted by the vast majority of the CIS participating States and other countries;

- to issue a decision of the Plenum of the Supreme Court of the Russia on judicial practice in cases of crimes of trafficking in persons for the use of slave labour and labour exploitation, which could explain clear criteria for determining the relevant elements of the crimes. In combination with the Decision issued by the same body in December 2019 on judicial practice related to Article 127.1, it would provide a good starting point for the courts to prosecute human trafficking and forced labour more effectively;- to expand the Federal Law «On State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings» with social support measures for protected persons, providing them with food, accommodation, treatment, clothing, means of communication and other needs;

- to strengthen the fight against human trafficking and the use of slave labour recognizing this field as a priority for the activities of law enforcement agencies, developing cooperation between different bodies (police, labour inspection, migration service), struggling corruption, ensuring efficient investigation of such crimes and punishment for the perpetrators.

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