

# Transaction Costs: Prosecuting child trafficking for illegal adoption in Russia<sup>1</sup>

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## Abstract

As primary implementers of laws on human trafficking, law enforcement helps construct how these laws are understood and applied. This article examines how this process has unfolded in Russia by looking at the phenomenon of and debates surrounding child trafficking for illegal adoption. It argues that pre-existing experience with trafficking laws and cultural narratives surrounding adoption have led law enforcement to focus on uncovering evidence of monetary transactions rather than exploitation when prosecuting trafficking cases. This construction of the meaning of trafficking comes with important trade-offs. While the emphasis on transactions helps law enforcement to be successful at prosecuting cases involving selling children for illegal adoption, a focus on transactions rather than exploitation results in a *de facto* prosecution policy that ignores the many forms of exploitation that occur in other trafficking cases.

**Keywords:** child trafficking, prosecution, Russia, illegal adoption, transactions

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# Costes de transacción: perseguir la trata de menores para adopción ilícita en Rusia.<sup>1</sup>

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## Resumen

Como principales ejecutores de las leyes en trata de personas, las fuerzas policiales ayudan a construir cómo se entienden y aplican esas leyes. Este artículo examina cómo este proceso se ha manifestado en Rusia a través de la trata de menores para la adopción ilegal y los debates que se han dado a este respecto. El artículo argumenta que una experiencia previa con la legislación anti-trata y narrativas culturales alrededor del tema de adopción, han conducido a reforzar la ley de persecución de casos de trata en encontrar evidencias de transacciones monetarias en vez de centrarse en la explotación. Esta construcción del significado de trata viene con importantes contrapartidas. Mientras que poner el énfasis en las transacciones ayuda al cumplimiento de la ley en lo que al enjuiciamiento de casos se refiere, esto también deriva en una política de enjuiciamiento *de facto* que ignora las muchas formas de explotación que ocurren en otros casos de trata.

**Palabras clave:** trata de menores, procesamiento, Rusia, adopciones ilícitas y transacciones.

## Introduction

In nearly all countries that have criminalised human trafficking, the emphasis on prosecution has put police, prosecutors and judges on the front lines of constructing how laws on trafficking are understood and applied. Further complicating matters, these laws are not implemented on a blank slate. Cultural conceptions about what trafficking is and pre-existing law enforcement practice impact how these new laws and concepts are incorporated into day-to-day practice. Child trafficking for illegal adoption is one area where these pre-existing conceptions

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matter. Illegal adoption is not included in the international protocol on human trafficking and many countries criminalise it separately.<sup>2</sup> Yet, as Liefsen points out, in discussions on illegal international adoption, there is a ‘marked tendency to identify more and more activities and operations with the trafficking label’.<sup>3</sup> This article uses the controversy over child trafficking for illegal adoption in Russia to show how understandings of trafficking become established over time and how those understandings then impact prosecution policy.

In 2008, an amendment to the Russian law on human trafficking re-established that the activity of buying and/or selling a person constituted trafficking regardless of whether it was done for an exploitative purpose.<sup>4</sup> Consequently, for Russian law enforcement, the key defining element of trafficking has become the transaction—a direct monetary exchange in which the object of sale is a person—rather than the more imprecise concept of exploitation, as outlined by international protocols and conventions to which Russia is a signatory. The characterisation of trafficking as a transaction comes directly out of a domestic narrative and political climate that, since the 1990s, has been focussed on exposing foreign adoptive parents, particularly Americans, who ‘bought’ Russian babies from orphanages for nefarious purposes or harmed them in some way. These narratives are coupled with law enforcement’s experience in implementing a 1995 law on trafficking in minors that focussed almost exclusively on transactions, creating expectations about what forms trafficking takes and experience prosecuting such cases. A focus on transactions has had notable consequences for prosecution policy. On the one hand, it has enabled law enforcement to be quite successful at prosecuting child trafficking for illegal adoption, which is almost always accomplished via a direct monetary transaction. This includes both child trafficking rings and individual parents selling their children, often out of desperation, rather than giving them up to state care. On the other hand, it has resulted in a *de facto* prosecution policy that prioritises cases in which transactions occur, while overlooking the subtler forms of exploitation that can occur in sex and labour trafficking situations where direct transactions rarely take place.

This research is based on a larger project which uses a unique dataset of publically available Russian language news media articles (e.g., television transcripts, newspapers, online reporting), court documents and information from court websites to follow cases of human trafficking through the Russian criminal justice system.<sup>5</sup> Data was collected from December 2003 through December 2013, though cases that remained open past December 2013 were also included with a final update in May 2015. News articles were coded for details about the offence, the offender, the victims and the crime’s progress through the criminal justice system, including a detailed narrative of each case. The data used in this paper include fifty-six incidents of child trafficking for illegal adoption culled from approximately 750 news articles and court documents from seventeen of those cases.<sup>6</sup> Additional information comes from interviews conducted with over 150 law enforcement professionals, activists and experts in Russia between 2007 and 2013.

## Public Sentiment and Domestic Politics on Adoption

When considering how trafficking prosecution patterns have developed in Russia, it is instructive to understand the cultural context into which Russia’s 2003 trafficking laws were passed and implemented. The Russian narrative about child trafficking has been deeply influenced by the significant increase in international adoption that occurred in the post-Soviet period and the sensationalistic media coverage of situations of abuse. These narratives established

<sup>2</sup> The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter Trafficking Protocol), an optional protocol to the UN Convention against Transnational Organized Crime is the international treaty regulating human trafficking. Because illegal adoption is not specified as a form of exploitation under the Trafficking Protocol, there remains a legal grey area regarding whether trafficking has taken place when children are bought, sold, traded or given away for illegal adoption, whether domestically or transnationally. One of the means outlined in the protocol ‘giving or receiving payments or payments of benefits to achieve the consent of a person having control of another person’ could be interpreted as covering illegal adoption, but its meaning has not been elaborated in the protocol or its accompanying explanatory documents. Russia became a signatory to this protocol in 2000 and ratified it in 2004. A T Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, New York, 2010, p. 40, 66–67; D Smolin, ‘Intercountry Adoption as Child Trafficking’, *Valparaiso University Law Review*, vol. 39, 2004, p. 281. However, another international instrument, Article 2 of the *Optional Protocol to the Convention on the Rights of the Child* (CRC) on the sale of children, child prostitution and child pornography, selling children is clearly prohibited. Russia became a signatory to this protocol in 2012 and ratified it in 2013.

<sup>3</sup> E Liefsen, ‘Child Trafficking and Formalisation: The case of international adoption from Ecuador’, *Children & Society*, vol. 22, 2008, p. 213.

<sup>4</sup> Russian law enforcement and Russian law does not interpret ‘buying-selling’ to include transactions arising from forced prostitution or other forced labour. The concept of buying-selling is limited to the sale of a whole person (or parts of a person, if for organs) not his/her services.

<sup>5</sup> For a more detailed description of methodology, see: L McCarthy, *Trafficking Justice: How Russian police enforce new laws, from crime to courtroom*, Cornell University Press, Ithaca, 2015. I do not use official Russian law enforcement statistics due to the difficulty of accessing them and the fact that, even when accessible, they do not disaggregate data by type of trafficking.

<sup>6</sup> Cases are referenced by their database identification number throughout this article. Basic information on all cases is located on the author’s website: <http://people.umass.edu/laurenmc/traffickingjustice>

that child trafficking was closely connected to illegal adoption and identified the buying and selling of children as the core of the problem.

In the aftermath of the breakup of the Soviet Union and the political and economic turmoil that followed in Russia, many children were abandoned by their parents and left in state care. Foreign adoption became a booming business as reports of the plight of Russian orphans made it to the West. Between 1995 and 2013, nearly 87,000 children were adopted out of Russia. Adoptions to the United States made up the biggest percentage of foreign adoptions, with over 58,000 Russian children finding homes in the United States during that period.<sup>7</sup> Russians have never been comfortable with the idea that their babies are being taken by foreigners to be raised outside of Russia, especially amidst a demographic crisis. They are ashamed that the government and society cannot properly take care of its own and disdainful of the idea of commodifying children in what they see as largely transactional family formation.<sup>8</sup> Furthermore, the idea that their children are being taken and raised by capitalist Americans, who are seen as preying on Russia's weakness after its Cold War defeat, has strong resonance in a nation proud of its once powerful position on the world stage. This unease is evidenced by the frequent calls for more extensive regulation and monitoring of the fate of adoptees in their new families, especially following cases of abuse by adoptive parents that feature prominently in the media.

Russians often cite the statistic that twenty Russian children have been killed by their adoptive American parents.<sup>9</sup> This claim is coupled with speculation and rumours of children being taken for abusive purposes (e.g., organ extraction, prostitution, or sexual abuse). Several cases that have come to light over the past two decades have served to confirm these fears. In 2001, Nadezhda Fratti, a dual Italian and Russian citizen was arrested on suspicion of bribing officials over a seven-year period to speed over 1,200 adoptions of Russian children to Italy, for which she received substantial payments. The fact that only five of these children were able to be tracked down led to widespread speculation that they were taken for exploitative purposes, though there was no evidence that anything untoward happened to them.<sup>10</sup> In 2005, American Matthew Mancuso was convicted in the United States of incest and raping his young daughter who had been adopted from Russia; he had also distributed photographs of her on child pornography websites.<sup>11</sup> Despite the fact that side payments and gifts, most often to orphanages and their employees, were very common in adoptions at the time,<sup>12</sup> in all of the cases of adoption-gone-wrong covered by the media, the focus was always on the transactional aspects of the situation. Adoptive parents had bribed someone to get these children or to get around proper screening, otherwise these tragedies could not possibly have taken place.<sup>13</sup> Thus, the focus on the transactional aspect of child trafficking and illegal adoption is part of a narrative that has been in circulation for two decades.<sup>14</sup>

## Child Trafficking for Illegal Adoption in Russia: 2003–2013

Despite beliefs about the purchase of children by foreign adoptive parents, none of the cases of child trafficking for illegal adoption prosecuted by Russian law enforcement from 2003 to 2013 reflect this narrative.<sup>15</sup> Media reports and case documents from this time period show two types of child trafficking for illegal adoption in Russia: organised child-selling and one-off sales of children by parents.

<sup>7</sup> Spain, Italy and France were the next three most popular adoption destinations, but even when combined, they still amounted to less than half of the number of Russian adoptees that went to the United States. See: <http://www.aican.org/statistics.php?region=0&type=birth> Also see: J McKinney, 'Russian Babies, Russian Babes: Economic and demographic implications of international adoption and international trafficking for Russia', *Demokratizatsiya*, vol. 17, 2009, p. 19; and A High, 'Pondering the Politicization of Intercountry Adoption: Russia's ban on American "Forever Families"', *Cardozo Journal of International and Comparative Law*, vol. 22, 2014, p. 497.

<sup>8</sup> See: McKinney; L Khabibullina, 'International Adoption in Russia "Market," "Children for Organs," and "Precious" or "Bad" Genes' in D Marre and L Briggs (eds.) *International Adoption: Global inequalities and the circulation of children*, New York University Press, New York, 2009, pp. 174–189.

<sup>9</sup> This statement was repeated by officials at every conference I attended on human trafficking in Russia.

<sup>10</sup> After five separate trials, she was convicted in 2010 of bribing officials and falsifying documents and received a four-year probationary sentence. N Popova, 'Погашая пауза', *Argumenty Nedeli*, 31 March 2011, vol. 12, no. 253.

<sup>11</sup> Khabibullina

<sup>12</sup> McKinney

<sup>13</sup> In the Mancuso case, this was true. The home visit conducted by the adoption agency took place over the phone and neither his ex-wife nor his daughter was interviewed before he was cleared to adopt.

<sup>14</sup> This narrative is not unique to Russia. For a description of similar scandals in Ecuador, see Liefsen.

<sup>15</sup> The one exception was a case that was largely opened for show after a Reuters news report found that parents of children adopted to the United States, including twenty-six from Russia, had used various Internet bulletin boards to facilitate 're-homing' of the children. The adoptive parents transferred custody rights over the children through private arrangements to people they met in the chat rooms and several of the children ended up in abusive new homes with parents who had already had their biological children removed from their care. See: M Twohey, 'The Child Exchange', *Reuters*, 9 September 2013; A Anishchuk and M Twohey, 'Russia launches criminal inquiry into U.S. child exchanges', *Reuters*, 25 December 2013.

Organised child-selling rings seek out new-born babies to sell, usually to childless couples. Between 2003 and 2013, ten of these were uncovered by Russian law enforcement. They are generally fairly small, but have a clear organisational structure. Each group has at least one member (usually a woman) who is connected to a maternity hospital as a doctor, nurse or midwife or has close connections with one of these people. These medical professionals are in a position to convince women or girls who are giving birth at the hospital to sign away their parental rights. Other members of the group then work as middlemen to falsify paperwork enabling the illegal adoption to take place. In all but one of these situations, the children were new-borns when they were sold, most less than a week old. The prices for children appear to be more or less fixed by the group, sometimes with differential pricing for boys and girls. In a 2006 case from Chechnya, the price for new-born boys was 110,000 roubles (USD 3,928) and for girls, 80,000 roubles (USD 2,857) (#11).<sup>16</sup> By 2012, when another case was discovered there (#420), the price had increased four-fold. New-born boys were being sold for 500,000 roubles (USD 17,857) and new-born girls for between 350,000 and 400,000 (USD 12,500-USD 14,285).

Most of the women who give their babies to these trafficking rings are not paid by the traffickers, but instead did not want to have a child or were already thinking of giving the child up after it was born. In other cases, the babies were obtained through deception. In one case (#420), a young girl gave birth in a Dagestan hospital after which the nurse told her that the child had a congenital disorder when in fact he was perfectly healthy. Consequently, she signed away her parental rights in the hospital and the child was taken by the trafficker and sold in Chechnya. In defending their actions, members of these rings say that they are simply trying to find good homes for unwanted children or helping infertile couples and they insist that they screen the adoptive families carefully to make sure that they have financial stability and can take care of the children. This reasoning does not seem to hold much weight with law enforcement or the courts who hand out harsh sentences in these cases.

In one-off child trafficking situations, parents are looking to sell their child out of desperation. Once caught, the parent (usually the mother) almost always identifies financial difficulties as the reason she sold the child. In one case in the Perm region (#390), the selling parents were unemployed and already had a daughter with disabilities. They planned to use the money from the sale of their three-month-old daughter to buy their own apartment. Another woman in the Kemerovo region had run into trouble with the law and said she needed the money for bribes to get out of being criminally prosecuted for stabbing her boyfriend during a drunken dispute (#111). Some of the sellers are described as alcoholics or drug addicts, many of them have had previous run-ins with the law and almost all of them are unemployed. Fathers are frequently absent and there may be other children at home already. In other cases, children are born to women who are temporarily in Russia for work (legally or illegally) and who are barely subsisting on their own or with the other children that they already support. Russian law enforcement uncovered 46 cases of one-off child trafficking from 2003 to 2013.

In most of these cases, the parent begins looking for a buyer for his/her child among friends, neighbours or the community and only rarely advertises publicly. Once a buyer is identified, price negotiations begin. In several cases, the parent started with a much higher price but quickly came down to meet the potential buyer at whatever price they were offering, at times less than half the starting price. In one example, the buyer, who was cooperating with the police at the time of the purchase, had originally agreed to pay 26,000 roubles (USD 928) for the child but when she showed up to make the purchase, she only had 6,000 roubles (USD 214) in cash on her. In a clear display of how desperate she was for any money at all, the mother took the money and gave her the baby (#509). In contrast to organised groups where the prices are consistent, in the one-off sales, there is wide variation. Children were sold for as little as sixty roubles (USD 2) and as much as 4 million roubles (USD 142,000).

In the eyes of Russian law enforcement, and by extension the Russian state, what makes this criminal is the intent to profit from the sale of the child rather than give it up to a state orphanage facility. Equally important is the view that by selling the child to an unknown buyer who has unclear intentions, the parent is unacceptably risking the child's well-being when compared to the care the child would receive at a state facility. These feelings are echoed in society at large. When these cases are covered in the mainstream media, it is rarely with any empathy for the parents who are usually painted as heartless, immoral demons and drunks rather than desperate people who feel that this is their only choice. Media coverage places particular emphasis on the lack of emotion and indifference shown by the parents at the moment when they hand their child over to the buyer. In one news report about a case in Khabarovsk, the news agency wrote of the mother: 'The policeman met with the woman several times to negotiate the deal...She didn't even once show interest in why a male stranger would buy a little boy.'<sup>17</sup>

In almost all cases of child trafficking for illegal adoption, whether committed by organised rings or by individual parents, the children who were illegally sold were located in Russia and taken into state care or placed with relatives. Because most of these were interdicted by law enforcement posing as buyers, we cannot know whether the children

<sup>16</sup> All monetary values are calculated at twenty-eight roubles to the dollar, the average for the time period under study.

<sup>17</sup> vostokmedia.com, "Добрую" маму из Бикина, которая чуть не продала сына за 300 тысяч осудили на три года', 12 November 2012.

would have been adopted and exploited by unscrupulous foreign parents, but the patterns of sale described here indicate that this is unlikely. Most people looking to sell children looked first within their own social networks and locally, making it unlikely that they would have found international buyers. The timing of interdiction also means that no adoptive parents were pursued. In the only case (#38) in which adoptive parents were mentioned, the Verzhbitskaya case described in more detail below, prosecutors encouraged the adoptive families to come forward to re-do the adoption paperwork properly so they could keep the children (none did). This suggests that the motives of adoptive parents who want to give a baby a loving home are considered less questionable by law enforcement than those of a person who sells babies ‘for profit’.

## Constructing the Legal Meaning of Trafficking

The way that Russian law enforcement has responded to child trafficking for illegal adoption has also been influenced by their experience enforcing a 1995 law criminalising trafficking in minors, which was passed in response to the fears of foreigners buying Russian children. The statute remained in the new Criminal Code when it was passed the following year.<sup>18</sup> Trafficking in minors was defined in Article 152 of the Criminal Code as ‘buying-selling of a minor or the commission of any transactions involving the giving or receiving a minor’ and punishable by imprisonment up to five years. For the eight years this law was on the books, at least 162 cases of this type were registered by law enforcement.<sup>19</sup>

In 2003, three years after signing the Trafficking Protocol, Russia’s legislature criminalised human trafficking with an amendment to the Criminal Code. This statute encompassed adult victims as well as children. Because the new trafficking statute included the aggravating factor ‘trafficking a known minor’, legislators thought it would be redundant to keep Article 152 and so it was eliminated. The trafficking statute was a hybrid of the previous Criminal Code article on trafficking in minors and the definition of trafficking as outlined in the Trafficking Protocol. It kept the term ‘buying-selling’,<sup>20</sup> which is nowhere in the Protocol, but it also included a nearly verbatim recitation of the acts that constitute human trafficking and the purpose of exploitation, as defined in the Protocol.<sup>21</sup> Scholars have suggested that this mixed wording was intended to create an understanding of the new crime that was as close as possible to one that law enforcement would already recognise.<sup>22</sup> The 2003 Russian law defined human trafficking in Criminal Code Article 127.1 as: ‘Buying-selling, or the recruitment, transportation, transfer, harbouring or receiving of a person for the purpose of their exploitation.’ Exploitation is defined as including: using the prostitution of others and any other form of sexual exploitation, slave labour or services, servitude or the removal of organs or skin. Sentences are up to fifteen years for the most severe forms of trafficking.

The change in focus from transaction to exploitation as the defining element of the crime made Russian law enforcement believe that selling children had been decriminalised because most children were sold to families for adoption, and adoption was not outlined as an exploitative purpose in the trafficking statute. This interpretation was supported by a number of legal scholars writing on the new law, many of whom called for amendments to correct this deficiency.<sup>23</sup> Under this interpretation, if law enforcement wanted to prosecute someone for selling a child, they first had to establish that the seller knew that the child would be exploited. Consequently, law enforcement officials who were committed to pursuing these cases had to get creative. In arranging undercover purchases of babies, they would explicitly tell the sellers that they intended to use the child for one of the exploitative purposes outlined in the law, usually for prostitution, begging or organ transplant. If the parents still went ahead with the sale, law enforcement considered this enough to prove intent and would charge the parents with buying-selling for the purpose of exploitation. All successful prosecutions of child trafficking for illegal adoption from 2003-2008 used this strategy.

<sup>18</sup> K Volkov, ‘Торговля несовершеннолетними: Вопросы ответственности и совершенствования практики правоприменения’, *Rossiiskii sledovatel*, vol. 10, 2007, p. 12.

<sup>19</sup> There are three years of missing data (1996, 1998 and 1999). Data for 1995 and 1997 from TS Volchetskaya and Iu Usenko ‘Криминалистическая характеристика преступлений, связанных с похищением несовершеннолетних и торговлей ими’ in *Optimizatsia ugolovnogo sudoproizvodstva: sbornik nauchnykh trudov*, pp. 89–92. Data from 2000-2003 on file with author.

<sup>20</sup> Russia was not the only post-Soviet country to do this. Uzbekistan, Lithuania, Belarus and Georgia all have definitions of trafficking that include buying-selling.

<sup>21</sup> Unlike the Trafficking Protocol, the Russian statute does not include a list of the means by which someone could be trafficked.

<sup>22</sup> I Alikhadzhieva, ‘Недостатки законодательной регламентации уголовно-правовой борьбы с торговлей людьми’, *Ugolovnoe pravo*, vol. 5, 2006, p. 4.

<sup>23</sup> A A Chekalin, ed. *Kommentarii k Ugolovnomu kodeksu Rossiiskoi Federatsii*. 3rd ed. Moscow: Jurait-Izdat, 2006; T Dolgolenko, ‘Уголовная ответственность за торговлю людьми’ *Ugolovnoe pravo*, vol. 2, 2004, p. 23; Alikhadzhieva 2006; K Volkov and D Ivashkin, ‘Торговля людьми в Дальневосточном федеральном округе: попытка криминологической оценки’, *Vestnik DVItI MVD Rossii*, vol. 1, 2008, p. 14.

In one example from the Sverdlovsk region in the Urals (#57), an Uzbek woman tried to sell her four-month-old daughter for 20,000 roubles (USD 714). When law enforcement officials caught wind of the plan, they arranged a fake purchase with an undercover female officer posing as the buyer who told the mother that her baby would be used for begging, a form of exploitation covered by the trafficking law. She did not change her mind and as soon as the money and the baby changed hands, she was arrested. In Novosibirsk, a father sold his ten-day-old daughter for USD 10,000 to undercover law enforcement agents who told him that the baby's kidneys would be removed and given to another child (#205). He was described as showing little interest in the ultimate fate of his child and was arrested after the transaction took place.

In the first several years after the trafficking law was passed, this perceived gap in the law was highlighted in every case of child selling for illegal adoption that came to the media's attention. The most prominent of these was the 2005 case of Ludmila Verzhbitskaya, a Moscow woman who was organising illegal adoptions for pay. She approached friends who worked in abortion clinics to find women who were in late stages of pregnancy and did not want their babies. Rather than having abortions, she convinced the women to give up their babies and falsified their participation in a surrogate mother programme. Verzhbitskaya paid each of the women USD 1,000-1,500 for their participation and then sold their babies to childless couples for USD 20-25,000 each. She sold at least four babies in this way, including one to a German couple, which is what brought the case to the attention of the authorities. Though the case was originally charged under the human trafficking statute, the court reclassified it, instead charging her with falsifying documents and actions contrary to the order presented by law (Article 330—самоуправство). She was fined 350,000 roubles (USD 12,500). One of the police investigators described the difficulties in bringing Verzhbitskaya to justice:

'Unfortunately, for unclear reasons, the statute "Trafficking in Minors" was removed from the Criminal Code. We simply cannot now find a statute to deal with these kinds of people. The justice system has shown that...these activities are not considered to be such serious crimes. The court's decision is a testament to that fact.'<sup>24</sup> Dissatisfied with her punishment, the prosecutors brought additional charges for kidnapping for which she was eventually convicted and received a seven year probationary (non-prison) sentence.

Despite the fact that the 2003 trafficking law could have been read to make buying-selling a crime on its own with the comma after 'buying-selling' being interpreted more like a semicolon, law enforcement agents like the one quoted above insisted that their hands were tied in cases of illegal adoption because there was no exploitation. The only other Criminal Code provision that could be used for these types of crimes was 'illegal adoption' (Article 154) but it required that the activity take place multiple times or with the intent to profit.<sup>25</sup> Lawmakers were not pleased at what they considered a misinterpretation of the statute. In response to accusations by law enforcement that the Duma had *de facto* legalised child trafficking, Pavel Krasheninnikov, head of the Duma's Legislative Committee accused law enforcement of incompetence:

There has been no legalization of child trafficking in our country....If earlier there was a 'partial' law, Article 152 (trafficking in minors), now there is a broader and more general statute, Article 127.1 (human trafficking) which provides for harsh punishment. The number of the statute has changed, but not its content, the statute reads 'human trafficking' so if there is a fact of trafficking, a criminal case should be opened. And buying-selling, that's separate. What is written after that should be read as 'or recruitment with the goal of exploitation, or transfer with the goal of exploitation, or harbouring with the goal of exploitation....' It is a legal technicality. And those who don't know that ought to relearn the basics. It's not a problem with the Criminal Code, but with the Procuracy [prosecutor's office].<sup>26</sup>

Ultimately, law enforcement's wishes carried the day. In 2008, an amendment was made to the Criminal Code article on human trafficking to specify that buying-selling or any transaction involving a person could stand alone as a crime and did not require law enforcement to prove it was done for the purpose of exploitation. During the hearing on the amendment, Krasheninnikov stated: 'From the academic point of view, "with the purpose of exploitation" is not a required element [of the crime], but in practice, we have gone down a path where implementers of the law always look for transactions with the goal of exploitation.'<sup>27</sup> Additionally, the aggravating factor of trafficking someone 'in a dependent state' was added to cover babies. Deemphasising the 'purpose of exploitation' as a required element of the trafficking crime was a significant departure from the internationally recognised definition of human trafficking which sees exploitation as *the* defining element of the crime.

<sup>24</sup> B Koralev, 'Младенцы под раздачу', *Vremia novostei*, 30 November 2005.

<sup>25</sup> Punishment for the offence can be a fine up to 40,000 roubles or equivalent to three months' pay, community service up to 350 hours, corrective labour up to a year, or arrest for up to six months. It is notable that in this entire period, not a single case was convicted under this law, showing it was not considered by law enforcement to be an adequate or useable substitute.

<sup>26</sup> B Koralev, 'Два года на два слова', *Vremia Novostei*, 18 March 2008.

<sup>27</sup> Transcript of Parliamentary Hearings on 19 March 2008, State Duma of the Russian Federation.

## Impacts on Prosecution Policy

Despite its departure from the predominant international understanding of trafficking, the 2008 amendment more closely corresponded to what Russian law enforcement already recognised as constituting the heart of the trafficking crime—the transaction. Consequently, they have been emboldened to focus primarily on transactions in all types of trafficking cases. In cases of child trafficking for illegal adoption, this strategy has brought them great success. After 2008, almost all cases of child trafficking charged under the human trafficking laws had successful convictions. In 2010 four of five were convicted, in 2011 six of six, and in 2012 ten of twelve, with one still ongoing at the time of publication. In 2013 these figures were four of seven with three still ongoing.<sup>28</sup> The charges in all the cases include the addition of two aggravating factors, ‘trafficking a known minor’ and trafficking those ‘in a dependent state’ which subjected them to sentences in the three to nine year range.

For all child trafficking cases, sentences have been significant, despite many defendants accepting plea bargains.<sup>29</sup> Sentencing information was available for forty-one defendants in thirty of these cases. Of them, 73% were sentenced to prison time ranging from two to ten years (average 3.7). The other 27% of defendants received probationary (non-prison) sentences ranging from three to five years (average 3.6). Especially in the cases of desperate parents selling their children, court documents showed that the justice system had little sympathy for mitigating factors of poverty, single parenthood and/or unemployment. Though Russian law allows judges to take into account difficult life circumstances, pregnancy or having a young child at home, among other things, as mitigating factors in sentencing, they showed little inclination to do so.<sup>30</sup> For example, in one case a migrant couple from Uzbekistan were living in basements and sleeping on the streets while trying to support their children in Uzbekistan when the woman gave birth and they decided to sell the baby. Despite consideration of these circumstances, the judge still sentenced each of them to four years in prison (#333).

However, a focus on transactions comes with important trade-offs. Practically speaking, the strategy of focussing on a transaction can be difficult. Without information that a transaction of this type will actually occur, police cannot go undercover to capture it. This strategy requires significant proactive police work, something that is often too resource intensive for departments. More broadly, a focus on transactions elevates the importance of child trafficking at the expense of other forms of trafficking in which straightforward transactions are more the exception than the rule. In labour and sex trafficking cases, it is rare that victims become victims through a monetary transaction. Forms of recruitment are significantly more varied and include false employment offers, force, coercion and, on rare occasions, kidnapping. The transaction element has become so important to law enforcement that agents rarely identify any situation as trafficking if there is not an element of buying and selling. As one law enforcement agent in the city of Vladivostok told me about domestic sex trafficking in 2008, ‘If there’s no selling and no force involved, it’s not trafficking.’ A judge in Khabarovsk echoed this point by describing how the transaction made up a key element in trafficking prosecutions: ‘With human trafficking [cases], you have to find the seller, the buyer, the victim and question all of them and show the transactions.’ Between 2003 and 2013, almost all of the cases of domestic sex trafficking that were prosecuted in Russia involved a transaction, while an equal number of cases involving very serious sexual exploitation but no transaction were instead prosecuted under other statutes.<sup>31</sup>

It is also important to note that focussing on the transaction is a pragmatic choice for law enforcement. Human trafficking cases are complicated to investigate, requiring significant time, resources and training.<sup>32</sup> Many law enforcement agencies tend to shy away from committing these resources, especially given that trafficking laws are often written unclearly and there is uncertainty about how they will be understood by other actors in the criminal justice system.<sup>33</sup> With a transaction, law enforcement needs only to capture the moment that the money and the person change hands on video and the conviction is virtually guaranteed. In one case in the Kaluga region (#333) the sentencing document showed that only three pieces of evidence were needed to prove the case: the video of the transaction, the marked money used in the exchange, and the child’s birth and vaccination certificates, which were

<sup>28</sup> In 2009, the first year after the change, I could not find outcomes for three of the six cases opened. In the others, two cases had defendants who were convicted of human trafficking, and one was closed because the defendant was sent for psychiatric treatment.

<sup>29</sup> The guilty plea, in Russian ‘special procedure’ (особы порядок), has been available since 2003 and allows the defendant to agree to the charges against him or her and cooperate with the investigation and in exchange receive a sentence of no more than two-thirds the statutory maximum and an abbreviated court hearing (Criminal Procedure Code Articles 314–317).

<sup>30</sup> Criminal Code Article 61.

<sup>31</sup> McCarthy. All forms of trafficking that are prosecuted under Article 127.1 (human trafficking) and 127.2 (use of slave labour), along with several other trafficking-like crimes (i.e. recruitment into prostitution; organising prostitution; distributing child pornography), are usually considered by the Russian government as trafficking for the purposes of reporting (i.e. for the annual United States Department of State’s *Trafficking in Persons Report*).

<sup>32</sup> A Gallagher and P Holmes, ‘Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the front line’, *International Criminal Justice Review*, vol. 18, 2008, p. 318.

<sup>33</sup> McCarthy.

given to the undercover officer at the time of the sale. Exploitation, on the other hand, is the end point of a series of other discrete actions (recruitment, transportation, transfer, harbouring, receipt) each of which have to be documented and proven along with the fact that the victim was exploited. This is inherently more complicated and resource intensive. As an investigator in Moscow told me in an interview in 2012, police strategy has increasingly focussed on undercover purchases of victims to uncover all types of trafficking precisely because it is so much easier to get a conviction if there is video evidence of the transaction. Additionally, focussing on the transaction helps clear cases quickly and with assured outcomes. Russian law enforcement agents and departments are assessed primarily by quantitative indicators that are aggregated up the law enforcement hierarchy. Case clearance rates, which are compared from year to year, are the most important statistic.<sup>34</sup> Judges face similar pressures.<sup>35</sup> When caught in the act and faced with overwhelming evidence against them, many traffickers decide to plead guilty, guaranteeing an abbreviated investigation, shortened court procedure and, most importantly for law enforcement, a case clearance.

## Conclusion

Russian law enforcement's pursuit of trafficking cases has been driven by a focus on the buying and selling of a person rather than the more amorphous and difficult-to-apply concept of exploitation that is the focus of international definitions. This fits well with cultural conceptions of child trafficking as deeply connected to illegal adoption and also fits with law enforcement's previous experience of using the law on trafficking in minors. Though the 2003 trafficking law used language that took this previous practice into consideration, it changed the focus just enough for law enforcement to believe that selling children had been legalised. When the law was amended in 2008, it again elevated buying and selling—the transactional element—to an equally important place in the legislative definition of human trafficking.

Ultimately, the narrow focus in Russia on trafficking as a transaction has had positive results in combating illegal adoption but has limited the attention law enforcement pays to the wider array of trafficking situations present on Russian soil. Understanding the genesis of law enforcement norms and practices surrounding human trafficking can help clarify how patterns of prosecution develop and are reinforced over time. As long as prosecution remains the primary focus of anti-trafficking policies, law enforcement will continue to define what anti-trafficking policy means on the ground. As this article has shown, these entrenched patterns of practice have significant strategic impacts, privileging certain groups and certain types of trafficking over others, regardless of what the laws on the books state.

Though not related to prosecution policy *per se*, the treatment of desperate parents selling their children as criminals raises important policy questions about the state's responsibility for creating social policies and programmes that might offer support to families who feel that selling a child is the only way to survive. More attention to social programmes that deal with addiction, homelessness, unemployment, gender discrimination in hiring, and provision of kindergarten spaces and other child care programmes could go a long way in helping prevent many child trafficking situations from happening at all. Instead of developing policies to support families in difficult situations, the Russian government has focussed almost exclusively on stopping foreign adoptive parents from 'buying' Russian babies, a narrative that has stubbornly persisted in spite of the reality on the ground. Stories of abuse and neglect are highlighted, while stories of successful adoptions, both foreign and domestic, are not. This discourse has gone hand in hand with a gradual shuttering of international adoption and greater encouragement and incentives for Russian families to adopt domestically.<sup>36</sup>

<sup>34</sup> McCarthy; E Paneyakh et al. *Pravookhranitel'naiia deiatel'nost' v Rossii: Struktura, funkcionirovaniie, puti reformirovaniia, chast' 1: Diagnostika raboty pravookhranitel'nykh organov RF i vypolneniya imi politseiskoi funktsii*. St. Petersburg: European University at St. Petersburg Research Institute for the Rule of Law, 2012; E Paneyakh, 'Faking Performance Together: Systems of performance evaluation in Russian enforcement agencies and production of bias and privilege', *Post-Soviet Affairs*, vol. 30, 2014, p. 115.

<sup>35</sup> P Solomon, Jr., 'Accountability of Judges in Post-Communist States: From bureaucratic to professional accountability' in Anja Seibert-Fohr (ed.), *Judicial Independence in Transition*, Springer, New York, 2012, pp. 909–36.

<sup>36</sup> For discussions on the history of Russian adoption laws and bilateral agreements between Russia and other countries, see High 2014; C Allen, 'The US-Russian Child Adoption Agreement: An end to failed adoptions?', *Fordham International Law Journal*, vol. 35, 2012, p. 1690; M Hora, 'A Standard of Service that All Families Deserve: The transformation of intercountry adoption between the United States and the Russian Federation', *Brandeis Law Journal* vol. 40, 2002, p. 1017; L Martin, 'The Pavlis Murder and Why Russia Changed the Russian Family Code and Policy on Foreign Adoptions', *Penn State International Law Review*, vol. 26, 2007, p. 709.

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