

Russian Legislation on the Protection of Children Against Sexual Abuse and Sexual Exploitation

A Review



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Russian Legislation on the Protection of Children Against Sexual Abuse and Sexual Exploitation:
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Introduction

On 30 November 2010, the President of the Russian Federation, Mr. Dmitry Medvedev, stated in his Presidential address to the Federal Assembly of the Russian Federation that Russia's policy on child protection is based on generally accepted international standards, referring, in particular, to the United Nations Convention on the Rights of the Child (CRC)² that establishes the priority of children's interests before the interests of society-at-large and the state.³ In his speech, the President paid special attention to the problem of child abuse, child prostitution and other crimes committed against children. Referring to the official statistical data, he characterized child abuse as a "truly horrible problem" in Russia, and noted that most often orphans and under-privileged children become involved in prostitution and other criminal activities. In this respect, the President proposed the introduction of harsher punishment for sex offenders and the establishment of preventive measures against such crimes.

Meanwhile, despite the fact that the Russian President acknowledged the problem of child sexual abuse and exploitation, Russia is still not a party to the most authoritative international instruments on the protection of children against these sexual offenses, namely the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (*the Optional Protocol*)⁴ and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (*CETS 201*)⁵. These covenants define the major sexual offenses committed against children and focus on the preventive, protective, criminal law and procedural law aspects of the fight against child sexual abuse and exploitation. States Parties to the Optional Protocol and CETS 201 are obliged to amend their national legislation in accordance with the requirements of these international instruments in order to protect children against sexual abuse and sexual exploitation more effectively. Neither the Optional Protocol nor CETS 201 provides enforcement mechanisms that hold States Parties accountable for their obligations. However, States Parties may feel pressure to observe relevant provisions of these instruments in order to avoid international criticism and to uphold the State's reputation in the international arena.

The Optional Protocol and CETS 201 were opened for signature and ratification on 25 May 2000 and 25 October 2007 correspondingly. However, only on 28 March 2013 the Russian Government approved both CETS 201 and the Optional Protocol and advised President Putin to

² *United Nations Convention on the Rights of the Child (CRC)*, entered into force September 2, 1990, [hereafter *CRC*], at <http://www2.ohchr.org/english/law/crc.htm> (last visited Jan. 11, 2013).

³ Presidential Address to the Federal Assembly of the Russian Federation, Nov. 30, 2010 (Russ.), <http://eng.kremlin.ru/transcripts/1384> (last visited Jan. 11, 2013).

⁴ *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, G.A. Res. 54/263, Annex II, U.N. Doc. A/54/49, Vol. III, art. 2, para. c, entered into force January 18, 2002 [hereafter *Optional Protocol*].

⁵ *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* [hereafter *CETS 201*], entered into force October 25, 2007, at <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> (last visited Jun. 28, 2010).

submit these treaties to the Russian Parliament for their further ratification.⁶ This report explains why Russia continued to delay ratification of the Optional Protocol and CETS 201 and attempts to determine the main challenges for bringing Russian law in conformity with the provisions of these international instruments. To this end, this report will address the following issues:

- Section I of this report will demonstrate that current Russian law is incapable of efficiently fighting the problem of sexual abuse and sexual exploitation of children;
- Section II will reveal the main gaps and shortcomings of existing Russian law via comparative analyses of the Optional Protocol, CETS 201, and current Russian legislation;
- Section III will analyze the official position of Russian authorities on the ratification of the Optional Protocol and CETS 201, including the action plan of the Russian Government on accession to these covenants, and the primary challenges for bringing Russian law in line with these treaties; and
- Section IV, the final section of this report, will provide recommendations on overcoming possible obstacles to the prompt amendment of Russian law in accordance with the Optional Protocol and CETS 201.

⁶ Resheniia Pravitel'stva, priniatye na zasedanii 28 marta 2013 goda [Decisions of the Government adopted at the meeting on 28 March 2013], (Russ.) <http://www.government.ru/docs/23606/> (last visited Apr. 5, 2013); Government approves the Protection of Children against Sexual Exploitation Convention, RAPSI (Apr. 1, 2013), <http://rapsinews.com/news/20130401/266884518.html> (last visited Apr. 5, 2013).

I. BRIEF OVERVIEW OF EXISTING RUSSIAN LAWS AND STATISTICAL DATA ON SEXUAL OFFENSES COMMITTED AGAINST CHILDREN

1.1 Russian legislation on protecting children against sexual abuse and sexual exploitation

The protection of children against sexual abuse and sexual exploitation is regulated by several laws in Russia. The Constitution of the Russian Federation (*the Constitution*) is the primary document in this field. It states that human rights and freedoms are recognized and guaranteed in Russia in accordance with international law.⁷ The Constitution protects the right to life⁸ and the right to dignity.⁹ It also provides for the state protection of motherhood, childhood and the family¹⁰ and guarantees state protection of human rights and freedoms in Russia.¹¹ Moreover, according to the Constitution, international treaties to which Russia is a party constitute an integral part of the Russian legal system and their provisions prevail over those stipulated by national laws (except for the Constitution itself which is the supreme law of the Russian Federation).¹² Russia is a party to the primary international instrument in the field of the protection of children's rights, that is, the United Nations Convention on the Rights of the Child. It protects children, *inter alia*, from all forms of sexual abuse, exploitation, sale of children, trafficking, and cruel and inhuman treatment. Russia ratified the CRC on 16 August 1990, and since then, Russia has attempted to incorporate the provisions of the CRC into its national legislation.

The CRC provisions were mainly incorporated into the Family Code of the Russian Federation (*the Family Code*) and Federal Law No. 124-FZ on the Basic Guarantees of the Rights of the Child in the Russian Federation dated 21 July 1998. The Family Code protects children's rights and legal interests, as well as the right to receive protection against abuse by their parents.¹³ The Family Code also obliges public officials to inform Child Protection Services of any cases where a child is subject to cruel treatment or the child's life or health is in danger and in turn, Child Protection Services must take all necessary measures to protect the child. In addition, the Family Code envisages the deprivation of parental rights should a parent abuse or mistreat his or her child.¹⁴

The Federal Law No. 124-FZ on the Basic Guarantees of the Rights of the Child in the Russian Federation also contains numerous declarations of children's rights, repeating the provisions

⁷ Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Constitution] (hereinafter – *the Constitution*) art. 17 (Russ.), at <http://www.consultant.ru/popular/cons/>.

⁸ *Id.* at art. 20.

⁹ Art. 21 of the Constitution states that “no one shall be subject to torture, abuse or other cruel and degrading treatment” [translation]. Unless otherwise indicated, all translations of foreign sources in this report (including their titles and citations) have been translated by Svetlana Huntley.

¹⁰ The Constitution, *supra* note 7, art. 38 (Russ.).

¹¹ *Id.* at art. 45.

¹² *Id.* at art. 15 pt. 4.

¹³ Semeinyi Kodeks Rossiiskoi Federatsii [SK RF] [Family Code] (hereinafter – *the Family Code*) art. 56 parts 1 and 2 (Russ.), at <http://www.consultant.ru/popular/family/>.

¹⁴ *Id.* at art. 69.

stipulated by the Constitution, the Family Code, and it also incorporates most of the provisions of the CRC. Overall, both this Law and the Family Code contain only declarations of children's rights and do not provide an effective mechanism making these rights enforceable. This may be explained by the fact that the CRC provisions are rather broad and general in nature, and Russian authorities simply duplicated the broad language in national legislation.

Punishment and prosecution of the perpetrators of sexual offenses against children are regulated by the Criminal Code of the Russian Federation (*the Criminal Code*)¹⁵ and the Criminal Procedure Code of the Russian Federation (*the Criminal Procedure Code*)¹⁶ respectively. The Criminal Code criminalizes sexual offenses against children and establishes penalties for the crimes. The problem of sexual abuse and exploitation of children is addressed in the articles of the Criminal Code that concern crimes against the dignity of a person as well as in the following articles: trafficking in children (Article 127.1, part 2), exploitation of slave labor (Article 127.2, part 2), rape and other sexual acts through the use of threat or force, or abuse of a vulnerable child (Article 131, parts 3-5; Article 132, parts 3-5), coercing to engage in sexual activities (Article 133, part 2), sexual acts committed without the use of force (Articles 134 and 135), child prostitution (Article 240, part 3; Article 241, parts 2 and 3), and child pornography (Articles 242.1 and 242.2). However, the Criminal Code is insufficient to protect children against sexual abuse and sexual exploitation for several reasons. First, it lacks key definitions of major sexual offenses. Second, the Criminal Code lacks the protections needed for children against most of the sexual offenses criminalized by international children's laws. Finally, it lacks strong sanctions for the offenses and it does not stipulate the criminal liability of legal entities.

The Criminal Procedure Code regulates the investigation and prosecution of sexual offenses committed against children. Overall, it does not speak to the needs of the children as victims or witnesses of sexual offenses. For instance, the Criminal Procedure Code does not address comprehensively child-friendly investigation and judicial proceedings; the statutes of limitation for sex offenders are too short; and in several cases criminal proceedings may be closed if the child victim withdraws his or her complaint.

Prevention mechanisms and medical treatment of sex offenders are regulated by the Penal Correctional Code of the Russian Federation (*the Correctional Code*)¹⁷ and by the Criminal Code. These Codes envisage intervention measures that may be imposed on or proposed to sex offenders in certain situations.¹⁸ However, such measures may be applied only to convicted sex offenders and not to those who are being prosecuted or simply fear committing such offenses in the future, which is one of the major shortcomings of correctional law in general.

¹⁵ Ugolovnyi Kodeks Rossiskoi Federatsii [UK RF] [Criminal Code] (hereinafter - *the Criminal Code*) articles 97-104 (Russ.), at <http://www.consultant.ru/popular/ukrf/>.

¹⁶ Ugolovno-Protsessualnyi Kodeks Rossiskoi Federatsii [UPK RF] [Criminal Procedure Code] (hereinafter - *the Criminal Procedure Code*) (Russ.), at <http://www.consultant.ru/popular/upkrf/>.

¹⁷ Ugolovno-Ispolnitelnyi Kodeks Rossiskoi Federatsii [UIK RF] [Correctional Code] (hereinafter - *the Correctional Code*), at <http://www.consultant.ru/popular/uikrf/>.

¹⁸ Criminal Code, *supra* note 15, article 97-104; Correctional Code, *supra* note 17, art. 12 pt. 6.1, art. 18 pt. 4, art. 180 pt. 2 (Russ.).

Russian legislation also regulates the distribution of information harmful to children's health and development through Federal Law No.436-FZ on Protection of Children from Information Harmful to their Health and Development adopted on 29 December 2010.¹⁹ This law, which entered into force on 1 September 2012, describes the information prohibited for distribution to children and requires the restriction of certain information depending on the child's age. Among the prohibited information is, *inter alia*, pornographic information and information inciting children to engage in prostitution. In regards to children's access to the Internet, the Law requires Internet telecom operators to filter websites that are dangerous for children (e.g. pornography and violence-promoting websites) by using technical, software, and hardware tools to protect children from harmful information. Violation of this requirement is punishable by an administrative fine from 20,000 to 50,000 rubles (approximately 645 to 1,610 USD) for legal entities and from 5,000 to 10,000 rubles (approximately 160 to 320 USD) for self-employed entrepreneurs.²⁰

Although Russian legislation discusses the issue of sexual offenses against children in numerous laws, the legislation is ineffective in protecting children against sexual abuse and exploitation since basic definitions are still lacking; sanctions are weak; key issues such as simple possession of child pornography, procuring child pornography, grooming, and corporate liability continue to be overlooked; and the legislation does not fully comply with international child rights laws.²¹ This is confirmed by the staggering statistics of sexual offenses against children in Russia.

1.2 Statistical data on sexual offenses against children in Russia

Judging from the official data provided by the Federal State Statistics Service of the Russian Federation,²² the number of child victims of various crimes²³ has not changed considerably in recent years, despite numerous changes related to laws on child protection against sale, sexual abuse and sexual exploitation that were introduced into Russian legislation from 2003 to 2012.²⁴

¹⁹ Federal'nyi Zakon RF No. 436-FZ o Zashchite Detei ot Informatsii, Prichiniaushchei Vred Ikh Zdorov'iu i Razvitiu ot 29 dekabria 2010 g. [Federal Law No.436-FZ On Protection of Children from Information Harmful to their Health and Development of Dec. 29, 2010], art. 2 cl. 8 (Russ.), at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=133372> (last visited Feb. 21, 2013).

²⁰ Kodeks Rossiiskoi Federatsii RF ob Administrativnykh Narusheniakh [KOAP RF] [Code of Administrative Violations] (hereinafter – *the Administrative Code*) art. 6.17 pt. 2 (Russ.), at <http://www.consultant.ru/popular/koap/>.

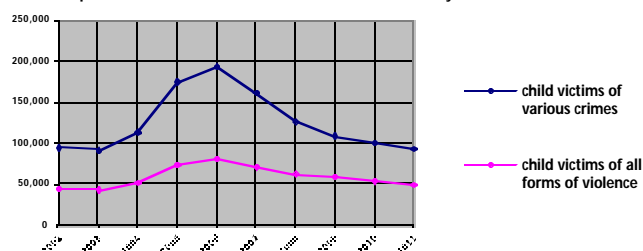
²¹ See also *Police lament the lack of laws to combat child sexual abuse images in Russia*, Council of Europe (Sept. 6, 2009), http://www.coe.int/t/dg3/children/1in5/News/RussianImages_en.asp (last visited Jan. 11, 2013); *Russian children rights commissioner calls for legislation to protect children from pedophiles*, Imperfect Parent (Jul. 24, 2011), <http://www.imperfectparent.com/topics/2011/07/24/russian-children-rights-commissioner-calls-for-legislation-to-protect-children-from-pedophiles/> (last visited Jan. 11, 2013).

²² Sotsial'noe polozhenie i uroven' zhizni naseleniya Rossii [Social Status and Standard of Living of the Russian Population] (Russ.), at http://gks.ru/wps/wcm/connect/rosstat/rosstatsite/main/publishing/catalog/statisticCollections/doc_1138698314188 (last visited Jan. 11, 2013).

²³ "Various crimes" means all types of crimes stipulated by the Criminal Code.

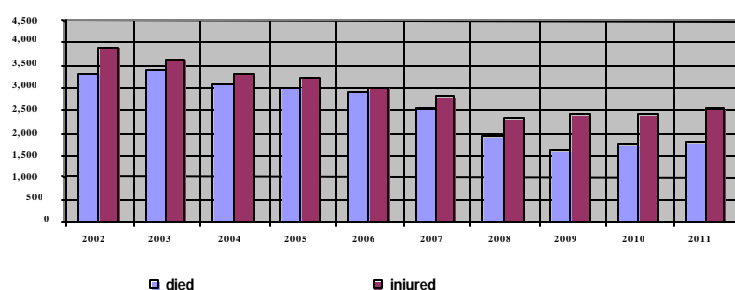
²⁴ In recent years the main changes to the child protection laws were introduced in 2003 and 2009, namely by Federal Law No. 162-FZ On Amendments to the Criminal Code of the Russian Federation of 8 December 2003 and by Federal Law No. 215-FZ On Amendments to the Criminal Code of the Russian Federation of 27 July 2009. These federal laws, *inter alia*, prohibited sale of children, exploitation of child slave labor, certain wrongful conduct related to child pornography and child prostitution, introduced harsher sanctions for child sexual abuse and increased the legal age for sexual activities from 14 to 16 years. Recently child protection legislation has been also amended by Federal Law No. 14-FZ On Amendments to the Criminal Code

Graph 1. Number of child victims of various crimes for the years 2002-2011



slightly less than in 2002.²⁷ Each year nearly half of the child victims were subjected to violence, physical and sexual, and this number has not changed considerably in recent years. Thus, in 2002, 44,300 children were victims of violence and this number nearly doubled in 2006, reaching 80,908 child victims.²⁸ Though, in 2011, the number of children who were victims of violence decreased considerably, down to 49,332 children, which does not differ greatly from the 2002 statistical data.²⁹

Graph 2. Children who died or were severely injured as a result of crimes against them



numbers significantly decreased to 1,700 and 2,400 correspondingly.³⁰ In 2011, about 1,761 children died as a result of various crimes.³¹

Although the total number of child victims of various crimes has decreased over the last few years, the number of child victims of sexual abuse is constantly growing.³² Graph No. 3

As graph No. 1 shows, in 2002, approximately 94,100 children in Russia were victims of a variety of crimes.²⁵ The highest number of child victims was in 2006, when it more than doubled in comparison with 2002 and constituted 194,000 children.²⁶ Starting in 2007, the number of child victims began gradually decreasing and in 2011 it constituted 93,241 children,

Interestingly, while the total number of child victims of various crimes, as well as child victims of all forms of violence, has not substantially changed in recent years, the number of child victims who died or were severely injured has decreased by half during the same period (see graph No. 2). In 2002, 3,300 children died and 3,900 were severely injured, however, in 2010, these

of the Russian Federation and Certain Legislative Acts of the Russian Federation in order to Strengthen Responsibility for Sex Offenses Committed Against Minors of 29 February 2012.

²⁵ All information which is represented in Graph No. 1 is available at the official site of the Unified Interdepartmental Statistical Information System, <http://www.fedstat.ru> (last visited Jan. 11, 2013).

²⁶ *Id.*

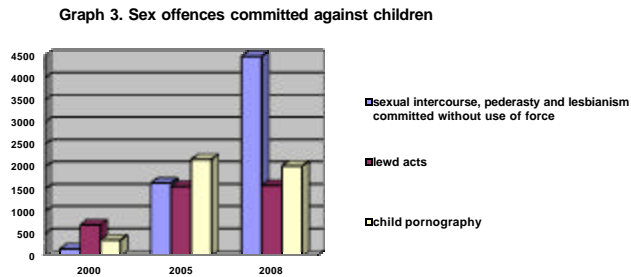
²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Chislo nesovershennoletnikh, poterpevshikh ot prestupnykh poshiagatel'stv [Number of child victims of crimes], ????? [Rosstat] (Russ.), http://www.gks.ru/bgd/regl/b12_13/IssWWW.exe/Stg/d2/10-06.htm (last visited Mar. 20, 2013).

³¹ Astakhov privel statistiku za 2011 god ubistv novorozhdennykh materiami [Astakhov cited statistics for 2011 on murders of newborns committed by their mothers] RIA Novosti (Mar. 30, 2012) (Russ.), <http://ria.ru/society/20120330/610301539.html> (last visited Jan. 11, 2013).



demonstrates this point by comparing statistical data related to such offenses as “sexual intercourse, pederasty and lesbianism committed without use of force”,³³ “lewd acts”,³⁴ and “child pornography committed against children” for 2000, 2005, and 2008.³⁵

The increase of child victims of sexual abuse is also confirmed by the Investigative Committee of the Russian Federation, the Public Chamber of the Russian Federation, and the Russian NGO “Soprotivlenie”. According to the Head of the Investigative Committee of the Russian Federation, Mr. Aleksander Bastrykin, as of 2010, minors constitute almost half of the victims of violent sexual offenses, and the number of children who suffered from all other sexual crimes has increased 20-fold over the last several years.³⁶ According to the information provided by the Russian NGO “Soprotivlenie”,³⁷ in comparison to the same period in 2010, the first quarter of 2011 had an increase of:

- 1) Rapes of children under 14 years old by 9%;
- 2) Crimes against children under Articles 132 and 133 of the Criminal Code³⁸ by more than 28%; and
- 3) The number of child victims of sexual acts committed without the use of force by 178%.

The increase of sexual acts against minors in Russia in recent years has also been highlighted by experts of the Public Chamber of the Russian Federation.³⁹ The experts noted, in particular, that the production and transmission of child pornography has increased 10-fold and involvement

³² *V 2009 godu v RF zherstvami seksual'nykh prestuplenii stali do 10 tysyach detei* [In 2009 10 thousand children became victims of sex offenses in Russia] RIA Novosti (Nov. 19, 2010) (Russ.), <http://ria.ru/society/20101119/298391747.html> (last visited Jan. 11, 2013).

³³ Criminal Code, *supra* note 15, art. 134.

³⁴ *Id.* at art. 135.

³⁵ See IUNISEF, ROSSTAT, IITS “Statistika Rossii” [UNICEF, Rosstat, Information and Research Center “Statistics of Russia”], *Deti v Rossii. 2009: Stat. sb. [Children in Russia. 2009: Statistical book]*, 2009 (Russ.), http://www.gks.ru/doc_2009/deti09_rus.pdf (last visited Jan. 11, 2013).

³⁶ Blog of Mr. Alexander Bastrykin, the Chairman of the Investigative Committee of the Russian Federation, Sledcom.ru (Russ.), <http://www.sledcom.ru/blog/detail.php?ID=23661#comments> (last visited Jan. 11, 2013).

³⁷ Information provided by Russian NGO “Soprotivlenie”.

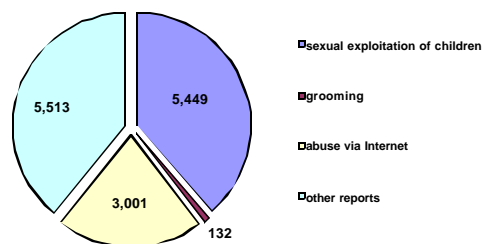
³⁸ Art. 132 parts 3-5 of the Criminal Code criminalize sexual acts (save for rape) where use is made of force or threats, or abuse is made of a vulnerable situation of the child and Art. 133 pt. 2 of the Criminal Code prohibits coercion to engage in sexual activities.

³⁹ The Public Chamber of the Russian Federation is a state institution of the Russian Federation that was formed in 2005 in accordance with the Federal Law No. 32-FZ on the Public Chamber of the Russian Federation of Apr. 4, 2005. The Public Chamber is responsible, *inter alia*, for analyzing the draft laws, monitoring the activities of the federal and local executive and legislative authorities in order to protect the interests and rights of Russian citizens and public associations. For more information on the Public Chamber visit their official site at <http://www.oprf.ru/rus/about>.

of children in prostitution has increased 11.8-fold.⁴⁰ This is in light of a general decrease in crime of 5% - 7%.⁴¹

In regards to child prostitution and child pornography, the Internet has become the primary tool for committing these sex offenses. For example, for the last few years the number of Internet sites containing child pornography in Russia has increased by almost 1/3, and the amount of Internet pornographic materials has increased 25-fold since the year 2000.⁴² Experts acknowledge that the Internet teems with child pornography and Russia along with the U.S. and Thailand are the top three world leaders in disseminating such materials.⁴³

Graph 4. Hotline reports alleging illegal content in the Internet in 2010



A majority of the children in Russia have access to the Internet and are active users. The number of children ages 9 to 16 in Russia who have access to the Internet is constantly growing and constitutes more than 60% of the total Internet users in Russia.⁴⁴ According to the 2011 UNICEF study “Generation of the RuNet”, every day children face numerous risks in the network space. Among them are cyber-bullying, exposure to obscene content, and grooming that may lead to real life contact abuse.⁴⁵ This is

confirmed by statistics provided by the Russian Safer Internet Center. In 2010, its Hotline registered 14,095 reports from Internet users alleging illegal content; and every two out of three reports proved to have grounds for reaction by law enforcement.⁴⁶ As graph No. 4 shows, more than half of these reports concerned child abuse and sexual exploitation.

Several factors explain the constant growth of child sexual abuse and child sexual exploitation in Russia. Among them are ineffective law enforcement practices, insufficient coordination of actions and decisions taken by various authorities to prevent crimes against children, as well as

⁴⁰ The Public Chamber of the Russian Federation, The 2010 Report on the State of Civil Society in the Russian Federation, 55, 2010, http://www.oprf.ru/files/dokument2011/2010_Report.pdf (last visited Jan. 11, 2013).

⁴¹ *Bolee 120 tysiach detei podverglis' nasiliu v 2008 godu v Rossii* [More than 120 Thousand Children Were Victims of Violence in 2008 in Russia], RIA Novosti (Jan. 27, 2009) (Russ.), http://sledcom.ru/smi/2261/?sphrase_id=54715 (last visited Jan. 11, 2013).

⁴² *Glava MVD RF ozabochen rasprostraneniem v Internete detskoj pornografii* [The Head of the Ministry of Interior of the Russian Federation is concerned about distribution of online child pornography] Interfax (Feb. 17, 2010) (Russ.), <http://www.interfax-russia.ru/main.asp?id=125693&p=2> (last visited Jan. 11, 2013).

⁴³ Nezavisimy i Institut Sotsial'noi Politiki, Detskii Fond OON [Independent Institute of the Social Policy, UNICEF], *Analiz polozheniya detei v Rossiiskoi Federatsii: na puti k obshchestvu ravnykh vozmozhnostei* [The situation of children in the Russian Federation: towards society of equal opportunities] 189, 2011 (Russ.), <http://www.soprotivlenie.org/files/all/UNISEF.pdf> (last visited Jan. 11, 2013).

⁴⁴ Federalnoe Agentstvo po pechati i massovym kommunikatsiiam [Federal Agency for Press and Mass Communications of the Russian Federation], *Internet v Rossii. Sostoianie, tendentsii i perspektivy razvitiia* [Internet in Russia. Status, Trends and Prospects], 19, 2011 (Russ.).

⁴⁵ Nezavisimy i Institut Sotsial'noi Politiki, Detskii Fond OON [Independent Institute of the Social Policy, UNICEF], *supra* note 43, 190.

⁴⁶ *Id.* at 20-21.

the unwillingness or inability of child victims to disclose what they have suffered.⁴⁷ According to a 2010 report of the Public Chamber, studies of leading criminologists show that the age of victims of sexual abuse usually ranges from 4 to 15 years, most often abused are children from 3 to 9 years.⁴⁸ Assuming that the youngest child victim of sexual abuse is 3 years old and considering that according to Russian law a child is a person under 18 years, approximately 20,934,189 children in Russia urgently need protection against potential sex offenses. This number constitutes about 14.7% of the total population of Russia.⁴⁹ As already stated, and as will be explained in more detail in the next section, current Russian legislation is incapable of effectively protecting children against sexual abuse and sexual exploitation; in particular, because it does not correspond to international child rights laws and needs considerable amendments in order to meet international standards.

⁴⁷ The Public Chamber of the Russian Federation, *The 2010 Report on the State of Civil Society in the Russian Federation*, 55, 2010, http://www.oprf.ru/files/dokument2011/2010_Report.pdf (last visited Jan. 11, 2013).

⁴⁸ *Id.*

⁴⁹ The calculation is based on the statistics provided by Rosstat. See Rosstat, *The Demographic Yearbook of Russia*, 41, 2010, http://www.gks.ru/doc_2010/demo.pdf (last visited Jan. 11, 2013); Rosstat, UNICEF, *Molodezh v Rossii. 2010* [Youth in Russia. 2010] 9, 2010 (Russ.), http://www.gks.ru/free_doc/doc_2011/MOLODEG_RUS_2010.pdf (last visited Jan. 11, 2013).

II. INTERNATIONAL STANDARDS OF THE OPTIONAL PROTOCOL AND CETS 201 AND THEIR IMPLEMENTATION IN RUSSIAN LEGISLATION

The UN Convention on the Rights of the Child (*CRC*) is the primary international instrument on child protection and the first to oblige States Parties to protect children from sexual abuse and sexual exploitation. Article 34 of the *CRC* requires States Parties to take all appropriate measures to protect children from “all forms of sexual exploitation and sexual abuse”, which include (i) the inducement or coercion of a child to engage in any unlawful sexual activity; (ii) the exploitative use of children in prostitution or other unlawful sexual practices; and (iii) the exploitative use of children in pornographic performances and activities. Pursuant to Article 35 of the *CRC*, the States Parties are required to take all appropriate measures to prevent “the abduction of, the sale of or traffic in children for any purpose or in any form.” As mentioned in the previous section, Russia became a party to the *CRC* on 16 August 1990, and since then it has attempted to bring its national legislation in line with the *CRC*’s requirements. However, while the *CRC* is an important tool, its language is rather broad and general, and leaves the States Parties much discretion in implementing its provisions in domestic legislation. In particular, this is demonstrated by the use of the expressions “take all appropriate measures” or “take all appropriate national, bilateral and multilateral measures” in numerous provisions; by the absence of definitions of child pornography, the sale of children and child prostitution; and by not specifying which conduct related to these sex offenses must be criminalized.⁵⁰

Meanwhile, there are two other international instruments that specifically focus on the protection of children from sexual abuse and sexual exploitation and the provisions of which are less flexible as compared to those of the *CRC*. These instruments are the Optional Protocol to the *CRC* on the Sale of Children, Child Pornography and Child Prostitution (*the Optional Protocol*) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (*CETS 201*). Russia is not yet party to either of these instruments. The Optional Protocol supplements the *CRC* and, therefore, interpretation of the Optional Protocol’s provisions must always be guided by the *CRC*’s principles of non-discrimination, best interest of the child and child participation. The Preamble of the Optional Protocol refers to achieving the implementation of the *CRC*’s provisions by the States Parties, especially articles 1 (definition of the child), 34 and 35 of the *CRC*. The Optional Protocol and *CETS 201* provide, *inter alia*, definitions of the major sex offenses against children and focus on protecting the rights of child victims and preventing child sexual abuse and exploitation. The language of these instruments is quite specific and ratification of either of these international instruments will require Russia to bring its domestic legislation on child protection into conformity with the international standards envisaged by these covenants.

In this Section, the provisions of the Optional Protocol and *CETS 201* will be analyzed in more detail, as will existing Russian law and the provisions of current draft laws related to the

⁵⁰ These expressions are used in the following Articles of the *CRC*: Art. 2 para. 2, Art. 3 para. 2, Art. 4, Art. 18 para. 3, Art. 19 para. 1, Art. 21(d), Art. 27 para. 4, Art. 28 para. 2, Art. 33, Art. 34, Art. 35, Art. 39.

protection of children against sexual offenses. Russian law will be compared to the international standards envisaged by the Optional Protocol and CETS 201 and, as a result, this analysis will reveal the most important gaps and shortcomings in Russian legislation.

This Section will focus on definitions, criminal law aspects, criminal procedure requirements, and intervention programs and measures for sex offenders envisaged by the Optional Protocol and CETS 201. These treaties also provide for preventive educational and training programs, assistance for victims, creation of sex offenders' databases and international cooperation. While their importance is indisputable, they will not be covered in this report, as they are secondary for the Russian Government. Based on the statistics in Section 1.2, criminal law, criminal procedure law, and correctional law in Russia are currently the priority for national action for protecting children against sexual offenses.

2.1 Definitions

The Optional Protocol and CETS 201 provide for comprehensive definitions of a child, sale of children, child prostitution, and child pornography. All States Parties are required to implement these definitions into their domestic legislation and to prohibit the sale of children, child prostitution and child pornography as they are defined in these international instruments. Among the definitions stipulated by the Optional Protocol and CETS 201, Russian law provides only for the definition of a “child” and “sale of children” (by defining “sale of persons”). Russian law and current draft legislation do not define child prostitution and child pornography.

Definition of a “child”

According to both international instruments, a child is a person under the age of 18.⁵¹ However, the definition provided by CETS 201 is stricter than the definition in the Optional Protocol. The Optional Protocol follows the definition in the CRC, which says a “child” is “every human being below the age of eighteen years *unless under the law applicable to the child, majority is attained earlier.*”⁵² This definition provides for the States discretion in determining the maximum age of the child and may leave some children unprotected. CETS 201 does not give such discretion and requires protection of all children under the age of 18. However, it should be noted that in certain articles related to sexual offenses, CETS 201 uses the term “legal age of consent” which may be below 18 years old and varies in different States depending on the provisions of their domestic legislation.

Russian law defines “a child” in the Family Code of the Russian Federation (Article 54), Federal Law No. 62-FZ On Citizenship of the Russian Federation (Article 3) and Federal Law No.124-FZ On the Basic Guarantees of a Child's Rights in the Russian Federation (Article 1). Each of these laws defines the child as a person below 18 years old (the age of majority). The Criminal Code and the Criminal Procedure Code do not contain a separate definition of a child and instead use

⁵¹ Art. 1 of the CRC (the Optional Protocol does not contain a separate definition for the term “child” since it supplements the CRC); Art. 3 of CETS 201.

⁵² Though the Optional Protocol does not contain a definition of a child, the definition of a “child” envisaged by art. 1 of the CRC is also applied to the Optional Protocol.

the term “minor”, which is a person who has not yet reached the age of majority (18 years old). Thus, Russian criminal law and criminal procedure law are consistent with the requirements of the Optional Protocol and CETS 201 as concerns the definition of child.

Definition of “sale of children”

The sale of children is defined by Article 2 of the Optional Protocol as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.” The Optional Protocol specifically refers to the sale of children, but does not cover the issue of child trafficking. These two separate crimes tend to be interpreted by the States as one and the same. Though sale and trafficking of children are similar concepts, they are not identical. Trafficking of children is defined as “the recruitment, transportation, transfer, harbouring or receipt of children for the purpose of exploitation.”⁵³ The sale of children can occur at any stage of the trafficking process (recruitment, transport, transfer, harboring, receipt, exploitation). In addition, the sale of children is not necessarily linked to the purpose of exploitation by the buyers and the sale of a child does not always involve the physical movement of the child.⁵⁴

CETS 201 does not address the issue of the sale of children.

Russian law prohibits the sale of children in the Criminal Code, however, it does not specifically define this term.⁵⁵ Meanwhile, there is a definition of the “sale of persons” in Article 127.1 of the Criminal Code that is applicable to the sale of children as well – “the purchase and sale of a human being, and other transactions with respect to a person.” If the same acts are committed with respect to a child, the Criminal Code provides for stricter liability for offenders. The definition of the “sale of persons” given by the Criminal Code reflects the main requirements envisaged by the definition of the “sale of children” in the Optional Protocol and covers an even broader range of transactions than the latter. Thus, unlike the Optional Protocol, the Criminal Code prohibits not only transactions that involve a child’s transfer from one person to another and remuneration (as required by the Optional Protocol), but also any other transactions with a child, which may include gratis use, exchange, replacement of one child by another, and others.⁵⁶ The list of these transactions is not exhaustive.⁵⁷

⁵³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3 (c), <http://www2.ohchr.org/english/law/protocoltraffic.htm> (last visited Jan. 11, 2013). According to art. 3 (a) of this Protocol exploitation is defined as including, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

⁵⁴ The UNICEF Innocenti Research Center, Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 910, 2009, http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf (last visited Jan. 11, 2013).

⁵⁵ Criminal Code, *supra* note 15, art. 127.1 pt. 2(b).

⁵⁶ The Criminal Code art. 127.1, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus.

⁵⁷ *Id.*

Definition of “child prostitution”

The Optional Protocol and CETS 201 provide similar definitions of “child prostitution”, though the definition of CETS 201 is more detailed. Article 2 of the Optional Protocol defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration”. The term “any other form of consideration” refers to the use of a child for sexual activities in exchange for any goods, services or favors (for example, drugs, food, shelter).⁵⁸

Article 19 paragraph 2 of CETS 201 defines child prostitution as, “the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.” Similar to the Optional Protocol, CETS 201 specifies that remuneration can be of any kind, not necessarily monetary. In addition, and in contrast to the Optional Protocol, CETS 201 explicitly explains that remuneration or consideration can be not only given, but also promised, and the recipient of such remuneration may be a third party and not necessarily the child.

A definition of “child prostitution” is still not envisaged by Russian laws. Bills that are currently being considered by the State Duma of the Russian Federation (a lower chamber of the Russian Parliament) also do not suggest introducing a definition into Russian legislation.

Definition of “child pornography”

Both international instruments contain identical definitions of child pornography. Article 2 of the Optional Protocol defines child pornography as, “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.” Article 20 paragraph 2 of CETS 201 defines child pornography as, “any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.”

Both definitions use the language for “primarily sexual purposes.”⁵⁹ Therefore, any material having scientific, artistic, medical or similar merit is not prohibited under the definition of child pornography. The Explanatory Report to CETS 201 also specified that the term “visual depiction” includes data stored on computer, electronic or other storage devices which can be converted into a visual image.⁶⁰

Child pornography is not defined in Russian law. However, Draft Law No. 217688-6 proposed a definition of child pornography as “materials and items containing any representation, by whatever means, of a minor’s sexual organs or a minor engaged in real or simulated sexual

⁵⁸ The UNICEF Innocenti Research Center, Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, *supra* note 54, page 11.

⁵⁹ Optional Protocol, *supra* note 4, art. 2(c); CETS 201, *supra* note 5, art. 20.

⁶⁰ Council of Europe, Explanatory Report, para. 142, <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm> (last visited Jan. 11, 2013).

activities.”⁶¹ Draft Law No. 113185-6⁶² suggests a more detailed definition, namely “pornographic materials and items containing naturalistic images or description of: 1) a minor’s sexual organs; 2) a minor engaged in a real or simulated sexual intercourse or other sexual activities; as well as 3) the same acts committed against a minor or with his or her participation; or 4) an adult imitating a minor engaged in a real or simulated sexual intercourse or other sexual activities.”

Further, Russian Federal Law No. 436-FZ On Protection of Children from Information Harmful to their Health and Development that entered into force on 1 September 2012 defines pornographic information as, “information provided in the form of naturalistic images or descriptions of sexual organs and (or) sexual intercourse or sexual acts comparable to sexual intercourse, including such acts committed against an animal.”⁶³ The definition of pornographic information could also be used by Russian legislators as a basis for defining child pornography.

2.2 Substantive Criminal law

The Optional Protocol and CETS 201 have a strong focus on the criminal law aspects of the fight against child sexual exploitation and sexual abuse. Both instruments enumerate sexual offenses that must be criminalized by each State Party and envisage detailed requirements aimed at repressing sex offenses. Below is a detailed description of each of the sexual offenses and other criminal law provisions envisaged by these covenants, as well as comparative analyses of Russian criminal law.

a. Sexual Offenses

Both the Optional Protocol and CETS 201 require criminalization of certain conduct related to child sexual abuse and sexual exploitation. Furthermore, both instruments criminalize offenses related to child prostitution and child pornography, as well as aiding, abetting and attempting to commit such offenses. However, CETS 201 provides more detailed obligations on prohibition of conduct, which the Optional Protocol does not expressly require to be criminalized, such as: sexual abuse, participation of a child in pornographic performances, corruption of children, solicitation of children for sexual purposes, simple possession of child pornography, and obtaining child pornography for personal use or for another person. However, the Optional Protocol criminalizes the sale of children, which is not covered by CETS 201. Most of the sexual offenses against children envisaged by the Optional Protocol

⁶¹ The System of Automated Paperwork Management, Bill No. 217688-6, [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=217688-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=217688-6) (last visited Apr. 2, 2013). According to the stated definition, the following materials and items shall not be considered pornographic: materials and items that contain naturalistic photographic, film, video or other images of minors made for scientific, medical, or educational purposes or made by a parent or close relative of a minor without the purpose of their distribution and which have family merit.

⁶² The System of Automated Paperwork Management, Bill No. 113185-6, [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=113185-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=113185-6) (last visited Apr. 18, 2013). According to the stated definition, the following materials and items shall not be considered pornographic: materials and items that contain naturalistic photographic, film, video or other images of minors made by a parent or close relative of a minor without the purpose of their distribution and which have family merit.

⁶³ Federal’ny i Zakon RF No. 436-FZ o Zashchite Detei ot Informatsii, Prichiniaushchei Vred Ikh Zdorov’iu i Razvitiuu, *supra* note 19.

and CETS 201 are not criminalized or only partially criminalized by Russian law.⁶⁴ Some of the sexual offenses criminalized by Russian law contain rather vague descriptions of unlawful conduct, making it easier for a sex offender to escape criminal liability.

Sale of children

Article 3 of the Optional Protocol prohibits the sale of children for various purposes. Thus, in the context of child sexual exploitation Article 3, paragraph 1(a) of the Optional Protocol requires States Parties to criminalize “the offering, delivering or accepting, by whatever means, of a child for the purposes of the sexual exploitation of the child.” The term sexual exploitation may include child prostitution, child pornography, temporary marriages, sexual slavery and sexual relations between an adult and a child under the adult’s control without any compensation being given to the child.⁶⁵ Children are also illegally adopted for sexual abuse and exploitation.⁶⁶ The Optional Protocol equates such adoptions to the sale of children and requires States Parties to envisage criminal liability of intermediaries for improperly inducing consent to sell children for the purpose of adoption.⁶⁷ Article 3 of the Optional Protocol also prohibits sale of children for purposes other than sexual exploitation, such as transfer of organs of the child for profit, and engagement of the child in forced labor.

As mentioned above, CETS 201 does not address the issue of the sale of children.

Overall, the provisions of the Optional Protocol concerning the sale of children have been implemented into the Russian criminal law. Thus, Article 127.1 parts 1 and 2(b) of the Criminal Code prohibits the sale of children (sale and purchase, and any other transactions with children). The same Article prohibits transferring, delivering and accepting a child for the purposes of his or her subsequent exploitation, including sexual exploitation. Offering children for the purpose of sexual exploitation is not prohibited by the Criminal Code⁶⁸ and is unlikely covered by the wording “other transactions with a person,” since according to Russian law a simple offer does not constitute a transaction, even a unilateral one.⁶⁹

The Criminal Code does not specifically criminalize the sale of children for the purpose of their subsequent illegal adoption. However, Article 154 of the Criminal Code criminalizes illegal adoptions generally. Therefore, the sale of children for the purpose of illegal adoption is usually considered a crime cumulatively in light of Article 127.1 and Article 154 of the Criminal Code.

⁶⁴ This applies to the cases when a particular offense is not criminalized by a separate Article of the Criminal Code, but may be covered by a broader provision of the Criminal Code, or classified as an attempt to commit an offense or as an aggravating circumstance.

⁶⁵ The UNICEF Innocenti Research Center, Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, *supra* note 54, pages 10-11.

⁶⁶ *Illegal International Adoption At A Glance*, Children Laws, <http://children-laws.laws.com/child-abduction/child-trafficking/illegal-international-adoption> (last visited Jan. 11, 2013).

⁶⁷ Optional Protocol, *supra* note 4, art. 3 para. 2.

⁶⁸ However, offering a child for the purpose of sexual exploitation may be qualified as the attempt to commit sale of children under the Criminal Code.

⁶⁹ Cherepakhin B.B., *Trudy po grazhdanskomu pravu* [Writings on the Civil Law] (Russ.), http://civil.consultant.ru/elib/books/22/page_34.html (last visited Jan. 11, 2013).

Article 127.1 of the Criminal Code also covers the sale of children for purposes other than sexual exploitation. Parts 2(b) and 2(zh) of this Article prohibit transfer, delivering and accepting children for the purposes of transfer of organs of the child. And parts 1 and 2(b) of this Article criminalize transferring, delivering and accepting children for their subsequent exploitation in forced labor.⁷⁰ However, the Criminal Code does not specifically criminalize offering children for the purpose of transfer of their organs or forced labor.⁷¹

There are no draft laws suggesting any relevant amendments to the provisions of the Criminal Code related to the sale of children.

Sexual abuse

Article 18 of CETS 201 obliges Member States to criminalize the offense of sexual abuse of a child. This Article envisages two types of child sexual abuse. The first type criminalizes engagement in sexual activities with a child who has not reached the age of legal consent as defined by domestic laws. This provision does not govern consensual sexual activities between minors even if they are below the legal age of consent.

The second type criminalizes engagement in sexual activities with a child (regardless of his or her age) committed via coercion, force, threat, or abuse of a particularly vulnerable situation of the child, a recognized position of trust, authority or influence over the child. All children under 18 years old must be protected against this type of abuse. The child's consent to sexual activities is irrelevant if there is an element of force, threat, or other types of coercion.⁷² Abuse of a recognized position of trust, authority or influence over the child may occur, *inter alia*, in the relationship between a child and his or her parents, other family members, care providers in institutions, teachers, doctors, or persons who employ or have financial control over the child.⁷³ In such cases, the offender does not use coercion, force or threats but rather relies on a pre-established relationship of trust. Examples of a particularly vulnerable situation of the child include mental or physical disability, autism, and a situation of dependence (children with drug or alcohol addiction or intoxication, unaccompanied migrant minors, insecure or illegal administrative situations and others).⁷⁴ These circumstances leave the children particularly vulnerable to adults who may seek to abuse them.

The Optional Protocol does not directly address the issue of sexual abuse of children.

Overall, Russian law meets most of the requirements of CETS 201 regarding the crime of child sexual abuse. For instance, according to Russian law, the legal age of consent to engage in sexual activities is 16 years. Articles 134 and 135 of the Criminal Code prohibit the first type of child sexual abuse addressed by CETS 201, which is engaging in any sexual activities with a child under 16 years of age. Article 134 covers such sexual activities as sexual intercourse,

⁷⁰ Art. 127.1 pt. 1 of the Criminal Code prohibits transfer, delivering and accepting children for the purpose of their exploitation. The Criminal Code defines exploitation as sexual exploitation, forced labor and servitude.

⁷¹ Though, under the Criminal Code "offering" may be qualified as an attempt to commit sale of children for such purposes.

⁷² Council of Europe, Explanatory Report, *supra* note 60, para. 122.

⁷³ *Id.* at paras. 123-124.

⁷⁴ *Id.* at para. 126.

pederasty and lesbianism. Article 135 prohibits lewd acts with a child under 16 years of age. The current law does not define “lewd acts”. However, in practice all other types of sexual activities not envisaged by Article 134 are classified as lewd acts under Article 135.⁷⁵ All of these sexual activities must be committed without the use of force to be qualified as crimes under these two Articles of the Criminal Code.

The second type of child sexual abuse articulated in CETS 201 as the use of force, coercion, or threats to engage in sexual activity with a child, is addressed in Articles 131-133 of the Criminal Code. The Criminal Code specifies in Articles 131 and 132 that if a victim of sexual abuse (either the first type or the second type) is a child under the age of 12, then the child is considered to be in a vulnerable situation since the child is unable to understand the character and the meaning of the sexual activities s/he is engaged in. Thus, even if the offender engaged in sexual activities with a child under the age of 12 without the use of force, the crime will still be classified as the second type of sexual abuse envisaging a harsher penalty. The Supreme Court of the Russian Federation further explained that a child may be in a vulnerable situation, *inter alia*, due to mental or physical disability or intoxication.⁷⁶

Article 133 part 2 of the Criminal Code criminalizes coercing a child to engage in sexual activities. Coercion in this Article refers more to psychological pressure and does not include use of physical force.⁷⁷ The crime is considered committed even if the offender did not engage in sexual activities with a child.

In regards to the second type of child sexual abuse, the Criminal Code does not criminalize engagement in sexual activities with a child where abuse is made of a recognized position of trust, authority or influence over the child, including within the family as required by CETS 201. Such conduct is envisaged by the Criminal Code as an aggravating circumstance. Meanwhile, a closer look at the relevant provisions of the Criminal Code allows one to conclude that child victims of 16 years of age and older are not protected by the Criminal Code in such cases of sexual abuse where an offender takes advantage of trust, authority or influence over the child. Thus, if such actions are committed against a child under 12 years old, they may be qualified as engaging in sexual activities with a child where abuse is made of a vulnerable situation of the child. If such offenses involve child victims who are 12 years old, but not yet 16 years old, they may be qualified as the first type of child sexual abuse under Articles 134 and 135 of the Criminal Code, which is committed without the use of force. If the child victim is 16 years old or older, then the Criminal Code does not suggest any protection for children in such cases of sexual abuse. The reasons for this lack of protection are: 1) this type of crime does not involve

⁷⁵ The Criminal Code art. 134, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus.

⁷⁶ Postanovlenie Plenuma Verkhovnogo Suda RF “O Sudebno i Praktike po Delam o Prestupleniiakh, Predusmotrennykh Stat’iami 131 i 132 Ugolovnogo Kodeksa Rossiiskoi Federatsii” ot 15 iyunia 2004, abz. 3. [Cl.3 of the Russia Federation Supreme court Plenary Ruling on Court Practice Concerning Crimes Envisaged by Articles 131 and 132 of the Criminal Code of the Russian Federation of June 15, 2004] (Russ.), at the Russian legal database Consultant Plus.

⁷⁷ The Criminal Code art. 133 (Russ.), *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus.

the use of force by a sex offender and is covered only by Articles 134 and 135 of the Criminal Code (first type of sexual abuse committed without the use of force), and 2) these Articles do not protect children who have reached the legal age of consent, that is 16 years of age. Current draft laws do not address this issue as well.

Child prostitution

Both the Optional Protocol and CETS 201 criminalize certain conduct related to child prostitution. These international instruments use different terminology in describing the conduct to be prohibited by States Parties. For example, according to Article 3 paragraph 1(b) of the Optional Protocol the following conduct related to child prostitution must be criminalized: offering, obtaining, procuring, or providing a child for prostitution. Article 19, paragraph 1 of CETS 201 requires the States Parties to prohibit recruiting or coercing a child into prostitution, causing a child to participate in prostitution, profiting from or otherwise exploiting a child for prostitution, and having recourse to child prostitution (using the “sexual services” of a child prostitute).

Though these two instruments use different terminology to describe the criminalized conduct, they generally prohibit similar activities. Thus, obtaining or procuring a child for prostitution may be committed via recruitment, coercion, or causing a child to participate in prostitution. Furthermore, offering or providing a child for prostitution may result in profiting from child prostitution and involve exploiting a child for such purposes. However, unlike CETS 201, the Optional Protocol does not explicitly impose criminal liability on the customers of “sexual services” of prostituted children.

The Russian criminal law does address the issue of child prostitution. However, the wording of the relevant articles of the Criminal Code is rather vague and ambiguous, and most of the activities concerning child prostitution as prohibited by the Optional Protocol and CETS 201 are not explicitly criminalized by Russian law. Article 240 part 3 of the Criminal Code criminalizes child prostitution as two specific activities: involvement of a child in prostitution and coercing a child to continue prostitution.

The law does not define the term “involvement” in prostitution. The case-law of Russian courts construing involvement in prostitution is rather scarce making it difficult to draw any specific conclusions.⁷⁸ It is, therefore, unclear if “involvement” includes any of the activities envisaged

⁷⁸ See *Postanovleniye Moskovskogo gorodskogo suda No. 4u/10-5894 ot 29 iulya 2010* [Ruling of the Moscow City Court No. 4u/10-5894 of July 29, 2010] (Russ.); *Opreделение Судебной Коллегии по уголовным делам Верховного Суда РФ No. 86-005-5 ot 28 aprelya 2005* [Decision of the Russian Federation Supreme Court Penal Division No. 86-005-5 of Apr. 28, 2005] (Russ.). According to these court decisions, involvement into prostitution may be understood as coercing, persuading or inciting a person to systematic sex trade, *id.*; See *Kassatsionnoe opredelenie Sudebnoy Kollegii po уголовным делам Верховного Суда РФ No. 82-Shch06-32 ot 12 yanvaria 2007* [Cassational Ruling of the Russian Federation Supreme Court Penal Division No. 82-Shch06-32 of Jan. 12, 2007] (Russ.). In this court decision, involvement into prostitution may be also committed by making promises about monetary wealth, *id.*; See *Kassatsionnoe opredelenie Sudebnoy Kollegii po уголовным делам Верховного Суда РФ No. 48-006-25 ot 24 marta 2006* [Cassational Ruling of the Russian Federation Supreme Court Penal Division No. 48-006-25 of Mar. 24, 2006] (Russ.). According to this ruling involvement into prostitution is not always construed as recruitment, especially if child prostitutes were previously engaged in prostitution, *id.* [All court rulings and decisions cited in this footnote are available at the Russian legal database Consultant Plus].

by the Optional Protocol and CETS 201. Meanwhile, legal academics interpret “involvement” as persuading or inciting a child to engage in prostitution. It may be committed by various means, such as by making promises, deceit, threats, payment of compensation, etc.⁷⁹ Based on this interpretation, theoretically, “involvement” may include causing a child to participate in prostitution, or recruiting and coercing a child into prostitution; however, this cannot be inferred from the wording of Article 240 of the Criminal Code. In practice, it is also unclear whether obtaining or procuring a child for prostitution is covered by the term “involvement” and thus by Article 240 of the Criminal Code. These activities may however be qualified as a crime under Article 127.1 parts 1 and 2(b) of the Criminal Code (sale of persons) that prohibits accepting a child for the purposes of his or her subsequent sexual exploitation (which includes, *inter alia*, exploitation of prostitution). The same Article 127.1 criminalizes recruitment of the child for the purposes of exploitation in prostitution.

Article 240 part 3 of the Criminal Code criminalizes coercing a child to continue prostitution. This provision covers only those cases where a child is already engaged in prostitution, but has the intention to stop it, and the offender impedes this decision by coercing a child to continue.⁸⁰

Russian criminal law also covers the exploitation of a child for the purpose of child prostitution. Article 127.2 part 2 (exploitation of slave labor) of the Criminal Code prohibits exploitation of child labor. This crime involves two actions: establishing and maintaining slave status of the child victim and consuming the results of the services of the victim or profiting from such services without their consumption.⁸¹ While Russian law addresses the issue of profiting from child prostitution, this act constitutes only one of the elements of a crime of exploitation of a child in prostitution and is not criminalized in Russia as a separate offense. Profiting from child prostitution is however prohibited by Article 6.12 of the Code of Administrative Violations of the Russian Federation (hereinafter – *the Administrative Code*) as an administrative offense and is punishable by an administrative fine of up to 2,500 rubles (approximately 80 USD) or an administrative arrest of up to 15 days. Article 6.12 applies to profiting from both adult and child prostitution, but does not differentiate the penalty if the victim of this administrative offense is a child. The criminalization of profiting from child prostitution was suggested by draft law No. 606271-5, but unfortunately, the Deputies of the State Duma reached an agreement not to consider it.⁸²

Offering and providing a child for prostitution, as well as having recourse to child prostitution are not criminalized by Russian law. However, offering a child for prostitution may be qualified as an attempt to sell the child for the purposes of his or her sexual exploitation under Articles 30 and 127.1 of the Criminal Code. Providing a child for prostitution may be qualified as

⁷⁹ The Criminal Code art. 240, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus.

⁸⁰ This provision does not cover situations when a child that has never been engaged in prostitution is coerced by the offender to do so. However, such cases of coercion may be covered by the term “involvement” into prostitution described above, though this does not clearly follow from the wording of Article 240 Criminal Code.

⁸¹ *Id.*

⁸² The System of Automated Paperwork Management, Bill No. 606271-5, [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=606271-5](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=606271-5) (last visited Jan. 11, 2013).

delivering a child for sexual exploitation under Article 127.1 of the Criminal Code. Draft laws do not address offering and providing a child for prostitution. In regards to using “sexual services” of a child prostitute, Draft Law No. 151664-6 suggests criminalizing this offense with a punishment of up to 3 years of imprisonment. This Draft Law applies to child victims who are 16 years old or older and interprets “sexual services” of a child prostitute as sexual intercourse with a child for monetary consideration.⁸³

Child pornography

Both the Optional Protocol (Article 3, paragraph 1(c) and CETS 201 (Article 20, paragraph 1) criminalize producing, distributing, offering, disseminating,⁸⁴ and selling⁸⁵ of child pornography. These covenants also prohibit the possession of child pornography. However, CETS 201 criminalizes simple possession,⁸⁶ while the Optional Protocol prohibits possession only for the purposes of producing, distributing, disseminating, importing, exporting, offering or selling child pornography.

In addition to the conduct described above, CETS 201 criminalizes the following activities: making available,⁸⁷ transmitting (includes not only sale, but sending through a computer system or giving child pornography materials to another person), procuring child pornography for oneself or for another;⁸⁸ and knowingly obtaining access, through information and communication technologies, to child pornography.⁸⁹ These offenses are not covered by the Optional Protocol. However, unlike CETS 201, the Optional Protocol criminalizes also importing and exporting of the child pornography.

Among the activities related to child pornography envisaged by the Optional Protocol and CETS 201, Russian law criminalizes only the following: offering or making available child pornography, distributing disseminating, and transmitting (including selling) child pornography. Specifically, Article 242.1 of the Criminal Code criminalizes advertising,⁹⁰ public

⁸³ The System of Automated Paperwork Management, Bill No. 151664-6, <http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=151664-6> (last visited Jan. 11, 2013).

⁸⁴ “Disseminating” is covered by the term “distributing” in CETS 201.

⁸⁵ “Selling” is included in the term “transmitting” in CETS 201.

⁸⁶ See Council of Europe, Explanatory Report, *supra* note 60, page 139. Simple possession means possession of child pornography, by whatever means, such as magazines, video cassettes, DVDs or portable phones, including stored in a computer system or on a data carrier, as well as a detachable storage device, a diskette or CD-Rom, without any specific purpose.

⁸⁷ See Council of Europe, Explanatory Report, *supra* note 60, page 136. “Making available” is intended to cover, *e.g.*, the placing of child pornography online for the use of others by creating child pornography sites or hyperlinks to child pornography sites in order to facilitate access to child pornography.

⁸⁸ See Council of Europe, Explanatory Report, *supra* note 60, page 138. “Procuring for oneself or for another” means actively obtaining child pornography for personal use or for another person, *e.g.* by downloading computer data or by buying child pornographic materials, such as film or images.

⁸⁹ See Council of Europe, Explanatory Report, *supra* note 60, page 140. This provision applies to those who view child images online by accessing child pornography sites but without downloading. To be liable the person must both intend to enter a site where child pornography is available and know that such images can be found there. The intentional nature of the offense may be deduced from the fact that it is recurrent or that the offenses were committed via a service in return for payment. Sanctions must not be applied to persons accessing sites containing child pornography inadvertently.

⁹⁰ See the Criminal Code art. 242.1, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus. The meaning of “advertising” is similar to the one of “offering,” *id.*

display,⁹¹ and distribution of child pornography.⁹² The Criminal Code does not criminalize the simple procurement of child pornography for oneself or for another; knowingly obtaining access through information and communication technologies to child pornography; simple importing and, exporting; simple possession and simple production of child pornography. Procuring child pornography for oneself or for another, importing, exporting, possessing, and producing child pornography are illegal in Russia only when they are committed with the purpose of distribution, public display or advertising of child pornography.⁹³ Draft Laws No. 217688-6 and No. 113185-6 suggest criminalizing the simple procurement, simple importation and exportation, simple possession and production of child pornography.⁹⁴

Participation of a child in pornographic performances

Article 21 of CETS 201 criminalizes certain conduct relating to the participation of children in pornographic performances. This Article envisages two types of conduct: intentional conduct of an organizer of such performances and the conduct of the customer or spectator of such performances. Thus, paragraphs 1(a) and (b) of this Article criminalize recruiting, causing and coercing a child into participating in pornographic performances, as well as profiting from or otherwise exploiting a child for such purposes. Paragraph 1(c) prohibits knowingly attending such pornographic performances. All of the acts, for both the organizer and spectator, must be intentional in order to incur criminal liability. CETS 201 does not define pornographic performances, but according to the Explanatory Report of CETS 201 this provision is aimed at fighting “organized live performances of children engaged in sexually explicit conduct.”⁹⁵

The Optional Protocol does not address this issue explicitly. However, this offense is prohibited by Article 34 of the CRC (this article requires Parties to take all appropriate measures to prevent “exploitative use of children in pornographic performances”).

Russian law addresses the participation of children in pornographic performances by criminalizing involving a child in participating in pornographic performances.⁹⁶ While the Criminal Code does not explain the meaning of the term “involving”, according to legal doctrine, “involving” a child in participating in pornographic performances may be inferred from the mere fact that the child participates in such shows.⁹⁷ As can be seen from this

⁹¹ See the Criminal Code art. 242.1, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus. The meaning of “public display” is similar to the one of “making available,” *id.*

⁹² See the Criminal Code art. 242.1, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus. The Criminal Code uses the term of “distribution” in a broad sense which include disseminating and transmitting as well, *id.*

⁹³ Criminal Code, *supra* note 15, art. 242.1 para. 1.

⁹⁴ The System of Automated Paperwork Management, Bill No. 217688-6, *supra* note 61; The System of Automated Paperwork Management, Bill No. 113185-6 *supra* note 62.

⁹⁵ Council of Europe, Explanatory Report, *supra* note 60, para. 147.

⁹⁶ Criminal Code, *supra* note 15, art. 242.2.

⁹⁷ Art. 242.1 of the Criminal Code, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus; Art. 242.1 of the Criminal Code, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.I. Raroga [Rarog A.I. ed.], 2011 (Russ.), at the Russian legal database Consultant Plus.

interpretation, “involving” may be construed rather broadly and can be committed by any means, including coercing, causing, recruiting and the like. Thus, it may be concluded that the Criminal Code criminalizes recruiting, causing and coercing a child into participating in pornographic performances as required by CETS 201.

Profiting from child pornographic performances or otherwise exploiting a child for such purposes is partially addressed more generally in Article 127.2 part 2 of the Criminal Code. This Article prohibits exploitation of child slave labor, which may also cover exploitation of children in pornographic performances. Profiting from such performances constitutes only one of the necessary elements of this offense and is not prohibited itself as a separate crime. Current draft laws do not address the issue of profiting from the participation of children in pornographic performances.

In regards to customers (spectators) of pornographic performances involving the participation of children, neither the Criminal Code nor any draft laws impose criminal liability on them.

Corruption of children

Article 22 of CETS 201 criminalizes causing a child who is below the legal age of consent to witness the sexual abuse of others or sexual activities (children or adults), even without having to participate. Such offenses must be intentional and committed “for sexual purposes” in order to incur criminal liability. By including this offense in the list of criminalized conducts, CETS 201 recognizes the danger it poses for a child’s personality and psychological health. For instance, as a result of viewing sexual abuse or sexual activities, the child could develop, *inter alia*, a distorted view of sex and personal relationships.⁹⁸

The Optional Protocol does not address this issue.

Russian law does not explicitly criminalize the corruption of children. Should this offense be committed by means of blackmail, threats to destroy, damage or remove property, or use of financial or other dependence of the child victim, then it may be qualified under two Articles of the Criminal Code: Article 133 part 2 (coercing a child to commit sexual activities) and Article 135 (lewd acts).⁹⁹ However, Article 133 of the Criminal Code does not envisage any other means of causing or coercing to commit sexual activities. Therefore, if corruption of children is committed by inducement, promise, or any other means not covered by Article 133 of the Criminal Code, then the perpetrator of the crime will not face criminal liability under Russian law. Moreover, since Article 135 of the Criminal Code protects only children who are under the legal age of consent, that is less than 16 years old; children who are 16 years old or older are not protected against the crime of corruption in Russia. Draft laws do not address the issue of corruption of children.

⁹⁸ Council of Europe, Explanatory Report, *supra* note 60, para. 151.

⁹⁹ The Criminal Code art. 133 (Russ.), *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.I. Raroga [Rarog A.I. ed.], 2011 (Russ.), at the Russian legal database Consultant Plus.

Solicitation of children for sexual purposes (grooming)

Article 23 of CETS 201 criminalizes an offense that is more commonly known as grooming. Grooming may involve befriending a child, drawing the child into discussing intimate matters, and gradually exposing the child to sexually explicit materials in order to reduce resistance or inhibitions about sex.¹⁰⁰ Article 23 criminalizes grooming that has been committed only “through the use of information and communication technologies.” Other forms of grooming are not covered by CETS 201.

However, simply sexual chatting online about sexual topics with a child is insufficient to incur criminal responsibility. Article 23 specifies that it must be followed by a proposal to meet the child in person with the purpose to engage in sexual activities with a child or to produce child pornography, and by material acts leading to such meeting (e.g. the fact of the perpetrator arriving at the meeting place). All of the elements of the offense must be committed intentionally.

The Optional Protocol does not envisage this offense.

Neither existing Russian criminal law nor draft laws criminalize the offense of grooming.

Aiding or abetting and attempt

Both the Optional Protocol¹⁰¹ and CETS 201¹⁰² criminalize attempt to commit any of the offenses envisaged by these international instruments, as well as aiding or abetting of the offenses. According to CETS 201 aiding, abetting or attempt must be committed intentionally to incur criminal responsibility.

However, the provisions of CETS 201 related to the criminalization of these activities are stricter than those of the Optional Protocol. According to the Optional Protocol, States Parties are allowed to criminalize aiding, abetting or attempt in accordance with their national law concerning these acts.

CETS 201 does not refer to the national law of a State Party insofar as it concerns aiding or abetting of the offenses. Meanwhile, CETS 201 does take into account the particularities of each country’s legal concept of attempt and allows each Party not to criminalize attempt, in whole or in part, with regard to child pornography offenses (except for production, distribution and transmission of child pornography), knowingly attending pornographic performances with the participation of children, corruption of children, and grooming.¹⁰³

Russian law is consistent with the requirements of the Optional Protocol and CETS 201 in regards to the issues of attempt and aiding and abetting. Thus, the Criminal Code criminalizes

¹⁰⁰ Council of Europe, Explanatory Report, *supra* note 60, para. 156.

¹⁰¹ Optional Protocol, *supra* note 4, Art. 3 para. 2.

¹⁰² CETS 201, *supra* note 5, Art. 24.

¹⁰³ CETS 201, *supra* note 5, Art. 24 para. 3.

attempt to commit any of the offenses envisaged by it,¹⁰⁴ as well as the aiding and abetting of the offenses.¹⁰⁵

b. Other criminal law provisions

Both the Optional Protocol and CETS 201 envisage requirements related to jurisdiction, sanctions, international recidivism, aggravating circumstances, and corporate liability. All of them are aimed at repressing sex crimes against children. Russian law reflects most of the requirements related to jurisdiction, sanctions, and aggravating circumstances. However, legal concepts such as corporate criminal liability and international recidivism have not yet been introduced into the Russian legal system.

Jurisdiction

Both the Optional Protocol and CETS 201 envisage several requirements with regard to jurisdiction over the offenses criminalized by these international instruments. Both documents require the States Parties to establish jurisdiction over the offenses in accordance with the following principles:

- The territoriality principle, which requires each State Party to punish offenses when they are committed on its territory (including on board a ship or aircraft registered in that State);
- The active personality principle, which requires each State Party to punish offenses when they are committed by its nationals or residents;¹⁰⁶
- The passive nationality principle, which requires each State Party to punish offenses where the victim is a national or resident of that State;¹⁰⁷
- The “extradite or prosecute” principle, which requires each Party to establish jurisdiction over offenses envisaged by CETS 201 and the Optional Protocol, in a case when domestic law prohibits extradition of nationals of a State Party if they committed a crime abroad.

However, unlike CETS 201, the Optional Protocol does not provide for exemption from the dual criminality principle. Article 25 (4) of CETS 201 requires each State Party to abolish, in relation to the most serious offenses of CETS 201,¹⁰⁸ the rule of dual criminality where an offense committed abroad can be punished only if it is considered a crime in both the country having jurisdiction over the perpetrator and the country where the offense was committed.¹⁰⁹ Elimination of this dual criminality rule, and inclusion of extraterritorial jurisdiction, is particularly important in cases of child sex tourism.

¹⁰⁴ Criminal Code, *supra* note 15, Art. 30.

¹⁰⁵ *Id.* at Articles 32-34.

¹⁰⁶ Both international instruments do not impose an obligation on the States to establish jurisdiction over the offenses committed by its residents. The Optional Protocol also does not require establishing active personality jurisdiction over the offenders who are its nationals.

¹⁰⁷ Both international instruments do not impose an obligation on the States Parties to establish such jurisdiction.

¹⁰⁸ Offenses established by CETS 201 art. 18 (sexual abuse), art. 19 (child prostitution), art. 20 para. 1.a (production of child pornography), and art. 21 paras. 1a and b (participation of a child in pornographic performances).

¹⁰⁹ Council of Europe, Explanatory Report, *supra* note 60, para. 171; The UNICEF Innocenti Research Center, Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, *supra* note 54, page 13.

Another provision which is missing from the Optional Protocol, but envisaged by CETS 201, is a requirement for each State Party to ensure that its jurisdiction over offenders who are nationals or residents of the State “is not subordinate to the condition that the prosecution can only be initiated following a report from the victim or a denunciation by the State of the place where the offense was committed.”¹¹⁰ This requirement applies exclusively to the offenses related to sexual abuse, child prostitution, production of child pornography and participation of a child in pornographic performances. CETS 201 negotiators included this provision to facilitate prosecution, since child victims are often afraid to bring complaints against their offenders (because of pressure or threats by the offenders), or they are unaware of this opportunity. In addition, some States do not have the necessary resources or the will to carry out an effective and thorough investigation.¹¹¹

Overall, Russian criminal law meets the majority of the requirements envisaged by the Optional Protocol and CETS 201 with regard to jurisdiction. The relevant provisions of both international instruments are implemented in Articles 11-13 of the Criminal Code and Articles 20 and 21 of the Criminal Procedure Code. The only jurisdictional principle that is not completely reflected in Russian law is the principle of “extradite or prosecute.” For example, Article 13 (1) of the Criminal Code prohibits extradition of Russian nationals if they committed a crime abroad. At the same time, Article 12 (1) of the Criminal Code requires prosecution of Russian nationals for the crimes committed abroad and envisaged by the Criminal Code. However, to date, most of the offenses envisaged by CETS 201 and the Optional Protocol are not criminalized by the Criminal Code. For example, if a Russian national commits the crime of simple possession of child pornography abroad, and he is not extradited to another country, he will not be prosecuted in Russia, since this offense is not criminalized by Russian law. If Russia adopts the necessary changes to the Criminal Code criminalizing relevant sexual offenses against children, Russian law will completely reflect the principle of “extradite or prosecute”.

Corporate liability

Both the Optional Protocol and CETS 201 require the States Parties to establish corporate liability for the offenses envisaged by these two instruments.¹¹² Both instruments allow for liability to be criminal, civil, or administrative.

However, CETS 201 contains stricter and more detailed provisions in regards to the liability of legal persons. Thus, unlike the Optional Protocol, CETS 201 requires each State Party to establish corporate liability not only for the acts themselves, but also for aiding, abetting or attempting to commit any of the offenses criminalized by it. As to the corporate liability for other offenses, the Optional Protocol allows States Parties to establish it “where appropriate”, while CETS 201 does not permit any reservations to the provisions related to corporate liability. Moreover, the Optional Protocol does not specify the elements of corporate liability, while CETS 201 describes in detail which conditions must be met for such liability to attach.

¹¹⁰ CETS 201, *supra* note 5, Art. 25 para. 6.

¹¹¹ Council of Europe, Explanatory Report, *supra* note 60, para. 173.

¹¹² CETS 201, *supra* note 5, Art. 26; Optional Protocol, *supra* note 4, Art. 3 para. 4.

In particular, CETS 201 envisages two situations when corporate liability may be imposed on an entity. The first is when an offense has been committed by a person in a leading position (*e.g.* a director of the entity or another senior position). In such a case, in order for corporate liability to attach: (1) the offense must have been committed for the entity's benefit; and (2) a person in a leading position must have acted on the basis of his or her powers or authorities allowing him or her to represent the entity, take decisions, or perform supervisory duties. The second situation for corporate liability to be imposed is when an offense has been committed by any other employee or agent of the entity acting within their powers. In this situation, for corporate liability to attach, the following conditions must be met: (1) the offense must have been committed for the entity's benefit; and (2) the offense was committed due to the failure of the leading person to supervise such employee or agent.

To date, Russian law does not envisage the criminal liability of legal persons. In Russia, legal entities may only be liable for administrative offenses or civil wrongdoings.¹¹³ Among the offenses criminalized by CETS 201 and the Optional Protocol, the Administrative Code refers to 1) profiting from the prostitution of persons (this applies both to prostitution of children and prostitution of adults); 2) simple production, simple procurement, simple possession, transportation, distribution, public display or advertisement of child pornography; and 3) the creation of conditions for the sale of children or exploitation of children (by providing premises, vehicles, or other tangible assets; by creating living conditions for the sale of children and/or exploitation of children; by providing services facilitating commission of these crimes; or by financing their commission).¹¹⁴ Exploitation of children includes child prostitution, other forms of sexual exploitation, slave labor, involuntary servitude of children, unlawful removal of organs or tissues, and illegal adoption for profit. However, the Administrative Code fails to establish corporate liability directly for the sale of children and crimes related to exploitation of children, addressing only the creation of conditions for such crimes by a legal entity. A legal person is not liable if involved in any other sexual offenses against children. As concerns child pornography and the sale of children, a legal person is subject to administrative liability in these cases only if these offenses are committed on its behalf or for its benefit by a person exercising managerial functions in the legal entity (such person may include the CEO, a member of the board of directors or another collegial executive body, or a person carrying out managerial or administrative functions in such entity on a constant or temporary basis or on the basis of a special order).

The civil liability of legal persons, as stipulated by the Civil Code of the Russian Federation, is not applied to cases where a legal person is involved in any of the offenses criminalized by the Optional Protocol or CETS 201.

¹¹³ Article 2.10 of the Administrative Code establishes administrative liability of the legal persons. However, according to this Article legal persons may be liable only for committing an administrative wrongdoing envisaged by the Administrative Code.

¹¹⁴ The Administrative Code, *supra* note 20, articles 6.12, 6.19 and 6.20(Russ.).

The Investigative Committee of the Russian Federation prepared a draft law establishing the criminal liability of legal persons.¹¹⁵ Under the draft law, criminal liability would be imposed on a legal person in the following cases:

- a. the offense has been committed for the benefit of the legal entity and by a person exercising managerial functions in the entity (CEO of the entity, member of the collegial executive body, member of the board of directors, and any other person exercising managerial and administrative functions in the legal entity) or carrying out the actual management of the entity (a person that in fact determines decisions made by the entity by virtue of predominant participation in its share capital, or because of other circumstances);
- b. use of the legal entity in order to commit a crime, conceal a crime or the consequences of the crime, by a person exercising managerial functions in or actual management of the entity (e.g. financing of the crime with the use of money or accounts of the legal person; entering into transactions on behalf of the entity to facilitate commission or concealment of a crime or property obtained as a result of the crime).

As can be seen from the above description, similar to the Administrative Code, the draft law of the Investigative Committee envisages the first instance under CETS 201 when corporate liability may be imposed on the entity (if a crime was committed by a person in a leading position), but fails to address the second instance when a crime has been committed by any other employee or agent of the entity due to the failure of the leading person to supervise such employee or agent. With that said, introduction of such a bill establishing corporate criminal liability is still a tremendous step forward in bringing Russian law into compliance with international standards.

Sanctions and measures

Both the Optional Protocol and CETS 201 require the Parties to punish sexual offenses against children with penalties that take into account their grave nature and seriousness.¹¹⁶ In addition, CETS 201 requires penalties to be effective, proportionate, and dissuasive, and it explicitly provides for deprivation of liberty among such penalties if an offense was committed by an individual. Among other sanctions, CETS 201 also envisages a temporary or permanent ban from exercising activity involving contact with children in the course of which the offense was committed. CETS 201 also suggests that States Parties adopt such measures as withdrawal of parental rights or monitoring and supervision of convicted persons.

Unlike the Optional Protocol, CETS 201 specifies sanctions that shall be applied to legal entities including the mandatory imposition of monetary sanctions on legal persons. Other measures may also be used such as: exclusion from entitlement to public benefits or aid, temporary or

¹¹⁵ Proekt. Federalnyi Zakon o Vnesenii Izmenenii v Nekotorye Zakonodatelnye Akty Rossiiskoi Federatsii v Sviazi s Vvedeniem Instituta Ugolovno-pravovogo vozdeistviia v otnoshenii iuridicheskikh lits [Draft. Federal Law On Amendments to Certain Legislative Acts of the Russian Federation due to Introduction of the Criminal Liability Concept with Respect to Legal Entities], Sledcom.ru (Russ.), <http://sledcom.ru/discussions/?SID=1273> (last visited Jan. 11, 2013).

¹¹⁶ Optional Protocol, *supra* note 4, Art. 3 para. 3; CETS 201, *supra* note 5, Art. 27(1).

permanent disqualification from the practice of commercial activities, imposition of judicial supervision, and introduction of a judicial winding-up order.

Both the Optional Protocol and CETS 201 provide for the closure of any establishment that is used to carry out any of the sexual offenses criminalized by these international instruments.¹¹⁷ They also outline seizure and confiscation requirements.¹¹⁸ Thus, each Party is required to confiscate: (1) any goods used to commit sexual offenses against children or facilitate their commission and (2) any proceeds derived from these crimes. CETS 201 also suggests that Parties create a special fund for allocation of these proceeds in order to finance prevention and assistance programs for victims of any of the offenses established by CETS 201.¹¹⁹

Neither CETS 201 nor the Optional Protocol give a detailed interpretation of the terms “effective”, “proportionate”, and “dissuasive” sanctions, or provide any specific criteria to be used in determining whether sanctions meet these requirements. Therefore, the States Parties have a certain degree of flexibility in establishing sanctions (e.g. when envisaging the terms of sentencing). Generally, Russian criminal law differentiates sanctions for sexual offenses against children based on the gravity of the offense and it allows for the deprivation of liberty in each Article of the Criminal Code that criminalizes sexual offenses against children. The maximum sentence for such offenses may include life imprisonment.¹²⁰ At the same time, the minimum term of imprisonment may be as low as 2 months in some cases.¹²¹ For certain crimes, the Criminal Code envisages alternative sanctions that are less harsh than imprisonment (e.g. corrective works and compulsory labor).¹²²

In July 2011, the President of the Russian Federation introduced amendments to the Criminal Code establishing stricter provisions regarding punishment of sex offenders (Presidential Bill No. 577813-5). These amendments have been adopted by the Russian Parliament (the Federal Assembly) and have recently become law. This Bill increased imprisonment terms; recognized a child victim under the age of 12 as a victim in a vulnerable situation; provided for harsher penalties for sexual offenses committed via the Internet and other public data networks; and provided for the ban to exercise professional or any other activity involving children for up to 20 years in each Article of the Criminal Code criminalizing sexual offenses against children.

¹¹⁷ Optional Protocol, *supra* note 4, Art. 7(c); CETS 201, *supra* note 5, Art. 27 para. 3(b).

¹¹⁸ Optional Protocol, *supra* note 4, Art. 7; CETS 201, *supra* note 5, Art. 27 para. 3(a).

¹¹⁹ See Art. 14 para. 1 of CETS 201. Assistance programs are aimed “to assist victims, in the short and long term, in their physical and psycho-social recovery”, *id.*

¹²⁰ This penalty is envisaged for a number of sexual offenses committed against a child under 14 years old by a recidivist who previously committed another sexual offense against a child victim under 14 years old: rape (Art. 131 of the Criminal Code) and other sexual activities committed with the use of force (Art. 132 of the Criminal Code), engaging in sexual activities with a child under 14 without use of force (Art. 134 of the Criminal Code), save for lewd acts.

¹²¹ This applies to the following offenses: coercing a child to engage in sexual activities (Art. 133 pt. 2 of the Criminal Code), engaging in sexual activities with a child who has reached 14 years of age but is under 16 years of age without use of force (Art. 134 parts 1 and 2 and art. 135 pt. 1 of the Criminal Code), actions aimed at organizing child prostitution (Art. 241 pt. 2 of the Criminal Code) (e.g. creation and maintenance of brothels, search for child prostitutes and etc). Meanwhile, the Criminal Code envisages the maximum term of imprisonment for each of these cases from 3 to 6 years.

¹²² Such alternative sanctions are established for the following offenses: exploitation of slave labor (for the purposes of child prostitution or child pornographic performance) (Art. 127.2 pt. 2 of the Criminal Code), coercing a child to engage in sexual activities (Art. 133 pt. 2 of the Criminal Code), engaging into sexual activities with a child who has reached 14 years of age but is under 16 years of age without use of force (Art. 134 parts 1 and 2 and Art. 135 pt. 1 of the Criminal Code).

However, all other amendments of this Bill providing for specific penalties are applied only to certain sexual offenses committed against children under 14 years of age.¹²³ Among these penalties are: probation and suspension of the sentence are not allowed; parole and alleviation of the sentence are possible only after completing four fifths of the sentence; compulsory outpatient observance and treatment by a psychiatrist may be imposed on sexual offenders; and life sentencing may be imposed for certain sexual offenses committed by a recidivist against children under 14 years of age.

Meanwhile, according to the statistics, the amendments to the Criminal Code introduced by the President had no real effect on the situation as the Presidential Bill focused on enhancing the protection of children under 14 years old, while the majority of child victims are usually 14 years old and older.¹²⁴ The statistics relate to sexual offenses prohibited by Article 134 of the Criminal Code that were reported to Russian investigative authorities.¹²⁵ In 2010, 91% of convicted offenders committed crimes against children 14-15 years old, and only 9% committed offenses against children younger than 14 years old. 67% of convicted offenders who committed crimes against children of 14-15 years old were sentenced with probation; 31% were sentenced with up to 2 years of imprisonment; 62% were sentenced with imprisonment from 1 to 3 years; and 7% of offenders were sentenced with imprisonment from 3 to 5 years.¹²⁶

As far as sanctions for legal persons are concerned, Russian law does not impose criminal liability on legal persons, and thus does not envisage any sanctions for legal entities. Though legal persons in Russia are subject to administrative liability for committing administrative wrongdoings, administrative sanctions may be imposed only in a limited number of cases (profiting from prostitution, certain child pornography offences, and creation of the conditions for the sale of children or exploitation of children) and they do not include judicial winding-up and permanent disqualification from practicing commercial activities as required by CETS 201.¹²⁷ As mentioned above, the Investigative Committee of the Russian Federation prepared a

¹²³ These amendments are not applied to the sale of children (Art. 127.1 pt. 2 of the Criminal Code), exploitation of children for child prostitution and child pornographic performances (Art. 127.2 pt. 2 of the Criminal Code), even if they are committed against children under 14 years of age.

¹²⁴ See, Elena Mizulina, *Bez deputatskogo antipedofil'skogo zakonoproekta, presidentskii – vsego lish' "strel'ba iz pushek po vorob'iam"* [Without deputy's anti-pedophile bill, the president's one is just "fireworks at sparrows"], Spravedlivo.ru (Oct. 4, 2011) (Russ.), <http://www.spravedlivo.ru/news/position/2518.php> (last visited Jan. 11, 2013). Statistics were mentioned by Ms. Elena Mizulina, a deputy of the State Duma and a member of the political party "Spravedlivaia Rossiia," *id.*

¹²⁵ Art. 134 of the Criminal Code prohibits engagement into sexual activities (sexual intercourse, pederasty and lesbianism) with a child under 16 years of age.

¹²⁶ Elena Mizulina, *Bez deputatskogo antipedofil'skogo zakonoproekta, presidentskii – vsego lish' "strel'ba iz pushek po vorob'iam"* [Without deputy's anti-pedophile bill, the president's one is just "fireworks at sparrows"], *supra* note 124.

¹²⁷ The Administrative Code, *supra* note 20, art. 3.2 (Russ.). This Article 3.2 envisages the following sanctions for the legal entities:

- Warning;
- Administrative fine;
- Seizure of goods, documents and other instrumentalities used to commit the offenses;
- Suspension of business activities.

According to Articles 6.19 and 6.20 of the Administrative Code creation of the conditions for the sale of children or exploitation of children, and child pornography offenses are punishable by a fine of 1,000,000 – 5,000,000 rubles or suspension of business activity for up to 90 days. In the case of child pornography offenses, this penalty is accompanied by confiscation of child pornography materials and all equipment used for their production.

draft law on corporate liability that makes legal persons criminally liable for offenses envisaged by the Criminal Code. The draft law envisages the following sanctions for legal entities:

- a warning;
- a fine;
- loss of license, quotas, preferences or privileges;
- disqualification from the practice of certain activities;
- a ban on any activity on the territory of the Russian Federation;
- forced winding-up.¹²⁸

In general, the sanctions suggested by the draft law fulfill the requirements of CETS 201.

The Criminal Code does not envisage such sanctions as withdrawal of parental rights and closure of an establishment that is used to carry out any sexual offenses against children. Meanwhile, withdrawal of parental rights is stipulated by the Family Code of the Russian Federation and may be implemented, *inter alia*, when a parent has committed an intentional crime against the life and health of his/her child or a child was subjected to cruel treatment including physiological, physical abuse, and sexual abuse.¹²⁹

The monitoring and supervision of convicted sex offenders is stipulated by the Criminal Code as a compulsory medical measure, rather than a sanction. Sex offenders who committed sexual crimes against children under 14 years of age and who are mentally competent may be subject to this compulsory measure. The monitoring and supervision of such sex offenders is done through a regular medical check-up that includes monitoring their mental health through regular examination by a psychiatrist, psycho-physiological and other treatment, social assistance and implementation of rehabilitation measures.¹³⁰ These measures may be applied to sex offenders even after their sentences have been served and until they are fully treated.¹³¹

All seizure and confiscation requirements established by the Optional Protocol and CETS 201 are reflected in Articles 104.1 and 104.2 of the Criminal Code, save for creation of a special victim compensation fund for allocation of proceeds from such seizure and confiscation. However, the creation of such a fund is not obligatory for the States Parties. Meanwhile, the Investigative Committee of the Russian Federation prepared a Draft Law on Victims of Crimes where it proposed to create a Federal Fund for helping victims of various serious crimes.¹³²

¹²⁸ Proekt. Federal'nyi Zakon o Vnesenii Izmenenii v Nekotorye Zakonodatelnye Akty Rossiiskoi Federatsii v Sviazi s Vvedeniem Instituta Ugolovno-pravovogo vozdeistviia v otnoshenii iuridicheskikh lits, *supra* note 115.

¹²⁹ The Family Code, *supra* note 13, art. 69.

¹³⁰ The Criminal Code Articles 97-100, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus; The Criminal Code Articles 97-100, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.I. Chuchaeva [Chuchaev A.I. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus; Zakon RF No. 3185-1 o Psikhiatrichesko i pomoshchi i garantiakh prav grazhdan pri ee okazanii ot 2 iulia 1992 g. [Law No. 3185-1 On Psychiatric Assistance and Guarantees of Rights to Citizens in its Provision of July 2, 1992], art. 26 (Russ.), at the Russian legal database Consultant Plus.

¹³¹ Criminal Code, *supra* note 15, art. 102 pt. 2.1.

¹³² Proekt. Federal'nyi Zakon o Poterpevshikh ot Prestuplenii [Draft. Federal Law On Victims of Crimes], art. 8, Sledcom.ru (Russ.), <http://sledcom.ru/discussions/?SID=2979> (last visited Jan. 11, 2013).

Aggravating circumstances

CETS 201 addresses the issue of aggravating circumstances in Article 28 which contains a list of such circumstances that should be considered by the national judges when sentencing offenders.¹³³ The wording of this provision does not impose any obligation on the judges to apply these circumstances. Each State Party must only ensure that such aggravating circumstances are envisaged by their national laws and are available to judges for their consideration.

Russian criminal law has implemented every aggravating circumstance stipulated by CETS 201.¹³⁴ All of these aggravating circumstances are applied to all sexual offenses criminalized by the Criminal Code.

International recidivism

Article 29 of CETS 201 introduces the principle of international recidivism, which provides for the possibility to take into account final sentences passed by another State Party in assessing a sentence by domestic courts. Each State Party is obliged to implement this principle in its national legislation. The Explanatory Report to CETS 201 suggests three options for the Parties to comply with this provision.¹³⁵ First, the State Party may envisage harsher penalties for offenders who have previous convictions by foreign courts for the offenses criminalized by CETS 201. Second, the Party may provide in its national legislation that domestic courts should take such convictions by foreign courts into account when determining the sentence. And third, national laws may establish a principle according to which the offender should not be treated less favorably than he would have been treated if the previous conviction was by a national court.

Neither the effective Russian law nor draft laws envisage the concept of international recidivism.

2.3 Criminal Procedure law

Both international instruments contain provisions that reflect the vital importance of ensuring that the investigation and trial procedures take due account of the particular vulnerability of children facing such procedures as victims or witnesses in order to conduct the investigation and prosecution of sexual offenses more effectively and prevent further traumatizing the children. These instruments discuss the following issues: general measures of protection for child victims and witnesses to be applied during all stages of investigation and trial proceedings; appropriate training for the persons who work with child victims and witnesses; and initiation of criminal proceedings against sex offenders. In addition, CETS 201 covers several issues that are not specifically addressed by the Optional Protocol, such as: statutes of limitation for certain sexual offenses, interviewing child victims and witnesses, and trial proceedings. Most of these requirements are not reflected in the Russian criminal procedure law.

¹³³ See the list of the aggravating circumstances in Appendix 1b to this Report.

¹³⁴ Criminal Code, *supra* note 15, art. 63.

¹³⁵ Council of Europe, Explanatory Report, *supra* note 60, para. 207.

General measures of protection

Article 8 (1) of the Optional Protocol and Article 31 (1) of CETS 201 oblige the States Parties to adopt necessary legislative and other measures to protect the rights of child victims and witnesses at all stages of the criminal procedure. The list of such measures is non-exhaustive and includes, *inter alia*:

- Procedural rules: informing children of their rights and their role; the charges brought against the offender; progress of the investigation and trial proceedings; outcome of their cases; and the possibility, for child victims, of being heard, of supplying evidence, and of having their other needs and concerns presented and considered;
- Privacy and safety measures: protection of victim's identity and image; safety and protection against intimidation and retaliation;
- Support services: providing victims with appropriate support services so that their rights are duly represented and taken into account.

In addition to these measures, CETS 201 also stresses the importance of the following child-friendly procedures designed to protect children during criminal proceedings:

- Obligation to inform children and their families when a sex offender is released, when considered necessary (e.g. when there is a risk of intimidation or retaliation);
- Obligation to prevent any contact of the child victim with an alleged offender within court or law enforcement agency premises;
- Access to free legal aid, where warranted, for child victims of sexual offenses;
- The possibility for the child to be represented by a special representative appointed by the court (this provision covers the situation when the parents or guardians are the sex offenders, or the parents/guardians have a relationship with the sex offender that hinders their ability to defend the interest of their child impartially);
- The possibility for various organizations (NGOs, support groups, foundations, and etc.) to support child victims during criminal proceedings;
- Obligation to present information to child victims during proceedings according to their age, maturity, and in a language they can understand.¹³⁶

Among the general measures of protection envisaged by the Optional Protocol and CETS 201, only a few are implemented by Russian law, namely procedural rules, privacy and safety measures, avoidance of contact of the child victim with an alleged perpetrator, and the obligation to present information to the child victims in a language they can understand. Thus, as far as the procedural rights are concerned, Article 6 (1) of the Criminal Procedure Code envisages protection of rights and interests of the victim regardless of the victim's age as the primary purpose of criminal procedure. Article 42 (2) of the Criminal Procedure Code enumerates procedural rights of the victim. According to Articles 164 (5), 268 and 278 of the Criminal Procedure Code, investigative and judicial authorities are obliged to inform the victims and witnesses of their relevant procedural rights. However, the above mentioned

¹³⁶ For a more detailed description of the general protection measures of child victims, please see Appendix 2 of this Report.

provisions of the Criminal Procedure Code relate to victims of all ages and do not take into account specific needs and concerns of child victims.

As to the privacy and safety measures for child victims and their families, Russian law is consistent with the relevant requirements of the Optional Protocol and CETS 201. Federal Law No. 119-FZ on State Protection of Victims, Witnesses and Other Participants of the Criminal Procedure envisages protection of privacy of the victims, their family, and witnesses.¹³⁷ According to Article 16 of Federal Law No. 119-FZ, security measures are applied to children based on the written statement of the parents/guardians and only if there is a real threat of murder, violence against a victim, or destruction or damage of his or her property.¹³⁸ In addition to this, the Criminal Procedure Code allows for the protection of the identity of victims and witnesses during investigation,¹³⁹ and protection of witness' identity during interviews in court.¹⁴⁰ The Administrative Code prohibits disclosure of a child victim's identity and image through mass media and data telecommunications networks. Violation of this requirement is punishable by confiscation of the data carrier and an administrative fine from 3,000 to 5,000 rubles (approximately from 100 to 165 USD) for individuals, from 30,000 to 50,000 rubles (approximately from 1,000 to 1,665 USD) for officials, and from 400,000 to 1,000,000 rubles (approximately from 13,330 to 33,330 USD) for legal entities.¹⁴¹ Draft Law No. 173958-6 enhances the protection of victims' privacy and establishes criminal liability for disclosure of certain information about the child victim or child witness.¹⁴²

The Russian law partially reflects the obligation to prevent any contact between the child victim and the alleged offender. The Criminal Procedure Code does not envisage a general obligation to avoid such contact within the court or on the premises of the law enforcement agency. This requirement is only mentioned in the context of two specific investigative actions: interviews of child victims or child witnesses in court and identification of an offender. According to the Criminal Procedure Code, a child victim or a child witness may be interviewed in court in the absence of the offender either on the request of the parties or at the court's decision.¹⁴³ The Criminal Procedure Code also provides for the identification of an offender without the offender's ability to visually observe the victim, should the investigator decide it is necessary.¹⁴⁴ The Criminal Procedure Code contains other investigative actions that may involve direct contact between the victim and the offender (e.g. face-to-face interrogation, investigative experiment); however, the Criminal Procedure Code does not contain similar provisions requiring avoidance of contact between the child victim and the offender in such cases.

¹³⁷ This Law is dated Aug. 20, 2004.

¹³⁸ Federal'nyi Zakon No. 119-FZ o Gosudarstvennoi Zashchite Poterpevshikh, Svidetelei i Inykh Uchastnikov Ugolovnogo Sudoproizvodstva ot 20 avgusta 2004 g. [Federal Law No.119-FZ On State Protection of Victims, Witnesses and Other Participants of the Criminal Procedure of Aug. 20, 2004], art. 16 (Russ.), at the Russian legal database Consultant Plus.

¹³⁹ Criminal Procedure Code, *supra* note 16, art. 166 pt. 9.

¹⁴⁰ *Id.* at art. 278 pt. 5.

¹⁴¹ The Administrative Code, *supra* note 20, art. 13.15 pt.3 (Russ.).

¹⁴² The System of Automated Paperwork Management, Bill No. 173958-6 (Russ.), [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=173958-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=173958-6) (last visited Jan. 11, 2013).

¹⁴³ The Criminal Procedure Code, *supra* note 16, art. 280 pt. 6.

¹⁴⁴ *Id.* at art. 193 pt. 8.

The obligation to present information to the child victim in a language he or she can understand is reflected in Article 18 of the Criminal Procedure Code, which states that the language of the criminal procedure must be Russian, as well as the official language of the Russian states (*sub'ekty*). If the victim does not understand any of these languages, he or she may use their native spoken language and shall be provided with the services of an interpreter free of charge. However, the term “child-friendly procedure” as used in CETS 201 goes beyond just using native spoken language in court and also stipulates presenting information in terms that are simple and understandable; this is not reflected by the Criminal Procedure Code.

All other general measures of protection stipulated by the Optional Protocol and CETS 201 are not reflected in Russian law. Draft Law No. 14704-6 suggests that child victims and their families are informed when a sexual offender, who sexually abused the child victim, is released from prison, should they request this of the court.¹⁴⁵ The same provision is envisaged by the Draft Law No. 173958-6.¹⁴⁶ It also requires compulsory participation of the advocate to provide legal aid to the child victim free of charge. This Draft Law also obliges the judges and investigators to appoint a special representative for the child victim when there is a conflict of interest between the child and the holders of parental responsibility. Additionally, the Draft Law On Victims of Crimes, prepared by the Investigative Committee of the Russian Federation, envisages the rights of child victims to be provided with relevant social services.¹⁴⁷ The draft laws do not introduce any other changes to the existing general measures of protection.

Special training for staff working with child victims

Both the Optional Protocol and CETS 201 recognize the importance of providing special training to the professionals responsible for the investigation and prosecution of sexual offenses committed against children. Such training is designed to prevent child victims and witnesses from being further traumatized and to ensure the effectiveness of investigations and trial proceedings by enhancing the professional competence of those involved in the prosecution of such sexual offenses.¹⁴⁸ Thus, Article 8 of the Optional Protocol obliges States Parties to ensure legal and psychological training for those working with child victims of sexual offenses. CETS 201 requires professionals that investigate child sexual abuse and sexual exploitation to be trained to combat these crimes or to be specialized in this field.¹⁴⁹ The same training should be available for judges, lawyers, and prosecutors working in this area.¹⁵⁰ Moreover, CETS 201 specifically states that interviews with the child should be carried out by professionals trained for this purpose.¹⁵¹

¹⁴⁵ The System of Automated Paperwork Management, Bill No. 14704-6 (Russ.), [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=14704-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=14704-6) (last visited Jan. 11, 2013).

¹⁴⁶ The System of Automated Paperwork Management, Bill No. 173958-6 (Russ.), *supra* note 142.

¹⁴⁷ Proekt. Federal'nyi Zakon o Poterpevshikh ot Prestuplenii, *supra* note 132.

¹⁴⁸ Thus, the Optional Protocol mentions that professionals should in particular have psychological training. According to art. 30 paras. 1 and 2 of CETS201 investigations and trial proceedings must always aim to avoid exacerbating the trauma which the child victims have already suffered.

¹⁴⁹ CETS 201, *supra* note 5, Art. 34 para. 1.

¹⁵⁰ *Id.* at Art. 36 para. 1.

¹⁵¹ *Id.* at Art. 35 para. 1(c).

Russian legislation does not outline any requirements for staff working with child victims to have a relevant specialization in the field of combating child sexual exploitation and sexual abuse or to be trained for this purpose. There is only a general requirement for investigators and judges to regularly advance their skills in order to maintain a high level of professionalism.¹⁵² However, in regards to investigators, the Investigative Committee of the Russian Federation established the Institute for Advanced Studies in 2010 to provide investigators with specialized training related, *inter alia*, to the investigation of sexual offenses committed against children.¹⁵³ This special training includes courses such as: psychological particularities of children, establishing contact with children by an investigator, and organizing psychological support for criminal investigations. Currently the Institute has four branches in Rostov-on-Don, Ekaterinburg, Novosibirsk, and Nizhny Novgorod.¹⁵⁴ According to the Institute's data, by the end of 2010, about 68% of the investigators of the Investigative Committee of the Russian Federation had completed their training at the Institute.¹⁵⁵ Furthermore, at the end of March 2012, 1,033 investigators had been trained at the Institute.¹⁵⁶ Judging from the above data, Russian authorities have undertaken the necessary measures to train investigators to work with child victims/witnesses and prosecute sex offenders. However, the same does not apply to judges.

Russian judges advance their skills at the Russian Academy of Justice.¹⁵⁷ It is unclear what types of training are provided by the Academy and whether they include special training related to examining sexual offenses committed against children. As far as the crimes involving children are concerned, the Supreme Court of the Russian Federation highlighted the importance of advancing the skills of those judges who examine juvenile crimes, where children are

¹⁵² Federal'nyi Zakon No. 403-FZ o Sledstvennom Komitete Rossiiskoi Federatsii ot 28 dekabria 2010 g. [Federal Law No. 403-FZ On the Investigative Committee of the Russian Federation of Dec. 28, 2010], art. 34 (Russ.), at the Russian legal database Consultant Plus; Law No. 3132-1 o Statuse Sudei v Rossiiskoi Federatsii ot 26 iyunia 1992 g. [Law No.3132-1 On the Status of Judges in the Russian Federation of June 26, 1992], art. 20.1 (Russ.), at the Russian legal database Consultant Plus.

¹⁵³ Istoricheskii ocherk ob Institute povysheniia kvalifikatsii Sledstvennogo Komiteta Rossiiskoi Federatsii [History of the Institute for Advanced Studies of the Investigative Committee of the Russian Federation] (Russ.), <http://ipk.clan.su/index/0-2> (last visited Jan. 11, 2013); Aktual'nye voprosy deiatel'nosti Instituta povysheniia kvalifikatsii Sledstvennogo komiteta Rossiiskoi Federatsii: tseli, zadachi, problemy, perspektivy [Actual questions on activity of the Institute for Advanced Studies of the Investigative Committee of the Russian Federation: goals, tasks, problems and prospects], Garant.ru (Russ.), <http://www.garant.ru/action/interview/350847/> (last visited on Jan. 11, 2013).

¹⁵⁴ Novosibirskii filial Instituta povysheniia kvalifikatsii SKR [Novosibirsk branch of the Institute for Advanced Studies of the Investigative Committee of the Russian Federation], Komitet-nso.ru (Russ.), http://komitet-nso.ru/learning_center/ (last visited Jan. 11, 2013); Filial IPK SK Rossii [Branch of the Institute for Advanced Studies of the Investigative Committee of the Russian Federation], Sled-uso.ru (Russ.), <http://sled-uso.ru/i.php?cid=17> (last visited Jan. 11, 2013); Nachal rabotu Rostovskii filial FGBOU DPO "Institut povysheniia kvalifikatsii Sledstvennogo komiteta Rossiiskoi Federatsii" [Rostov branch of the Institute for Advanced Studies of the Investigative Committee of the Russian Federation started its work], Skrnd.ru (Russ.), http://www.skrnd.ru/index.php?option=com_content&task=view&id=1336&Itemid=28 (last visited Jan. 11, 2013); Sozdanie filiala Instituta v Nizhnem Novgorode [Establishing a branch of the Institute in Nizhny Novgorod], http://ipk.clan.su/news/sozdanie_filiala_instituta_v_nizhnem_novgorode/2012-03-31-37 (last visited Jan. 11, 2013).

¹⁵⁵ Istoricheskii ocherk ob Institute povysheniia kvalifikatsii Sledstvennogo Komiteta Rossiiskoi Federatsii [History of the Institute for Advanced Studies of the Investigative Committee of the Russian Federation] *supra* note 153.

¹⁵⁶ Institut povysheniia kvalifikatsii Sledstvennogo Komiteta Rossiiskoi Federatsii [The Institute for Advanced Studies of the Investigative Committee of the Russian Federation], Sledcom.ru (Russ.), http://www.sledcom.ru/inst_as/detail.php?ID=106294&spphrase_id=123591 (last visited Jan. 11, 2013).

¹⁵⁷ Fakultet povysheniia kvalifikatsii i perepodgotovki sudei, gosudarstvennykh grazhdanskikh sluzhashchikh sudov obshchei iurisdiktsii i Sudebnogo departamenta [Faculty of Advanced Studies and Retraining of Judges, Civil Servants of the Courts of General Jurisdiction and the Judicial Department], Raj.ru (Russ.), <http://www.raj.ru/?mod=pages&id=3> (last visited Jan. 11, 2013).

offenders.¹⁵⁸ In such cases, the judges must have special knowledge not only of the law, but also of pedagogy, sociology, and the psychological characteristics of a teenager. Unfortunately, neither Russian law, nor the Supreme Court of the Russian Federation specify the need for similar training for judges examining sexual crimes where children are victims. Meanwhile, according to the Judicial Council of the Russian Federation, such advanced trainings are necessary for judges examining sexual offenses committed against children. The Council stated that “advanced skills training and specialization are necessary not only in criminal cases involving crimes committed by minors, but also in criminal cases where the victims are minors, as well as in civil cases concerning protection of the rights of the child.”¹⁵⁹ The Chief of the Rostov Region Court, Mr. V.N. Tkachev, also highlighted the importance to specialize judges that work in the area of sexual offenses committed against children. He said:

“However, experience shows that it is necessary to specialize judges hearing criminal cases in which the victims are children. For the latter, the criminal proceedings are psychologically traumatic. There is no legal framework to provide the necessary assistance and support directly to children - victims of crime, including victims of sexual crimes; such a system, which would provide them with psychological support, mitigate post-traumatic stress disorder, maintain, and support children during criminal proceedings (preliminary investigation and court proceedings). Courtrooms, where criminal cases involving child victims are heard do not provide the possibility to exclude victims of traumatic contact with the offender.”¹⁶⁰

Though there is no direct requirement in Russian legislation for the judges to be specialized in criminal proceedings involving a child victim, some of Russian courts have introduced such specialization. In the Rostov Region, such specialization was introduced in three lower courts during the period of 2004-2006 and was successfully implemented into practice.¹⁶¹ In 2001, similar practice was adopted in Sverdlovsk Region Court.¹⁶² In September 2011, a special bench was created in the Central District Court of Komsomolsk-on-Amur that focuses on criminal cases where the victim is a minor.¹⁶³ The idea of implementing such judicial specialization is supported by many other courts in Russia, such as in St. Petersburg, Irkutsk, Kemerovo,

¹⁵⁸ Postanovlenie Plenuma Verkhovnogo Suda RF “O Sudebno i Praktike primeneniia zakonodatel'stva, reglamentiruiushchego osobennosti ugovolno i otvetstvennosti i nakazaniia nesovershennoletnikh” ot 1 fevralia 2011 g., abz. 4. [Cl.4 of the Russian Federation Supreme Court Plenary Ruling on Court Practice Concerning Application of the Law Governing Particularities of the Criminal Liability and Punishment of Minors of Feb. 1, 2011] (Russ.), at the Russian legal database Consultant Plus.

¹⁵⁹ O iuvenal'noi iustitsii v sisteme pravosudiia RF (6 avgusta 2009 g., No. 185) [About juvenile justice within the justice system of the Russian Federation (Aug. 6, 2009, No. 185)], Juvenilejustice.ru (Russ.), <http://www.juvenilejustice.ru/documents/doc2/PostSS/postJJ09> (last visited Jan. 11, 2013).

¹⁶⁰ Tkachev V.N., *Opytnaia model' iuvenal'noi iustitsii v Rostovskoi oblasti i ee rasprostranenie v regionakh Rossii* [Experimental model of the juvenile justice in Rostov region and its expansion to the regions of Russia], Rostobsud.ru (Russ.), http://www.rostobsud.ru/to_3524582 (last visited Jan. 11, 2013).

¹⁶¹ *Id.*

¹⁶² O rezul'tatakh obobshcheniia informatsii sudov sub'ektov RF ob ispol'zovanii iuvenalnykh tekhnologii sudami obshchei iurisdiktsii (21 iunია 2010 g., No. 228) [The Results of Summarizing Information Obtained from the Courts of the Constituent Entities of the Russian Federation on Application of Juvenile Justice Methods by the Courts of General Jurisdiction (June 28, 2010 No. 228)], Rosobsud.ru (Russ.), http://www.rostobsud.ru/ne_4475065 (last visited Jan. 11, 2013).

¹⁶³ Khabarovskii krai osvaivaet mekhanizmy iuvenal'noi iustitsii [Khabarovsk region develops mechanisms for juvenile justice], Juvenile justice.ru (Russ.), <http://www.juvenilejustice.ru/about/news/2011/9/new345> (last visited Jan. 11, 2013).

Novosibirsk, Stavropol, Chuvashia, Karelia, Khakassia, Jewish Autonomous Region, Novgorod, Tambov, Voronezh, and Khanty-Mansiysk.¹⁶⁴

Advocates¹⁶⁵ and prosecutors¹⁶⁶ have the same obligations as judges and investigators to advance their professional skills.¹⁶⁷ Prosecutors are trained in the Academy of the Prosecutor General's Office of the Russian Federation,¹⁶⁸ while advocates improve their professional skills at the Russian Law Academy of the Ministry of Justice.¹⁶⁹ However, it is still unclear whether special training related to examining sexual offenses committed against children is available to the prosecutors and the advocates in these educational institutions.

As mentioned above, CETS 201 also envisages that interviews with a child should be carried out by professionals trained for this purpose. As far as this provision is concerned, the Criminal Procedure Code requires all interviews of children under 14 years of age (both during investigation and court proceedings) to be held with the participation of a "pedagogue". If a child is over 14 years of age, then participation of such pedagogue in the interviews depends on the decision of the investigator or the court.¹⁷⁰ The law does not define the term pedagogue and does not explain whether this person must possess specific skills to interview children. According to legal doctrine, a pedagogue may be a person with a pedagogical education, such as a school teacher or a teacher in a pre-school institution.¹⁷¹ However, even if this person

¹⁶⁴ O rezul'tatakh obobshcheniia informatsii sudov sub'ektov RF ob ispol'zovanii iuvenalnykh tekhnologii sudami obshchei iurisdiktsii, *supra* note 162.

¹⁶⁵ In Russia every advocate (*advokat*) is a lawyer (*iurist*), but not every lawyer is an advocate. An advocate is a person who has a law degree and with the status of an advocate and the right to practice law. An advocate is an independent professional adviser on legal matters. Only advocates may protect the interests of suspects and defendants in criminal proceedings. Advocates are also primary representatives of victims in criminal proceedings. All other lawyers also have a law degree but do not have the status of an advocate. Other lawyers may represent the rights of victims in criminal proceedings only with permission of the justice of the peace.

¹⁶⁶ According to Russian law, a prosecutor (*prokuror*) is an official of the Prosecution Service (*Prokuratura*) which is a system of organs monitoring compliance with Russian law and human rights on behalf of the State as well as carrying out other duties. A prosecutor is authorized to represent the prosecution in court, as well as to monitor compliance with Russian law in almost all spheres of national life on behalf of the Russian Federation.

¹⁶⁷ Federal'nyi Zakon No. 63-FZ ob Advokatsko i Deiatelnosti i Advokature v Rossiiskoi Federatsii ot 31 maia 2002 g. [Federal Law No. 63-FZ On Legal Practice and Advocacy in the Russian Federation of May 31, 2002], art. 7 cl. 1(3) (Russ.), at the Russian legal database Consultant Plus; Federal'nyi Zakon No. 2202-1 o Prokurature Rossiiskoi Federatsii ot 17 ianvaria 1992 g. [Federal Law No. 2202-1 On Prosecution Service of the Russian Federation of Jan. 17, 1992], art. 43.4 pt. 2 (Russ.), at the Russian legal database Consultant Plus.

¹⁶⁸ Tseli i Zadachi Akademii [Objectives and Tasks of the Academy], Agprf.org (Russ.), <http://www.agprf.org/acad/acad-1.html> (last visited Jan. 11, 2013).

¹⁶⁹ About the Russian Law Academy, Rpa-mu.ru, <http://eng.rpa-mu.ru/> (last visited Jan. 11, 2013); Obrashcheniie Prezidenta Federal'noi palaty advokatov Rossiiskoi Federatsii [Message from the President of the Federal Chamber of Advocates of the Russian Federation], Rpa-mu.ru (Russ.), http://rpa-mu.ru/seminari_fpk/sovet-federalnoy-palaty-advokatov-rossiyskoy-federacii-schitaet-cesloobraznyim-i-perspektivnyim-dlya-obucheniya-advokatov-aktivizirovat-vzaimodeystvie-s-rossiyskoy-pravovoy-akademiei-minyusta-ros (last visited Jan. 11, 2013).

¹⁷⁰ See the Criminal Procedure Code art. 191 pt. 1. Interviews of minors during investigation are held with the participation of a pedagogue. Minor's holders of parental responsibility have a right to be present during such interviews, *id.*; See the Criminal Procedure Code art. 280 pt. 1. Interviews of minors within court are held with participation of a pedagogue. A pedagogue has a right with the court's permission to ask the child victim/witness questions. If a minor is under 14, the interview is held with a compulsory participation of his or her holders of parental rights, *id.*

¹⁷¹ The Criminal Procedure Code art. 191, *construed in* Kommentarii k Ugolovno-Protsessualnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Procedure Code of the Russian Federation] pod redaktsiei B.T. Bezlepina [Bezlepkin B.T. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus; The Criminal Procedure Code art. 191 (Russ.), *construed in*

completed a pedagogical education, it does not necessarily mean that s/he was specifically trained to interview children. The Draft Law No. 173958-6 defined the term pedagogue as “an expert in the field of developmental or educational psychology,” thus establishing stricter requirements on the professional background of such a person.¹⁷²

Initiation of criminal proceedings

The provisions in CETS 201 concerning the initiation of criminal proceedings are designed to facilitate the prosecution of sex offenders in this context. For this purpose, each State Party has the following duties:

- to investigate the criminal cases even when the age of the child victim is uncertain;¹⁷³
- to prosecute sexual offenses without the child victim having to file a complaint;¹⁷⁴ and
- to continue with the prosecution of sexual offenses even if the child victim withdraws his or her complaint against the perpetrator.¹⁷⁵

Russian law explicitly reflects only one of the requirements related to the initiation of criminal proceedings – the prosecution of sexual offenses without the child victim having to file a complaint. According to Article 20 of the Criminal Procedure Code, criminal cases are divided into three categories: private, private-public and public prosecution cases. Sexual offenses against children belong to the third category of cases (public prosecution). Criminal proceedings in such cases are initiated by the authorities, regardless of whether a victim filed a complaint or not.¹⁷⁶

Russian law does not include a requirement to investigate the criminal case when the child victim’s age is uncertain. At the same time, uncertainty of the child victim’s age is not listed as a ground to refuse initiation of criminal proceedings.¹⁷⁷ Moreover, if the age of the victim is uncertain, it must be established via forensic examination, which may be carried out only after initiating criminal proceedings.¹⁷⁸ While uncertainty of the child victim’s age is unlikely to prevent initiation of criminal proceedings in Russia, it is recommended that Russian law expressly reflect the CETS 201 requirement related to the uncertainty of the child victim’s age.

The obligation to continue prosecution even if the child victim withdraws his or her statement is not expressly envisaged by Russian law. Instead, it sets forth certain conditions to be met in order to close criminal prosecution if the victim withdraws the complaint.¹⁷⁹ There are four conditions:

- It is the first offense ever committed by the perpetrator;

Ryzhakov A.P., *Kommentarii k Ugolovno-Protssessualnomu Kodeksu Rossiiskoi Federatsii* [Commentary to the Criminal Procedure Code of the Russian Federation], 2010 (Russ.), at the Russian legal database Consultant Plus.

¹⁷² The System of Automated Paperwork Management, Bill No. 173958-6 (Russ.), *supra* note 142.

¹⁷³ Optional Protocol, *supra* note 4, Art. 8(2); CETS 201, *supra* note 5, Art. 34(2).

¹⁷⁴ CETS 201, *supra* note 5, Art. 32. The Optional Protocol does not envisage such a provision.

¹⁷⁵ CETS 201, *supra* note 5, Art. 32. The Optional Protocol does not envisage such provision.

¹⁷⁶ Criminal Procedure Code, *supra* note 16, art. 20 pt. 5.

¹⁷⁷ The Criminal Procedure Code art. 24 pt. 1 enumerates six grounds for such refusal, the list is exhaustive. None of them mention uncertainty of the child victim’s age.

¹⁷⁸ Criminal Procedure Code, *supra* note 16, art. 196 pt. 5.

¹⁷⁹ These conditions are envisaged by the Criminal Procedure Code art. 25 and the Criminal Code art. 76.

- It is a minor offense or of medium gravity;
- The offender has reconciled with the victim; and
- The offender has undone the harm caused to the victim.

Among the sexual offenses committed against children that fall within the category of minor offenses or offenses of medium gravity are:

- Sexual intercourse committed without use of force against a minor under 16 but over 14 years of age;¹⁸⁰
- Lewd acts committed without use of force against a minor under 16 but over 14 years of age;¹⁸¹ or
- Coercion of a child of any age to engage in sexual activities.¹⁸²

Thus, if the above four conditions are met, Russian law allows criminal prosecution to be closed upon withdrawal of the complaint by the child victim if the offender committed one of the three sexual offenses mentioned in the previous paragraph. Therefore, Russian law does not fully meet the requirements of CETS 201 as to the initiation of criminal proceedings. The draft laws also do not address this issue.

Statute of limitations

CETS 201 envisages requirements related to the statute of limitations for initiation of criminal proceedings that are also aimed at ensuring the effective prosecution of sex offenders. According to Article 33 of CETS 201, the States Parties shall ensure that the limitation period continues to run for a period of time sufficient to allow the effective initiation of prosecution after the child victim has reached the age of majority. In other words, the child must have sufficient time to file a complaint and the competent authorities must be in a position to bring prosecution for the offenses in question.¹⁸³ The statute of limitations also should be commensurate to the gravity of the crime. These provisions apply only to certain sexual offenses criminalized by CETS 201: offenses related to sexual abuse, child prostitution (except for using the services of a child prostitute) and participation of a child in pornographic performances (save for knowingly attending such pornographic performances). These provisions are of vital importance, as many child victims of sexual offenses are unwilling to report these offenses, or they give false testimony to keep the committed offenses secret out of fear of the offender, embarrassment, psychological pressure, or threats by the offender or the offender's family or possibly the child's own family.¹⁸⁴ And as a result the offenders escape from criminal responsibility when the limitation periods for sexual offenses committed by them against children expire.

¹⁸⁰ Criminal Code, *supra* note 15, art. 134 pt. 1.

¹⁸¹ *Id.*

¹⁸² *Id.* at art. 133 pt. 2.

¹⁸³ Council of Europe, Explanatory Report, *supra* note 60, para. 231.

¹⁸⁴ Karagodin V. N., *Rassledovanie prestuplenii, sovershennykh v otnoshenii nesovershennoletnikh* [Investigation of Crimes Committed Against Minors] 45 (I. Malikova and M. Yanshina eds., 2010) (Russ.); Council of Europe, Explanatory Report, para. 231, <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm> (last visited Jan. 11, 2013).

Russian law establishes statutes of limitations for all crimes in Article 78 of the Criminal Code. They vary from two years up to fifteen years, depending on the severity of the crime, and begin to toll from the date the crime was committed. As mentioned above, CETS 201 requirements related to the statute of limitations apply only to sexual abuse, child prostitution (except for using the services of a child prostitute), and participation of a child in pornographic performances (save for knowingly attending such pornographic performances). The statutes of limitations for these offenses as envisaged by Russian law are as follows:

1. Sexual abuse offenses:
 - Engaging in sexual activities with a child without use of force¹⁸⁵ – from two, six, ten, or fifteen years;¹⁸⁶
 - Engaging in sexual activities with a child with the use of force or threats, or abuse of a vulnerable situation of the child¹⁸⁷ – fifteen years;
 - Coercing a child to engage in sexual activities¹⁸⁸ – six years.
2. Child prostitution offenses:
 - Involvement in prostitution and coercing a child to continue in prostitution¹⁸⁹ – ten years;
 - Recruitment of a child for the purposes of exploitation in prostitution – either ten or fifteen years;¹⁹⁰
 - Exploitation of a child in prostitution – either ten or fifteen years.¹⁹¹
3. Child pornography performances:
 - Recruiting a child into pornographic performances – either ten or fifteen years.¹⁹²

Thus, taking into account that children of any age can be victims of sexual offenses,¹⁹³ even the maximum 15 year-term for the statute of limitations does not fulfill the requirement of CETS 201, since in certain cases (depending on the age of the child), the victim will not even reach the age of majority (18 years old) by the time the statute of limitations expires. Draft Law No. 563944-5 suggests not applying the statute of limitations to certain sexual offenses committed

¹⁸⁵ Criminal Code, *supra* note 15, articles 134 and 135.

¹⁸⁶ The statute of limitations depends on the severity of this sexual offense, which is determined by the following factors: age of the child victim, sex of the victim, number of victims, offender's previous convictions for similar crimes, conspiracy to commit an offense, or commission of an offense by a crime group or an organized crime group.

¹⁸⁷ Criminal Code, *supra* note 15, art. 131 parts 3-5 and art. 132 parts 3-5.

¹⁸⁸ *Id.* at art. 133 pt. 2.

¹⁸⁹ *Id.* at art. 240 pt. 3.

¹⁹⁰ *Id.* at art. 127.1 parts 2(b) and 3. The statute of limitations depends on the severity of this sexual offense, which is determined, by the following factors: an offense resulted in grave consequences such as a victim's death or severe injury, commission of an offense by an organized crime group, or commission of a crime put life and health of many people in danger.

¹⁹¹ *Id.* at art. 127.2 parts 2(b) and 3. The statute of limitations depends on the severity of this sexual offense, which is determined, by the following factors: an offense resulted in grave consequences such as a victim's death or severe injury, or commission of an offense by an organized crime group.

¹⁹² *Id.* at art. 242.2 parts 1 and 2. The statute of limitations depends on the severity of this sexual offense, which is determined, by the following factors: age of the child victim, number of victims, conspiracy to commit an offense, or commission of an offense by an organized crime group or via the Internet and other public data networks.

¹⁹³ I.A. Alekseeva & I.G. Novosel'sky, *Zhestokoe obrashchenie s rebenkom. Prichiny, posledstviia, pomoshch* [Child Abuse. Causes, Consequences and Care] 81 (2d ed. 2010) (Russ.).

against children.¹⁹⁴ However, the amendments introduced by this Bill do not apply to child prostitution and child pornography offenses.

Interviews with the child

Article 35 of CETS 201 envisages a number of rules designed to safeguard the interests of child victims and witnesses and to prevent further traumatizing the victim during the interview process.¹⁹⁵ For instance, interviews should be held in rooms specifically designed and adapted for children in the presence of the child's legal representative or an adult of his or her choice. It is desirable for all interviews to be conducted by the same specially trained person. The number of interviews should be as few as possible. In addition, the interviews with a child victim or a child witness may be videotaped and later used as evidence during the criminal proceedings. Besides protecting the child from further trauma (e.g. the child may be further traumatized by attending the court hearing), this rule also helps to limit the number of interviews, since such videos may serve multiple purposes, *inter alia*: medical examination of the child and therapeutic services.¹⁹⁶ The relevant provisions of Article 35 of CETS 201 apply to interviews conducted both during investigation and trial proceedings. Moreover, CETS 201 requires the States Parties to apply these rules even when the child's actual age is unknown.

Russian law reflects only two of the Article 35 requirements, namely:

- videotaping of interviews,¹⁹⁷ and
- holding interviews in the presence of the child's legal representative.¹⁹⁸

According to the Criminal Procedure Code,¹⁹⁹ the investigator may decide to videotape interviews. Such videotapes are classified as evidence that may be used during the criminal proceedings.²⁰⁰ The Draft Law No. 173958-6, enhanced this videotaping requirement making it compulsory for interviews with child victims and child witnesses.²⁰¹ Interviews with the child victim or child witness during investigation and trial proceedings are regulated by Articles 191 and 280 of the Criminal Procedure Code. Both Articles allow the presence of the child's legal representative during interviews. During the trial proceedings the child's legal representative is obliged to be present at the interview of the child if the latter is under 14 years of age. Should the child be 14 years old or older, then in each particular case, the court decides whether the presence of the child's legal representative is necessary at his or her interview.

All other provisions of Article 35 of CETS 201 are not implemented in Russian law. The Draft Law No. 173958-6 addresses the length of the interviews with child victims and witnesses

¹⁹⁴ The System of Automated Paperwork Management, Bill No. 563944-5 (Russ.), <http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=563944-5> (last visited Jan. 11, 2013). Among such sexual offenses are rape and other sexual activities committed with the use of force, and sexual activities committed against a child under 16 years of age without use of force.

¹⁹⁵ For the detailed description of the rules of the interview see Appendix 2 to this Report.

¹⁹⁶ Council of Europe, Explanatory Report, *supra* note 60, para. 238.

¹⁹⁷ The Criminal Procedure Code, *supra* note 16, art. 84 pt. 1 and 2, art. 189 pt. 4.

¹⁹⁸ *Id.* at articles 191 and 280.

¹⁹⁹ *Id.* at art. 189 pt. 4.

²⁰⁰ *Id.* at art. 84 pt. 2.

²⁰¹ The System of Automated Paperwork Management, Bill No. 173958-6 (Russ.), *supra* note 142.

stating that an interview may not last longer than two consecutive hours or more than 4 hours per day. Any other issues related to interviews with a child victim or a witness are not envisaged by the Draft Law.

Trial proceedings

Article 36 (2) of CETS 201 adapts certain trial proceedings principles to the special needs and interests of the child victim and witness. The judge may order the hearing to take place without the presence of the public and provide for the possibility to interview the child victim outside of the courtroom, in particular via videoconferencing (these provisions are very important for preventing the child's further psychological trauma and confrontation of the child by the offender).

Overall, Russian law does correspond to these requirements of CETS 201 on trial proceedings. The relevant provisions are reflected in Article 241 (hearing without a public),²⁰² Articles 277 and 278.1 of the Criminal Procedure Code (interview of the victim or witness without being present in the courtroom). Thus, the court may order a hearing to take place without the presence of the public if the case concerns sexual offenses and its examination may disclose information about the intimate life of the participants in the trial or information degrading their honor and dignity. Closed hearings may also take place to ensure the safety of the victim, witnesses, and their relatives. The Criminal Procedure Code allows for the use of videoconferences to interview the victim or the witness. The law does not specify in which cases the judge may order interviews via videoconferencing; however, videoconferencing may be used at the judge's discretion.

2.4 Intervention programs and measures

CETS 201 obliges the States Parties to promote and ensure effective intervention programs and measures targeting sex offenders in order to prevent repeat sexual offenses against children in the future.²⁰³ All of these measures are of a non-obligatory character, are not necessarily part of the penal system of sanctions and measures, and are not applied to persons suffering from mental disorders (such persons are subject to treatment in accordance with the national laws of each State Party). There are three types of intervention programs and measures:

1. Psychological, which includes various therapeutic methods;
2. Medical, which mainly refers to anti-hormone therapy (medical castration); and
3. Social, which is aimed at stabilizing the social behavior of the offender (such measures may include prohibition to attend certain places or meeting certain persons) and at facilitating re-integration into society (e.g. assistance with job search).²⁰⁴

Such intervention programs and measures should be offered to: (i) persons prosecuted for sexual offenses against children, but not yet convicted and (ii) persons convicted of sexual

²⁰² Criminal Procedure Code, *supra* note 16, art. 241 pt. 2 cl. 3 and 4.

²⁰³ CETS 201, *supra* note 5, Chapter V.

²⁰⁴ CETS 201, *supra* note 5, Art. 15 para. 2; Council of Europe Explanatory Report, *supra* note 60, paras. 101-102. Please note, that medical castration is not explicitly mentioned in the text of CETS 201. It is referred to in the Explanatory Report to CETS 201 which does not provide an authoritative interpretation of CETS 201.

offenses. Special attention should be paid to offenders who are themselves children: in such cases these intervention programs should be adapted to meet the developmental needs of the children to address their sexual behavioral problems. Each State Party should also make available such intervention programs to persons, who are neither prosecuted nor convicted of sexual offenses, but are afraid they may commit such offenses in the future.²⁰⁵

In any case, since these intervention programs are of a non-obligatory character, they may not be imposed on sexual offenders; the offender's prior consent is required. However, in cases of convicted offenders, the States Parties may stipulate in their domestic laws that suspension of sentence, conditional release, or other measures that alleviate the sentence are conditional upon participation in an intervention program.²⁰⁶

Russian law envisages two types of intervention programs and measures: (i) compulsory medical measures that are a part of the penal system's sanctions and measures²⁰⁷ (they are described in Section 2.2 b "Sanctions and measures" in more detail), and (ii) measures of a non-obligatory character that may be offered to certain convicted sex offenders. CETS 201 does not establish any requirements for compulsory measures and leaves this matter to the discretion of each State Party. Non-obligatory intervention programs and measures for sex offenders are envisaged by the Correctional Code.²⁰⁸ Like CETS 201, the Correctional Code provides for three types of non-obligatory measures, namely: psychological, medical, and social.

Psychological measures are envisaged by Article 12 part 6.1 of the Correctional Code, which provides that each convicted person has a right to psychological assistance. In such cases, at the request of the convicted person, the administration of the correctional facility must invite a psychologist for the convicted person at the expense of the latter or his or her relatives.²⁰⁹

The non-obligatory medical measures have been recently introduced into the Correctional Code by Presidential Bill No. 577813-5 and are envisaged by Article 18 part 4 and Article 180 part 2.1 of the Correctional Code, though the law does not specify the types of medical measures. Although, according to the explanatory note to the Presidential Bill No.577813-5, such medical measures may include chemical castration.²¹⁰ Six months prior to the expiration of the sentence, the administration of the correctional facility must inform the sex offender of his or her right to be examined by a psychiatrist in order to determine whether the offender has a mental disorder (pedophilia) and which types of medical measures should be applied to the offender. The administration of the correctional facility must obtain the full consent of the sex offender for such medical examinations to be performed and subsequent medical measures to be applied, which corresponds to the requirements envisaged by CETS 201. These rules concerning non-

²⁰⁵ CETS 201, *supra* note 5, Art. 7.

²⁰⁶ CETS 201, *supra* note 5, Art. 17; Council of Europe Explanatory Report, *supra* note 60, para. 111.

²⁰⁷ Criminal Code, *supra* note 15, articles 97-104.

²⁰⁸ Correctional Code, *supra* note 17.

²⁰⁹ See also the Correctional Code art. 12, *construed in* Kommentarii k Ugolovno-Ispolnitel'nomu Kodeksu Rossiiskoi Federatsii [the Commentary to the Penal Correctional Code of the Russian Federation] (Russ.), <http://www.pravo174.ru/kommispol1.php> (last visited Jan. 11, 2013).

²¹⁰ The Explanatory Note to the Presidential Bill, at [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=577813-5](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=577813-5) (*in Russian*) (last visited Jan. 11, 2013).

obligatory medical measures are applicable only to those sex offenders who do not have a medical disorder at the time of their conviction and are older than 18 years of age.

Social intervention programs include only assistance with the job search after the offender has served his/her sentence. Thus, prior to the expiration of the sentence, the administration of the correctional facility must send information about the convicted person (his or her professions, ability to work, a place to live) to the Federal Labor and Employment Service to help identify work for them upon release.²¹¹

All of these non-obligatory intervention programs and measures envisaged by the Correctional Code are available only to those sex offenders who have been convicted. Russian law does not oblige the authorities to offer similar intervention measures to sex offenders who are being prosecuted. Theoretically, such offenders may apply to the psychiatric facility and request psychiatric assistance at their own expense.²¹² The same applies to those persons who are neither prosecuted, nor convicted, but who are afraid that they may commit sexual offenses against children in the future.

As to sex offenders under the age of 18, there is a system of agencies that are responsible for the prevention of child neglect and offenses committed by children. This system of agencies was established by Federal Law No. 120-FZ On Prevention of Child Neglect and Juvenile Delinquency.²¹³ Among the duties of these agencies are social adaptation and rehabilitation of children, psychological and medical help, assistance in employment and searching for a place to live. However, the provisions of this Law are of a rather broad and general character and do not specifically address the issue of intervention programs and measures for children who are sex offenders.

Overall, as far as the non-obligatory intervention measures are concerned, Russian law only partially reflects the relevant provisions envisaged by CETS 201 in this field. There are at least two issues that need to be considered by Russian legislators: (1) to broaden the categories of persons for whom such measures may be available, that is to include offenders being prosecuted and those who are neither prosecuted nor convicted, and (2) to prescribe intervention programs for children who are sex offenders. There are currently no draft laws that cover these issues.

²¹¹ Correctional Code, *supra* note 17, art. 180 pt. 1.

²¹² Zakon RF No. 3185-1 o Psikiatrichesko i pomoshchi i garantiakh prav grazhdan pri ee okazanii ot 2 iulia 1992 g. [Law No. 3185-1 On Psychiatric Assistance and Guarantees of Rights to Citizens in its Provision of July 2, 1992], art. 4 (Russ.), at the Russian legal database Consultant Plus. Such assistance may include, *inter alia*, monitoring of the mental health of the offender through regular checkups by a psychiatrist, psycho-physiological and other treatment, social assistance, and rehabilitation measures, *id.* art. 26.

²¹³ This law is dated June 24, 1999.

III. POSSIBLE OBSTACLES FOR BRINGING RUSSIAN LAW IN LINE WITH THE OPTIONAL PROTOCOL AND THE COUNCIL OF EUROPE CONVENTION

As mentioned in Section II of this report, Russian law does not reflect a considerable number of provisions of the Optional Protocol and CETS 201 and should be made more efficient in combating sexual abuse and sexual exploitation of children. Ratification of these international instruments would induce Russia to introduce these amendments into national law. However, Russia has been delaying accession to these covenants for many years, despite numerous calls by the international community for ratification. On 23 November 2005, the UN Committee on the Rights of the Child adopted its Concluding Observation on the Third Periodic Report of the Russian Federation on Implementation of the CRC. The Committee recommended Russia to strengthen measures that prevent and combat sexual exploitation and sexual abuse of children²¹⁴ and urged Russia to ratify the Optional Protocol.²¹⁵ Moreover, other States and international organizations have repeatedly encouraged Russia to join the Optional Protocol and CETS 201.²¹⁶

3.1 Delay in the ratification process as an obstacle for prompt amendment of child protection laws

Officially, Russian authorities do not oppose the ratification of these two instruments. However, unlike many other countries that joined these treaties, initially Russia decided to choose a longer and more challenging way for their ratification. Instead of first ratifying the Optional Protocol and CETS 201 (thereby setting an international standard for the legislators) and only after that amending its domestic laws, Russia decided to do the opposite.

On 15 June 2009, the President of the Russian Federation issued Assignment No. Pr-1796 on implementation measures necessary to ensure the Russian Federation's readiness to fulfill international obligations under the Optional Protocol and CETS 201. Pursuant to this Assignment, the Russian Government prepared an Action Plan on 21 August 2009, which provided for three stages: 1) Harmonizing Russian law with the provisions of these international instruments; 2) Elaborating programs aimed at assisting child victims of sexual offenses and preventing and minimizing the risk of recidivism of sexual offenses; and 3)

²¹⁴ UN Committee on the Rights of the Child, Concluding Observations, Russian Federation, para. 79, (CRC/C/RUS/CO/3), Nov. 23, 2005, <http://www.unhcr.org/refworld/publisher.CRC..RUS.45377eb50.0.html> (last visited Jan. 11, 2013).

²¹⁵ *Id.* at para. 87.

²¹⁶ See Situation Analyses of Children in the Russian Federation, 84, 2007, http://www.unicef.org/sitan/files/ru_en_situation-analysis_170907.pdf (last visited Jan. 11, 2013). UNICEF suggested Russia to ratify the Optional Protocol, *id.*; See [Russia] Country Progress Card, 16, http://www.ecpat.net/TBS/PDF/2010_Russia_Progress_Card.pdf (last visited Jan. 11, 2013). ECPAT International called for ratification of the Optional Protocol and CETS 201 by Russia, *id.*; Council of Europe Parliamentary Assembly Network of Contact Parliamentarians to stop sexual violence against children, Moscow Declaration, 2012, http://www.assembly.coe.int/CommitteeDocs/2012/declarationdeMoscou_E.pdf (last visited Jan. 11, 2013). Members of the Network of Contact Parliamentarians to stop sexual violence against children encouraged Russia to ratify CETS 201 as soon as possible; See also Database of Universal Periodic Review (UPR) recommendations http://www.upr-info.org/database/index.php?limit=0&f_SUR=144&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=25&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly (last visited Jan. 11, 2013). In 2009 Slovakia recommended Russia to become part of the Optional Protocol, *id.*

Submitting proposals on accession to the Optional Protocol and CETS 201 to the President of the Russian Federation.²¹⁷

Initially, the deadline for implementation of this Plan was 26 December 2011, however, it was delayed in spite of the shocking statistics on sexual offenses committed against children in Russia.²¹⁸ Thus far, Russian authorities have not implemented this Plan. The Federation Council, which is the upper chamber of the Russian Parliament, urged the Minister of Interior of the Russian Federation, Mr. Nurgaliev,²¹⁹ to undertake all necessary measures to speed up ratification of the Optional Protocol and CETS 201 and asked him to explain which measures have been implemented thus far to address this issue.²²⁰ On 11 January 2011, Minister Nurgaliev, explained that before ratifying the Optional Protocol and CETS 201, it is necessary to establish all required legal, organizational, economic and financial conditions for this at the national level, otherwise claims may be brought against Russia for not fulfilling its obligations.²²¹

On 14 March 2012, the Minister of Foreign Affairs of the Russian Federation, Mr. Lavrov, expressed a similar opinion.²²² During a speech to the State Duma, Minister Lavrov mentioned that both the Optional Protocol and CETS 201 are well-balanced international instruments meeting the standards of multilateral human rights treaties. However, Russian law does not fully correspond to a number of provisions of these instruments. Thus, a condition of Russia's participation in these treaties is the improvement of Russian administrative, criminal and criminal procedure laws. The Ministry of Foreign Affairs has repeatedly expressed support for Russia's accession to these treaties, but only subject to the necessary changes and additions to existing Russian laws.

The Federation Council made another attempt to speed up the ratification of the Optional Protocol and CETS 201. It worked together with the State Duma, relevant Ministries, NGOs, public groups, experts and specialists in the field of children's rights and in the end of March 2012, a Draft National Children's Strategy for 2012-2017 was drafted, which was highly assessed by the Council of Europe's Secretary General.²²³ This document suggests certain measures to improve protection of children's rights in Russia. Among such measures is ratification of CETS 201 and the Optional Protocol and bringing Russian law into compliance with international

²¹⁷ Information was provided by the Russian NGO "Soprotivlenie".

²¹⁸ For more information on the statistics see Section 1.2 of this Report.

²¹⁹ The Ministry of Interior of the Russian Federation is one of the main ministries responsible for elaboration of the relevant federal laws.

²²⁰ U Soveta Federatsii est' voprosy k politzii [The Federation Council has questions to the police], Soprotivlenie.org (Jan. 16, 2012) (Russ.), <http://www.soprotivlenie.org/?id=24&cid=1720&t=v> (last visited Jan. 11, 2013).

²²¹ Information was provided by the Russian NGO "Soprotivlenie".

²²² O vystuplenii v Gosudarstvenno i Dume 14 marta 2012 goda v ramkakh "pravitel'stvennogo chasa" Ministra inostrannykh del Rossiiskoi Federatsii S.V. Lavrova [Address of the Minister of the Foreign Affairs of the Russian Federation, Mr. S.V. Lavrov, in the State Duma on Mar. 14, 2012 during the "government hour"], question 40, Komitet9.ru (Mar. 14, 2012) (Russ.), <http://komitet9.km.duma.gov.ru/site.xp/052057124051055057.html> (last visited Jan. 11, 2013).

²²³ Working meeting with Federation Council Speaker Valentina Matviyenko, Kremlin.ru (May 28, 2012), <http://eng.kremlin.ru/news/3918> (last visited Jan. 11, 2013).

standards on children's rights.²²⁴ On 28 May 2012, the Speaker of the Federation Council, Valentina Matvienko, had a working meeting with President Vladimir Putin during which they discussed approval of the National Children's Strategy for 2012-2017 and ratification of CETS 201 and the Optional Protocol.²²⁵ On 1 June 2012, as a result of this meeting, the President approved the National Children's Strategy, which might have changed the initial intention of the Russian Government to ratify CETS 201 and the Optional Protocol only after amending Russian law and, therefore, expedited the ratification process.²²⁶

The National Children's Strategy will be implemented in two stages, with the first stage spanning from 2012 to 2014 and the second stage from 2015 to 2017.²²⁷ In terms of the first stage, the President instructed the Russian Government to elaborate a plan of priority measures up to 2014 to implement the most important provisions of the Strategy.²²⁸ On 15 October 2012, the Russian Government approved the proposed plan for 2012-2014.²²⁹ According to the plan, responsible Ministries should draft a Bill on the ratification of CETS 201 and the Optional Protocol by December 2014.

Following the respective Resolutions of the Russian President,²³⁰ the Ministry of Foreign Affairs signed the Optional Protocol²³¹ and CETS 201 on behalf of Russia.²³² The Optional Protocol was signed on 26 September 2012 and CETS 201 on 1 October 2012. UNICEF welcomed Russia's

²²⁴ Kontseptsii formirovaniia natsional'nogo plana (Strategii) deistvii v interesakh detei Rossiiskoi Federatsii (proekt) [A Concept of a National Action Plan (Strategy) for Children of the Russian Federation (a draft)] Council.gov.ru (Mar. 28, 2012) (Russ.), http://council.gov.ru/kom_home/ccf_educ/analytics/item2373.html (last visited Jan. 11, 2013).

²²⁵ Working meeting with Federation Council Speaker Valentina Matviyenko, *supra* note 223.

²²⁶ Vladimir Putin signed the Executive Order On the National Children's Strategy for 2012-2017, Kremlin.ru (June 1, 2012), <http://eng.kremlin.ru/news/3949> (last visited Jan. 11, 2013); Ukaz Prezidenta Rossiiskoi Federatsii No. 761 O Natsional'noi strategii deistvii v interesakh detei na 2012-2017 gody ot 1 iyunia 2012 [Executive Order of the President of the Russian Federation No. 761 On National Children's Strategy for 2012-2017 of June 1, 2012] (Russ.), <http://www.unicef.ru/upload/iblock/ce2/ce22e3cf8cf8784fff8bda3bd7cd44c5.pdf> (last visited Jan. 11, 2013).

²²⁷ Natsional'naia strategii deistvii v interesakh detei na 2012-2017 [National Children's Strategy for 2012-2017 of June 1, 2012] sec. VIII, (Russ.), <http://www.unicef.ru/upload/iblock/ce2/ce22e3cf8cf8784fff8bda3bd7cd44c5.pdf> (last visited Jan. 11, 2013).

²²⁸ Ukaz Prezidenta Rossiiskoi Federatsii No. 761 O Natsional'noi strategii deistvii v interesakh detei na 2012-2017 gody ot 1 iyunia 2012 [Executive Order of the President of the Russian Federation No. 761 On National Children's Strategy for 2012-2017 of June 1, 2012] cl. 3(a) (Russ.), <http://www.unicef.ru/upload/iblock/ce2/ce22e3cf8cf8784fff8bda3bd7cd44c5.pdf> (last visited Jan. 11, 2013).

²²⁹ Rasporiazhenie Pravitel'stva Rossiiskoi Federatsii ot 15 oktiabria 2012 g. No. 1916-r [Resolutions of the Russian Government No. 1916-r of 15 October 2012], Government.ru (Russ.), <http://government.ru/gov/results/21160/> (last visited Jan. 11, 2013).

²³⁰ Rasporiazhenie Prezidenta Rossiiskoi Federatsii No. 276 -rp ot 25 iyunia 2012 [Resolutions of the Russian President No. 276-rp of June 25, 2012], Pravo.gov.ru (Russ.), <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102314683&intelsearch=%EA%EE%ED%E2%E5%ED%F6%E8%FF+%F1%EE%E2%E5%F2%E0+%E5%E2%F0%EE%EF%FB+%EF%EE+%E7%E0%F9%E8%F2%E5+%E4%E5%F2%E5%E9> (last visited Jan. 11, 2013); Rasporiazhenie Prezidenta Rossiiskoi Federatsii No. 275-rp ot 25 iyunia 2012 [Resolutions of the Russian President No. 275-rp of June 25, 2012], Pravo.gov.ru (Russ.), <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102314682&intelsearch=%F4%E0%EA%F3%EB%FC%F2%E0%F2%E8%E2%ED%FB%E9+%EF%F0%EE%F2%EE%EA%EE%EB+%EA%EE%ED%E2%E5%ED%F6%E8%FF+%EE+%EF%F0%E0%E2%E0%F5+%F0%E5%E1%E5%ED%EA%E0> (last visited Jan. 11, 2013).

²³¹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Status of ratification, reservations and declarations http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Jan. 11, 2013).

²³² CETS 201. Chart of Signatures and Ratifications, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG> (last visited Jan. 11, 2013).

initiative to sign CETS 201 and the Optional Protocol and also called for prompt ratification of these treaties,²³³ since Russia is only legally bound after ratification.²³⁴

On 6 December 2012, President Putin requested the Russian Government and the State Duma to take all necessary measures for ratifying the Optional Protocol and CETS 201 in 2013.²³⁵ On 28 March 2013 the Russian Government approved CETS 201 and the Optional Protocol and prepared a draft decision on forwarding these instruments to the President who further submitted them to the Russian Parliament for ratification on 15 April 2013.²³⁶

According to Russian law, the ratification of CETS 201 and the Optional Protocol requires adoption of federal law on ratifying the treaty.²³⁷ The ratification procedure has six stages. The first four stages are the same as those envisaged for the legislative process for adoption or amending federal laws.²³⁸ The final two stages include signature of the instrument of ratification by the Russian President and deposit of the instrument of ratification with relevant international authorities.²³⁹

The ratification of the Optional Protocol and CETS 201 may contain pitfalls that may delay ratification of these treaties. For instance, there are no deadlines for reviewing the Bill on ratification by the State Duma. In addition, the State Duma may decide to postpone review of the Bill on ratification.²⁴⁰ Though the law requires the State Duma to provide reasons for such a decision; it does not specify the types of reasons that are acceptable thus providing the State Duma with rather broad latitude. Furthermore, if the State Duma adopts reservations and declarations to the treaty that were not approved in advance by the President of the Russian Federation or the Russian Government, a Bill on ratification will be reviewed by the State Duma

²³³ Rossiia podpisala mezhdunarodnye dokumenty, napravlennye na zashchitu detei ot nasiliia [Russia signed international documents protecting children from violence], Unicef.ru (Jun. 27, 2012) (Russ.), <http://www.unicef.ru/events/news/1087/> (last visited Jan. 11, 2013).

²³⁴ See Section 3.3 of this report for more details on ratification of treaties according to Russian law.

²³⁵ On ensuring implementation of the Presidential assignment, <http://government.ru/eng/docs/22063/> (last visited Jan. 11, 2013).

²³⁶ Resheniia Pravitel'stva, priniatyie na zasedanii 28 marta 2013 goda [Decisions of the Government adopted at the meeting on 28 March 2013], (Russ.) <http://www.government.ru/docs/23606/> (last visited Apr. 5, 2013); Government approves the Protection of Children against Sexual Exploitation Convention, RAPSİ (Apr. 1, 2013), <http://rapsinews.com/news/20130401/266884518.html> (last visited Apr. 5, 2013); The System of Automated Paperwork Management, Bill No. 259792-6 (Russ.), [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=259792-6&02](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=259792-6&02) (last visited Apr. 17, 2013); The System of Automated Paperwork Management, Bill No. 259818-6 (Russ.), [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=259818-6&02](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=259818-6&02) (last visited Apr. 17, 2013).

²³⁷ The Constitution art. 106(g); Federal'nyi Zakon No. 101-FZ o Mezhdunarodnykh dogovorakh Rossiiskoi Federatsii ot 15 iuliia 1995 g. [Federal Law No. 101-FZ On Treaties of the Russian Federation of July 15, 1995], art. 14 (Russ.), at the Russian legal database Consultant Plus.

²³⁸ These four stages are the following: 1) introduction of the Bill to the State Duma; 2) review by the State Duma; 3) review by the Federation Council; and 4) signature by the President of the Russian Federation and release to the public.

²³⁹ Federal'nyi Zakon No. 101-FZ o Mezhdunarodnykh dogovorakh Rossiiskoi Federatsii ot 15 iuliia 1995 g. [Federal Law No. 101-FZ On Treaties of the Russian Federation of July 15, 1995], articles 18 and 19 (Russ.), at the Russian legal database Consultant Plus.

²⁴⁰ Postanovlenie GD FS RF o Reglamente Gosudarstvenno i Dumy Federal'nogo Sobraniia Rossiiskoi Federatsii ot 22 ianvaria 1998 g. No. 2134-II GD [Resolution of the State Duma of the Federal Assembly of the Russian Federation On Regulations of the State Duma of the Federal Assembly of the Russian Federation of Jan. 22, 1998, No. 2134-II GD] (hereinafter – *the Rules of the State Duma*), art. 197 (Russ.), at the Russian legal database Consultant Plus.

in three readings instead of one, thus creating the risk of being rejected at the end of each reading.²⁴¹

However, the above risks for delaying ratification of CETS 201 and the Optional Protocol are rather low, since, it appears, that President Putin took ratification process under his personal control after approval of the National Children's Strategy. Therefore, there is no doubt that the Russian Parliament will adopt federal laws on ratification of CETS 201 and the Optional Protocol without delay and these treaties will be ratified rather soon in 2013.

Notwithstanding that the continued delay of the ratification process is no longer an obstacle to prompt improvement of Russian child protection laws, there are still two more challenges for bringing Russian legislation in line with CETS 201 and the Optional Protocol:

- A considerable number of amendments to Russian law are required to bring it into conformity with the Optional Protocol and CETS 201. Some of the amendments introduce new legal concepts that might create numerous discussions and debates in the legal community. A regular practice of blocking necessary amendments by introducing alternative Presidential Bills might hinder the process of amending legislation; and
- The legislative process in Russia for passing federal laws is rather time consuming, complicated and has several shortcomings, allowing the legislators to delay adoption of necessary amendments.

3.2 Introduction of the necessary amendments to Russian law

As noted earlier, based on the official position of Russian authorities, Russia will ratify the Optional Protocol and CETS 201 only after bringing its national law into conformity with these international instruments. The analysis in Section II of this report demonstrates that most of the provisions of the Optional Protocol and CETS 201 are not yet reflected in Russian law, and a considerable number of amendments and additions are needed to bring it into conformity with these treaties. Several amendments have already been introduced in various draft laws and submitted to the State Duma for consideration.²⁴² However, the majority of the provisions of the Optional Protocol and CETS 201 are still not covered by any draft law; among them are certain definitions, criminal law and criminal procedure law provisions, and provisions related to intervention programs and measures. Adoption of these amendments by Russian legislators may be quite challenging, as some amendments constitute new legal concepts, amendments concerning child pornography may be blocked by alternative Presidential Bills (which has occurred in the past), and the legislative process is complicated and slow.

Definitions

Russian law does not define child prostitution and child pornography. Neither does it envisage definitions of prostitution and pornography. A group of legislators has attempted to introduce a definition for child pornography into Russian law twice since 2008. However, their initiative has

²⁴¹ The Rules of the State Duma, articles 194 and 192 (3); Federal'nyi Zakon No. 101-FZ o Mezhdunarodnykh dogovorakh Rossiiskoi Federatsii ot 15 iul'ia 1995 g. [Federal Law No. 101-FZ On Treaties of the Russian Federation of 15 July 1995], art. 17 (Russ.), available at the Russian legal database Consultant Plus.

²⁴² For more information see Appendices 1 and 2 to this Report.

been blocked each time by introducing alternative Presidential Bills that fail to provide the relevant definition.²⁴³ The most recent time this occurred was on 7 February 2012, when Bill No. 349188-5 was rejected due to adoption of the alternative Presidential Bill No. 577813-5.²⁴⁴ The most recent attempts to define child pornography were made in July 2012 and again in February 2013 with the introduction of Draft Laws No. 217688-6 and No. 113185-6.²⁴⁵

Substantive Criminal Law

Numerous amendments should be introduced into Russian criminal law with regard to crimes such as the sale of children, sexual abuse, child prostitution, child pornography, participation of children in pornographic performances, corruption of children, and grooming.²⁴⁶ Among the most necessary amendments are the criminalization of:

1. Profiting from child prostitution;
2. Using sexual services of a child prostitute;
3. Simple importation and exportation of child pornography;
4. Simple procurement of child pornography for oneself or for another person;
5. Simple possession of child pornography;
6. Simple production of child pornography;
7. Profiting from child pornographic performances;
8. Knowingly attending child pornographic performances; and
9. Grooming.

Criminalization of profiting from child prostitution has been proposed in Draft Law No. 606271-5, but the deputies of the State Duma later reached an agreement not to consider the provision.²⁴⁷ Criminalization of simple procurement of child pornography, simple production and simple possession, simple exportation and importation of child pornography are proposed in Draft Laws No. 217688-6 and No. 113185-6.²⁴⁸ Draft Law No. 151664-6 criminalizes using “sexual services” of a child prostitute. However, it applies only to child victims who are 16 years old or older and limits “sexual services” of a child prostitute to sexual intercourse with a child for monetary consideration.²⁴⁹ All other issues listed above are not covered by draft laws.

There are a number of other provisions in Russian criminal law that need to be clarified and amended in order to be consistent with the requirements of the Optional Protocol and CETS 201, namely:

²⁴³ Mneniia ekspertov. Elena Mizulina [Expert opinions. Elena Mizulina] Nedopusti.ru (Jan. 7, 2011) (Russ.), <http://nedopusti.ru/experts/582/> (last visited Jan. 11, 2013).

²⁴⁴ The System of Automated Paperwork Management, Bill No. 349188-5 (Russ.), [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=349188-5](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=349188-5) (last visited Apr. 9, 2013).

²⁴⁵ The System of Automated Paperwork Management, Bill No. 217688-6, *supra* note 61; the System of Automated Paperwork Management, Bill No. 113185-6, *supra* note 62.

²⁴⁶ For more details see Appendix 1 to this Report.

²⁴⁷ The System of Automated Paperwork Management, Bill No. 606271-5 (Russ.), *supra* note 82.

²⁴⁸ The System of Automated Paperwork Management, Bill No. 217688-6, *supra* note 61; the System of Automated Paperwork Management, Bill No. 113185-6 *supra* note 62.

²⁴⁹ The System of Automated Paperwork Management, Bill No. 151664-6, *supra* note 83.

1. Russian law does not criminalize offering children for the purpose of sexual exploitation (including child prostitution) and such purposes as the sale and transfer of organs or forced labor.
2. Russian law does not protect child victims who are 16 years old and older against sexual abuse by a person exploiting a recognized position of trust, authority or influence over the child, including within the family.
3. Russian law criminalizes involvement of a child in prostitution without specifying the meaning of the term “involvement.” Therefore, it is unclear if this term includes any of the activities related to child prostitution that are criminalized by the Optional Protocol and CETS 201.
4. Russian law does not protect children who are 16 years old or older against the crime of corruption of children. Moreover, this offense is criminalized only if committed through blackmail; threats to destroy, damage or remove property; or by taking advantage of financial or other dependence of the victim.

Draft laws do not address any of the above issues.

In regards to sanctions, the following gaps and shortcomings are present in Russian law:

1. The minimum term of imprisonment for several sexual offenses committed against children may be as little as 2 months.²⁵⁰
2. For some sexual offenses committed against children, Russian criminal law envisages sanctions alternative to imprisonment, such as corrective works and compulsory labor.²⁵¹
3. Russian criminal law does not envisage sanctions such as closing establishments that were used to carry out sexual crimes against children.

Existing draft laws do not address any of these issues.

The Optional Protocol and CETS 201 also introduce the legal concepts of corporate liability and international recidivism that are rather new for the Russian legal system. The introduction of either of them will likely create numerous discussions and debates in the legal community. This is especially true for introducing corporate criminal liability into Russian criminal law. The Russian legislature’s position is that criminal liability may be imposed only on a person and not an entity that is guilty of an offense, since a guilty mind can be attributable only to a natural person, not a legal one. Therefore, according to Russian law, even if the offense was committed

²⁵⁰ This applies to the following offenses: coercing a child to engage in sexual activities (Art. 133 pt. 2 of the Criminal Code), engaging into sexual activities with a child who reached 14 but is under 16 years of age without the use of force (Art. 134 parts 1 and 2 and art. 135 pt. 1 of the Criminal Code), actions aimed at organizing child prostitution (Art. 241 pt. 2 of the Criminal Code) (e.g. creation and maintenance of brothels, search for child prostitutes and etc).

²⁵¹ Such alternative sanctions are established for the following offenses: exploitation of the slave labor (for the purposes of child prostitution or child pornographic performance) (Art. 127.2 pt. 2 of the Criminal Code), coercing a child to engage in sexual activities (Art. 133 pt. 2 of the Criminal Code), engaging into sexual activities with a child who has reached 14 years of age but is under 16 years of age without the use of force (Art. 134 parts 1 and 2 and Art. 135 pt. 1 of the Criminal Code).

in connection with the activities of legal persons, only a natural person that has committed these acts can be charged with and convicted of a crime.²⁵²

In order to avoid this dispute the concept of corporate liability was recently introduced into the Administrative Code for a limited number of sex offences. However, this concept as included in the Administrative Code does not fully correspond to the requirements of CETS 201 and the Optional Protocol. For example, administrative sanctions for legal persons do not include judicial winding-up and permanent disqualification from practicing commercial activities. Further, the Administrative Code does not envisage corporate liability directly for the sale of children and exploitation of children, prohibiting only the creation of conditions for such offenses by legal persons.

The Investigative Committee of the Russian Federation prepared a Draft Law establishing criminal liability of legal persons, including relevant sanctions for legal entities.²⁵³ While preparing this Draft Law, the Investigative Committee was guided by recognized international standards and best practices of civil law and common law countries in combating crimes committed for the benefit of the legal entity.²⁵⁴

The Draft Law of the Investigative Committee includes most of the requirements of the Optional Protocol and CETS 201 related to corporate liability. However, similar to the Administrative Code, it does not envisage the imposition of corporate liability on an entity when an offense has been committed by a person not in a leading position, but due to the failure of the leading person to supervise such employee or agent.

Criminal Procedure Law

Russian criminal procedure law should also be considerably amended to be consistent with the Optional Protocol and CETS 201. Among the gaps and shortcomings of Russian criminal procedure laws are the following:

1. Most of the general measures of protection of the rights of child victims and child witnesses are not envisaged by Russian criminal procedure law.²⁵⁵
2. Russian law only provides general requirement for judges, prosecutors and advocates to periodically advance their skills through educational institutions.²⁵⁶ It is unclear whether

²⁵² The Criminal Code art. 19, *construed in* Kommentarii k Ugolovnomu Kodeksu Rossiiskoi Federatsii [Commentary to the Criminal Code of the Russian Federation] pod redaktsiei A.V. Brilliantova [Brilliantov A.V. ed.], 2010 (Russ.), at the Russian legal database Consultant Plus.

²⁵³ Proekt. Federalnyi Zakon o Vnesenii Izmenenii v Nekotorye Zakonodatelnye Akty Rossiiskoi Federatsii v Sviazi s Vvedeniem Instituta Ugolovno-pravovogo vozdeistviia v otnoshenii iuridicheskikh lits, *supra* note 115.

²⁵⁴ Poiasnitel'naia zapiska k proektu federal'nogo zakona o Vnesenii Izmenenii v Nekotorye Zakonodatelnye Akty Rossiiskoi Federatsii v Sviazi s Vvedeniem Instituta Ugolovno-pravovogo vozdeistviia v otnoshenii iuridicheskikh lits [Explanatory note to the Draft Federal Law On Amendments to Certain Legislative Acts of the Russian Federation due to Introduction of the Criminal Liability Concept with Respect to Legal Entities], Sledcom.ru (Russ.), <http://www.sledcom.ru/discussions/?ID=45943> (last visited Jan. 11, 2013).

²⁵⁵ Russian law has, *inter alia*, the following gaps: the requirement to avoid contact between a child victim or child witness and the sex offender in the case of face-to-face interrogation and investigative technique that require direct contact between the victim and an offender; it does not prescribe any support and social services for child victims, nor does it provide the right to free legal aid; there is no obligation to inform child victims and their families when the sex offender is released. For more detailed information about implementation of general measures of protection into the Russian law see Appendix 2 to this Report.

any of those institutions provide for special trainings related to examining sexual offenses committed against children.

3. Russian law does not clearly envisage that uncertainty as to the actual age of the victim should not prevent initiation of the criminal investigation.
4. Russian law allows criminal proceedings to be closed when the child victim has withdrawn his/her complaint.²⁵⁷ This should not be an option.
5. The statute of limitations for initiating proceedings, as envisaged by Russian law, does not correspond to the requirements under CETS 201. Thus, in certain cases, victims will not reach 18 years of age (the age of majority) prior to the expiration of the statute of limitations.
6. Most of the requirements of CETS 201 related to interviewing child victims and witnesses are not envisaged by Russian law.

The draft laws address only some of these issues: general measures of protection (informing the child victim of the release of the sex offender, the obligation to provide child victims with support services and free legal aid, and appointment of a special representative for the child victim); statute of limitations; and interviewing child victims and witnesses (limitation of the number of interviews and stricter specialization requirements for professionals interviewing the child). The remaining issues (items 2, 3, and 4 above) are not covered by the draft laws.

Intervention programs and measures

Russian law only partially reflects relevant provisions envisaged by CETS 201 related to non-obligatory intervention programs and measures for sex offenders. For instance:

1. Intervention programs are not available to sex offenders who are being prosecuted and those individuals who have been neither prosecuted nor convicted, but are afraid of committing such sex offenses in the future.
2. Russian law does not provide intervention programs for children who commit sexual offenses.

These issues are not addressed by current draft laws.

While it is clear that a considerable number of amendments are required to bring Russian law into conformity with the Optional Protocol and CETS 201, there has been a common practice of blocking necessary draft legislation aimed at fighting sex offenses against children by

²⁵⁶ Law No. 3132-1 o Statuse Sudei v Rossiiskoi Federatsii ot 26 iyunia 1992 g. [Law No.3132-1 On the Status of Judges in the Russian Federation of 26 June 1992], art. 20.1 (Russ.), at the Russian legal database Consultant Plus; Federal'nyi Zakon No. 63-FZ ob Advokatsko i Deiatelnosti i Advokature v Rossiiskoi Federatsii ot 31 maia 2002 g. [Federal Law No. 63-FZ On Legal Practice and Advocacy in the Russian Federation of 31 May 2002], art. 7 cl. 1(3) (Russ.), at the Russian legal database Consultant Plus; Federal'nyi Zakon No. 2202-1 o Prokurature Rossiiskoi Federatsii ot 17 ianvaria 1992 g. [Federal Law No. 2202-1 On Prosecution Service of the Russian Federation of 17 Jan. 1992], art. 43.4 pt. 2 (Russ.), at the Russian legal database Consultant Plus.

²⁵⁷ See page 38-39, footnotes 179-182 of this report for information on when investigators may discontinue prosecution if the child victim withdraws his/her statement.

introducing alternative Presidential Bills which lacked necessary provisions.²⁵⁸ For example, on 7 February 2012, Bill No. 349188-5 was rejected due to the adoption of the alternative Presidential Bill No. 577813-5.²⁵⁹ The rejected Bill provided for a concrete definition of child pornography, criminalized procuring of child pornography, simple possession and simple production of child pornography, and provided for other provisions that are not envisaged by Presidential Bill No. 577813-5, which was ultimately passed.

3.3 Legislative process for amending child protection laws

As demonstrated by Section 3.1 above, in order to bring Russian law into conformity with the Optional Protocol and CETS 201, Russian legislators must amend the criminal law, criminal procedure law, and criminal correctional law. According to the Constitution of the Russian Federation, these types of legislation are within the jurisdiction of the Russian Federation.²⁶⁰ In other words, it means that the federal legislative body (the Parliament) of Russia is responsible for introducing relevant amendments into Russian law.²⁶¹

The legislative process in Russia consists of four main stages (for a diagram see Appendix 3):²⁶²

- 1) Introduction of a Bill into the State Duma;
- 2) Review the Bill in three readings and subsequent adoption of the Law by the State Duma;
- 3) Review and adoption of the Law by the Federation Council; and
- 4) Signature of the Law by the President of Russia and its release to the public.

These are the primary stages, but depending on the individual participant's actions in the legislative process additional sub-stages may be added. The first and second stages are rather complex and consist of numerous steps, and the law does not establish clear and strict deadlines for completion of these first two stages.²⁶³

Overall, there are at least two main risks the Bill may face during the legislative process. First, the State Duma may reject the Bill at the end of each reading. Sometimes Bills are even rejected

²⁵⁸ Mneniia ekspertov. Elena Mizulina [Expert opinions. Elena Mizulina] Nedopusti.ru (Jan. 7, 2011) (Russ.), *supra* note 243; *see also* Pavlov I., *V bor'be s pedofilami tochka ne postavlena "Spravedlivaia Rossiia" schitaet priniatiye prezidentskii zakon vazhnym, no nedostatochnym* [In the fight with pedophiles the point is not set "Fair Russia" considers adoption of the Presidential Act essential but insufficient], Novopol.ru (Russ.), <http://www.novopol.ru/text117322.html> (last visited Apr. 2, 2013); *see also* Astakhov podozrevaet, chto v Dume suschestvuet pedofil'skoe lobbi [Astakhov suspects that there is a pedophile lobby in the Duma], Vesti.ru (Russ.), <http://www.vesti.ru/doc.html?id=367210&tid=92194> (last visited Apr. 2, 2013); but *see* Bastrykin: SKP ne raspolagaet faktami o "pedofil'skom lobbi" v Dume [Bastrykin: The ICP does not have facts about a "pedophile lobby" in the Duma], RIA.ru (Russ.), <http://ria.ru/society/20100625/250287319.html#ixzz2PJqZf5A6> (last visited Apr. 2, 2013).

²⁵⁹ The System of Automated Paperwork Management, Bill No. 349188-5 (Russ.), *supra* note 244.

²⁶⁰ Constitution, *supra* note 7, art. 71(o).

²⁶¹ The official name of the Russian Parliament is the Federal Assembly of the Russian Federation. It consists of two chambers; the lower chamber is the State Duma and the upper chamber is the Federation Council. The State Duma has the primary role in the legislative process.

²⁶² The description of the legislative process in Russia in Section 3.2 of the report is based on the following legislative acts: the Rules of the State Duma, razdel III [ch. III] (Russ.); Postanovlenie SF FS RF o Reglamente Soveta Federatsii Federal'nogo Sobraniia Rossiiskoi Federatsii ot 30 ianvaria 2002 g. No. 33-SF [Resolution of the Federation Council of the Federal Assembly of the Russian Federation on Regulations of the Federation Council of the Federal Assembly of the Russian Federation of Jan. 30, 2002, No. 33-SF] (hereinafter – *the Rules of the Federation Council*), glavy 12-14 [secs. 12-14] (Russ.), *at the Russian legal database Consultant Plus*; The Constitution articles 94-108.

²⁶³ For instance, registration of the Bill, compliance review by the Special Purposes Committee, appointing the Executive Committee, three readings in the State Duma, preparation work of the Executive Committee before each reading, etc.

during the period between the first and second readings. Thus, if the Executive Committee decides that the Bill has lost its applicability after the first reading, it may suggest that the State Duma reject it.²⁶⁴

Second, the Bill faces the risk of being reviewed by the Russian Parliament for an extended period of time. The law does not establish any specific deadlines for completing the review of the Bill by the State Duma. Specific dates for each reading are determined by the Council of the State Duma. This explains, in part, why reviewing the Bill at this stage may take several years. However, Bills introduced by the President of the Russian Federation or the Russian Government that are marked as urgent must be made a priority for the State Duma.²⁶⁵ Further, subsequent rejection of the Law, either by the Federation Council or by the President, creates additional sub-stages in the legislative process. In such an event, the Law is sent back to the State Duma for revision.

²⁶⁴ The Executive Committee of the State Duma prepares the Bill for review before each reading.

²⁶⁵ The Rules of the State Duma art. 51(1).

IV. CONCLUSIONS AND RECOMMENDATIONS

Frightening statistics prove that current Russian law is inadequate to fight child sexual abuse and child sexual exploitation. One of the reasons for this is that, despite several attempts by legislators to introduce relevant amendments into Russian law, a considerable number of international standards of child protection focused on sexual abuse and sexual exploitation are still not implemented in Russian legislation. Consequently, Russian legislation contains numerous gaps and shortcomings in comparison to the requirements of the two most authoritative international instruments in this field: the Optional Protocol and CETS 201. It is obvious that ratification of these covenants would induce Russia to promptly implement relevant provisions into its national law. Otherwise Russia will risk violating the obligations under these treaties, and as a result, its reputation in the international arena might be damaged inviting criticism from other States Parties.

Russian authorities do not oppose ratification of the Optional Protocol and CETS 201. The ratification plan suggested initially by the Russian Government on 21 August 2009 considerably delayed ratification of these treaties as it required adoption of all necessary changes and additions to existing Russian laws before ratifying CETS 201 and the Optional Protocol.

Approval of the National Children's Strategy for 2012-2017, which envisages ratification of CETS 201 and the Optional Protocol by the end of 2014, has expedited the ratification of these treaties. Thus, the Ministry of Foreign Affairs signed both CETS 201 and the Optional Protocol on behalf of the Russian Federation in autumn 2012, and on 15 April 2013 President Putin submitted CETS 201 and the Optional Protocol to the State Duma for the further ratification of these treaties, which may now take place in 2013.

It would benefit Russia to accelerate the effective implementation of the provisions of the Optional Protocol and CETS 201 into Russian law, though it will be challenging due to the nature and number of gaps and shortcomings of Russian law, a common practice of blocking necessary amendments by introducing alternative Presidential Bills, and the complexity and the shortcomings of the legislative process for adoption of necessary amendments.

Nevertheless, there are several steps that may help Russia ensure the effective implementation of international standards in the area of child protection. The World Conference on Human Rights has suggested the following steps:²⁶⁶

1. The State should review its current legislation and ensure that laws are consistent with international instruments. At this stage it can determine which laws need to be amended, adopted, or abolished.

²⁶⁶ United Nations Office of the High Commissioner for Human Rights, Fact Sheet No.10 (Rev.1), The Rights of the Child, sec. III, <http://www.ohchr.org/Documents/Publications/FactSheet10Rev.1en.pdf> (last visited Jan. 11, 2013).

2. The State should gather statistical information on the current situation with protection of children against sexual offenses. Statistical data may help the State to determine its priorities for national action for protecting children against sexual offenses.
3. In addition, it is highly advisable to create special mechanisms to monitor implementation of the relevant international instruments and to make sure that child protection issues are taken seriously by the State authorities, especially by the executive and legislative bodies. This step is especially important for Russia, in order to address concerns that the prompt adoption of the laws aimed at fighting child sexual abuse and child sexual exploitation are being intentionally hindered.

APPENDICES

Appendix 1 – Comparative analyses of Russian Criminal Law:

- 1a Comparison of Russian Criminal Law to the provisions of the Optional Protocol;
- 1b Comparison of Russian Criminal Law to the provisions of CETS 201.

Appendix 2 – Comparative Analyses of Russian Criminal Procedural Law:

- 2a Comparison of Russian Criminal Procedural Law to the provisions of the Optional Protocol;
- 2b Comparison of the Russian Criminal Procedural Law to the provisions of CETS 201.

Appendix 3 – Legislative Process in Russia.

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
Key Definitions						
Child (Article 1 of the Convention on the Rights of the Child)	Every human being below the age of eighteen years <i>unless under the law applicable to the child, majority is attained earlier.</i>	Allowed		✓ ¹		"A child" is defined in the Family Code of the Russian Federation (Article 54), Federal Law No.62-FZ On Citizenship of the Russian Federation (Article 3) and Federal Law No.124-FZ On the Basic Guarantees of a Child's Rights in the Russian Federation (Article 1). Each of these laws defines the child as a person below 18 years old (the age of majority).

¹ ✓ = OP provision is implemented in the Russian law;
✗ = OP provision is not implemented in the Russian law;
✓✗ = OP provision is partially implemented in the Russian law.

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						The CC does not contain a separate definition of a child and instead uses the term “a minor”, which is a person who has not reached the age of majority (18 years old).
Sale of children (Article 2(a))	Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.	Allowed	OP specifically refers to the sale of children and does not cover the issue of child trafficking.	✓		<p>There is a definition of the “sale of persons” in Article 127.1 CC that is applicable to the sale of children as well - “the purchase and sale of a human being, other transactions with respect to a person”.</p> <p>If the same acts are committed with respect to a child, the CC provides for stricter liability for offenders.</p>

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
Child prostitution (Article 2(b))	The use of a child in sexual activities for remuneration or any other form of consideration.	Allowed	The term “any other consideration” means that a child can be used in sexual activities in exchange for any goods, services or favors (for example, drugs, food, shelter).	✗	Draft laws do not address this issue.	Russian legislation does not define the term “prostitution” either.
Child pornography (Article 2(c))	Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.	Allowed	Material having an artistic, medical, scientific or similar merit, i.e. where there is absence of sexual purposes, does not fall within the ambit of this definition.	✗	Draft Law No. 217688-6 defines child pornography as “materials and items containing any representation, by whatever means, of a minor’s sexual organs or a minor engaged in real or simulated sexual activities.” The following materials and items shall not be considered pornographic:	

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
					<p>materials and items that contain naturalistic photographic, film, video or other images of minors made for scientific, medical or educational purposes or made by a parent or close relatives of a minor without the purpose of their distribution and which have family merit.</p> <p>Draft Law No. 113185-6 suggests a more detailed definition: pornographic materials and items containing naturalistic images or description of:</p> <p>1) a minor's sexual organs; 2) a minor engaged in a real or simulated sexual intercourse or other sexual</p>	

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
					<p>activities; as well as 3) the same acts committed against a minor or with his or her participation; or 4) an adult imitating a minor engaged in a real or simulated sexual intercourse or other sexual activities.</p> <p>Like Draft Law No. 217688-6 it mentions materials that are not pornographic. The only difference is that Draft Law No. 113185-6 does not include materials made for scientific, medical or educational purposes in such a list.</p>	

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
Offenses to be Criminalized by the OP ²						
Sale of Children (Article 3 §1(a))	(i) Offering, delivering or accepting, by whatever means, a child for the purpose of: a. sexual exploitation of the child;	Allowed		✓✗	There are no draft laws that would suggest any relevant amendments to the provisions of the CC related to the sale of children.	Article 127.1 parts 1 and 2(b) CC prohibits the sale of children (sale and purchase, and any other transactions with children). The same Article prohibits transferring, delivering and accepting a child for the purposes of his or her subsequent exploitation, including sexual exploitation. Offering children for the purpose of sexual exploitation is not criminalized by the CC. However, offering a child for the purpose of sexual

² All offenses require intentional conduct.

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						exploitation may be qualified as the attempt to commit sale of children under the CC.
	b. transfer of organs of the child for profit; c. engagement of the child in forced labor.	Allowed		✓✗	There are no draft laws that would suggest any relevant amendments to the provisions of the CC related to the sale of children.	Article 127.1, parts 2(b) and 2(zh) CC prohibit transfer, delivering and accepting children for the purposes of transfer of organs of the child. Article 127.1, parts 1 and 2(b) CC criminalize transfer, delivering and accepting children for their subsequent exploitation in forced labor. CC does not criminalize offering children for the purpose of transfer of their organs or forced labor.

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						Though, under the CC offering may be qualified as the attempt to commit sale of children for such purposes.
	(ii) Improperly inducing consent, as an intermediary for the adoption of a child in violation of applicable international legal instruments on adoption.	Allowed		✓		The sale of children for the purpose of illegal adoption is usually determined as a crime cumulatively by Article 127.1 (sale of persons) and Article 154 (illegal adoption) CC.
Child prostitution (Article 3 §1.b)	Obtaining and procuring a child for child prostitution.	Allowed		✓ x	Draft laws do not address this issue	Article 240 part 3 CC criminalizes child prostitution as two specific activities: involvement of a child into prostitution and coercing a child to continue

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>prostitution.</p> <p>The law does not define “involvement” into prostitution. It is unclear if it includes obtaining, offering, procuring, providing or neither of them. Legal academics interpret “involvement” broadly as persuading or inciting a child to engage in prostitution, and assert that it may be committed by various means: by making promises, by deceit, threats, payment of compensation and etc.</p> <p>Based on this interpretation, obtaining or procuring a child for prostitution may not</p>

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						necessarily be covered by the term “involvement”. These activities may be qualified as a crime under Article 127.1 parts 1 and 2(b) CC (sale of persons) that prohibits accepting a child for the purposes of his or her subsequent sexual exploitation (which includes, <i>inter alia</i> , exploitation of prostitution).
	Offering and providing a child for child prostitution.			✓ ✗	Draft laws do not address this issue	Offering and providing a child for prostitution are not criminalized by the Russian law. Draft laws do not address this issue as well. However, offering a child for prostitution may be qualified as the attempt

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						to sell the child for the purposes of his or her sexual exploitation under Articles 30 and 127.1 CC. Providing a child for prostitution may be qualified as delivering a child for sexual exploitation under Article 127.1 CC.
Child pornography (Article 3 §1.c)	Producing child pornography.	Allowed		✗	Draft law No. 217688-6 and Draft Law No. 113185-6 suggest criminalizing the simple production of child pornography.	Article 242.1 CC criminalizes production of child pornography only if it was committed with a purpose of its distribution, public display or advertising (offering).
	Offering child pornography.	Allowed		✓		Article 242.1 CC criminalizes offering as advertising of child pornography.

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	Distributing, disseminating or selling child pornography.	Allowed		✓		Article 242.1 CC criminalizes distribution in a broad sense, which may include selling and disseminating.
	Importing or exporting child pornography.	Allowed		✗	Draft law No. 217688-6 and Draft Law No. 113185-6 suggest criminalizing the simple importation and exportation of child pornography.	Article 242.1 CC criminalizes import and export of child pornography only if it is committed with the purpose of its distribution, public display or advertising (offering).
	Possessing child pornography for the purposes of its production, distribution, dissemination, import,	Allowed		✓ ✗	Draft law No. 217688-6 and Draft Law No. 113185-6 suggest criminalizing the simple possession of child pornography.	Article 242.1 CC criminalizes possession of child pornography only if it is committed with a purpose of its distribution, public display or

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SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	export, offer or sale.					advertising (offering). This Article does not mention any other purposes envisaged by the OP.
Aiding or abetting and attempt (Article 3 §2)	Subjects to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.	Allowed		✓		Articles 30, 32-34 CC
Other Criminal Law Provisions under the OP						
Jurisdiction (Article 4)	§1. Each Party shall take such measures as may be necessary to establish its	Allowed		✓		Articles 11 CC

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SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	jurisdiction over the offenses referred to in Article 3, paragraph 1, when the offense are committed: <ul style="list-style-type: none"> - In its territory; or - On board of a ship or aircraft registered in that State. 					
	§2. Each Party may take such measures as may be necessary to establish its jurisdiction over the offenses referred to in Article 3, paragraph 1, in the following cases: <p>a. When the</p>	Allowed	There is no obligation to establish such jurisdiction, as demonstrated by the use of the expression “may take such measures”.	✓		Articles 12 CC

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SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	<p>alleged offender is a national of that State or a person who has his or her habitual residence in its territory;</p> <p>b. When the victim is a national of that State.</p>					
	<p>§3. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the above-mentioned offenses when the alleged offender is present in its territory</p>	Allowed	<p>This paragraph concerns a principle: extradite or prosecute.</p>	✓✗	<p>Draft laws do not address this issue.</p>	<p>Article 13 part 1 CC prohibits extradition of Russian citizens if they committed a crime abroad.</p> <p>At the same time Article 12 part 1 CC envisages prosecution of Russian nationals if the crime they</p>

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	and it does not extradite him or her to another State Party on the ground that the offense has been committed by one of its nationals.					<p>committed abroad is envisaged by the CC.</p> <p>However, currently not all of the offenses established by the OP are criminalized by the CC.</p> <p>If Russia adopts the necessary changes to the CC criminalizing relevant sexual offenses against children, Russian law will reflect the principle of “extradite or prosecute” completely.</p>
Corporate liability (Article 3 §4)	Subject to the provisions of its national law, each State Party shall take	Allowed		✓✗	Investigative Committee prepared a draft law establishing corporate liability of the entities in	Article 2.10 of the Russian Administrative Code establishes administrative liability of the legal entities.

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	<p>measures, where appropriate to establish the liability of legal persons for offenses established in Article 3, paragraph 1.</p> <p>Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative</p>				<p>cases when a crime was committed for the benefit of the entity by a person who has a leading position in the entity.</p>	<p>However, a legal person may be liable only for committing administrative wrongdoings stipulated by the Administrative Code.</p> <p>Among the offenses criminalized by the OP, the Administrative Code refers to the creation of conditions for the sale of children or exploitation of children and to child pornography offenses. The Administrative Code fails to establish corporate liability directly for the sale of children and crimes related to exploitation of children, addressing only the creation of conditions for such crimes by a legal entity. A legal person is</p>

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SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>subject to administrative liability only if these offenses are committed on its behalf or for its benefit by a person exercising managerial functions in the legal entity.</p> <p>All other offenses stipulated by the OP are criminalized by the CC or not criminalized by it at all. Therefore, in cases when the legal person is involved in other sexual offenses against children, administrative liability does not attach as well.</p> <p>Liability of legal persons is also stipulated by the Russian Civil Code. However it is not applied</p>

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						to the offenses established by the OP.
Sanctions and measures (Article 3§3 and Article 7)	Article 3 §3. Each State Party shall make these offenses punishable by appropriate penalties that take into account their grave nature.	Allowed		✓✗	Draft laws do not introduce any changes to the relevant Articles of the CC.	The CC differentiates sanctions for the sexual offenses against children based on the gravity of the offense and allows for deprivation of liberty in each Article criminalizing sexual offenses against children. The maximum sentence may constitute life imprisonment. At the same time, the minimum term of imprisonment may be as low as 2 months in some cases. For certain crimes, the CC envisages alternative sanctions that are less harsh than

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SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>imprisonment (e.g. corrective works and compulsory labor).</p> <p>The CC also prohibits probation and suspending the sentence. It allows parole and alleviation of the sentence only after completing 4/5th of the sentence. According to the CC compulsory out-patient observance and treatment by a psychiatrist may be imposed on sexual offenders. However, these provisions are not applied to sexual offenses if the child victim is 14 years old or older, as well as to the sale of children, exploitation of children for sexual purposes and for</p>

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						child pornography.
	<p>Article 7(a). States Parties shall, subject to the provisions of their national law take measures to provide for the seizure and confiscation, as appropriate of:</p> <ul style="list-style-type: none"> - Goods such as materials, assets and other instrumentalities used to commit or facilitate offenses under the present Protocol; - Proceeds 	Allowed		✓		Articles 104.1 - 104.2 CC

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	derived from such offenses.					
	Article 7(b). States Parties shall, subject to the provisions of their national law, execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in Article 7(a).	Allowed		✓		Articles 453, 454, 457 of the Criminal Procedure Code of the Russian Federation. Each foreign State can send requests on legal aid to the Russian authorities that are executed by the courts, prosecutors, investigators or the head of the investigative body.

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	Article 7(c). Take measures at closing, on a temporary or definitive basis, premises used to commit such offenses.	Allowed		✓✗	Draft laws do not address this issue	<p>The Russian Administrative Code establishes suspension of business activities that may include closure of such establishments. However, the CC does not provide for corporate liability and does not establish sanctions for legal persons.</p> <p>Administrative sanctions may be imposed on legal persons only in a limited number of cases (profiting for prostitution, certain child pornography offences and creation of the conditions for the sale of children or exploitation of children) and they do not include permanent closure of premises as required by</p>

Appendix 1a - Comparison of Russian Criminal Law to the provisions of the Optional Protocol

SUBSTANTIVE CRIMINAL LAW						
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)				Implementation of the OP provisions in the Russian law		
OP provisions	Text of the OP provisions	Reservations to the OP	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						the OP.

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
Key Definitions						
Child (Article 3)	Any person under the age of 18 years	Not allowed		✓ ¹		“A child” is defined in the Family Code of the Russian Federation (Article 54), Federal Law No.62-FZ On Citizenship of the Russian Federation (Article 3) and Federal Law No.124-FZ On the Basic Guarantees of a Child’s Rights in the Russian Federation (Article 1). Each of these laws defines the child as a person below 18 years old (the age of majority).

¹ ✓ = CETS 201 provision is implemented in the Russian law;
 ✗ = CETS 201 provision is not implemented in the Russian law;
 ✓✗ = CETS 201 provision is partially implemented in the Russian law

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						The CC does not contain a separate definition of a child and instead uses the term “a minor”, which is a person who has not reached the age of majority (18 years old).
Child prostitution (Article 19, §2)	The fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment regardless if this payment, promise or consideration is made to the child or to	Not allowed	Any kind of remuneration, not only monetary (for example drugs, shelter, clothes, food and etc), suffices in order to meet the legal requirement of the offense. Third parties are usually those who take financial	✗	Draft laws do not address this issue.	Russian legislation does not define the term “prostitution” either.

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	a third person.		profit from child prostitution.			
Child pornography (Article 20, §2)	Any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes.	Not allowed	Material having an artistic, medical, scientific or similar merit, i.e. where there is absence of sexual purposes, does not fall within the ambit of this definition. The visual depiction includes data stored on computer diskette or on other electronic means or other storage device which is capable of conversion into a visual image.	×	Draft Law No. 217688-6 defines child pornography as "materials and items containing any representation, by whatever means, of a minor's sexual organs or a minor engaged in real or simulated sexual activities." The following materials and items shall not be considered pornographic: materials and items that contain naturalistic photographic, film, video or other images of minors	

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
			"Sexually explicit conduct" must be defined by Parties.		<p>made for scientific, medical or educational purposes or made by a parent or close relatives of a minor without the purpose of their distribution and which have family merit.</p> <p>Draft Law No. 113185-6 suggests a more detailed definition: pornographic materials and items containing naturalistic images or description of:</p> <p>1) a minor's sexual organs; 2) a minor engaged in a real or simulated sexual intercourse or other sexual activities; as well as 3) the same acts committed</p>	

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
					<p>against a minor or with his or her participation; or</p> <p>4) an adult imitating a minor engaged in a real or simulated sexual intercourse or other sexual activities.</p> <p>Like Draft Law No. 217688-6 it mentions materials that are not pornographic. The only difference is that Draft Law No. 113185-6 does not include materials made for scientific, medical or educational purposes in such a list.</p>	

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
Offenses to be Criminalized by the CETS 201 ²						
Sexual abuse (Article 18)	§1.a. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities.	Not allowed	<p>The provision gives each Party a flexibility to decide the age below which it is prohibited to engage in sexual activities with a child.</p> <p>This provision does not govern consensual sexual activities between minors.</p>	✓	Draft laws do not introduce any changes to the relevant Articles of the CC.	<p>This offense is criminalized by Articles 134 and 135 of the CC. According to these Articles the age of consent in Russia is 16 years.</p> <p>Article 134 CC covers sexual intercourse, pederasty and lesbianism (the list is exhaustive) without use of force.</p> <p>Article 135 CC is applied to lewd acts committed without use of force. The current law does not define “lewd acts”. That is why on</p>

² All offenses require intentional conduct.

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>practice all other types of sexual activities not envisaged by Article 134 CC are classified as lewd acts under Article 135 CC.</p> <p>Meanwhile, Article 135 CC provides for a less harsh penalty than Article 134 CC. At the same time many “other sexual activities” can be as dangerous and serious as those provided by Article 134, and thus their perpetrators should face the same penalty as envisaged in Articles 134 CC. Draft law No.349188-5 tried to solve this problem. However it was rejected by the State Duma on 7</p>

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						February 2012.
	<p>§1.b. Engaging in sexual activities with a child where:</p> <ul style="list-style-type: none"> i. use is made of coercion, force or threats; or ii. abuse is made of a recognized position of trust, authority or influence over the child, including within the family; or iii. abuse is made of a particularly vulnerable 	Not allowed	The age of the child is irrelevant. Every child under 18 years is protected by these provisions.	✓✗	Draft laws do not introduce any changes to the relevant Articles of the CC.	<p>Sub-paragraph (ii) is not criminalized as a separate crime. It is envisaged by the CC as an aggravating circumstance. Victims who are 16 and under 18 years old are not protected by the CC in such cases.</p> <p>Sub-paragraphs (i) and (iii) are generally covered by the CC:</p> <p>- Articles 131 and 132 CC cover engaging in sexual activities with a child where use is made of force or threats, or abuse is made of a vulnerable situation of</p>

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SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	situation of the child, notably because of a mental or physical disability or a situation of dependence.					<p>the child.</p> <p>According to CC any child victim of a sexual abuse under 12 years old is considered to be in a vulnerable situation. According to the Supreme Court vulnerable situation also includes, <i>inter alia</i>, mental or physical disability, intoxication.</p> <p>- Article 133 part 2 CC criminalizes coercing a child to engage in sexual activities. Coercion in this Article refers more to psychological pressure and does not include use of physical force or threats. The crime is considered</p>

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						committed even if the offender did not engage in sexual activities with a child.
Child prostitution (Article 19)	§1.a. Recruiting a child into prostitution or causing a child to participate in prostitution.	Not allowed		✓ ✗	Draft laws do not address this issue.	Article 240 part 3 CC criminalizes child prostitution as two specific activities: involvement of a child into prostitution and coercing a child to continue prostitution. The law does not define “involvement” into prostitution. It is unclear if it includes obtaining, offering, procuring, providing or neither of them. Legal academics interpret “involvement”

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>broadly as persuading or inciting a child to engage in prostitution, and assert that it may be committed by various means: by making promises, by deceit, threats, payment of compensation and etc.</p> <p>Based on this interpretation, theoretically “involvement” may include causing, coercing and recruitment into prostitution; however, this cannot be clearly inferred from the wording of Article 240 CC.</p> <p>Article 127.1 CC criminalizes recruitment of the child for the purposes</p>

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SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						of exploitation by prostitution.
	§1.b. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes.	Not allowed		✓ ✗	Draft laws do not address this issue.	<p>Article 240 CC criminalizes only coercing a child to continue prostitution. This provision covers only those cases where a child is engaged in prostitution already, but has the intention to stop it, and the offender impedes this decision by coercing a child to continue.</p> <p>Coercing a child into prostitution may be covered by Article 240 CC as “involvement into prostitution”. However, it cannot be clearly inferred from this wording.</p>

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>Exploitation of a child in prostitution is covered only by Article 127.2 part 2 CC (exploitation of slave labor).</p> <p>Profiting from child prostitution is not criminalized. It is prohibited by the Russian Administrative Code (Article 6.12) and is punishable by an administrative fine up to 2500 rubles (approx. 80 USD) or an administrative arrest of up to 15 days. This Article applies to adult and child prostitutes, but does not differentiate the penalty if the victim of this offense</p>

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						is a child.
	§1.c. Having recourse to child prostitution.	Not allowed		x	Draft Law No. 151664-6 criminalizes this offense with a punishment of up to 3 years of imprisonment. This Draft Law applies to child victims who are 16 years old or older and interprets “sexual services” of a child prostitute as sexual intercourse with a child for monetary consideration.	
Child pornography (Article 20)	§1.a. Producing child pornography.	Allowed In whole or in part, to the production and possession		x	Draft law No. 217688-6 and Draft Law No. 113185-6 suggest criminalizing the simple production of child pornography.	Article 242.1 CC criminalizes production of child pornography only if it was committed with a purpose of its distribution, public display or

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SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
		<p>of pornographic material:</p> <p>a) consisting exclusively of simulated representations or realistic images of non-existent child;</p> <p>b) involving children who have reached the legal age for sexual activities, where these images are produced and possessed by</p>				advertising (offering).

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
		them with their consent and solely for their own private use.				
	§1.b. Offering or making available child pornography.	Not allowed	“Making available” is intended to cover, e.g., the placing of child pornography online for the use of others by creating child pornography sites or hyperlinks to child pornography sites in order to facilitate access to child pornography.	✓		Article 242.1 CC criminalizes offering as advertising child pornography. Article 242.1 CC criminalizes public display of child pornography, which is similar to the meaning of “making available”.
	§1.c. Distributing or transmitting child pornography.	Not allowed	“Distribution” is an active dissemination of the material.	✓		Article 242.1 CC criminalizes distribution in a broad sense, which may include transmitting as it is

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
			“Transmitting” covers sending child pornography through a computer system to another person, selling or giving of child pornographic materials such as photographs or magazines.			understood by the CETS 201.
	§1.d. Procuring child pornography for oneself or for another person.	Not allowed	“Procuring for oneself or for another” means actively obtaining child pornography for personal use or for another person, e.g. by downloading computer data or by buying child pornographic materials, such as film or images.	✗	Draft law No. 217688-6 and Draft Law No. 113185-6 suggest criminalizing the simple procurement of child pornography.	Article 242.1 CC criminalizes procuring child pornography only if it is committed with the purpose of its distribution, public display or advertising (offering).

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	§1.e. Possessing child pornography.	<p>Allowed</p> <p>In whole or in part, to the possession of pornographic material:</p> <p>a) consisting exclusively of simulated representations or realistic images of non-existent child;</p> <p>b) involving children who have reached the legal age for sexual activities,</p>	Provision covers possession of child pornography, by whatever means, such as magazines, video cassettes, DVDs or portable phones, including stored in a computer system or on a data carrier, as well as a detachable storage device, a diskette or CD-Rom.	✗	Draft law No. 217688-6 and Draft Law No. 113185-6 suggest criminalizing the simple possession of child pornography.	Article 242.1 CC criminalizes possession of child pornography only if it is committed with a purpose of its distribution, public display or advertising (offering).

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
		where these images are produced and possessed by them with their consent and solely for their own private use.				
	§1.f. Knowingly obtaining access, through information and communication technologies, to child pornography.	Allowed In whole or in part	This provision applies to those who view child images online by accessing child pornography sites but without downloading. To be liable the person must both intend to enter a site where child pornography is available and know that	✗	Draft laws do not address this issue.	

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
			<p>such images can be found there. The intentional nature of the offense may be deduced from the fact that it is recurrent or that the offenses were committed via a service in return for payment.</p> <p>Sanctions must not be applied to persons accessing sites containing child pornography inadvertently.</p>			
Participation of a child in pornographic performances	§1.a. Recruiting a child into participating in pornographic performances or	Not allowed		✓	Draft laws do not introduce any significant changes to the relevant Article of the CC.	Article 242.2 CC criminalizes involving a child into participation in pornographic

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
(Article 21)	causing a child to participate in such performances.					<p>performances.</p> <p>CC does not explain the meaning of the term “involving”. According to legal doctrine “involving” a child in participating in pornographic performances may be inferred from the mere fact that the child participates in such shows. “Involving” may be construed rather broadly and can be committed by various means, including coercing, causing, recruiting and the like. Therefore, we may conclude that the CC criminalizes recruiting, causing and coercing a child into participating in</p>

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						pornographic performances.
	§1.b. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes.	Not allowed		✓ ✗	Draft laws do not introduce any significant changes to the relevant Article of the CC.	<p>Coercing a child into participating in pornographic performances may be covered by Article 242.2 CC as “involvement” of a child into such performance.</p> <p>Exploitation of a child for such purposes is covered only by Article 127.2 part 2 CC (exploitation of slave labor).</p> <p>Profiting from child pornographic performances is not criminalized.</p>

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	§1.c. Knowingly attending pornographic performances involving the participation of children.	Allowed Each Party may limit the application of this provision to cases where children have been recruited or coerced in conformity with Article 21, §1.a or b of the CETS 201.	Relates to a spectator. This provision may also cover the situation of persons who are spectators of pornographic performances involving participation of children via webcams. A spectator must know that the pornographic performance will involve children.	✗	Draft laws do not address this issue.	
Corruption of children (Article 22)	Causing, for sexual purposes, of a child who has not reached the legal age for sexual	Not allowed	“Causing” may include any way in which the child is made witness the acts, such as by	✗	Draft laws do not address this issue.	Should this offense be committed by means of blackmail, threats to destroy, damage or remove

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CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	activities, to witness sexual abuse or sexual activities, even without having to participate.		force, coercion, inducement, promise and etc.			property, or use of financial or other dependence of the child victim, then it may be qualified under two Articles of the CC: Article 133 part 2 (coercing a child to commit sexual activities) and Article 135 (lewd acts). Corruption of children committed by use of other means is not criminalized by the CC. Children who are 16 years old or older are not protected against the crime of corruption in Russia.
Solicitation of children	Proposal, through and information and	Not allowed	Solicitation "grooming" or may	×	Draft laws do not address this issue.	

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
for sexual purposes (Article 23)	communication technologies, of an adult to meet a child who has not reached the legal age for sexual activities, for the purpose of committing any of the offenses established in accordance with Article 18, §1.a, or Article 20, §1.a of the CETS 201, against him or her, where this proposal has been followed by material acts leading to such meeting.		involve befriending of a child, drawing the child into discussing intimate matters, and gradually exposing the child to sexually explicit materials in order to reduce resistance or inhibitions about sex. Simply sexual chatting with a child is insufficient to incur criminal responsibility. It must be followed by a proposal to meet the child, the purpose to commit any of the specified offenses, and material acts leading to such meeting (e.g. the fact of the perpetrator			

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CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
			<p>arriving at the meeting place).</p> <p>Such means of grooming as real contacts or non-electronic communications are outside the scope of this provision.</p>			
Aiding or abetting and attempt (Article 24)	§1. Aiding or abetting the commission of the offenses established by the CETS 201.	Not allowed	Liability arises where the person who commits a crime is aided by another person who also intends the crime to be committed.	✓		Articles 32-34 CC
	§2. Attempts to commit the offenses	Allowed		✓		Article 30 CC

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	established by the CETS 201.	In whole or in part, to offenses established in accordance with Art 20, § 1.b, d, e and f, Article 21, § 1.c, Article 22 and Article 23 of the CETS 201				
Other Criminal Law Provisions under CETS 201						
Jurisdiction (Article 25)	§1. Each Party shall establish jurisdiction over any offense established by the CETS 201, when the offense is committed:	Allowed The right not to apply or to apply only in specific cases	Under sub-paragraphs d and e, if one of its nationals or persons having habitual residence in its territory commits an offense	✓		Articles 11-12 CC

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CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	<ul style="list-style-type: none"> a. In its territory; or b. On board of a ship flying the flag of the Party; or c. On board an aircraft registered under the laws of that Party; or d. By one of its nationals; or e. By a person who has his or her habitual residence in its territory. 	<p>or conditions the jurisdiction rules laid down in §1.e of this article.</p>	<p>abroad, a Party is obliged to be able to prosecute him/her.</p>			

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	§2. Each Party shall endeavor to establish jurisdiction over any offense established by the CETS 201 where the offense is committed against one of its nationals or a person who has his or her habitual residence in its territory.	Not allowed	There is no obligation to establish such jurisdiction, as demonstrated by the use of the expression "endeavor".	✓		Articles 12 part 3 CC
	§4. For the prosecution of the offenses established by Articles 18 (sexual abuse), 19 (child prostitution), 20, §1.a (production of child pornography), and 21, §1a. and b (participation of a child in pornographic	Allowed A right to limit application of this paragraph with regard to offenses established by Article 18, §1.b, second and	The provision eliminates the usual rule of dual criminality where acts must be criminal offenses in the place where they are performed. Its aim is to combat the phenomenon of sex tourism, whereby	✓		Article 12 part 1 CC

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	performances) of the CETS 201, each Party shall ensure that its jurisdiction as regards §1.d is not subordinate to the condition that the acts are criminalized at the place where they were performed.	third indents, to cases where national has his or her habitual residence in its territory	persons are able to go abroad to commit acts which are classified as criminal offenses in their country of nationality.			
	§6. For the prosecution of the offenses established by Articles 18 (sexual abuse), 19 (child prostitution), 20, §1.a (production of child pornography), and 21 (participation of a child in pornographic performances) of the	Not allowed		✓		Articles 20-21 of the Russian Criminal Procedure Code

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CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	CETS 201, each Party shall ensure that its jurisdiction as regards §§1.d and e is not subordinate to the condition that the prosecution can only be initiated following a report from the victim or a denunciation from the State of the place where the offense was committed.					
	§7. Each Party shall establish jurisdiction over the offenses established by the CETS 201, in cases where an alleged offender is present on its territory and it does	Not allowed	This paragraph concerns a principle: extradite or prosecute.	✓ ✗		Article 13 part 1 CC prohibits extradition of Russian citizens if they committed a crime abroad. At the same time Article 12 part 1 CC envisages prosecution of Russian

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	not extradite him or her to another Party, solely on the basis of his or her nationality.					<p>nationals if the crime they committed abroad is envisaged by the CC.</p> <p>However, currently not all of the offenses established by CETS 201 are criminalized by the CC.</p> <p>If Russia adopts the necessary changes to the CC criminalizing relevant sexual offenses against children, Russian law will reflect the principle of “extradite or prosecute” completely.</p>
Corporate liability (Article 26)	§1. A legal person can be held liable for an offense established by	Not allowed	“Person who has a leading position” refers to someone who is	✓ ✗	Investigative Committee prepared a draft law establishing corporate	Article 2.10 of the Russian Administrative Code establishes administrative

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	<p>the CETS 201, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <ul style="list-style-type: none"> a. Power of representation of the legal person; b. An authority to take decisions on behalf of the legal person; c. An authority to exercise 		<p>organizationally senior, such as a director.</p> <p>Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative (Art 26, §3).</p> <p>Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offense (Art 26, §4).</p>		<p>liability of the entities in cases when a crime was committed for the benefit of the entity by a person who has a leading position in the entity.</p>	<p>liability of the legal entities. However, a legal person may be liable only for committing administrative wrongdoings stipulated by the Administrative Code.</p> <p>Among the offenses criminalized by the OP, the Administrative Code refers to profiting from prostitution, creation of conditions for the sale of children or exploitation of children and to child pornography offenses. The Administrative Code fails to establish corporate liability directly for the sale of children and crimes related to exploitation of children, addressing only</p>

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	control within the legal person.					the creation of conditions for such crimes by a legal entity. A legal person is subject to administrative liability (in cases of child pornography and sale/exploitation of children) only if these offenses are committed on its behalf or for its benefit by a person exercising managerial functions in the legal entity.
	§2. A legal person can be held liable where the lack of supervision or control by a natural person who has a leading position has made possible the commission of an offense established by the CETS 201 for the benefit of that legal person by a natural person acting under its authority.	Not allowed		×	Draft laws do not address this issue.	All other offenses stipulated by the OP are criminalized by the CC or not criminalized by it at all. Therefore, in cases when the legal person is involved in other sexual offenses against children,

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						administrative liability does not attach as well. Liability of legal persons is also stipulated by the Russian Civil Code. However it is not applied to the offenses established by the CETS 201.
Sanctions and measures (Article 27)	§1. Sanctions must be effective, proportionate and dissuasive, and take into account seriousness of the offense. Sanctions shall include penalties involving deprivation of liberty which can give rise to extradition.	Not allowed	Under Article 2 of the European Convention on Extradition (ETS No. 24), extradition is to be granted in respect of offenses punishable under the laws of the requesting and requested Parties by deprivation of liberty or under a detention order	✓ ✗	Draft laws do not introduce any changes to the relevant Articles of the CC.	The CC differentiates sanctions for the sexual offenses against children based on the gravity of the offense and allows for deprivation of liberty in each Article criminalizing sexual offenses against children. The maximum sentence may constitute life imprisonment. At the same

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CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
			for a maximum period of at least 1 year or by a more severe penalty.			<p>time, the minimum term of imprisonment may be as low as 2 months in some cases. For certain crimes, the CC envisages alternative sanctions that are less harsh than imprisonment (e.g. corrective works and compulsory labor).</p> <p>The CC also prohibits probation and suspending the sentence. It allows parole and alleviation of the sentence only after completing 4/5th of the sentence. According to the CC compulsory out-patient observance and treatment by a psychiatrist may be imposed on sexual</p>

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Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						offenders. However, these provisions are not applied to sexual offenses if the child victim is 14 years old or older, as well as to the sale of children, exploitation of children for sexual purposes and for child pornography.
	<p>§2. Sanctions for legal persons shall include monetary criminal or non-criminal fines and may include other measures, in particular:</p> <p>a. Exclusion from entitlement to public benefits or aid;</p>	Not allowed	The list is not mandatory or exhaustive and Parties are free to envisage other measures.	✓✗	<p>Investigative Committee prepared a draft law establishing corporate liability of the entities. This draft stipulates the following kinds of the sanctions for legal persons:</p> <ul style="list-style-type: none"> - a warning; - a fine; - loss of license, quotas, preferences or privileges; 	<p>Under the CC legal persons are not subjects of crimes and cannot be held criminally liable. Thus, there are no sanctions for legal persons under the CC.</p> <p>The Russian Administrative Code establishes the following penalties for the legal persons:</p>

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	b. Temporary or permanent disqualification from the practice of commercial activities; c. Placing under judicial supervision; d. Judicial winding-up order.				- disqualification from the practice of certain activities; - a ban on any activity on the territory of the Russian Federation; - forced winding-up.	<ul style="list-style-type: none"> - Warning; - Administrative fine; - Seizure of goods, documents and other instrumentalities used to commit the offenses; - Suspension of business activities. <p>However, administrative sanctions may be imposed only in a limited number of cases (profiting for prostitution, certain child pornography offences and creation of the conditions for the sale of children or exploitation of children)</p>

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						and they do not include judicial winding-up and permanent disqualification from practicing commercial activities as required by CETS 201.
	<p>§3.a. The following shall be seized and confiscated:</p> <ul style="list-style-type: none"> - Goods, documents and other instrumentalities used to commit the offenses established by the CETS 201 or to facilitate their 	Not allowed		✓		Articles 104.1 - 104.2 CC

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	commission; - Proceeds derived from such offenses or property the value of which corresponds to such proceeds.					
	§3.b. Any establishment shall be temporarily or permanently closed if it was used to carry out any of the offenses established by the CETS 201, without prejudice to the rights of <i>bona fide</i> third parties.	Not allowed	This sub-paragraph allows taking measures against such establishments as matrimonial agencies, placement agencies, travel agencies, hotels, escort services, cabarets, bars or restaurants and etc. Such closure or ban may be envisaged as a	✓ ✗	Draft laws do not address this issue.	The Russian Administrative Code establishes suspension of business activities that may include closure of such establishments. However, they do not include permanent closure of premises as required by the CETS 201.

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
			criminal penalty or administrative measures.			
	§3.b. The perpetrator shall be denied temporarily or permanently the exercise of the professional or voluntary activity involving contact with children in the course of which offense was committed.	Not allowed		✓		CC allows denial to exercise professional or any other activity in the course of which offense was committed for up to 20 years. In most cases a judge has discretion whether to impose this penalty or not, save for a number of sexual offenses committed against a child under 14 by a recidivist who previously committed another sexual offense against a child victim under 14: rape (Article 131 CC) and other sexual activities committed with the use of force

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>(Article 132 CC), engaging in sexual activities with a child under 14 without use of force (Articles 134 and 135 CC).</p> <p>All Articles of the CC establishing sexual offenses against children provide maximum terms for such ban from carrying on activities.</p>
	§4. Other sanctions may include withdrawal of parental rights or monitoring or supervision of convicted persons.	Not allowed	Monitoring or supervision may facilitate assessment of the risk of reoffending or to ensure that intervention programs and measures are effective.	✓		<p>CC does not provide for withdrawal of parental rights, this measure is established by the Family Code of the Russian Federation.</p> <p>Withdrawal of parental rights may be implemented</p>

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>based on the provisions of the Family Code of the Russian Federation (Article 69), <i>inter alia</i>, when a parent has committed an intentional crime against the life and health of his/her child or a child was subject to cruel treatment including physiological and physical abuse, and sexual abuse</p> <p>Monitoring and supervision of convicted persons is stipulated by the CC as a compulsory medical measure (in the form of regular medical check-up), rather than a sanction. Sex offenders who committed sexual crimes</p>

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
						<p>against children under 14 years old and who are mentally competent may be subject to this compulsory measure. This measure requires monitoring the mental health of the offender through regular examination by a psychiatrist, psycho-physiological and other treatment, and implementation of rehabilitation measures. Such measures may be applied to sex offenders even after the sentence has been served and until they are fully treated.</p>

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	§5. Proceeds of crime or property confiscated may be allocated to a special fund in order to finance prevention and assistance programs for victims of any of the offenses established by the CETS 201.	Not allowed	This provision is optional and does not establish a positive undertaking for the Parties.	x	The draft law On Victims of Crimes, prepared by the Investigative Committee of the Russian Federation, suggests creation of the Federal Fund for helping victims.	
Aggravating circumstances (Article 28)	The following circumstances may be taken into consideration as aggravating ones in the determination of the sanctions: a. The offense seriously	Not allowed	These circumstances must not already form part of the constituent elements of the offense. The phrase “may be taken into consideration” means that the Parties shall	✓		Article 63 CC provides for each and every aggravating circumstance stipulated by the CETS 201 that are applied to all sexual offenses against children criminalized by CC.

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	<p>damaged the physical or mental health of the victim;</p> <p>b. The offense was preceded or accompanied by acts of torture or serious violence;</p> <p>c. The offense was committed against a particularly vulnerable victim;</p> <p>d. The offense was committed by a member of</p>		<p>ensure that these aggravating circumstances are available for judges to consider when sentencing offenders, however, there is no obligation on judges to apply them.</p> <p>The Parties shall apply these provisions in conformity with the relevant provisions of the internal law, which permits them to retain some of their fundamental legal concepts.</p> <p>Circumstance (g) relates to particular risk of</p>			

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	<p>the family, a person cohabiting with the child or a person having abused his or her authority;</p> <p>e. The offense was committed by several people acting together;</p> <p>f. The offense was committed within framework of a criminal organization;</p> <p>g. The</p>		<p>recidivism for those who commit sexual offenses against children.</p>			

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
	perpetrator has previously been convicted of offenses of the same nature.					
Previous convictions (Article 29)	Each Party shall provide for possibility to take into account final sentences passed by another Party in relation to the offenses established in accordance with the CETS 201 when determining the sentences.	Not allowed	Reflects the principle of international recidivism. To comply with this provision Parties may provide in their domestic law that previous convictions by foreign courts are to result in a harsher penalty. This provision does not place any positive	x	Draft laws do not address this issue.	

Appendix 1b - Comparison of Russian Criminal Law to the provisions of CETS 201

SUBSTANTIVE CRIMINAL LAW						
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)				Implementation of the CETS 201 provisions in Russian law		
CETS 201 provisions	Text of the CETS 201 provisions	Reservations to the CETS 201	Comments	Criminal Code (CC) and other laws	Draft laws	Comments
			obligation on courts or prosecution services to take steps to find out whether persons being prosecuted have received final sentences from another Party's courts.			

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
General measures of protection (Article 8 §1)	§1. Rights and interest of child victim shall be protected at all stages of the criminal justice process, in particular by: a. recognizing the vulnerability of child victims and adapting procedures to recognize their special needs,	a. and b: This information should be provided in a manner adapted to the age of the child;	✓✗ ²	Draft laws do not address this issue.	CPC provides for victims' rights in general. Article 6 (1) CPC – protection of rights and interests of the victim is the purpose of the criminal procedure. Article 42 (2) CPC – enumerates the rights of the victim. There is an obligation to inform a victim of his or her rights (Articles 164 (5), 268 and 278 CPC). However, these Articles relate to victims of all ages and do not take into account specific needs and concerns of child victims that they

¹ All provisions related to criminal procedural law allow making reservations to them.

² ✓ = OP provision is implemented in the Russian law;

✗ = OP provision is not implemented in the Russian law;

✓✗ = OP provision is partially implemented in the Russian law.

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	<p>including their special needs as witnesses;</p> <p>victims should be informed of their rights and of the services at their disposal; the follow-up given to their complaint, the charges, the general progress of the investigations or proceedings, and their role and the outcome of their cases;</p>				should be able to present and have considered in criminal proceedings.

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	b. informing children of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;				
	c. allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national		✓		Article 42 (2) CPC.

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	law;				
	d. providing appropriate support services to child victims throughout the legal process;		✗	Draft law On Victims of Crimes, prepared by the Investigative Committee of the Russian Federation, envisages the right of child victims to have social help.	CPC does not contain any Article that stipulates providing a child victim with support services, such as services of a psychologist or a legal representative specially trained to protect children against sexual violence, abuse and exploitation.
	e. protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to		✓	Draft Law No. 173958-6 establishes criminal liability for disclosure of relevant information	Article 42 (2) clause 21 CPC – the victim may ask for security measures to be applied towards him or her. Article 278 (5) CPC – witness's identity may be protected during interviews in court.

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	<p>avoid the inappropriate dissemination of information that could lead to the identification of child victims;</p> <p>f. providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;</p>			about the child victim or child witness.	<p>Article 166 (9) CPC – victim’s and witness’s identity may be protected during performance of an investigation action.</p> <p>Federal Law N.119-FZ On State Protection of Victims, Witnesses and Other Participants of the Criminal Procedure dated 20 August 2004 envisages protection of victim’s privacy, as well as protection of victim’s family, and witnesses.</p> <p>Article 16 of this Federal Law - security measures are applied to children based on the written statement of the parents/guardians and only if there is a real threat of murder, violence against a victim, or destruction or damage of his or her property.</p> <p>Article 13.15(3) of the Administrative Code prohibits disclosure of a child victim’s identity and image through mass media and data telecommunications networks. Violation of</p>

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
					this requirement is punishable by confiscation of the data carrier and an administrative fine.
	g. avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.		✗	Draft laws do not address this issue.	Article 6.1 CPC contains general requirement that criminal proceedings shall be carried out within a reasonable time period. It is not specific with regard to the criminal proceedings involving child victims.
Initiation of proceedings (Article 8 §2)	Uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including		✗	Draft laws do not address this issue.	Russian law does not envisage a requirement to investigate the criminal case when the child victim's age is uncertain. At the same time uncertainty of the child victim's age is not listed as a ground to refuse in initiation of criminal proceedings. Moreover, if the age of the victim is uncertain, it must be established

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	investigations aimed at establishing the age of the victim.				via forensic examination which may be carried out only after initiation of criminal proceedings (Article 196 part 5 CPC). While uncertainty of the child victim's age is unlikely to prevent initiation of criminal proceedings in Russia, it is recommended that Russian law expressly reflects the CETS 201 requirement related to the uncertainty of the child victim's age.

Appendix 2a - Comparison of the Russian Criminal Procedural Law to the provisions of the Optional Protocol

CRIMINAL PROCEDURAL LAW					
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution (OP)			Implementation of the OP provisions in the Russian legislation		
OP provisions ¹	Text of the OP provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
Specialization (Article 8 §4)	States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the OP.		✓ ✗	Draft laws do not address this issue.	<p>In September 2010 the Investigative Committee of the Russian Federation established the Institute for Advanced Studies to provide investigators with specialized training related, <i>inter alia</i>, to the investigation of sexual offences committed against children.. By the end of March 2012, 1,033 investigators have been trained in the Institute.</p> <p>Russian judges advance their skills in the Russian Academy of Justice. It is unclear which types of training are provided by the Academy and whether they include special training related to examining sexual offences committed against children.</p> <p>As for a similar training for prosecutors and lawyers involved in the trial proceedings it is also unclear whether such training is available for them.</p>

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
General measures of protection (Article 31)	<p>§1. Rights and interest of child victims, including their special needs as witnesses, shall be protected at all stages of investigations and criminal proceedings by the following:</p> <p>a. victims should be informed of their rights and of the services at their disposal; the follow-up given to</p>	<p>a. and b: This information should be provided in a manner adapted to the age of the child;</p>	✓✗ ²	Draft laws do not address this matter.	<p>CPC provides for victims' rights in general.</p> <p>Article 6 (1) CPC – protection of rights and interests of the victim is the purpose of the criminal procedure.</p> <p>Article 42 (2) CPC – enumerates the rights of the victim.</p> <p>There is an obligation to inform a victim of his or her rights (Articles 164 (5), 268 and 278 CPC).</p> <p>However, these Articles relate to victims of all ages and do not take into account specific needs and concerns of child victims that they should be able to present and have considered in criminal proceedings.</p>

¹ All provisions related to criminal procedural law prohibit making reservations to them.

² ✓ = CEC provision is implemented in the Russian law;

✗ = CEC provision is not implemented in the Russian law;

✓✗ = CEC provision is partially implemented in the Russian law.

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	their complaint, the charges, the general progress of the investigations or proceedings, and their role and the outcome of their cases;				
	b. obligation to inform children and their families when a person prosecuted or convicted of sexual offences against the child concerned is released, where it seems necessary;		×	Draft law No. 14704-6 prescribes relevant provisions. The same provisions are suggested by the Draft Law No. 173958-6.	CPC or other related laws do not contain such provision or any similar provisions.

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	c. the possibility, for victims, of being heard, of supplying evidence;		✓		Article 42 (2) CPC.
	d. providing victims with appropriate support services so that their rights are duly presented and taken into account;		✗	Draft law On Victims of Crimes prepared by the Investigative Committee of the Russian Federation envisages the right of child victims to have social help.	CPC does not contain any Article that stipulates providing a child victim with support services, such as services of a psychologist or a legal representative specially trained to protect children against sexual violence, abuse and exploitation.
	e. victim's privacy (identity and image) shall be protected;	e. and f: the protection of victim's identity, image and privacy extends to the risk of "public"	✓	Draft Law No. 173958-6 establishes criminal liability for	Article 42 (2) clause 21 CPC – the victim may ask for security measures to be applied towards him or her. Article 278 (5) CPC – witness's identity may

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	f. victims, their families and witnesses shall be protected against any risk of intimidation, retaliation and repeat victimization;	disclosure, and these requirements should not prevent this information being revealed in the context of the actual proceedings.		disclosure of relevant information about the child victim or child witness.	<p>be protected during interviews in court.</p> <p>Article 166 (9) CPC – victim’s and witness’s identity may be protected during performance of an investigation action.</p> <p>Federal Law N.119-FZ On State Protection of Victims, Witnesses and Other Participants of the Criminal Procedure dated 20 August 2004 envisages protection of victim’s privacy, as well as protection of victim’s family, and witnesses.</p> <p>Article 16 of this Federal Law - security measures are applied to children based on the written statement of the parents/guardians and only if there is a real threat of murder, violence against a victim, or destruction or damage of his or her property.</p> <p>Article 13.15(3) of the Administrative Code prohibits disclosure of a child victim’s identity and image through mass media and data telecommunications networks. Violation</p>

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
					of this requirement is punishable by confiscation of the data carrier and an administrative fine.
	g. contact between victims and perpetrators within court and law enforcement agency premises shall be avoided.	g. this requirement does not apply if competent authorities establish otherwise in the best interest of the child (when the child wants to attend the hearing) or when the investigations or proceedings require such contact (for example when a confrontation appears necessary).	✓ x	Draft laws do not address this matter.	Article 280(6) CPC – a child victim or a child witness may be interviewed in court in the absence of the offender either on the request of the parties or at the court’s decision. Article 193 (8) CPC - the identification of an offender without the offender’s ability to visually observe the victim, should the investigator decide it is necessary. Meanwhile, the CPC envisages other investigative actions that may involve direct contact between the victim and the offender (e.g. face-to-face interrogation, investigative experiment); however, the CPC does not contain similar provisions requiring avoidance of contact between the child victim and the offender in such cases.

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	§2. Victims shall have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.	Procedures for compensating victims, protective measures.	✗	Draft laws do not address this matter.	The CPC does not contain such provisions.
	§3. Victims shall have access, provided free of charge, where warranted, to legal aid when it is possible for them to have the status of parties of criminal proceedings.	This provision does not afford victims an automatic right to free legal aid. The conditions under which such aid is granted must be determined by internal law.	✗	Draft Law No. 173958-6 envisages compulsory participation of the advocate to provide legal aid to the child victim free of charge.	Article 45 (2) CPC – representation of child victims by their parents/guardians or other relatives (elder brother or sister provided they reached the age of legal competence, grandparents) or an advocate is compulsory. However, the CPC neither specifies that a child victim has a right to free legal aid nor determines conditions for having access to such free legal aid. Interestingly, in the Vologodsk Region child victims have access to free legal aid starting from 1 January 2012 according to the Ruling of the Government of

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
					this Region No.1470 dated 21 November 2011.
	§4. The judicial authorities shall have a possibility to appoint a special representative for the victim when, by internal law, he or she may have a status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the	This provision is created specifically for situation of sexual abuse within the family, where, for example, the holders of parental responsibility are the perpetrators of the offence.	✗	Draft Law No. 173958-6 envisages this provision.	The CPC does not envisage any provisions related to this matter.

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	victim.				
	§5. Groups, foundations, associations or governmental or non-governmental organizations shall have a possibility to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with the CEC.		✗	Draft laws do not address this matter.	The CPC does not envisage any provisions related to this matter.
	§6. The information given to victims in	Refers to written or other materials that must be available in	✓ ✗	Draft laws do not address this matter.	The CPC does not require presenting information in terms that are simple and understandable to a child.

Appendix 2b - Comparison of Russian Criminal Procedural Law to the provisions of CETS 201

CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
	conformity with the provisions of this article is provided in a manner adapted to their age and maturity and in a language that they can understand.	the languages most widely used in the country.			Article 18 CPC - the language of the criminal procedure must be Russian, as well as the official language of the Russian states (<i>sub'ekty</i>). If the victim does not understand any of these languages, he or she may use their native spoken language and shall be provided with the services of interpreter free of charge.
Initiation of proceedings (Article 32)	Investigations or prosecution of offences established by the CEC shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has	Victims may withdraw their complaints because of pressure or threats by the perpetrators of offences.	✓ x	Draft laws do not address this matter.	Article 20 (5) CPC – the sexual offences against children are public prosecution cases and criminal proceedings are initiated by the authorities without a victim having to file a complaint. Article 25 CPC and 76 of the Criminal Code of the Russian Federation (CC) allows criminal prosecution to be closed upon withdrawal of the complaint by the child victim in certain cases. The following conditions should be met in order to close criminal prosecution:

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	withdrawn his or her statement.				<ol style="list-style-type: none"> 1. It is the first offence ever committed by the perpetrator; 2. It is a minor offence or of a medium gravity; 3. The offender reconciled with the victim; and 4. The offender undid the harm caused to the victim. <p>Among the sexual offences committed against children that fall within the category of minor offences or offences of medium gravity are:</p> <p>a. Sexual intercourse committed without use of force against a minor under 16 but over 14 years of age (Article 134 part 1 CC);</p> <p>b. Lewd acts committed without use of force against a minor under 16 but over 14 years of age (Article 135 part 1 CC); and</p> <p>b. coercion of a child of any age to engage in sexual activities (Article 133 part 2 CC).</p>

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CRIMINAL PROCEDURAL LAW					
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)			Implementation of the CETS 201 provisions in Russian legislation		
CETS 201 provisions ¹	Text of the CETS 201 provisions	Comments	Criminal Procedure Code (CPC)	Draft laws	Comments
					If the above four conditions are met, criminal prosecution may be closed upon withdrawal of the complaint by the child victim if offender committed one of the three sexual offences mentioned in the previous paragraph.
Statute of limitation (Article 33)	The statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18 (sexual abuse), 19 (child prostitution) §1.a and b, and 21 (child pornographic performances)	This provision provides that the limitation period continues to run for a sufficient period of time to allow prosecutions to be effectively initiated after the child has reached the age of majority. “Sufficient” means, firstly, that the child must have sufficient	✗	Draft Law № 563944-5 suggests applying the statute of limitation to certain sexual offences committed against children. The Draft law does not apply to child	Article 24 (3) CPC states that criminal proceedings cannot be initiated if the statute of limitation for imposing criminal liability has expired. These statutes of limitation are established by Article 78 CC, and vary from 2 to 15 years, depending on the severity of the crime, and begin to toll from the date the crime was committed. The statutes of limitations for the sexual offences stipulated in Article 33 of the CEC are as follows: a. Sexual abuse offences: - Articles 134 and 135 CC (Engaging in

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	§1.a. and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.	time to file a complaint and, secondly, that the prosecution authorities must be in a position to bring prosecutions for the offences concerned.		pornography and child prostitution offences.	<p>sexual activities with a child without use of force) – from 2, 6, 10 or 15 years;</p> <ul style="list-style-type: none"> - Articles 131 and 132 CC (with the use of force or threats, or abuse of a vulnerable situation of the child) – 15 years; - Article 133 part 2 CC (coercing a child to engage in sexual activities) – 6 years. <p>b. Child prostitution offences:</p> <ul style="list-style-type: none"> - Article 240 CC (involvement into prostitution and coercion to continue prostitution by a child) – 10 years; - Article 127.1 CC (recruitment of a child for the purposes of exploitation in prostitution) – either 10 or 15 years; - Article 127.2 CC (exploitation of a child in prostitution) – either 10 or 15 years. <p>c. Child pornography performances:</p> <ul style="list-style-type: none"> - Article 242.2 part 1 CC (recruiting a child into pornography performances) – either 10 or 15 years. <p>Thus, taking into account that children of any age can be victims of the sexual offences, even the maximum 15 year-term for the statute of</p>

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					limitation does not fulfill the requirement of the CEC, since in certain cases (depending on the age of the child), the victim will not even reach the age of majority (18 years old) by the time the statute of limitation expires.
Investigations (Article 34)	§1. Persons, units or services in charge of investigations are specialized in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources.	Parties could set up interdisciplinary services to carry out investigations, with the aim of enhancing professional competence and or preventing re-victimization of the victim by repetitive procedures. Comprehensive and multi-agency services for victims under one roof (often known as "Children's House")	✓		In September 2010 the Investigative Committee of the Russian Federation established the Institute for Advanced Studies to provide investigators with specialized training related, <i>inter alia</i> , to the investigation of sexual offences committed against children. By the end of March 2012, 1,033 investigators have been trained in the Institute.

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		could be set up.			
	§2. Uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigation.		×	Draft laws do not address this issue.	Russian law does not envisage a requirement to investigate the criminal case when the child victim's age is uncertain. At the same time uncertainty of the child victim's age is not listed as a ground to refuse in initiation of criminal proceedings. Moreover, if the age of the victim is uncertain, it must be established via forensic examination which may be carried out only after initiation of criminal proceedings (Article 196 part 5 CPC). While uncertainty of the child victim's age is unlikely to prevent initiation of criminal proceedings in Russia, it is recommended that Russian law expressly reflects the CETS 201 requirement related to the uncertainty of the child victim's age.
Interviews with the child (Article 35)	§1.a. Interviews with the child shall take place without unjustified delay		×	Draft laws do not address this issue.	The CPC does not envisage such provisions.

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	after the facts have been reported to the competent authorities;				
	§1.b. interviews with the child shall take place, where necessary, in premises designed or adapted for these purposes;		✗	Draft laws do not address this issue.	Article 187 (1) CPC – Interviews are held in premises of the investigation authority. If necessary, interviews may be held in residential premises of victims/witnesses. The CPC does not envisage that premises should be suitable, designed and adapted for interviewing children.
	§1.c. interviews with the child are carried out by professionals trained for this purpose;		✗	Draft Law No. 173958-6 defined “pedagogue” as “an expert in the field of developmental or educational psychology”.	Article 191(1) CPC – interviews of children during investigation are held with the participation of a pedagogue. Child’s parents or guardians have a right to be present during such interviews. Article 280 (1) CPC – interviews of children during court proceedings are held with the participation of a pedagogue. A pedagogue has a right with the court’s permission to ask

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				<p>The compulsory participation of such expert is guaranteed for the child victims under 16 years.</p>	<p>the child victim/witness questions. If a child is under 14, the interview is held with a compulsory participation of his or her parents or guardians.</p> <p>If a child is under 14, participation of such pedagogue in the interview is compulsory. If a child is over 14, then participation of such pedagogue in the interviews depends on the decision of the court or the investigator.</p> <p>Russian law does not define “pedagogue” and does not specify that such person must be specifically trained to interview children. According to legal doctrine a pedagogue may be a person with a pedagogical education, such as a school teacher or a teacher in a pre-school institution. However, even if this person completed a pedagogical education, it does not necessarily mean that s/he was specifically trained to interview children.</p>
	§1.d. the same persons, if possible		✗	Draft laws do not address this	The CPC does not envisage such provision.

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	and where appropriate, conduct all interviews with the child;			issue.	
	§1.e. the number of interviews shall be as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings.		✗	Draft Law No. 173958-6 limits the number of interviews as follows: - an interview may not last longer than 2 consecutive hours or more than 4 hours per day.	The CPC does not envisage such provision.
	§1.f. the child may be accompanied by his or her legal representative or, where appropriate, an		✓		Articles 191 and 280 CPC.

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	adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.				
	§2. All interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by	The main objective of this provision is to protect children of being further traumatized.	✓	Draft Law No. 173958-6 requires compulsory videotaping of the interviews with the child victims and child witnesses.	Article 84 CPC (1, 2) and 189 (4) CPC. These articles apply to victims of any age.

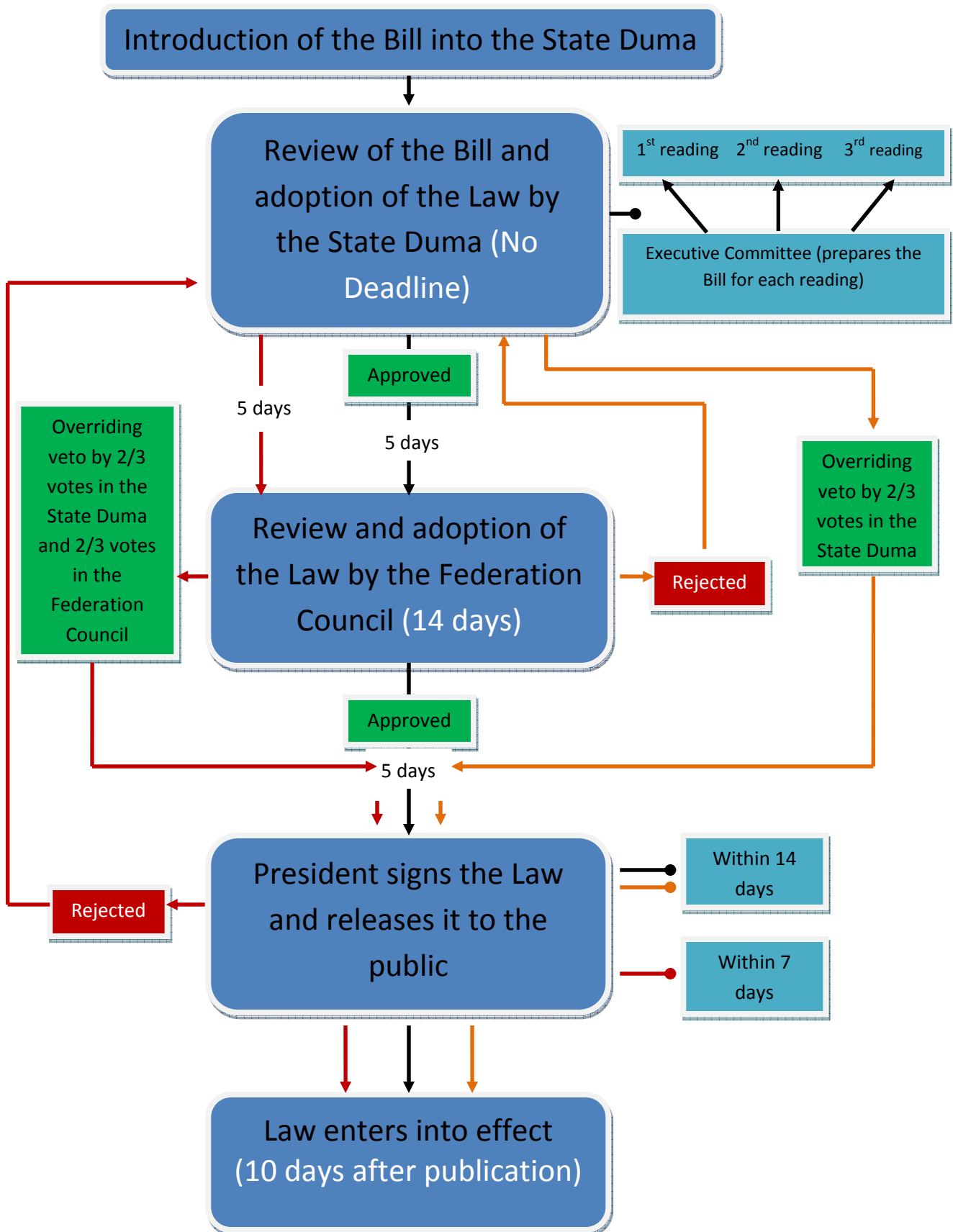
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	its internal law.				
	§3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the measures established in paragraphs 1 and 2 shall be applied pending verification of his or her age.		×	Draft laws do not address this issue.	The CPC does not envisage such provision.
Criminal court proceedings (Article 36)	§1. Training on children's rights and sexual exploitation and sexual abuse of children shall be available for the benefit of all		×	Draft laws do not address this issue.	The CPC does not envisage such provision. Russian judges advance their skills in the Russian Academy of Justice. It is unclear which types of training are provided by the Academy and whether they include special training related to examining sexual offences committed against children.

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	persons involved in the proceedings, in particular judges, prosecutors and lawyers.				As for a similar training for prosecutors and lawyers involved in the trial proceedings it is also unclear whether such training is available for them.
	§2.a. the judge may order the hearing to take place without the presence of the public		✓		Article 241, part 2, clauses 3 and 4 CPC.
	§2.b. the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies		✓		Articles 277 and 278.1 CPC.

Appendix 3 - Legislative Process in Russia



the Bill is approved at each stage

the Bill is rejected by the Federation Council

the Bill is rejected by the President



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