



Elimination of Child Labor: Standards and Role of International Organizations

By

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EXECUTIVE SUMMARY

The current thesis by using comparative analysis of national legislation, analysis of international law, the case law of international bodies, and the activities of the international organizations in Russia and Ukraine will address several questions: concept of child labor, causes and scope of child labor in Russia and Ukraine, international and national child labor standards and the ways the international organizations affect the state's compliance with the international standards.

The thesis will argue that participation in the international organization affects the state compliance with international standards, although the ability of the international organizations to force the country to comply is different. By reviewing the case law of the international bodies set to observe the countries' compliance with the international standards, like the Economic and Social Council, Committee on the Rights of the Child, and European Committee on Social, I will conclude that conventional international bodies in the field of child labor provide relatively weak enforcement mechanisms, because the state compliance with their recommendations depends essentially on the will of the state. I will argue that although the Council of Europe has created a strong international regime because of participants' strong commitment into it, still this organization is not free from the main disadvantage of conventional international organizations – inability to act on the national level in case of state's unwillingness to cooperate. The International Program on Elimination of Child Labor (IPEC), established by the International Labor Organization, was created as a technical body to foster the countries' compliance with the international standards on child labor, but it managed to create such mechanism, that renders significant results in fostering the countries compliance. Such effectiveness comes from the

IPEC capacity to directly work with the instances of child labor (none of the mentioned conventional international bodies have such capacity) and its ability to engage into the national legislative process, therefore affecting the legislation. The IPEC success in advancing the national legislation is explained by the IPEC bottom-up lobbying style, which targets creation of the grass rooted legislative initiatives.

LIST OF ABBREVIATIONS

CLMS – Child labor monitoring system

EU - European Union

GDP – Gross domestic product

GNI - Gross national income

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

ILO – International Labor Organization

IPEC – International Program on Elimination of Child Labor

NSCL – National Child Labor Statistics

UN – United Nations Organization

UNICEF - United Nations International Children’s Fund

1. INTRODUCTION

Scope of the problem

According to the data of the International Labor Organization (hereinafter – the ILO), an organization within the structure of the United Nations (hereinafter – the UN) which specifically targets the elimination of the child labor as one of its objectives, there is no country in the world completely free from child labor.¹ Though it is true, that child labor happens much more often in Asia and in Africa (61% and 32% respectively² out of all instances of child labor) and the European share in the global child labor is no more than 1%,³ it is also true that 2.4 % of Ukrainian children (around 165 thousand) engage in child labor.⁴ Although there is no statistical information on Russia, it can be predicted that there are about one million of child laborers, the most spoken of which is child street labor. However, due to the undeniable supremacy of Russian and Ukrainian economic development over the majority of the African and Asian countries and debilitating consequences of the child labor for the child's health and development, and countries' human capital and poverty level, even such “small” percentages are alarmingly high.

The ILO suggests that there are three main factors that make work dangerous for the children: task it involves, the tools that the children use while performing the job, and conditions.⁵ Excessively heavy tasks and tools cause physical strain, fatigue and musculoskeletal disorders.⁶ It should be noted that in determination of the work danger an adult should not be a comparator, since children have different needs, most important of which are their immaturity, growing process and need for education. Therefore, even

¹ A Future Without Child Labor. Global Report Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work, 2002. Geneva: ILO. P. 21.

² Goulart, Pedro. Child Labor and Educational Success in Portugal. *Economics of Education Review* 1, no. 5: 575-587, 2008. P 580. Available at www.ebsco.com.

³ A Future Without Child Labor, p. 21.

⁴ "Ukraine: Child Labor Data Country Brief (Country Profile)." Geneva: ILO, 2008. P. 4. <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=7806> (last visited on 06.01.2009).

⁵ A Future Without Child Labor, p. 11.

⁶ "Report Vi (1) Child Labor: Targeting the Intolerable. Sixth Item on the Agenda." In *International Labor Conference. 86th Session*. Geneva: ILO, 1998. P.13.

seemingly harmless for the adults jobs can be physically and morally dangerous for children. Children are engaged in the types of work that can be considered dangerous for the adults. For instance, about 40% of Ukrainian laboring children work in agriculture, where they are adversely affected by climatic exposure, heavy work, toxic chemicals, and accidents from sharpened tools and motorized equipment. Begging, the second commonest occupation for the Moscow working street children can expose them to the contentious diseases, extreme cold and hot weather conditions, since they work outside for long hours. Children that have been reported to be working in the mines in Ukraine in Donetsk and Kherson regions⁷ are exposed to high humidity, extreme temperatures, harmful dusts, gases which can cause respiratory diseases.

It is established that children who start working at early age, have much lower level of education, and thus, have lesser opportunities to improve their social status in the future,⁸ and enrich the country work force with the skilled workers. Therefore child labor is not only dangerous for the children themselves, but also for the society in general, because it hinders social development and reinforces poverty. As the ILO has put it, “child labor does not lift any child out of poverty. Rather, it imprisons them in the very trap of poverty in which they are caught. A working child may earn a small wage and it may be enough to help a family to survive. But a small wage cannot change their world and their future the way education has the potential to do.”⁹

Concept of child labor

⁷ UKRAINE: CHILD LABOUR IN MINING. Data issued 07.07.2005. Available at http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Broadcast_materials/Video_News_Release/lang--en/WCMS_067902/index.htm (last visited on 06.08.09).

⁸ Lopez-Calva, Luis F. Child labor: Myths, theories and facts. *Journal of International Affairs* 1: 59-73, 2001. P. 60. Available at www.ebsco.com (last visited on 1.10.09).

⁹ Out of Work and Into School. Our development Challenge. The Project Experience 2001-2006. The ILO; Geneva. P. 14. Available at <http://www.ilo.org/public/english/region/asro/bangkok/apec/index.htm>. (last visited on 5.08.09).

Since the UN Convention on the Rights of the Child in the article 1 admits that “...a child means every human being below the age of eighteen years unless, under the law applicable to the child, an age of majority is attained earlier”, there is an obvious temptation to call any work done by children a child labor. However, following the logic of the international conventions, child labor is a more sophisticated concept.

For the purpose of the current thesis the concept of child labor embraces work that harms physical, mental or moral well-being of a child. The worst cases of the labor that harms child’s physical, mental or moral well-being are called unconditional worst forms of child labor. They include trafficking, debt bondage, forced recruitment of children in armed conflict, prostitution, pornography and involvement into illicit activities. The current thesis excludes from its scope unconditional forms of child labor (more on unconditional forms of child labor in the Chapter II). The current thesis won’t consider working activities of the children over the age of compulsory education either.

Internationalization of child labor standards and research framework of this master’s thesis

For a very long time, child labor standards have been considered to be a national issue, while many states viewed child work as an intimate matter between the parent and the child, because the children were mainly working at the family’ farm or business under parental surveillance. At that time child labor was not considered to be a problem, because it did not endanger child’s health and moral and it was mainly to teach a child necessary life skills. However, a perception of child labor has changed during industrialization in Great Britain in the middle of 19 century, because children started to engage in a dangerous business of working in the factory. Moreover, since children provided cheap labor, the employers were much more willing to hire them rather than the adults. Therefore, the bread-winners of the families were left without work. This forced the labor unions to start fighting against child labor in order not to impoverish further the

poor families of the workers. Moreover, a detrimental affect of exploitative working factory conditions on children became visible.¹⁰ The labor unions pushed the states to adopt the legislation that banned the use of child labor at the factories. At this time child labor has remained to be a national, rather than international concern.

The creation of the ILO has changed the situation. This organization started to deal with child labor by adoption the Minimum Age Convention (Industry) in 1919,¹¹ which was followed later by the other ILO conventions, like Convention # 5, which stated that “children under the age of fourteen should not be employed in any public or private undertaking” and Conventions #7, 10, 15, 33 and 59, which sought to establish the minimum age for the children working in the fishing industry and agriculture. The biggest disadvantage of the conventions is that they do not establish effective enforcement mechanism, leaving this domain to the will of the country. Although one could argue that these conventions are no more than the wishful thinking, it seems that the main achievement of the conventions is that they brought international attention to the topic of child labor and underlined the importance of this problem.

In the second half of the XX century the international documents on the child labor (the International Covenant on Social, Economic and Cultural Rights and the Convention on the Rights of the Child) have been adopted on the United Nations level. These conventions had an enforcement mechanism. Therefore, my thesis is concerned with the question whether participation in the international organizations makes any differences in the country’s legislation and implementation of child labor provisions.

¹⁰ Sakurai, Riho. Child labor and education. A Working Paper for Education for All Global Monitoring Report 2007 Strong Foundations: Early Childhood Care and Education. UNESCO, 2006. P. 3. Available at <http://unesdoc.unesco.org/images/0014/001474/147485e.pdf> (last visited on 12.10.09).

¹¹ ILO Conventions and Recommendations on Child Labor. Available at <http://www.ilo.org/ipec/Action/Legal/Conventions/lang--en/index.htm>. (last visited on 27.04.09).

Research statement. This paper argues that participation in an international organization positively affects countries' compliance with international labor standards on child labor. I will also claim that although the ILO was not able to establish even the reporting procedures for revision of the states' compliance, it elaborated a more effective mechanism through establishment of the International Program on Elimination of Child Labor (hereinafter – IPEC)

Territorial scope. Two countries have been chosen for the comparison: Russia and Ukraine. The main factors that affected the choice were: absence of relevant research on child labor in these countries, accessibility of resources in both Russian and Ukrainian languages, similarity of the legislation, common historical past and social structure. These factors make comparison of Russia and Ukraine appropriate.

Research questions. While covering this topic it will be necessary to answer the following questions:

- What is the scope of child labor in Ukraine and Russia?
- What are the causes for child labor in general and are they different in Russia and Ukraine?
- What are the international core labor standards on child labor? Which international treaties regulate this sphere? What kind of enforcement mechanism do these treaties suggest? Is it effective?
- What are the national labor standards in regards to child labor? Are the national standards in compliance with the international standards?
- How is the IPEC/ILO approach of fighting against child labor different from the approach, elaborated by the other international bodies, established by the international treaties?

Methodology. This task will be accomplished through comparative analysis of the legislation, review of the international standards on child labor and analysis of the

case law of the international bodies established to observe compliance with the international standards, and analysis of the work of the ILO IPEC (International Program on Elimination of the Child Labor) in Ukraine and Russia. The legislation of two countries will be compared with the focus on: a) legal age, when a child can start working, b) type of labor a child can do, c) legal requirements for concluding contracts with children below age of compulsory education, d) enforcement mechanisms of child labor standards, including bodies responsible for enforcement and administrative/criminal responsibility for violation of the labor norms on child labor.

These areas will be addressed through analysis of relevant literature, governmental and international reports and statistics on children's affairs, legislation (with particular focus on labor code), evaluation of existing ILO projects on child labor in Russia and Ukraine.

My thesis will be structured in the following way: the first chapter will describe in detail the scope of the child labor (approximate number of working children, gender, age distribution, fields and activities the child labor is mainly used, etc.) After admitting that child labor presents an urgent problem for both countries, I will elaborate on the causes of child labor. Due to the absence of relevant studies on the causes of child labor in Russia and Ukraine, I will apply experience of the other countries, presuming that causes have universal character and therefore applicable for all the countries. The following causes and factors will be examined: poverty, demand for child labor and lack of education.

The second chapter will deal primarily with national standards in Russia and Ukraine. The third chapter will elaborate on the international documents, like International Covenant of Economic, Social and Cultural Rights, Convention on the Rights of the Child, and the Revised Social Charter. The chapter will conclude that despite the fact that Council of Europe has created a strong international regime, it is still

has a main flaw that all conventional international organizations encounter – inability to force the state to act when the state does not want to.

The fourth chapter will analyze the efforts of the ILO in elimination of child labor in both countries. It will show that the ILO has developed such approach that targets direct interventions to the instances of child labor (like child labor identification, withdrawal and rehabilitation). Since IPEC also aims at creation of the enabling environment, where all the necessary laws are in place, national officers are able to enforce them and poverty of the household would not push the children to work in expense of their schooling, the forth chapter will show these efforts as well.

2. CHAPTER I. Child Labor: an Overview of the Problem

2.1. Child Labor Problem in Ukraine and Russia

Ukraine. Ukraine, unlike many former Soviet countries, has sufficient information on the scope of child labor primarily due to the ILO initiative, called the Statistical Information and Monitoring Program on Child Labor (SIMPOC), which assists countries in collection, processing and analysis of child labor relevant data.¹² Within the SIMPOC the national child labor statistics is compiled (hereinafter - the NCLS) in one report, which is called the Child Labor Data Country Brief. This report on Ukraine was issued in 2008, although it uses the statistics of the National Child Labor Survey (hereinafter – the NCLS), which was conducted in 1999, and revealed that 2.4 % of Ukrainian children (167 thousand) engage in child labor, while 350 thousand were doing the work which could be not identified as child labor because it is not dangerous for the child's health, morals and development. Though the NCLS revealed that among working children the majority are of the age of 15-17 (52%), 24 % of children of the age 13-14 were also working (those children can do only light work by international standards), while approximately the same percentage of children below this age (and therefore, prohibited from working) were engaged in work, which gives about 78 thousand illegally working minors of the age below 13 in Ukraine.¹³

As regarding the time of the laboring activities, the child of the age 13-14 is allowed to do only light work, which should not be interfering with education. For the

¹² International Program on the Elimination of Child Labor. International Labor Office. Available at <http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=7809> (last visited on 3.08.09).

¹³ Domestic chores is the work that are usually done at home to sustain household, like cleaning, cooking, etc.

work not to be interfering with education, the work should be short (not more than two hours a day) and simple. The establishment of the age threshold for light work suggests that work of the children below this age should be even shorter and simpler (more information on this will be provided in the chapter II). The NCLS showed that the majority of working children (73%) worked on average up to five hours per day over a five-day working week. 27% of children were engaged in labor even more and 6% of the total worked more than 8 hours a day.¹⁴ Analyzing this information it could be safely concluded that such work clearly interferes with at least educational component of the light work definition and therefore is not light.

Regarding the simplicity of the work, the work performed by the majority of the children is very far from being simple. In the alarming number of cases this work is even dangerous for health, because children engage in the low skilled physical work. The NSCL revealed that 42% of children complained about hazardous working conditions, among which were heavy physical labor, heavy work load (physical and nonphysical overload, excessive concentration, eye strain, absence of lunch and other breaks), and excessive dust, fumes and noise. These working conditions were reported to have adversely affected more than 4% of working children of the age 10-12 by causing them job-related diseases.¹⁵ The unreported effect of the working conditions seems to be even worse.

In Ukraine child labor often happens in dangerous working environment. For instance in the group 5-9 years agricultural share is 56.8%, when in 10-14 years – 48.6%.

¹⁶ Although not all agricultural work presents danger for the child, the introduction has shown that agricultural work can be dangerous to the child's health, because it involves

¹⁴ Statistics Bulletin, Child Labor in Ukraine. International Labor Organization and State Statistics Organization Committee of Ukraine. Kyiv, 2001. P. 4.

¹⁵ Statistics Bulletin, Child Labor in Ukraine, p. 4.

¹⁶ Ibid.

heavy work, toxic chemicals, and could result in accidents from sharpened tools and motorized equipment. It can also expose children to extreme sun, cold or wind. Another alarming pattern is child's involvement into industry in Ukraine (5.9%), because in industry children might face heavy workloads, extreme noise and dust. The above outlined dangers do not suggest that all children involved in industry or agriculture are exposed to them; I merely suggest children could be endangered; therefore their work in these occupations should be carefully regulated.

Some reports show that child labor in Ukraine is also used in illegally operated mines.¹⁷ As the video shot by the ILO suggests that in 2005 there were about 8000 illegal mines in Ukraine in Donetsk region, where children work side-by-side with parents in harmful conditions without ventilation and even primitive safety arrangements (like emergency exists).¹⁸ In services within the age group 5-9 years 37.3% are engaged, while among 10-14 years - 45.5%.¹⁹ Although the Ukrainian survey has not revealed the types of services performed by children, it could be suggested that child labor is used in vending in the streets, post circulation, gardening the property, cleaning, advertisement (leaflets spread or wearing "sandwich" ads). Such work exposes them to chemical substances, danger to their health or life, climatic exposure, heavy workload.

¹⁷ *Ceacr: Individual Observation Concerning Minimum Age Convention, 1973 (No. 138) Ukraine (Ratification: 1979).* 2008. Available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=10285&chapter=6&query=%23year%3D2008+%2B+Ukraine%40ref&highlight=&querytype=bool&context=0> (last visited on 9.01.2009).

¹⁸ UKRAINE: CHILD LABOUR IN MINING. Data issued 07.07.2005. Available at http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Broadcast_materials/Video_News_Release/lang--en/WCMS_067902/index.htm (last visited on 06.08.09).

¹⁹ "Ukraine: Child Labor Data Country Brief (Country Profile)." Geneva: ILO, 2008. P. 5. <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=7806> (accessed 06.01.2009).

Table 1. Types of Labor Activities to Which 5-9 Years Old Ukrainian Children are Involved (According to the Child Labor Data Country Brief, 1999)

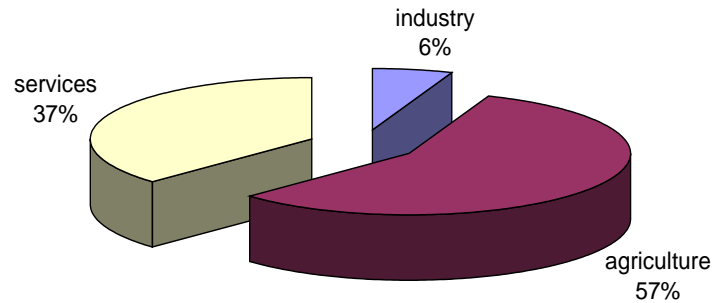
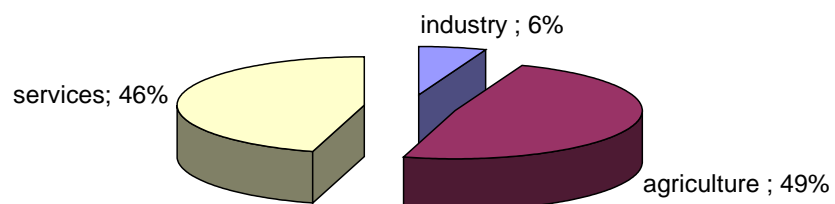


Table 2. Types of Labor Activities to Which 10-14 Years Old Ukrainian Children are Involved (According to the Child Labor Data Country Brief, 1999)



It also interesting to see that number of children working in the industrial sector is constant (disregarding the age group) – around 6%, but boys are more likely to be working in industrial sector, while girls are more than boys involved in agricultural

sector (61.6 % of girls and 42.7 % of boys). Girls also represent a smaller proportion in services (33.4 % versus 50.9 % of the boys). ²⁰

Russia. Russia unlike Ukraine, did not participate in the SIMPOC project of the ILO. Therefore, there is no ILO information on the Russian scope of child labor. There is no governmental information on this either. Although the statistics of the Service of Employment provides that in 2006 the labor inspectors found only 5500 violations for children of all age groups, the labor inspections do not inspect the informal sector, where the majority of the violations happen. Therefore, the real figures of violations of child labor are much higher.

As it has been said before, there is no national data on working children, not even on working street children, where the concept of working street children embraces children that engage in the working activities in the streets. The term “working street children” should be differentiated from notion of street children, because the latter involves the children who live in the streets. The working street children often have a house and a family;²¹ therefore they are not street children per se.

²⁰ Ukraine: Child Labor Data Country Brief (Country Profile), p. 2.

²¹ In-Depth Analysis of the Situation of the Working Street Children in Moscow. ILO: Moscow, 2002. P. 25. Available at http://www.ilo.org/public/english/region/eurpro/moscow/areas/ipecc/mos_report.pdf (last visited on 4.10.2009).

Although the problem of street children receives political attention, such attention is not enough, because the citizens and even the employers of St. Petersburg or Moscow do not consider this problem severe enough.²² There are also alarming underestimations of the dangers of the early child labor. For instance, public perceives child labor as something good and beneficial for the child partly due to linguistic phenomenon, since Russian language does not distinguish between labor and work, calling everything “work” (работа). Therefore «детский труд» (child labor) has a positive social connotation, according to which the children need to be engaged into



«работа» to become hardworking adults in future. Therefore, in order to escape the linguistic gridlock an alternative concept has to be introduced into language.

According to the estimations of the experts, in St. Petersburg there are 40 to 50 thousand laboring children (under the age of 13) and 30 to 50 thousand in Moscow.²³ The majority of those children lives with their parents, goes to school and works during the time when they are free from schooling. If it is presumed that the ratio child laborer – population is stable, then the number of laboring children in Russia under the age of 13 is around a *million*. Since the children between the ages of 13 to 16 are working, perhaps, on a larger scale, since they can be hired from the age of 14 to do light work, the number of the working children significantly exceeds a million.

²² Ibid, p. 18.

²³ In-Depth Analysis of the Situation of the Working Street Children in Moscow, p. 21.

According to the ILO surveys, the majority of the street working children in Russia are under the age of 13. There are examples when children engage in street work as early as 6. Generally the children start working in the streets at the age of 9-11. The majority of the children are boys – 75%, partly because the street children are mainly the children who run away from their homes. Therefore, this gender distribution might suggest that the girls tend less to run away from the parents.²⁴

The occupations where the children are working are: selling goods, begging, loading, unloading and transportation of the goods (this work has a very dangerous character, since it involves heavy lifting), collecting refuse (waste paper, scrap metals), cleaning work and job as watchmen. Among the children of the Leningrad region gathering of mushrooms and berries are also common.²⁵ Street children tend to work much more than they should (as it was already discussed in the subsection on Ukraine time limit for the children under the age 14 is two hours): about 50% work around five hours, which clearly suggests that such work is not light, and therefore, Russia can be presumed to be in breach of its international obligations and national legislation (further on international obligations and national legislation in the next chapters). The girls tend to work much longer than the boys, a significant number of girls work up to eight hours a day. The reason for extended working hours of the girls is unclear. However, considering that girls' share in the total number of working children is much less than that of the boys, it could be suggested that although girls tend to engage in child labor less often than the boys, but their extent of involvement is much deeper, therefore their extent of detachment from school is also much higher. To support or disprove this hypothesis it

²⁴ In-Depth Analysis of the Situation of the Street Working Children in St. Petersburg. ILO: Moscow, 2002. P. 33. Available at http://www.ilo.org/public/english/region/eurpro/moscow/areas/ipec/mos_report.pdf (last visited on 4.10.2009).

²⁵ Ibid.

will be interesting to see if there is a gender disparity in the academic achievement and truancy of the working street children.

When talking about the labor activities for the street children, it should be remembered that the children hardly start laboring from the worst forms of child labor (like prostitution or drug trafficking), they engage in these activities after having been engaged in other forms of child labor for several years. The most probable reason why the children change the occupation is money: the unconditional forms are more beneficial, although some girls involved in the prostitution claim they earn hardly enough to pay their food.²⁶

Children working in the streets tend to drop out of schooling. In Moscow among the working street children only 62% attend school on the regular basis.²⁷ But since any child's laboring activity diverts child's attention from schooling to the work, it seems that could be difficult for the laboring child not to lag behind its peers in the number of completed classes and academic achievements.

Thus, this chapter has presented a scope of child labor in Russia and Ukraine. It has also shown that children work in dangerous conditions excessive hours, which clearly suggests that such work is in violation of the Russian and Ukrainian obligations. Therefore, this subchapter has demonstrated that in both countries child labor is an urgent problem that requires immediate actions. But what are the causes of child labor?

2.2. Causes of Child Labor

Discussion of the causes of child labor is relevant to the current thesis, because in case a cause is identified, the strategy for elimination of child labor should target the

²⁶In-Depth analysis of the Situation of the Street Working Children in St. Petersburg, p. 14.

²⁷ In-Depth Analysis of the Situation of Working Street Children in Moscow, p. 23.

cause. The current thesis is going to address poverty as the main reason for child labor. However, it will also note that some other factors should be taken into consideration while elaborating an effective strategy for the elimination of child labor, like the child labor demand and lack of education. Due to the lack of the relevant studies in Russia and Ukraine the current discussion of the causes of child labor will be based on the studies done in the third countries. Then I will see if the identified cause exists in Russia. If it does then it could be presumed that the identified cause is a reason of child labor in Russia and Ukraine.

2.2.1. Poverty

The majority of the literature on child labor contends that child labor is mainly caused by poverty. Poverty can be understood as general poverty of the country and the poverty of a particular household. In my discussion I am going to address both.

The main country's poverty indicator is low gross domestic product (hereinafter - GDP) or gross national income (hereinafter – GNI). The researchers have found a clear correlation between the low GDP and instances of child labor. According to the results of the studies conducted for the World Bank, labor rate of children aged 10-14 years is extremely high (at 30-60 percent) in countries with per annual capita income of \$500 or less. But it declines quite rapidly to 10-30 percent in countries with incomes between \$500 and \$1,000. However, this correlation becomes less visible in the more affluent developing countries (in the \$1,000 to \$4,000 income range).²⁸

The poverty of the household also determines the instances of child labor. Surveys, done among the working children in Latin America, show that 59% of children

²⁸ Fallon, P. T., Zafiris. *Child Labor: Issues and Directions for the World Bank*. Washington, D.C.: The World Bank, 1998. P. 3

name poverty as a primary reason for work.²⁹ The ILO also recognizes the poverty is the main cause of child labor, admitting this in the Sixth Report, where it stated that research [conducted by the ILO] shows that money the child earns can be extremely important to family budget, because in some cases the child's share can be up to 20% of the family budget.³⁰ If so, then it is logical to presume that the improvements in the family budget could decrease the number of the child laborers. Studies in Pakistan have confirmed this proposition and have revealed that improvements in family budget accounted for 80% decline in child labor³¹.

The correlation can be further tested if the studies could show that in one country experienced changes in number of child laborers during the economic crisis or upheaval. Such studies were done and they show that there is a strong correlation between the number of child laborers and economic rise or fall. For instance, in Vietnam during an economic boom in the 90s the number of children involved in labor significantly dropped, esp. among the households living on less than \$400 per person per year.³² Therefore, it can be safely concluded that experience of the other countries shows that poverty is the main cause of child labor. After having admitted this chapter will address the economic situation in Russia and Ukraine.

Russia and Ukraine had both undergone the transition period in the 90s after the collapse of the Soviet Union and transition to the market economy. This transition made poverty an acute problem in both countries, because it deprived the majority of the families (in particular those with single parent) of the state support, which was heavily

²⁹ Sakurai, Riho. Child Labor and Education. A Working Paper for Education for All Global Monitoring Report 2007 Strong Foundations: Early Childhood Care and Education. UNESCO, 2006. P. 5. Available at <http://unesdoc.unesco.org/images/0014/001474/147485e.pdf>

³⁰ "Report VI (1) Child Labor: Targeting the Intolerable. Sixth Item on the Agenda." In *International Labor Conference. 86th Session*. Geneva: ILO, 1998. P. 14.

³¹ Edmonds, Eric. "Does Child Labor Decline with Improving Economic Status?" *The Journal of Human Resources*, Vol. 40, No. 1 (Winter, 2005). P. 77. Available at www.jstor.com.

³² Edmonds, Eric V. "Understanding Child Labor: Patterns, Types, and Causes." *e-Journal USA* U.S. Department of State (01 August 2008). <http://www.america.gov/st/hr-english/2008/August/20080825164330SrenoD0.1839258.html>.

relied on during the soviet era. It also deprived adult workers of their jobs, due to the shrinking of the production, which emerged with the transition.

Despite the fact that more than eighteen years have passed since the transition period had begun, a significant part of the population in both countries still lives below the poverty line. According to the statistics of the World Bank, about 9 million of Ukrainian people lived in poverty in 2003.³³ Though six years have passed since 2003, it seems that situation has not significantly improved. On the contrary, most probably it has worsened due to the recent economic crises and the rise of unemployment throughout the countries. Other studies, presented in the Strategy Paper of the European Union (hereinafter – the EU), which was done as a part of the EU project on the Neighborhood Policy, suggest that extreme poverty in Ukraine is low, however, a big proportion (about 20%) of the population lives below a poverty line. Poor people are concentrated in small towns and rural areas.³⁴ Consequently, poverty presents a crucial problem for Ukraine, which can account for a significant number of child laborers in Ukraine.

In Russia according to the statistics of UNICEF (United Nations Children's Fund), the organization which deals with the well-being of the children in the developing countries and publishes general information on the countries economic and social development, the GNI in 2007 was 7560 dollars, while in Ukraine was only 2550 dollars.³⁵ Therefore, it could be suspected that poverty is as acute problem in Russia, as it is in Ukraine. However, due to the common gap in income distribution among the Russian population, poverty is widely spread. According to the statistics of the United

³³ *Ukraine Poverty Assessment: Poverty and Inequality in a Growing Economy*. Washington, D.C.: World Bank, 2005. Available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/UKRAINEEXTN/0,,contentMDK:20810635~pagePK:141137~piPK:141127~theSitePK:328533,00.html> (last visited on 14.01.09).

³⁴ EUROPEAN NEIGHBOURHOOD AND PARTNERSHIP INSTRUMENT. UKRAINE COUNTRY STRATEGY PAPER 2007-2013 Available at http://ec.europa.eu/world/enp/pdf/country/enpi_csp_ukraine_en.pdf

³⁵ *Statistics*. Available at http://www.unicef.org/infobycountry/russia_statistics.html (last visible 15.01.09).

Nations Development Program about forty percent of the Russian population in 2005 lived below the level of subsistence.³⁶ The Russian governmental statistics of 2008 (before the crises broke down) presents the percentage of the people in 2008 living under the subsistence level was about 13.5 percent, comprising around 20 million people.³⁷ Hence, it can be concluded that since poverty is an urgent problem for Russia, poverty can be the main reason of child labor. But in order to test the conclusion, the child laborers should be asked on the reasons for their labor.

A survey of the street children in Moscow conducted by the ILO has revealed that 57% work of street children³⁸ work because they want some additional pocket money and only 27.5% work because they face work-or-die situation. The compelling majority of the children involved in prostitution (77.9%) work because of the poverty. The NCLS in Ukraine showed that more than half working children indicated that the main reason for their employment is a wish to have pocket money. Only one-third work because they face work-or-die situation and 14% cited as a reason for their working their desire to get some experience in an occupation.

These figures suggest two main conclusions. First, poverty is the main cause of child labor. Despite the fact that children cite poverty less often than their wish to have more pocket money, the latter comes from the parents inability to satisfy the development needs of the children, like better clothing, some items like phones, etc. Although the inability to satisfy these needs is not as striking as parents' inability to feed the child, it definitely suggests that the parents are in a scarcity of resources.

The second conclusion suggests that a child engages in labor not to ensure family survival. Thus in case a child does not have job offers, the child would be able to

³⁶ Press Release on 20.06.2005 of the United Nations Development Program. Available at <http://www.undp.ru/index.phtml?iso=RU&lid=1&pid=1&cmd=text&id=151> (last visited on 25.07.09).

³⁷ Background Note: Russia. U.S. Department of State Report, dd. 04/09. Available at <http://www.state.gov/r/pa/ei/bgn/3183.htm> (last visited on 25.07.09).

³⁸ Children engaged in prostitution were not included in this group. Their responses are presented separately.

survive without work. Therefore, the strategies for child labor elimination in these two countries should pay particular attention to the advocacy activities within the employers since the employers form a demand side of child labor phenomenon.

2.2.2. Child Labor Demand

Poverty makes children consider working, but realization of these aspirations can be achieved only if supply meets the appropriate demand from the employers' side. Therefore, to counter child labor effectively the employers should be targeted as well. Demand side of the child labor can be explained from the several aspects. The first reason is that child labor is *cost-effective*, since children are often underpaid. Though some researchers suggest that this reason is fallacious,³⁹ since it gives only 5-10% additional monetary value to the goods, those small percentage can make a huge difference for the small contractors, which are the commonest employers of the children.

Another reason for high child labor demand is natural *characteristics of children*, which addresses both physical appearance and physiological characteristics. A famous "nimble fingers" (the carpets should be preferably weaved by the children because their fingers ensure better quality of the carpets) was shown to be fallacious by recent ILO studies in India, because it uncovered that the adults can do the same job better than children.⁴⁰ What remains true is that children are more *submissive* than adults and they do not form unions to protect their interests. Therefore, businesses could be willing to hire children more than adults.

³⁹ "Report Vi (1) Child Labor: Targeting the Intolerable. Sixth Item on the Agenda." In *International Labor Conference. 86th Session*. Geneva: ILO, 1998. P. 16.

⁴⁰ Anker, Melkas. *Economic Incentives for Children and Families to Eliminate or Reduce Child Labor*. Geneva: International Labor Office, 1996. P. 19. Available at <http://www.ilo.org/public/english/comp/child/text/papers/economic/index.htm> (last visited on 12.01.2009).

A third reason that can be identified for hiring children is a *tradition*. Some work maybe considered to be traditionally done by children, or there maybe a tradition for children to work alongside with parents, thus these arrangements would require that children would be involved in work. For instance, in India parents insist that their children are hired to work near them, which allegedly pushes employers to hire children.⁴¹ Tradition is difficult to fight, because it touches the mindset of the nation. Therefore, the most successful strategy lies within education and awareness-raising among employers and parents.

Thus, the experience of the third countries suggests that there three main reasons why employers hire children: cost of child labor, natural characteristics of the children, and tradition. It is worth considering whether the Russian and Ukrainian employers hire children for the same reasons. The ILO survey of the Moscow employers contends that they hire children, because of: they believe that a work for children is better than begging – 69.1%, they share an opinion that through work the child is becoming more hard-working (45.7%), and they have an idea that while working the child will be under the constant supervision of adults, which is always better than child neglect.⁴² It is interesting to note that according to the results of this survey the employers hire children out of noble urge. However, one needs not to be deceived by this high veneer. Most probably the employers hire children because they provide cheap labor for the occasional jobs and they are much more docile than adult workers. However, the results of the ILO survey also underline the underestimation of the employers of the dangers of child labor. Therefore, there is an urgent need for a large scale awareness raising campaign.

⁴¹ Ibid.

⁴² Почему работодатели за пределами семьи нанимают детей на работу?/ Why employers hire children outside of the family boundaries? Subregional Office for Eastern Europe and Central Asia. Available at <http://www.ilo.org/public/english/region/eurpro/moscow/areas/ipec/empl.htm>

2.2.3. Lack of Education

As it has been already discussed, poverty is the main reason for child labor. However, there are also some suggestions to consider lack of education as a cause of child labor, too. I will illustrate that lack of education is important in the discussion of the triggers of child labor, but it is an indicator of poverty.

Generally the proponents of inclusion of lack of education as a cause of child labor suggest that in absence of available education a reasonable thinking parent will send a child to work to teach him/her some life skills.⁴³ In this case work will be regarded as the educational (and the only one) opportunity for the child. It should be considered that if a district does not have available public schooling, it could mean that the district is poor to support public schooling. In the poor district the compelling majority of the population is poor. As it has been shown in the section on poverty, poor families are more prone to send their children to work. The same is applicable to the case when the school system exists, but the parents are not able to afford sending a child there. In this case availability of education depends on family financial status. Russian and Ukrainian statistics support this hypothesis, because there is a sufficient system of schooling (at least in the towns and cities), but because of poverty parents may not afford it.

In both countries primary and secondary education is mandatory. According to data, provided by the Russian Federal Service of State Statistics (ROSSTAT), in October 2004 there were around 13 thousand children in the age of 7-15 who did not attend school, which makes 0.08% of all children (total amount of children is 15.8 million of children, not talking into account children who can not attend school because of the

⁴³ In-Depth Analysis of Working Street Children in St. Petersburg, p. 17.

health conditions).⁴⁴ The ILO presents different statistics, admitting that around 1.5 million children in Russia do not attend the school.⁴⁵ The differences between the statistics could be possibly explained by the differences in methodology and the fact the Russian statistics is often based on the number of the registered children, which is often less the actual number.

The official figures in Ukraine show that school unavailability is even more problematic. Primary school enrolment ratio in 2000-2006 is 83 %⁴⁶, when primary school attendance is around 97%, which means that around 20% of all children do not attend primary school⁴⁷. The situation with secondary school is also alarming – only 80% of children attend a secondary school. Remarkably, girls attend school less often than boys (82% vs 77%), which could reflect an idea of female inferiority and absence of necessity for girls to get an education. But it also suggests that girls are more likely than boys to be involved in child labor. Therefore, system of education exists, but a significant number of children do not attend school, both countries should take appropriate measures to ensure that education is not only existent, it is also available.

It also could be suggested that lack of understanding the importance of education is an important contributor to child labor. Indeed, the studies have shown that there is a correlation between the family education and the instances of child labor, when uneducated parents would send their children to work more often than educated parents.

⁴⁸ However, uneducated parents tend also to be poor, and exactly because of their

⁴⁴ Council of Federation. 2006. Доклад "О положении детей в Российской Федерации"/Report "On Children's State of Affairs in Russian Federation". Moscow: Parliament Newspaper. Available at <http://www.council.gov.ru/info/ps/chronicle/2006/06/item4666.html> (last visited on 12.01.2009).

⁴⁵ In-Depth Analysis of Working Street Children in St. Petersburg, p. 52.

⁴⁶ UNICEF statistics on Ukraine. Available at http://www.unicef.org/infobycountry/ukraine_statistics.html (last visited on 14.01.2009).

⁴⁷ Ibid.

⁴⁸ For further information, see Tzannatos, Zafiris. 2003. Child labor and school enrollment in Thailand in the 1990s. *Economics of Education Review* . 22: 523–536 and Hsin, Amy. 2005. *Children's Time Use: Labor Divisions and Schooling in Indonesia*. California Center for Population Research Working Paper.

poverty they did not get education themselves. Thus, lack of education can not be considered as a cause of child labor, it is a *social indicator of poverty*. Therefore, it could be presumed that if all children are at school (which means that all families can afford sending a child to existing educational facilities), the scope of child labor will decrease. As it has been well-said by Kaushik Basu, a leading expert in the economy of child labor has put it, “it is more effective to legislate for the compulsory education instead of simply banning child labor... One good reason for this is that a child’s presence in school is easier to monitor (and thus to ensure) than a child’s absence from work.”⁴⁹

Therefore, the current section has supported a conclusion that the primary course of child labor is poverty. Russia and Ukraine have to pay special attention to the needs of the socially disadvantaged children and provide them with the adequate financial aid at least sufficient for child to buy necessary books, cloths and school supplies. The government should also emphasize the work with the parents of these children to advise them to send the children to work, because there is an alarming belief among the population that education would not bring any significant changes in the life of the minor and therefore, it is better in case of poverty to spend time for earning money, rather than investing it in education. It is also strongly advisable for the governments of both countries to do their best to alleviate poverty among the population.

The governments should continue their endeavors on hiring children at the age of 14 for the light jobs, because government provides jobs in formal sector, therefore discussed later labor inspections inability to monitor the informal sector would not be disturbing. The conditions of this work should be carefully monitored, because statistics suggests that employers tend to disrespect the requirements of the law on light labor and jeopardize children. For instance, in Kostroma region (Russia) in 2004 the labor

⁴⁹ Basu, p. 1090.

inspections have found breaches of labor law, when children worked for ten hours, in the forest industry and without previous medical examinations.⁵⁰

It is advisable that the states hire children of the age of 14 to do light at schools. In this case the labor inspections will have an easy access to the working premises, and thus could control the working minors easily. Moreover, since the child will be working at school, he will be compelled to at least come to school and thus the problem of truancy of the children in the difficult economic situations (who otherwise might end up in the streets) will be solved. It is almost certain that the child working in the school will not be working during the holidays and weekends, thus having enough time for rest and preparation for the school. In Chelyabinsk region (Russia) the child can work in school where he studies after a child has reached the age of 14. This child is paid around 60 dollars per month for two hours work each day (in total 10 hours a week). Priority is given to children from poor families. Among the activities the child can be involved in are maintaining a school web-site, working with computers, work in the school garden, etc. This initiative can render a positive result, because children can acquire the some valuable skills, like computer knowledge.

As the conclusion of the current chapter, it could be said that the scope and the cause of child labor in both countries have similar features. Child labor exists primarily in industry, agriculture (although agricultural aspect is not yet researched in Russia) and services. Domestic bonded labor and child soldiers do not present a problem. The situation with poverty and education are similar. Both countries have sufficiently high literacy rate, but still an alarming number of children do not attend the school. Moreover,

⁵⁰ Пятнадцатилетний трудоголик/ Fifteen years hard-worker. Russian Newspaper. 12 October 2004. <http://www.rg.ru/2006/10/12/deti-trud.html>

the belief that education can make a difference is not firm enough, because of the poor living conditions of many educated people, working in schools and hospitals.

Poverty also presents a significant challenge. Even though the number of people who are extremely poor is not significant, number of people living below the poverty line is still on the rise. Therefore, in order to eliminate child labor the actions should address the causes and the factors contributing to child labor as well. Otherwise eliminated child labor in one industry would flee to another.

Relatively similar background settings in both countries make them easy to compare. The comparison in the current thesis will be done in the following order. In the chapter II I will describe national legal arrangements to deal with child labor. The third chapter will identify international norms on child labor, established by the international bodies which envisage enforcement mechanism with the state reporting system. The forth chapter will cover ILO efforts in strengthening states' compliance with international standards.

3. CHAPTER II. Child Labor Standards in Russia and Ukraine

After having considered the scope and causes of child labor in both countries the Russian and Ukrainian legislation should be reviewed. The consideration of the national legislation will be divided into two parts. The first part will consider the substance of the legislation. Since generally the legislation of the countries does not present a significant issue for concern, the enforcement of the legislation would be considered as a second part of the national legislation section.

3.1. What is Labor?

Unfortunately, neither Russian nor Ukrainian language distinguish between labor and work in the same way it is done in English, when labor is a more fatiguing type of work. Labor (“труд” – in Russian and “праці” – in Ukrainian) in Russian or Ukrainian languages means any work, not just hard work.

The Russian and Ukrainian labor codes do not give a definition of labor. The concept of labor can be understood through the concept of labor relationship. Labor relationship is a relationship between employer and employee, which are based on the agreement that a worker will personally execute a labor function (a work according to staff schedule, profession, qualification, function), that the worker will obey the internal rules of the organization... (art. 15 of Russian and art. 21 of Ukrainian). The employer by Russian and Ukrainian legislation is defined narrowly, because it includes only registered entities (like individual entrepreneurs or organizations) or physical persons, who use labor for personal service and maintenance of the house. Therefore, everything happening outside of this scope is not labor.

3.2. *Age for Admission to Work*

Article 63 of Labor Code of the Russian Federation and 188 of Ukrainian establishes sixteen years as the minimum age for concluding the labor contracts. There are three exceptions to this rule. First, when a child finishes his education (graduated or excluded from the school) he can start working at the age of 15. The second exception allows children from the age of 14 do light work. The third exception concerns employment of children below the age of fourteen in theater, cinema, concerts and circuses. The labor codes do not establish explicitly that such work should be light. Moreover, a ban on child work during the weekends is not applicable for work in cinema and theaters either. The one and only requirement set for such employment is that such work should not be dangerous for their moral development and health. Also neither of the states establish further requirements for such work (like hours of work, duration of work, content of the performances, films, etc, where children participate, and ability of the labor inspectorate to monitor such activities). Therefore, there is a clear legislative gap in regulation of the work in cinema and theaters, which could lead to the undesirable consequences, such as exploitation of the child.

In amending the legislation Russia and Ukraine should consider good practice of the other European countries. For instance, in Estonia the children aged 13-14, who are subject to the compulsory education may not perform after 8 pm.⁵¹ In Bulgaria the Ordinance on the Work of Under 15-Year Old persons SG No 8 of January 30 1987 established the following conditions for such work: time limit for working during one day is four hours, there should be an uninterrupted rest for at least 14 hours between the workdays. The participation in performances after 8 pm is banned. The employer in

⁵¹ Conclusions 2006 Volume 1 of European Committee on Social Rights. Date of conclusion 30/06/2006. Available at <http://hudoc.esc.coe.int/esc2008/query.asp?action=page&page=2×tamp=69753.97> (last visited on 2.08.09).

conjunction with a doctor is obliged to draw up an individual regime of study and extra activities for young persons permitted to work.⁵² Similar arrangements could be made in Russia and Ukraine.

The Ukrainian labor code prohibits admission to work before age of 16 (art. 188), and asks for written form of contract (section 5 art. 24). It also allows work from 15 years in case there is a permission of one parent/legal guardian (sec. 2 art. 188) “as an exception”. It has not established what the words “as exception” mean. It seems that the Labor code left for the authorities to define the meaning of the word “as exception”. According to the same article of labor code, children at the age of fourteen can be hired for the light work “for preparation of the youth for the work”.

Unfortunately neither Russian nor Ukrainian legislation clearly defines light work. The codes of both countries mention only that such work should not be dangerous and intervene with the process of education time-wise. Therefore, the first consideration should be given to the type of work the children can do. The only existent legislation in both countries on the type of work the children of the age 14-16 can do is list of dangerous occupations, where work of the people younger than 18 years old can not be used.⁵³ However, as it has been already discussed, that light work and non-hazardous work are different, therefore the countries’ legislation should be perfected to ensure that light work is well defined. In adopting such legislation Russia and Ukraine should also

⁵² Conclusions 2004 Volume 1. Committee on Social Rights. Available at <http://hudoc.esc.coe.int/esc2008/query.asp?action=page&page=3×tamp=70109.81> (last visited on 2.08.09).

⁵³ "Об утверждении перечня тяжелых работ и работ с вредными или опасными условиями труда, при выполнении которых запрещается применение труда лиц моложе восемнадцати лет" (с изменениями от 20 июня 2001 Г.) / On Confirmation of the List of Heavy Jobs and Jobs with with Dangerous Conditions, Where It Is Prohibited to Use Work of People Younger Than 18 Years Old (Edition of June, 20 2001)." In *163*, edited by Government of Russian Federation, 1131. Собрании законодательства Российской Федерации / Records of legislation of Russian Federation, February, 25 2000. Постановление Минтруда РФ От 7 Апреля 1999 Г. N 7 "Об Утверждении Норм Предельно Допустимых Нагрузок Для Лиц Моложе Восемнадцати Лет При Подъеме И Перемещении Тяжестей Вручную"/ Decree of Russian Ministry of Labor "On Norms Confirmation of Weight Permissible for Lifting and Handling Items by Hand for the Persons Younger Than 18 Years". In *7*, edited by Ministry of Labor of Russian Federation. Российской газете/ Russian Newspaper, April, 7 1999.

pay attention to the good practice of other countries. For instance, Sweden adopted the Provision of the Swedish Work Environment Authority on Minors at Work (AFS 1996:1), which enlists activities that minors can perform. Among those activities are work at a personal computer or terminal, light duties as a retail assistant (not check-out work), light work on tray carrying and general duties at self-service counters, in cafes and suchlike, light feeding work, light manual sowing and planting, weeding of beds and small cultivated areas, picking of fruit and soft fruit, light courier or delivery work (not carriage of cash and valuables), assistance in a hairdressing salon (but not using substances dangerous for health), etc.⁵⁴

Another requirement set by Russia and Ukraine upon the light work is time limit. Russian and Ukraine require that time allocated by the child for the job should not exceed 24 hours a week if the child is working during the non-study period (holidays) or 12 hours a week if the child is working and studying at the same time. It should be noted that such neither state requires mandatory rest period during a summer holiday. Neither of the country specifies a daily limit for work.

3.3. Additional Requirements for Hiring the Child

The labor codes of both countries establish some procedural requirements for hiring the children. Among those requirements are:

- mandatory medical examinations (art. 266 in Russian and art. 191 in Ukrainian)
- mandatory permission of the parents for hiring the child and mandatory permission of the governmental agencies for the child's dismissal (article 269 of Russian and 199 of the Ukrainian labor codes)

⁵⁴ 1st Report on the Implementation of the Revised European Social Charter, submitted by THE GOVERNMENT OF SWEDEN (for the period 1 January 1999 to 31 December 2000: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20). Available at <http://www.coe.int> (last visited on 2.08.09).

- no probation period (Russian – art. 70, Ukrainian –art. 26)
- days of holidays (in particular, the art. 267 of the Russian and 195 and 75 of Ukrainian labor codes establish that the minors enjoy longer holidays, then adults – 31 days, which can be taken at any convenient for the minor time)
- prohibition of overnight work and work during (Russia - art. 268, Ukraine – art. 192).

Even the statistics of the labor inspections (which have discussed later limitations on operation) suggest the violations of child labor legislation are quite common. As the inspections note the wide spread violations are due to the fact that minors are hired illegally, stay in the organization for a short time and tend not to complain about the conditions. Among the commonest violations of the procedural requirements are the setting of the probation period, work during the nighttime and delay in salary payments.⁵⁵ The commonest violations of the substantive requirements are the work of minors in the hazardous conditions, like construction, night clubs, industrial setting with the hazardous conditions, lifting heavy objects. Analysis of the reports of the labor services suggests that the labor inspections do not differentiate between the hazardous labor, non-hazardous work and light work, which is a natural outcome of the failure of the legislation to define the light labor.

The violations of the procedural requirements include the failures to sign the labor contract, failure to provide labor security instructions, failure to receive the permission of the guardianship agencies to hire minors, non-observance of the requirements for the short holidays, -instruction absence of labor security.

⁵⁵ For the further details see: Ukraine: Національна служба посередництва і примирення.. За додержанням законодавства про працю — державний нагляд/ National service on arbitration. HYPERLINK "<http://www.nspp.gov.ua/?s=32&id=3263>" <http://www.nspp.gov.ua/?s=32&id=3263>. In Ukraine in case of the violation of the labor legislation, the dispute can be arbitrated in the National Service on Arbitration.

3.4. Enforcement

As the European Committee of Social Rights within the Council of Europe has noted, “the effective protection of the rights guaranteed by article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labor Inspectorate has a decisive role to play in this respect.”

⁵⁶ Therefore, the current thesis reviews in detail the enforcement procedures of the child labor legislation in Ukraine and Russia.

Enforcement is determined by two main institutions: the agencies which are responsible to identify and fight against the violations and the punishment, which these agencies can rely upon when the violation is found. This section is divided into two subsections. The first subsection will discuss the agencies. The second subsection will review punishment, which constitute legal tools for the agencies to enforce the law.

3.4.1. Agencies Responsible for the Enforcement

The labor enforcement in both countries is done in a similar way: there is a ministry, which elaborates a general policy of the labor and labor legislation enforcement (Ministry of Health and Social Development in Russia and Ministry of Labor and Social Policy in Ukraine) and central agencies which are directly responsible for the labor legislation enforcement (the Federal Service on Labor and Employment in Russia and the State Department of Surveillance over Labor Legislation Observance in Ukraine). Those central agencies also have regional offices. The regional offices have the labor inspectors, who operate of the field and find the violations.

To be effective the labor inspectors should have an ability to inspect both formal and informal sectors of economy, as the ILO has noticed “it is not often that any

⁵⁶ DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS. THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS. INTRODUCTION. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf. (last visited on 2.08.09).

significant number of child workers will be found in the... officially registered businesses, at least in the industrialized countries.”⁵⁷ Following the logic of the ILO it could be concluded that biggest number of the working children would be found in the informal sector. Moreover, the Labor Convention # 81 entrusts the labor inspectors to inspect all workplaces. This norm should be interpreted as giving an authority to inspect both formal and informal sectors. In fact, both countries do not provide the labor inspectors with ability to inspect the informal sector.

This inability comes from a very narrow definition of workplaces. The workplaces are the occupations where the labor happens (this confusion happens due to the already mentioned inability of the language to distinguish between work and labor). Labor occurs only where there are labor relations, which happen between the employers and employees. The employers in both countries are defined as either registered legal persons or physical persons, who use labor for personal service and maintenance of the household. The list of employers is closed. Therefore, only registered employers could be inspected.

It can be argued that police is able to perform the function of child labor identification in the informal sector. However, due to the legal restrictions, which enables police to act only when it encounters crime through the formal complaint or notification by the mass media or when police witnesses the crime occurrence, police lacks ability to search for the child labor. Moreover, due to the limitation in human and financial resources police can not be an effective fighter against child labor. Thus, since the labor inspections have knowledge and experience in monitoring the labor legislation compliance, it is advisable that the legislative amendments are made to entrust the labor inspection with an ability and duty to monitor child labor compliance in the informal

⁵⁷ Combating Child Labor: A Handbook for Labor Inspectors. ILO: Geneva. P. 15. Available at www.ilo.org (last visited on 1.08.09).

sector. This conclusion also implies there should be a strong cooperation between the labor inspections, police, and commission on minor's affairs⁵⁸. Such cooperation requires information sharing and effective time management, which means that in case either police or commission on the minor's affairs visits a remote location, this agency should be able to deal with the any type of abuse and later provide the found violations to the labor inspections for the future investigation.⁵⁹

To monitor the activities in the informal sector the labor inspections should change the way the businesses are chosen for the inspections, which is currently done on the basis of their official registration. It is advisable that the labor inspections organize streets' or fields' inspections. In case a child working during the school hours is identified during these inspections, the labor inspectors should charge a person who gave a child the work. Most importantly the labor inspections should ensure that the child won't return to work in the future by finding alternative solutions for the child, like education or light work opportunities in the formal sector.

Inspecting an informal sector might raise privacy objections. These concerns could be accommodated by the legal system, by establishing that only with the permission of the special authority the labor inspector could enter the private premises. The experience of different countries can be helpful in such legislative design. For instance, in India the majority of child labor happens in the houses. Therefore, for successful enforcement of prohibition of child labor the labor inspectors had to enter the house of suspected employer. Obviously, during the public discussions on expanding the roles of the labor inspectors to enter the private premises, there were many concerns, because the house is considered to be exempted from any public eye. The authorities

⁵⁸ Commission on Minor's affairs is responsible for the truancy identification and is involved in the prevention, investigation and adjudication of the minor's crimes.

⁵⁹ Combating Child Labor: A Handbook for Labor Inspectors. P. 20.

compromised and established that the inspectors would be able to enter a house until they get an authorization of the chef commissioner.⁶⁰ Similar arrangements could be made in Russia and Ukraine. The ability of labor inspections to inspect the informal sector would not only help in elimination of child labor, it would enable the inspectors to enforce other labor standards as well, which would lead to decrease in injuries and deaths received during labor, and potentially improve the situation with the illegal labor migration.

To provide effective labor law enforcement there should be sufficient number of the labor inspectors. Though every country has to find an ideal ratio considering its financial resources, business allocation (in case informal sector prevails over the formal sector the share of inspector-worker should be smaller, since it demands more efforts for the inspectors to find violations), experiences of the other countries could be helpful in striking a right balance. For instance, France (with the population almost three times smaller than in Russia and 0.5 times bigger than in Ukraine) has about 2000 labor inspectors⁶¹, while Russia has about 3000⁶² and Ukraine has 710 labor inspectors⁶³. Unlike Russia and Ukraine, France does not have a vast informal sector of economy; still

⁶⁰ Bharati Pflug. An Overview of Child Domestic Workers in Asia. Asia: IPEC: An overview of child domestic workers in Asia. ILO, Bangkok, 2002. P. 8. Available at <http://www.ilo.org/ipsec/areas/Childdomesticlabour/Rapidassessmentsnationalandregionalreports/lang--en/index.htm> (last accessed on 20.06.09).

⁶¹ L'inspection Du Travail. Available at <http://www.travail-solidarite.gouv.fr/informations-pratiques/fiches-pratiques/litiges-conflits-du-travail/inspection-du-travail.html>. (last visited on 2.08.09).

⁶² The statistics of 2006 year is used as the latest available for the public. For the purpose of comparison, it is presumed that the share of the workers in France, Russia and Ukraine is approximately the same. ДОКЛАД ФЕДЕРАЛЬНОЙ СЛУЖБЫ ПО ТРУДУ И ЗАНЯТОСТИ О РЕЗУЛЬТАТАХ РАБОТЫ В 2006 ГОДУ ПО ОСУЩЕСТВЛЕНИЮ ГОСУДАРСТВЕННОГО НАДЗОРА И КОНТРОЛЯ ЗА СОБЛЮДЕНИЕМ ТРУДОВОГО ЗАКОНОДАТЕЛЬСТВА И ИНЫХ НОРМАТИВНЫХ ПРАВОВЫХ АКТОВ, СОДЕРЖАЩИХ НОРМЫ ТРУДОВОГО ПРАВА, 2006. / Report of the Federal Service of Labor and Employment on the results of the control and supervision of the implementation of the labor and other legislation, 2006. Available at <http://www.rostrud.info/activities/nadko/doklad/> (last visited on 1/08/2009).

⁶³ United States Department of Labor, 2007 Findings on the Worst Forms of Child Labor - Ukraine, 27 August 2008. Available at: <http://www.unhcr.org/refworld/docid/48caa497c.html> (last visited 1/08/09).

the proportion inspector-worker is higher. Italy has around 3 760 labor inspectors,⁶⁴ although the population of Italy equals of the population of France. However, Italy is still found in non-conformity with the requirements of article 7.3 the Charter due to ineffective enforcement,⁶⁵ because of large informal sector of economy. However, even if Italian inspector-population ratio is transferred on the Russian soil, Russia should have around 11 thousand labor inspectors, while Ukraine one thousand and a half.

3.4.2. Punishment for Breaking the Law

3.4.2.1. Employers' Responsibility

In the discussion of labor effectiveness number of labor inspectors bears significant importance, but also the legal tools that legal inspectors are granted in case child labor is identified should be reviewed. The labor codes of both countries refer to criminal and administrative codes which provide punishment for breaking labor law (art. 419 of the Russian LC and art. 265 of Ukrainian LC). In the next subsections the responsibility under administrative and criminal codes for the formal employers will be reviewed. The responsibility of the parents, who have pushed the child to work, will be also considered.

The title of article 5.27 - “the break of labor law” - of the Russian code of administrative offences promises a lot, but fails to fulfill these promises. It establishes the responsibility only for the officials (“должностное лицо”). The officials are private entrepreneurs, civil servants or legal entities. Civil servants and legal entities function in the formal sector. Therefore, there is a need to define private entrepreneurs to fully see the limitation of the article.

⁶⁴ 8th National Report on the implementation of the European Social Charter (revised) submitted by THE GOVERNMENT OF ITALY (Articles 3, 11, 12, 13, 14, 23 and 30 for the period 01/01/2005 – 31/12/2007). Available at http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Italy8_en.pdf (last visited on 2.08.09).

⁶⁵ Italy. Conclusions 2006 Volume 1. Article 7; 7.3. Conclusion date 06/30/2006.

According to article 23 of the Russian Civil Code, a citizen can engage in entrepreneur activities after registration. Thus, only the agents of the formal sector, according to the Russian legislator, can be held responsible for the break of the child labor law. Article 41 of the Ukrainian Code on administrative offences also provides punishment for breaking the law only for the registered employers. In addition to this flaw it has another one - it establishes the administrative responsibility only for the delays in salary payments (art. 41.), thus omitting the other offences.

The Russian criminal code limits the responsibility for the break of safety rules by the person being in charge of ensuring labor safety (art. 143). Even though this article is deprived of the limitations of the administrative code (is not restricted to the officials), it requires the actual infliction of severe body damage. Since the Convention on the Worst Forms of Child Labor requires prohibition of work that presents a *probable* danger, the protection of the Russian criminal code seems inadequate.

The Russian Criminal Code (art. 145.1) contains a norm establishing punishment for the director of the registered organization in case of delays in salary payments for more than two months. (As it was described above, this offence is administrative in Ukraine). The Ukrainian criminal code also establishes responsibility for the delays in payment in case of damage to health.⁶⁶

The main difference between Ukrainian and Russian criminal codes in regards to responsibility for child labor is that the Ukrainian code made it possible in article 150 to hold a person who economically exploits a person under minimum age for the employment (which in Ukraine is 16 years) criminally responsible. Neither Russian criminal nor administrative code contains a similar norm (the closest Russian norm is the article 127.2 of the criminal code, which prohibits slavery, but it has obvious limitations,

⁶⁶ "Кримінальний Кодекс України /Criminal Code of Ukraine." In *Відомості Верховної Ради / News of Verhovna Rada*, 2001. Available at <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=7&nreg=2341-14> (last visited on 14.107.09).

since not all child labor is slavery). The biggest achievement of the Ukrainian article 150 is that it has a general application: it applies to everybody, and not just private entrepreneurs, state officials, etc.

It is also remarkable that Ukraine is on the way of incorporating an article to the criminal code that establishes punishment for all worst forms of child labor. This amendment has already passed the first reading.⁶⁷ Advantage of compiling punishment for the worst forms of child labor in one article is that it is easier to apply and interpret it. It also makes it easier for the international bodies to follow the activities of the state with regards to worst forms of child labor.

3.4.2.2. Parents' Responsibility for Child's Neglect

In case a child is employed by his parents either at home or in family business, it is possible to make parents responsible for failure to carry out their obligations as regards maintenance and upbringing of the children (article 5.35 of Russian and 184 of Ukrainian administrative code). Legal guardians and other people responsible for child's nurturing can be also be hold accountable on the basis of the article. Since both codes provide insignificant punishment for the violation of these articles, the practical situation when the parents can be hold responsible only once in six months for the violation and the latency of the majority of the violations, the enforcement of this articles is not sufficient.

The Russian criminal code establishes in article 156 a responsibility for the parents (legal guardians) for child neglect if such neglect has been accompanied by the cruel treatment. There is no legal definition of cruel treatment in Russian criminal code. It is suggested that it is defined through physical or moral sufferings.⁶⁸ But the latter is

⁶⁷ Activities for Combating Child Labor and Trafficking in Children in Ukraine, ILO IPEC: Ukraine, 2008. P. 4.

⁶⁸ V. M. Lebedev. Комментарий к Уголовному кодексу Российской Федерации/Commentary to Criminal Code. Moscow: Norma. 2007. 5 ed. Available in the database Garant.

also a non-defined legal concept, therefore is subject to the authority's discretion, which creates legal uncertainty.

The Ukrainian Criminal Code also establishes criminal responsibility for child's neglect. Unlike Russian code it establishes a requirement that such neglect should be malicious ("злісне"), meaning that it should be done more than three times, and should result in heavy consequences for the child. It seems that the Ukrainian approach can entail better results, because any neglect causes moral or physical suffering for the child, as it is natural for the children to experience a physiological stress and trauma when neglected. In addition to this, sanctioning the authority's discretion (the Russian approach) may result in weak enforcement, since the severity of moral suffering would be left for the third person to decide.

3.4.2.3. Punishment for Engaging Children into Begging

Begging presents a challenging problem for the legislator. On one hand, begging can be the only opportunity for the family to survive. In the light of tough economic conditions in Russia and Ukraine, it seems excessively harsh to punish family for using children in begging. On the other hand, children in both countries are exploited by mafia when used for begging.

Russian criminal code prohibits engagement ("вовлечение") of a child in systematic begging, unless it is done by the parents (but not by legal guardians) who are in severe life conditions (article 151). "Systematic" is understood as more than three times. Engagement is understood as intentional process of involvement, which implies that the involved party understands that it is involved. This article has at least three flaws. The first touches the framing of the article. Legal requirements of "systematic begging" and "engagement" in the working of the article means in practice that the law enforcement officer in order to trigger the article has to notice the same begging child

more than three times, and then prove that the adult has made an effort to engage this child into begging. It creates obvious practical obstacles. Second flaw is that such wording does not cover using for begging the newborn children of the age 0-3 years old, who had not formed a mental capacity to understand that they are “engaged”.

The third flaw is derived through the analysis of this article together with the administrative code. Usually, the logic of the Russian lawgiver makes it possible to hold a person legally responsible under the administrative law, if the facts of the case do not trigger criminal responsibility. In case of child begging a failure to prove the requirement of “systematic begging” does not entail an administrative responsibility. That is why it is advisable to include to the administrative code an article, which will prescribe punishment for engaging a child into begging, unless it is done by the parents due to family’s severe life conditions. In this case it will be easier to impose criminal responsibility, because an adult would already have a record of administrative responsibility. Therefore, to accommodate the above mentioned concerns the amendments should be made to using children for begging unless it is done by the parents.

The Ukrainian Criminal Code already included “usage” (“використання”) rather than “engagement” in the wording of the article 150-1. However, the major flaw of the Ukrainian Criminal Code is that it has adopted an excessively strict approach, punishing everybody who uses children in begging (without providing parents an affirmative defense of living under severe life conditions). Moreover, a single act of using triggers a criminal responsibility. On one hand, this approach endorses more effective measures to fight child’s begging, because *prima facie* child’s begging entails criminal responsibility. On the other hand, it is not tailored to the conditions of the country, where poverty is a serious concern. In case a family does not have a house or shelter and the only source of earnings is begging, where a parent can leave a child while “earning money”? It also

makes impossible for the single mothers who live in severe conditions and who can not leave a child at home to engage in begging. Thus, it seems advisable to accommodate the needs of the parents in the tough economic situation and provide exception from the criminal responsibility for using a child in begging.

Therefore, although both countries have adopted legislation that aims protection of the minors who did not reach the minimum age of employment (in both countries it is 16 years), there are important legislative gaps. Neither country has defined the light work and has adopted the list of light jobs. Both countries allow children before reaching the minimum age to participate in the cinema and theater performances. Though the labor codes of both countries settle some safeguards (like permission of the Guardianship agency) for such work, both countries fail to regulate this work appropriately. Hence, both countries should adopt legislation that will establish the time limits for such work, content of the performances where such work could be used, etc.

Though both countries have established the system of labor inspectorate, they have failed to provide legal tools to this system, like ability to inspect the informal sector of economy, where the majority of the child labor violations take place. Therefore, Russia and Ukraine should enable labor inspectors to inspect informal business. This legislative amendment should also be followed by significant increase in the numbers of labor inspectors.

Russia and Ukraine have included the violations of the labor code into the administrative and criminal codes. These codes have obvious limitations, which obstruct effective abolition of child labor. The first flaw is failure of the administrative codes to cover employers other than registered persons. As it has been already said the child labor happens on a large scale in the informal sector, rather than formal, therefore the administrative codes should provide administrative punishments for minor violations of the child labor legislation for anybody that does so. The criminal codes should establish

responsibility for harsh violations of child labor. A good practice was launched in Ukraine, where a new criminal code includes an article, which establishes punishment for child exploitation. Russia might consider incorporating the same rule into the criminal code.

Those measures together could help in effective abolition of child labor in both countries. It should be noted, however, that legislative measures alone are not sufficient in the fight against child labor. The countries should elaborate an effective strategy, which targets awareness-raising, capacity-building of different stakeholders in the society, rehabilitation for the children – victims of worst forms of child labor.

There are no doubts that in elaboration of these activities the country can act alone, trying to find its own way of addressing the problem. It seems, however, that the countries should closely cooperate with the international organizations that have international experience, which can lighten and fast forward a difficult process of finding appropriate solutions, since they had compiled valuable knowledge on child labor elimination. Therefore the next chapters are going to focus on the efforts of the international organizations in child labor sphere.

4. CHAPTER III. International Standards on Child Labor

The international organizations have several ways of affecting the states' behavior. First international organizations attract specialists of high expertise with considerable international experience, therefore the international organizations can provide advice and knowledge transfer.⁶⁹ Such advice can be done either by drafting international norms or through consultations. Second, existence of international norms and references to them in the debates in the national parliaments reminds legislators of their responsibility for the quality of the legislation.⁷⁰ Third, almost all international documents discussed in this chapter, have implementation mechanism (either strong or weak). In case the country signs an international document, which envisages an implementation mechanism, the country usually commits to the norms enshrined in the document. Even weak mechanisms (when international community is capable to review the countries compliance, but can not enforce the norms in case of not-compliance), can stimulate or prod the governments to closer compliance, because incompliance can trigger international embarrassment.⁷¹ This phenomenon is also called "peer pressure", which in most cases could be considered to be effective. For instance, the UN notes, that though the UN conventions on child labor have a weak enforcement mechanism, the real power of the Conventions comes from public pressure.⁷²

The international organizations can also provide a forum for the states to learn from each other. During the states reports review the governments can listen to the problems of each other and by comparison can identify the most efficient ways to

⁶⁹ Glenn Mower, Jr. The Effectiveness of the International Human Rights Program. *International Organization*. Vol. 29. No 2 (spring 1975) P. 549.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² United Nations Background Note on Children's Rights. Available at <http://www.un.org/rights/dpi1765e.htm> (last visited on 18.12.2009).

address their national problems. In addition to this the international organizations provide forum for dealing with sensitive situations, when the countries' ability to address them on the national level is impeded by some domestic considerations,⁷³ therefore, in this case the international organizations could serve as relatively impartial mediator.

Having this theoretical considerations in mind and admitting that that in practice the effectiveness of the international organizations is difficult to address,⁷⁴ current and the next chapters will try to draw some conclusions on effectiveness of several international organizations in the following order: first, it will consider those international agencies that work in conventional way – namely, they affect the state compliance in a top-down way by providing advice, reviewing reports, etc. without direct involvement into the state' home affairs. Such international organizations have been established by International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), International Covenant on Civil and Political Rights (ICCPR) (1966), Convention on Rights of the child (1989) and Revised Social Charter within the context of the Council of Europe. The next chapter will focus on the ILO mechanisms, covering the Minimum Age Convention #138 (1973) and the Convention on the Worst Forms of Child Labor (1999) and the IPEC (International Program on Elimination of Child Labor).

⁷³ Glenn Mower, Jr. The Effectiveness of the International Human Rights Program. *International Organization*. Vol. 29. No 2 (spring 1975) P. 549.

⁷⁴ Francis W. Hoole. Evaluating the Impact of International Organizations. *International Organization*. Vol. 31, No. 3 (summer 1977). P.559 Available at www.jstor.org (last accessed on 15.11.09).

4.1. UN Tools

4.1.1. Scope of Protection against Child Labor by the ICCPR, the ICESCR and the Convention on the Rights of Child

International Covenant on Civil and Political Rights (hereinafter – ICCPR), which was signed by Russia and Ukraine, prohibits slavery and forced labor (article 8).⁷⁵ It bans the states from compelling anybody to work and also imposes obligation on the state to ensure that other persons are restrained from forcing workers to work. But this Covenant does not deal specifically with child labor. Since neither slavery nor forced labor is within the scope of my thesis, I will not elaborate further on this Covenant.

In article 10 (3) of International Covenant on Economic, Social and Cultural Rights (ICESCR), another international treaty, which both Russia and Ukraine have signed, there is a prohibition of child's economic and social exploitation. It also calls for prohibition of such work, which is harmful to the child's morals, health, dangerous to life or is "likely to hamper their normal development". In the light of this document two remarks should be made. The first remark touches the term "economic and social exploitation". Neither this convention nor other international norms explain it. The semantics of the word "exploitation" suggest that it involves taking unfair advantage over another person. In another words, "exploitation" means that employer takes benefit from the work of the child in a harmful way (either by not-paying fair salary, or by exposing to work in a dangerous conditions, etc). Following this logic, the "economic exploitation" would mean that an employer takes an unfair advantage of the work of the child to gain some economic benefit.

⁷⁵ International Covenant on Economic, Social and Cultural Rights. Available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited on 04.10.2009).

The term “social exploitation” does not offer an easy interpretation. It could mean that the Covenant drafters tried to come up with the word that would mean an exploitation, which does not involve taking an economic benefit, in another words, a “non-economic exploitation”. However, it is difficult to come up with the example of social exploitation, because in any case there will be an economic benefit (in case it is presumed that the latter is not limited to the monetary benefit).

Another aspect that should be examined is connection between the work harmful to morals, health, and life and exploitation. Although it could be argued that they mean the same, it seems that the latter is a wider term, which covers not only a harmful work, but also work under unfair working conditions (where the extent of the unfair conditions is not so deteriorating as to be regarded exploitation).

The second remark on this Covenant concerns the absence of the child’s education as a component of child labor, like the Convention on the Rights of Child, discussed in the next paragraph. It seems, though, that the notion of “normal development” is not specific enough and could mean almost anything. Moreover, the understanding of a “norm” in different countries is different, and following the long-established traditions may include sending the girls to work as domestic workers to get prepared for the coverture. Since the international norms should be as precise as possible not to lose their meaning, this article be phrased in a way, which will exclude a term “normal development” and include education.

As it has been just mentioned above, Convention on the Rights of Child (1989) covers education. In particular, it mentions in art. 32 ‘the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health

or physical, mental, spiritual, moral or social development”.⁷⁶ Thus, this Convention does not prohibit explicitly social exploitation (although it can be argued that it is covered by the definition anyway), but provides different types of development that child work should not interfere with.

4.1.2. Enforcement Mechanisms of ICESCR and Convention on the Rights of the Child and Their Case Law

The ICESCR sets the following mechanism for implementation: the countries submit to the Committee on Economic, Social and Cultural Rights (ESC Committee) their reports describing their actions to achieve full realization of the rights, developed in the ICESCR. The ESC Committee was formed according to the Economic and Social Council resolution 1985/17. It consists of eighteen independent experts, who are elected by the Economic and Social Council for the term of four years.⁷⁷ Election of the members by the Council seems to be a sufficient guarantee of their full independence. First, the election by the Council suggests that candidates managed to win support of diverse members of the Council on their profile, which implies that the candidates are consensus-builders. Second, an appointment by the Council allows concluding that these experts in the Committee would be less prone to defend their countries of origin during the considerations of reports, because they would be free from consideration of their next appointment.

The states have to submit their reports once in 5 years. The reports have to be prepared according to the Guidelines, which ask for presentation of *general* information on the Covenant requirements, like national framework law, policies and strategies,

⁷⁶ Convention on the Rights of Child. Available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

⁷⁷ Committee on Economic, Social and Cultural Rights. Monitoring the economic, social and cultural rights. Available at <http://www2.ohchr.org/english/bodies/cescr/>.

general overview of the enforcement mechanism (art. 3 of the Guidelines Annex).⁷⁸ In connection with a significant number of articles the ESC Committee has to consider, it is expectable that the concluding observations would have rather general character and would identify systematic or the most outrages problems. In addition to this the ESC Committee can not force the states to change their practices and remedy the situation, since it does not have the necessary tools at its disposal. Therefore, the only tools this body can rely on is persuasion, mediation and public pressure, which in many cases are effective, as some authors claim that strong international regimes rely more on mutual commitment, rather formal procedures (which only supplement state acceptance).⁷⁹ Therefore, this system has rather weak enforcement.

Analysis of the ESC Committee's case law also presents some inconsistency in addressing child labor in Russia and Ukraine. While reviewing the reports submitted by Russia and Ukraine the Council has paid different attention to the problem of child labor: while in the concluding observations to the Russian reports the attention is fading away, it is becoming stronger in the Ukrainian case. In the concluding observations in 1997 on Russia the Committee has noted that growing number of child labor instances and recommended the Russian government to take appropriate measures.⁸⁰ Though having reviewed already two Russian reports since this time, the issue of child labor in Russia has never come to the scope of review. The situation is reversed in the case of Ukraine.

⁷⁸ GUIDELINES ON TREATY-SPECIFIC DOCUMENTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. Adopted on 24 March 2009 by Economic and Social Council. Available at <http://www2.ohchr.org/english/bodies/cescr/> (last visited on 8.10.09).

⁷⁹ Jack Donnelly. International Human Rights: A Regime Analysis. *International Organization*, Vol. 40, No 30 (summer, 1986). P. 622. Available at www.jstor.org (last visited on 29.09.09).

⁸⁰ CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT Concluding observations of the Committee on Economic, Social and Cultural Rights RUSSIAN FEDERATION. 20 May 1997. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G97/166/97/PDF/G9716697.pdf?OpenElement>

The ESC Committee did not address this issue in the concluding observation in 1995 or in 2001, but the observation of 2008 paid significant attention to it:

The Committee urges the State party to intensify its efforts to combat child labor, including through systematic and effective labor inspections and urgent controls by social services, heavier sentences for persons who make use of illegal child labor, mandatory training for the police, prosecutors and judges, awareness raising campaigns for children and parents on the dangers of child labor and the importance of education, and assistance and reintegration for children engaged in child labor.⁸¹

Such inconsistency can be explained either by flaws in the national reports submitted by Russia, when the country does not present full information (the Committee is essentially powerless to compel the countries to provide information) or by the political considerations of the international organization. In the current discussion the first consideration is the most probable one, since the national reports of Russia tend to declare the country's full compliance with the international norms, while the Ukrainian reports carefully address the problems (sections 160-163).⁸² However, even in the Ukrainian case the ESC Committee does not elaborate on measures the countries have to adopt, therefore leaving this domain entirely to the will of the state. Thus, the implementation mechanism is limited by the Committee's inability to investigate further the real state practices, and to grant comprehensive review including drawing a detailed action plan.

⁸¹ CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT. Concluding observations of the Committee on Economic, Social and Cultural Rights. UKRAINE. 4 January 2008. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/400/43/PDF/G0840043.pdf?OpenElement>

⁸² IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. Fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant. Addendum. Pp. 21-22. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/439/24/PDF/G0643924.pdf?OpenElement>

The Convention on the Rights of Child establishes Committee on the Rights of the Child as a monitoring body, which consists of 18 experts, who are elected by the states for the terms of four years.⁸³ Such institutional arrangements seem not to fully guarantee the experts' independence from the state, because, first, the state will be likely to elect a person with a stronger pro-state (rather than pro-Committee) attitude. Experts also remain dependent on the state for reelection. However, having a state representative as a member of Committee can also be beneficial to the work of the Committee since the measures it proposes would be more tailored to the needs of the country and therefore would be more likely to be followed by the governments. However, because of variety of diverse countries and a big number of articles under on which Committee has to grant its consideration it is not possible for the Committee to examine in detail legislation and practice of the states and to draw a detailed action plan. In fact, it has noted that it is not up to it to provide for "detailed arrangements appropriate for very different systems of governments across state parties".⁸⁴

Since the Convention on the Rights of the child does not establish the list of the jobs that can be considered dangerous, a case law of the Committee can help in understanding it. Among the dangerous child labor practices are: use of child as camel jockeys (Oman, 2006); cleaning sewers and latrines (Congo, 2006); begging in the streets (Senegal, 2006); domestic servants (Senegal, 2006); street vendors (Samoa, 2006); metal works and crafts, including rock-cutting, tobacco cultivation (Lebanon, 2006), and jewelry, carpet and mosaic industry (Morocco, 2003); cotton harvesting (Turkmenistan, 2006; Uzbekistan, 2006); mines, garbage dumps and battery recycling

⁸³ Committee on the Rights of the Child – Members. Available at <http://www2.ohchr.org/english/bodies/crc/members.htm> (last accessed on 01.11.09).

⁸⁴ CRC/GC/2003/5, 34th Sess., Available at www.unhcr.org/refugees/3bba808e47bf25ab8c7fjoan700079f96?OpenDocument (last visited on 1.09.09).

(Peru, 2006); gold mines and service sector (Viet Nam, 2003); and work in informal sector: small family enterprises, agriculture and domestic labor (Jordan, 2006).

Analysis of concluding observations, which are a result of the state reports review, leads to conclusion that in the past five years the committee has intensified attention paid to child labor problem. In 2003-2004 report round the Committee did not elaborate on child labor country's efforts, mentioning sometimes only relevant legislation. In the current reports (the latest round of reports – 2006-2009) the child labor problem has been under constant attention.

In the first concluding observation of the Committee on Russia, issued in 1993, child labor was not mentioned,⁸⁵ even though due to the economic crisis this problem might have been on the rise. In the next concluding observation in 1999, the Committee expressed its concern about a growing number of child labor and working street children. The Committee asked to strengthen monitoring in the informal sector and undertake a research on the issue of street children.⁸⁶ The Committee encouraged considering technical assistance from the ILO-IPEC".⁸⁷ In the next concluding observations of 2005 the Committee has raised the same concerns and recommended the same actions.⁸⁸ Thus, a trend opposite to the Council can be observed: the Committee started from paying no attention to child labor problem, but progressively shed light on it. The Russian Federation did not accomplish the goals set by the Committee: research on street children has not been done yet and the enforcement mechanism has not been

⁸⁵ Concluding Observations of the Committee on the Rights of the Child on the Report of the Russian Federation 18/12/93. CRC/C/15/Add.4. Available at <http://tb.ohchr.org/default.aspx>

⁸⁶ Concluding Observations of the Committee on the Rights of the Child on the Report of the Russian Federation 10/11/1999. CRC/C/15/Add.110. P. 10. Available at <http://tb.ohchr.org/default.aspx>.

⁸⁷ Ibid.

⁸⁸ Concluding Observations of the Committee on the Rights of the Child on the Report of the Russian Federation. 23/11/2005. CRC/C/RUS/CO/3. P. 16. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/451/04/PDF/G0545104.pdf?OpenElement>

strengthened. However, it started working with IPEC, although as it will be shown later, not so closely as Ukraine.

The same pattern of shedding light on the issue of child labor can be observed with Ukraine. In the first concluding observation of 1995 the Committee said nothing about child labor⁸⁹, while in the second, delivered in 2002, the Committee “remain[ed] concerned that there [was] inadequate enforcement of the Ukrainian Labor Code [addressing the child labor], in particular with regard to hazardous and forced labor”.⁹⁰ The Committee has recommended Ukraine to undertake a national survey on the number of working children. This task was accomplished by Ukraine with the support of the IPEC.

Therefore, practical consideration of two implementation mechanisms established by the UN Conventions show that although being successful in certain cases to foster the countries’ compliance, they do not have legal tools to compel the countries to comply with the international standards. The strongest tool they have is political pressure and exposure to public reproach, which could be effective, since as the UN notes, the UN conventions on child labor have weak enforcement mechanism, but the power of the Conventions comes from mutual example and pressure from the public.⁹¹ However, if country is numb to the international pressure, then the effectiveness of the UN agencies is limited. Therefore, the UN mechanisms could be said to have rather promotional (information exchange, promotion, or assistance and weak monitoring) rather than

⁸⁹Concluding Observations the Committee on the Rights of the Child on the Report of Ukraine. 27/11/1995. CRC/C/15/Add.42. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G95/197/30/PDF/G9519730.pdf?OpenElement>

⁹⁰ Concluding Observations the Committee on the Rights of the Child on the Report of Ukraine. 09/10/2002. CRC/C/15/Add.191. P. 16. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/454/39/PDF/G0245439.pdf?OpenElement>

⁹¹ United Nations Background Note on Children's Rights. Available at <http://www.un.org/rights/dpi1765e.htm> (last visited on 18.12.2008).

enforcement (binding decision making) character⁹², since their efficiency ultimately depends on the states will, which could be (but not always) affected by these mechanisms through essentially moral suasion. Although one could argue that a successful international organization will try to maximize its power, but maximization has also limits, which are determined by the states' commitment to the international regime.⁹³ The fact that the countries have established weak UN regimes shows that the countries are not ready for the stronger enforcement mechanism within the UN gambits, since it might not present a "safe" choice, because the states might fear that national human rights practices could cause substantial embarrassment⁹⁴ or because there is no strong consensus that such universal bodies can provide effective implementation. Therefore essentially the states' commitment to the UN mechanisms is limited; hence even the public shaming (basically the only available tool for the UN bodies) does not bear its full effectiveness, since in the absence of substantial commitment the states can disregard pressure much easier. In the case of Council of Europe commitment seems to be much stronger, therefore public shaming will be capable of rendering better effectiveness.

4.2. European Social Charter (Revised 1996)

The Revised Charter has been signed by all 45 member states of the Council of Europe (Croatia and Liechtenstein has not signed yet)⁹⁵ and ratified by 28. The Russian Federation signed the Revised Social Charter on 14 September 2000 and it ratified on

⁹² Jack Donnelly. International Human Rights: A Regime Analysis. *International Organization*, Vol. 40, No 30 (summer, 1986). P. 604. Available at www.jstor.org (last visited on 29.09.09).

⁹³ Even J. Ringquist and Tatiana Kostadinova. Assessing the Effectiveness of International Environmental Agreements: The Case of the 1985 Helsinki Protocol. *American Journal of Political Science*, Vol. 49, No. 1 (Jan., 2005), P. 87. Available at www.jstor.org (last visited on 17.10.09).

⁹⁴ Jack Donnelly. International Human Rights: A Regime Analysis. *International Organization*, Vol. 40, No. 3. P. 616.

⁹⁵ Country Fact Sheets. Council of Europe. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable_en.asp (last visited on 12.04.2009).

16/10/2009.⁹⁶ Ukraine has signed and ratified it on 21/12/06. To evaluate the conformity of the states legislation and practice with the requirements of the Charter the European Committee of Social Rights' (ECSR) was set up.⁹⁷

4.3.1. Enforcement of the Charter

Institutional Arrangements

The European Committee on Social Rights consists of fifteen independent impartial experts, elected by the Committee of Ministers for the term of 6 years. The European Committee on Social Rights examines national reports and issues conclusions in respect of national reports and decisions in respect of collective complaints.⁹⁸ If during consideration of the state reports the Committee finds non-conformity with the Charter, the Governmental Committee, which consists of the representatives of the states, can issue either recommendations, which proposes a plan for the states to follow,⁹⁹ or a warning (a legal force of which implies that “unless it [the state] takes steps to comply with its obligations under the Charter, the Committee may proposed a recommendation the next time this provision is examined”) or it can express an opinion on the issue.¹⁰⁰ In case Governmental Committee does not see possible solutions to the national situation it can ask the Committee of Ministers to propose a recommendation.

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⁹⁶ Russian Federation and the European Social Charter. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Russia_en.pdf (last visited 15.11.09).

⁹⁷ Children's Rights Under the European Social Charter, 2001. P. 11. Available at <http://www.coe.int/> (last visited on. 02.08.09).

⁹⁸ European Committee of Social Rights (ECSR). Available at http://www.coe.int/t/dghl/monitoring/socialcharter/ECSR/ECSRdefault_en.asp.

⁹⁹ Governmental Committee: follow-up of conclusions. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/GovernmentalCommittee/GCdefault_en.asp

¹⁰⁰ GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER. Strasbourg, 30 June 2008. http://www.coe.int/t/dghl/monitoring/socialcharter/GovernmentalCommittee/Rules2008_en.pdf.

¹⁰¹ Ibid.

According to experts, the Council of Europe has unprecedentedly strong international regime¹⁰², because there is relatively similar culture and national legal systems among the Charter parties in comparison to the similar UN bodies,¹⁰³ where relative ideological hegemony is a crucial contributor to the creation of the strong international organization.¹⁰⁴ Therefore there is substantially more trust and commitment of the member states to this system, which provides better opportunities for the international organization (Council of Europe) to review the states compliance.

In addition to this, since in the Council of Europe the number of states is rather limited (in comparison to the UN bodies) the Committee can devote much more time for the consideration of the states' reports. Unlike the UN bodies the Committee examines not only systematic and the most outrageous legal problems, it explores all legal arrangements, created by the country to deal with specific problem. In addition, the ESC Committee considers the documents other than state reports, when drawing up conclusions. In fact, the Committee unlike the UN bodies cites in its conclusions (and therefore uses in consideration) information acquired from different sources like Eurydice¹⁰⁵ (it is part of the Community Action Program in the Field of Lifelong Learning), the ILO reports,¹⁰⁶ country reports, drafted by the EU entities,¹⁰⁷ reports of the international NGOs, information issued by the US Department of State¹⁰⁸ etc., which could provide a more balanced and perhaps, more independent view of the state practices (for instance, it has identified concealed in the state reports issue of illegal child

¹⁰² Donnelly, p. 636.

¹⁰³ Although of course, consistency of national legal systems in the Council of Europe settings is a relative feature, because there is still substantial disparity within the participant countries, still in comparison to the UN bodies (where a wider range of countries are represented) the European national systems are more similar.

¹⁰⁴ Donnelly, p. 638.

¹⁰⁵ Estonia. Conclusions 2006 Volume 2. Article 7; 7.3. Conclusion date 06/30/2006.

¹⁰⁶ Spain. Conclusions 2006 Volume 2. Article 7; 7.3. Conclusion date 06/30/2006.

¹⁰⁷ Sweden. Conclusion XV – 2 Volume 2. Article 7; 7.3. Conclusion date 12/31/2001.

¹⁰⁸ France. Conclusion 2006, Volume 1. Article 7; 7.3.10. Conclusion date 06/30/2006.

work¹⁰⁹). Therefore, the Committee's review is more detailed and thorough than of the similar UN bodies. Moreover, the Committee also pays close attention to the enforcement, admitting that statutory prohibition of child labor is essential, but the state has to take the necessary steps to ensure that ..[rules] are effectively enforced,¹¹⁰ which the Committee measures through several factors, like activities of the Labor Inspectorate to ensure compliance with the law on the employment of minors, in particular, the number of infringements detected and sanctions applied, the extent to which children work illegally, the strategy of the authorities in detecting and combating illegal work by children and an indication of the results obtained.¹¹¹ The Committee's methodology to address child labor enforcement includes consideration of the following aspects: effective enforcement of the labor laws through enquiries of the statistics on child labor enforcement, like numbers of inspections carried out¹¹² the percentage of the covered workers,¹¹³ the types of the labor inspections enquiries (the Committee requires conduct of special surveys on employment injuries of adolescent employees and monitoring occurrence of occupational diseases).¹¹⁴

Thus, the Committee's particular institutional arrangements ensure a more rigorous consideration of the state reports in comparison within the UN system, which makes careful and detailed consideration of the legislation and enforcement possible. Due to the states' commitment to the Council of Europe system and followed from this a states' anxiety about peer shaming, the Committee's conclusions have more chances to be transferred to the national system than the conclusions made within the UN system. In fact, although there have been some unsuccessful Committee's attempts to bring states

¹⁰⁹ Spain. Conclusions 2006 Volume 2. Article 7; 7.3. Conclusion date 06/30/2006.

¹¹⁰ Lenia, Samuel. Fundamental Social Rights – Case Law Of the European Social Charter. Strasburg, 2002. P. 175.

¹¹¹ Ibid.

¹¹² Portugal. Conclusion 2006. Volume 2. Article 7; 7.2. Conclusion date 06/30/2006.

¹¹³ Slovakia. Conclusion XVI-2 Volume 2. Article 7; 7.3. Conclusion date 06/30/2004.

¹¹⁴ Slovakia. Conclusion XVI-2 Volume 2. Article 7; 7.3. Conclusion date 06/30/2004.

practices in closer compliance, analysis of the Committee's case law allows concluding that it has been generally effective in enforcing the international standards on the national states. For instance, legislation of France in regards to child labor had significantly improved after the Committee has first found France to be not in conformity with the child labor standards because national child labor legislation did not apply to the children working in the family business.¹¹⁵ After Portugal has been found in violation of the Charter in the collective complaint procedure (discussed earlier) the next report of Portugal has shown important progress in legislation (regarding light work, minor's participation in cultural, artistic or advertising activities) and enforcement.¹¹⁶

Existing Enforcement Procedures

There are two types of the procedures of the enforcement machinery: collective complaint procedure and review of the state reports. Collective complaints can be lodged by (article 1 of Additional Protocol to the European Social Charter for a System of Collective Complaints):

- a. international organizations of employers and trade unions;
- b. other international non-governmental organizations that have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee. Article 3 allows submitting complaints only within the scope of their competence.

¹¹⁵ Conclusion XV-2 Volume 1. 12/31/2001. Available at <http://hudoc.esc.coe.int/esc2008/query.asp?action=page&page=5×tamp=57154.51> (last visited on 3.11.09).

¹¹⁶ Conclusion 2006. Volume 2. 06/30/2006. Available at <http://hudoc.esc.coe.int/esc2008/query.asp?action=page&page=5×tamp=57154.51> (last visited on 3.11.09).

- c. national organizations of employers and trade unions¹¹⁷.

Another procedure envisaged by the Charter is the State reports procedure. Currently a new reporting system has been set by decision of the Committee of Ministers¹¹⁸, which came into effect since 31 October 2007. It introduced such system which requires a state to present a report on one out of four groups every year (in a four year round each group will be reviewed). Group 1 includes Employment, training and equal opportunities, Group 2 - Health, social security and social protection, group 3 - labor rights, group 4 – rights of Children, families, and migrants.

4.3.2. Substance of the Charter in Regards to Child Labor

Among the hard core provisions of the Revised Social Charter is article 7, which deals with child labor and asks for:

1. minimum age for work admission is 15 years. The Charter makes an exception for the children who perform light work, where the concept of light work is framed in the following way: “light work without harm to their [children] health, morals or education”. It seems that requirement on the health and morals safety of work is a requirement upon the tasks and occupations where the work is performed, while requirement of not-interference with school seems to be more a condition upon time. As the Committee notes, the main purpose of this article it “to ensure that young people below the age of fifteen are effectively protected against the dangers of employment which is likely to have a harmful effect on their health, morals, development and education”. Interestingly, unlike the ILO Convention on Minimum Age (discussed later) the Charter

¹¹⁷ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. 9.XI.1995. ed. Council of Europe.

¹¹⁸ European Social Charter – governmental committee of the European social charter – new system for the presentation of reports on the application of the European social charter – proposal of the governmental committee. 3 May 2006. ed. Committee of Ministers.

does not set a minimum age for light work. Such approach is more beneficial, because it introduces a work done by children under 13 (admission age for light work under Minimum Age Convention) into the scope of the legislative regulation (unlike Russian and Ukrainian legislation, which establish 14 years as the age of admission to light work, therefore leaving outside of regulation work done before reaching this age).

2. The working hours of persons younger than 18 years should be limited by their development needs. (In Social Charter 1961 this threshold is 16 years);

3. 18 years for the admission to work under dangerous and unhealthy conditions (in Social Charter of 1961 this threshold -15 years);

4. students that are involved in compulsory education shall not be employed if their work deprives them of the full benefit of their education;

5. fair salary to minor workers;

6. minimum four weeks of annual holiday with pay (3 weeks under Social Charter of 1961);

7. no night work, with the exception of some occupations under the national law;

8. regular medical check-ups for children under 18 years.

As it has been already mentioned, the Committee pays special attention to enforcement of child labor laws, but above all it requires statutory prohibition of child labor. It notes,

A rigorous, comprehensive statutory framework is essential to compliance with these provisions, since anything less may deny the authorities an adequate legal basis to take the actions necessary to prevent the economic exploitation of children in all economic sectors.

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¹¹⁹ Lenia, p. 177.

The Committee had a chance to present its interpretation of the child labor in the review of the complaint, lodged by the International Commission of Jurists against Portugal in 1998 and while reviewing the state reports. Since there are no national reports or complaints against Ukraine and Russia it is interesting to look at the reports and the complaint to understand the Committee's interpretation. While ruling on Portugal inconformity with Charter in regards with the prohibition of child labor, the Committee has concluded that:

- duration of the work is decisive in determination of lightness. If the work takes more than three hours a day, then it is not light.¹²⁰ Projection of this rule on Russian and Ukraine allows admitting that neither Russian nor Ukrainian legislation defines the time a child could work daily while performing light work, therefore they are strongly advised to do so.
- Charter's requirements are applicable to all the economic sectors and all types of enterprises, including family business, and to all types of work (no matter paid or unpaid).¹²¹ Therefore inability of Russian and Ukrainian inspections to inspect all working places will be contrary to the Charter.

The case law shows that Committee's uses the following characteristics to identify "light work": a) nature of the work (the work by no means should be dangerous), b) maximum working hours, c) time of the day work is performed, e) mandatory rest period. I am going to address nature of the work first and then analysis the Committee case law on the work timing.

Dangerous tasks

¹²⁰ Decision on the Merits: Collective Complaint no. 1/1998 from the International Commission of Jurists Against Portugal. 15/10/1999. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC1Merits_en.pdf (last visited 27.07.09).

¹²¹ Decision on the Merits: Collective Complaint no. 1/1998 from the International Commission of Jurists Against Portugal.

Although as it has been already mentioned, between light work and dangerous work there is a substantial range of non-light and non-dangerous type of work, there is a priority task to ensure that children before 18 are not engaged in dangerous work. In order to satisfy this standard the Committee asks the states either to draw up a list of factors linked to it that make work dangerous (which embrace physical, biological and chemical risks) ¹²² or to present a list of occupations where children can not be hired (negative list). It seems that drawing up a list of factors grants more flexibility in determination of the danger of the working place. On the other hand, it places responsibility on the employer to assess the risks the work presents, ¹²³ which can be effective sometimes. However, considering the consequences that dangerous work can pose for the minor and possible inability of the employer to assess the risk the works presents, a legislative determination of the list of occupations may be a more preferable choice in this regard.

The Committee regards as dangerous sexual exploitation, trafficking, begging, removal of the organs, pick pocketing, servitude, street labor ¹²⁴ (those activities are mainly accessed under article 7 (10). Other activities that have been found dangerous for the children: work with benzene, jobs in commerce, transport, hotel or catering sectors.¹²⁵ Some types of job have a potential to be regarded as dangerous, like agricultural and work in family business and jobs involving the shifting loads, ¹²⁶ transportation by bicycle¹²⁷ in the Committee's future considerations. The Committee

¹²² Slovenia. Conclusion 2006 Volume 2. Article 7; 7.3. Conclusion date 06/30/2006.

¹²³ Lithuania. Conclusion 2004 Volume 2. Article 7; 7.3. Conclusion date 05/31/2004.

¹²⁴ For further information, see Moldova. Article 7; 7.10. Conclusions 2006 Volume 2. Conclusion date 06/30/2006 or Romania. Article 7; 7.10. Conclusions 2006 Volume 2. Conclusion date 06/30/2006

¹²⁵ Lenia, p. 177.

¹²⁶ Ibid.

¹²⁷ Conclusion C XIII-3 285 (Portugal) in *David Harris and John Darcy. The European Social Charter. Transnational Publishers: NY. P. 113.*

appears be willing to prohibit children under age of 18 to work with some other dangerous and unhealthy substances in a line with the EU standards.¹²⁸

The Committee is able to grant some exceptions to child's work in dangerous environment if such work is done within the framework of educational program (certified by authority,¹²⁹ or by the employers' association and a trade union.¹³⁰) and is performed under supervision of the qualified employee and if it is absolutely necessary for vocational training.¹³¹ In addition to this the Committee requires application of the measures to protect health and safety of these children¹³² to reduce the risk to the lowest level reasonably practicable.¹³³ Such careful analysis of the legal arrangements support the point presented above that the system envisaged by the European Social Charter has a good potential for Russia and Ukraine in advancing their legislation, because it is able to identify the flaws in the existing systems and through examples of the third countries Russian and Ukraine can get inspiration on how the problems can be targeted.

Defining time

The Committee while considering the state reports on the article 7.3 in the first supervision cycle has concluded that in order to ensure that children of the compulsory education age are not employed in work, which could deprive them with the benefit of education, the states at least have to take measures to ensure limit "the employment of children still attending school to work after school hours or at weekends".¹³⁴ In the third cycle the Committee has expanded its view to demand that governments take "specific measures which, *inter alia*, set a maximum limit on the duration of work done by children

¹²⁸ David Harris and John Darcy. The European Social Charter. Transnational Publishers: NY. P. 117.

¹²⁹ Sweden. Conclusion 2002. Article 7; 7.3. Conclusion date 03/31/2002.

¹³⁰ Sweden. Conclusion 2006. Article 7; 7.3. Conclusion date 06/30/2006.

¹³¹ Slovenia. Conclusion 2006 Volume 2. Article 7; 7.3. Conclusion date 06/30/2006.

¹³² Italy. Conclusion 2002. Article 7; 7.3. Conclusion date 03/31/2002.

¹³³ United Kingdom. Conclusion XVII – 2 Volume 2. Article 7; 7.3. Conclusion date 06/30/2005.

¹³⁴ Conclusion 1, p.43 in *Lenia*, p. 177.

before or after school hours and restricted the permissible types of work to prescribed light occupations.¹³⁵ The Committee finds it compatible with the Charter if during a school term a child works within the following time limits:

- 6 years old children are authorized to work 2 hours a day, but no more than 4 hours a week
- 7-11 years olds can work 3 hours a day, but no more than 6 hours a week
- children from the age of 12 to 15 are authorized to work less than 4 hours a day but no more than 8 hours a week.¹³⁶ Committee considers work for 4 hours a day to be excessive to satisfy the requirement of light work.¹³⁷

The Committee considers rest during the holidays as valuable contributor to the child receptive abilities and educational in general. Therefore, in order to satisfy the child's needs to rest and to ensure that child's school performance is undamaged, the child working hours during the weekends and holidays should also be limited. The Committee has emphasized:

Existence of a compulsory weekly rest period would not be sufficient if a child worked up to eight hours a day and forty hours a week for the entire duration of holidays, since in such a case the aim of this provision would not be attained... Uninterrupted employment during the school holidays could have adverse effects on compulsory school attendance.¹³⁸

In development of this idea the Committee has set the following time frames for the work during holidays:

- children from 6 to 11 years should work not more than 6 hours per day and not more than 12 hours a week;¹³⁹

¹³⁵ Conclusions III, p. 40 in *Lenia*, p. 180.

¹³⁶ Portugal. Conclusions 2006 Volume 2. Conclusion date 06/030/2006.

¹³⁷ Bulgaria. Conclusions 2004 Volume 1. Conclusion date 05/31/2004.

¹³⁸ Conclusion VIII, p. 109. Sweden in *Lenia*, p. 180.

¹³⁹ Portugal. Conclusions 2006 Volume 2. Conclusion date 06/030/2006.

- for the children older than 13 the Committee finds appropriate to work for 7 hours a day no more than 35 hours per week to be compatible with the Charter.¹⁴⁰

In order for the work to be light the Committee has established requirement on the child's rest by establishing mandatory rest period, which must be at least half the holiday period to ensure sufficient rest.¹⁴¹ The Committee demands that mandatory rest period should include half of the summer holidays (half of the school leave).¹⁴²

Regarding the day time when working activity is performed the Committee has noted that in principal work before school (at the mornings) is incompatible with the requirements.¹⁴³ However, the Committee is willing to grant exceptions to this rule, when the child works before the school, but has at least one hour break between the school and work.¹⁴⁴

Since a wide gamut of factors have to be taken into account for the work to satisfy the requirements of "lightness", the Committee asks the states to "define the types of work which may be considered light, or at least to draw up the list of those which are not".¹⁴⁵ These lists will help the employers and the competent bodies to assess light character of the work,¹⁴⁶ as the Committee does not regard as acceptable to leave prescription of work entirely to the discretion of the supervisory bodies.¹⁴⁷

On the ground of the case law presented above it seems that Russian ratification of the Revised Social Charter (and following submitting of the states reports) has a

¹⁴⁰ Slovenia. Conclusions 2006 Volume 2. Conclusion date 06/030/2006.

¹⁴¹ Lithuania. Conclusions 2006 Volume 2. Conclusion date 06/030/2006 and United Kingdom.

Conclusion XVII-2 Volume 2. Conclusion date 06/30/2005.

¹⁴² Moldova. Conclusions 2006 Volume 2. Conclusion date 06/030/2006.

¹⁴³ Lithuania. Conclusions 2006 Volume 2. Conclusion date 06/030/2006.

¹⁴⁴ Portugal. Conclusions 2006 Volume 2. Conclusion date 06/030/2006.

¹⁴⁵ INTERPRETATION OF THE DIFFERENT PROVISIONS OF THE REVISED EUROPEAN SOCIAL CHARTER. DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS. P. 59. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf (last visited on 2.08.09)

¹⁴⁶ Lenia, p. 175.

¹⁴⁷ Ibid.

capacity to yield important results in fostering this country into further compliance with the international norms on child labor because of the specific nature of the system of Council of Europe, including the international enforcement mechanism of the Social Charter. The above mentioned specificity is explained, first, by the fact that Council of Europe enjoys trust and commitment of the member states. Such commitment also implies a strong peer pressure on the countries found in no-compliance. The Russian signature of the Revised Charter after long years of resistance testifies that it has a will to comply with the Charter provisions, although there may be no sufficient understanding of the Charter requirements, as the Governmental Commission on Russian ratification of the European Social Charter¹⁴⁸ and President D. Medvedev considers Russia to be already in complete compliance with the Revised Charter requirements.¹⁴⁹ Therefore it will be interesting to see first conclusions of Committee on Russian and Ukrainian compliance with the Charter requirements on article 7.

Second, the Charter has such institutional arrangements of the review of the state reports (when essentially Committee of Experts, Governmental Committee and the Committee of Ministers could get involved in the consideration of the state reports) that better safeguards factual and perceived by the states' independence of the Charter's regime. Perceived by the states impartiality reinforces the authority and confidence of the states in such mechanism, thus providing even more confidence. In addition to this, due to the smaller number of participating countries in the Charter (in comparison to the alike UN bodies) and significantly more cultural and legal homogeneity between the

¹⁴⁸ European Social Charter. Ratification Challenges for Russian Federation. Analysis of Working Groups of the Commission of Russian Federation on Ratification the European Social Charter. Available at <http://www.budgetrf.ru/Publications/Magazines/VestnikSF/2003/vestniksf196-03/vestniksf196-03100.htm> (last visited on 04.09.2009).

¹⁴⁹ Dmitry Medvedev Proposed to the State Duma to Ratify the European Social Charter (Revised). Official President Web-Site. Available at <http://www.kremlin.ru/news/3570> (last visited on 13.12.09).

member states, the Committee is able to overcome the weakness of the other similar international bodies (review of the general legislative trends and identification of the systematic problems) and grant a detailed consideration to all national legal arrangements. Moreover, the analysis of the case law shows that Committee pays close attention to the implementation of the child labor laws. In assessing the countries' compliance the Committee is not limited to information provided in the states' report (which hypothetically could be inaccurate), it can also consider the other sources, therefore bringing consideration closer to the reality. Therefore, even the procedure that was considered weak with the UN system (review of the state reports) in fact can provide better results in the Council of Europe settings, although, of course, essentially national compliance is dependent on the will of the states to comply, because the system of the Council of Europe lacks ability to forge compliance in a button up way (like discussed in the last chapter ILO).

Furthermore, the system of the Charter regime also envisages and additional supervision mechanism - collective complaint procedure, a quasi-judicial procedure. Although this procedure in field of child labor has been initiated only once, it showed a proved impact on the legislation and law enforcement in Portugal. Although Russia and Ukraine have not accepted this procedure, and are not likely to do this in the near future (5-10 years) allegedly because of the fear to be found in violation, it could be argued that existence of this procedure is still beneficial to them, since the countries can learn from the identified violations of the other member states. Russia and Ukraine benefit from this procedure also indirectly, because such procedure strengthens capacity of the Committee by presenting new phenomena (which may not be revealed in the state reports member states' practices), therefore giving the Committee a chance to deepen its knowledge and develop new case law, which could later be used in the consideration of the state reports.

After having considered the role of international organizations set to affect the states' behavior in a top-down way, I will show that at least some international organizations also intrude upon the sphere that has always been considered a home issue – national legislative process. I will show that ILO has been established as advisory (technical) body, but essentially it managed to strengthen its international regime through involvement to the domestic affairs.

5. CHAPTER IV. The ILO Efforts to Foster Russian and Ukrainian Compliance with the Prohibition of Child Labor

5.1. The ILO Conventions

The ILO was the first international organization that drew international attention to the problem of child labor. In 1919 the ILO first introduced the Recommendations # 4 on October 29, 1919, which aimed at protecting children from the lead poisoning. In 1921 the ILO issued the Convention # 5, which stated that children under the age of fourteen should not be employed in any public or private undertaking". The later ILO Conventions (like #7, 10, 15, 33 and 59) sought to establish the minimum age for the children working in the fishing, and agriculture. Though it could be argued that by the time of the first ILO conventions the only states that sought to comply were Western, capitalist, wealthy and developed states,¹⁵⁰ it could be safely concluded that internationalization of the child labor problem is a major achievement of the ILO. Later ILO conventions, like the Convention on Elimination of the Worst Forms of Child Labor and Minimum Age Convention attempted to further expand international child labor legislation.

Convention on Elimination of the Worst Forms of Child Labor, adopted in 1999, is much more detailed than any other UN documents on child labor. It prohibits slavery, trafficking, debt bondage and other forms of forced labor; prostitution and pornography; forced recruitment of children for military purposes; and the use of children for illicit activities such as the trafficking of drugs, and other work which is likely to be harmful

¹⁵⁰ Jack Donnely. International Human Rights: A Regime Analysis. International Organizations, Vol. 40, No 30 (Summer , 1986). P. 614. Available at www.jstor.org (last visited 18.08.09).

for health, safety or morals of the child (art. 3).¹⁵¹ Convention prohibits two different types of labor: unconditional worst forms of child labor (like slavery, trafficking, debt bondage, etc) and hazardous labor. Recalling the wording of two UN documents on child labor (Convention on the Rights of the Child and the ICESCR) the unconditional worst forms can be regarded as the types of exploitation, although exploitation is not limited to these activities. The unconditional forms of child labor comprise crime per se disregarding the age of the victim.

Hazardous labor is not a crime per se. Hazardous labor exposes children to the lesser harm than the unconditional worst forms, but still presents danger because of either the nature of the work (work, which requires significant moral or physical efforts) or conditions in which it is carried out (in this case the nature of the work is not harmful, but circumstances (for instance, child working as a waiter in night club). It should be noted that the Convention on the Worst Forms of Child Labor does not prohibit work that is dangerous for child's schooling, because the convention seeks to abolish the gravest forms of child labor, which trampers, first of all, the child's existence and physical survival.

The work which is devoid of dangers to the child's existence interferes, but interferes schooling also harms a child, since as already mentioned Committee on Social Rights have noted, excessive simple work can also have negative effect, as "working children are much more likely to have to repeat a school year".¹⁵² However, such interferes with the development of the child, rather than with the physical existence. Thus, such work can not be called "hazardous" in the spirit of the Worst Forms of Child

¹⁵¹ Worst Forms of Child Labor Convention, (No. 182). Available at <http://www2.ohchr.org/english/law/childlabour.htm> (last visited on 12.10.09).

¹⁵² Italy. Conclusions 2002. Article 7; 7.3. Conclusion date 03/31/2002.

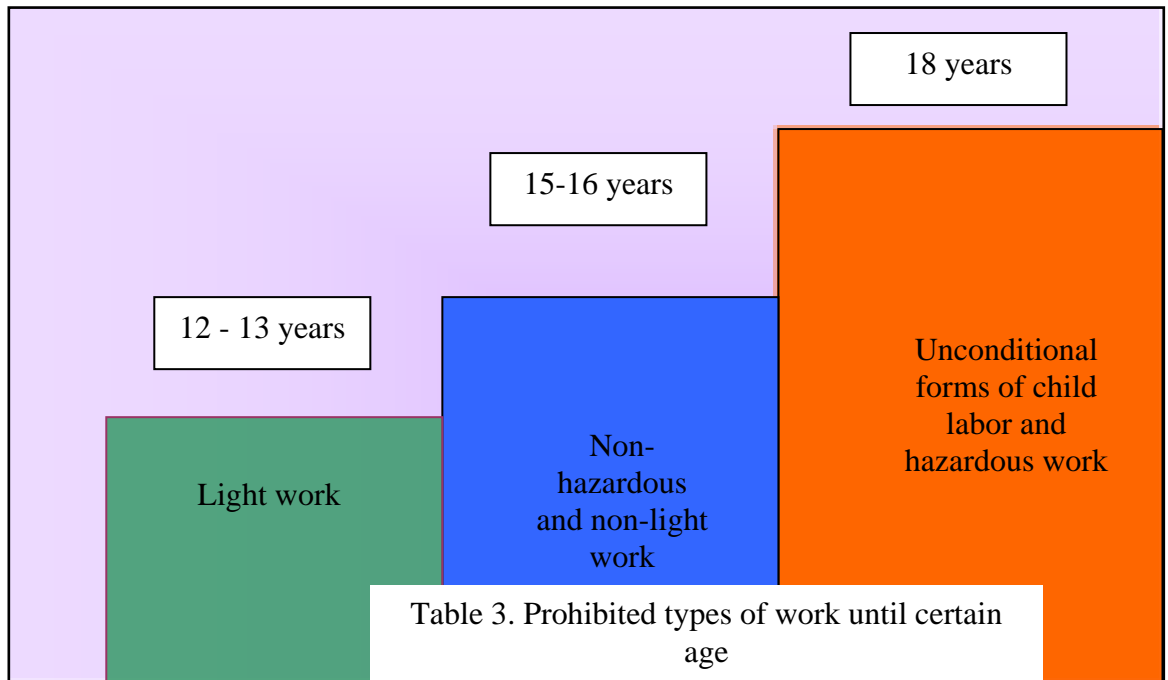
Labor Convention. For the future purposes the work that does not present danger for the child's existence, but impedes development or schooling, will be called "non-hazardous and non-light work".

Despite of the fact that the Convention of the Worst Forms of Child Labor does not prohibit the non-hazardous and non-light work, such work is still banned in the international law for the children below the minimum age by the Minimum Age Convention (whereas the worst forms of child labor are prohibited for all persons below the age of 18 years old). Minimum Age Convention requires each country-signatory to set up minimum age for the employment, which should not be less than the age of completion of the compulsory education (in any case it should not be less than 15 years). If the economic conditions of the country do not allow the country to set 15 years as the minimum age, then the country can set the age of 14 as the minimum age for the employment (art.2). Children below the minimum age can not do non-hazardous and non-light work. The only work that is available for them is light work.

Minimum Age Convention allows the countries to adopt legislation that will permit children between the age of 13 to 15 to do light work, which is specified as being not dangerous for their health and development and not intervening with their schooling (art. 7). Thus, the only difference between the non-hazardous and non-light work and light work is the requirement for the light work not to interfere with education and even lesser extent of strain which is required for the work. It is difficult, however, to understand the margins between the light work and non-hazardous and non-light work in regards with the efforts the work requires.

Although the time limits for the work to be regarded as non-interfering with education are not set by Minimum Age Convention, they are mentioned by the

Convention on Minimum Age Convention (Non-Industrial Employment) of 1932, which is still supported by the ILO¹⁵³. The margins are set on the limit of two-hours per day of economic activities or 28 hours per week for non-economic. For better presentation of the differences between light work, non-hazardous and non-light work and unconditional forms of child labor and hazardous work I have drawn Table 3.



Thus, this table shows that until the age of 18 years the child can not engage in unconditional forms of child labor and hazardous work. The term “hazardous work” is not defined by the conventions, but the ILO has issued the Recommendations # 190. Among hazardous activities the Recommendation mentions “work which exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment

¹⁵³ "Report III - Child Labor Statistics." In *18th International Conference of Labor Statisticians*. Geneva: ILO, 2008.P. 34.

and tools, or which involves the manual handling or transport of heavy loads; work in an unhealthy environment; work under particularly difficult conditions”.¹⁵⁴

Children younger than 12-13 years can do work that is even lighter than light work and could be called *minor working activities*. These minor working activities are outside of the international scope. However, it is recommended that international agencies start considering these activities as well by requiring the states to draw up list of activities that comply with the nature of these activities.

5.2 ILO Enforcement Mechanism

As it has been mentioned earlier, the ILO has transcended the traditional approach of the international organizations (hereinafter – IO) within the system of UN and Council of Europe, which had capacity of reviewing the state reports. Since the ILO does not have a capacity of reviewing the state reports, it created an enforcement mechanism different from the other UN institutions. The current chapter will expand on specificity of the ILO enforcement mechanism. For the purpose of the current thesis this ‘special’ ILO approach will be called ‘the ILO approach’. Such approach consists of direct interventions, like child labor identification, withdrawal and rehabilitation and creation of enabling environment, where child labor would cease to exist. Therefore, creation of such environment targets child labor prevention and consists of poverty alleviation programs, local officers capacitating and lobbying.

The development of the ILO approach started in the 40s with the elaboration of the conventions which aimed at helping the states in implementation of the promises undertaken by the other ILO conventions. For the implementation of already ratified ILO

¹⁵⁴ ILO Recommendation No. 190: Worst forms of Child Labor, 1999. Available at <http://www.ilocarib.org.tt/projects/childlabour/r190.htm> (last visited on 26.12.08).

conventions on different labor-related issues (including the Convention on the Minimum Age) the ILO designed the Labor Inspection Convention, 1947 (C81). This Convention requires that labor inspectors to inspect all workplaces (as it has been discussed already this provision should empower the labor inspections to inspect both formal and informal sector). It capacitates the labor inspectors to examine the work place as often as it is necessary for the effective enforcement of the labor regulations. Though Russia and Ukraine have been prioritizing the social and labor rights above political and civil ones, both countries have not ratified this convention until recently: Russia in 1998 and Ukraine in 2004.

Until the beginning of the 90s the ILO in the field of child labor did not establish further tools to improve the countries' compliance. However, in 1992 the ILO has created the IPEC (the International Program on Elimination of Child Labor) with an aim of "strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labor".¹⁵⁵ The analysis of this aim suggests that the IPEC has been created as a technical body, which means that the IPEC was established to bolster already existing capability to fight child labor by providing the state with the necessary tools, like logistical advice on the projects, elaborating the questionnaire for identification of the scope of child labor, etc. In other words, the IPEC was established to assist the states by advising them how to eliminate child labor. Therefore, it could be suggested that at the time of the IPEC creation it was not envisaged that the IPEC would target formation of political will in the state level to fight against child labor. However, this chapter will argue that the IPEC in addition to strengthening capacity has been changing the policy of the state.

155 The Program. Available at <http://www.ilo.org/ipec/programme/lang--en/index.htm> (last accessed on 23.09.09).

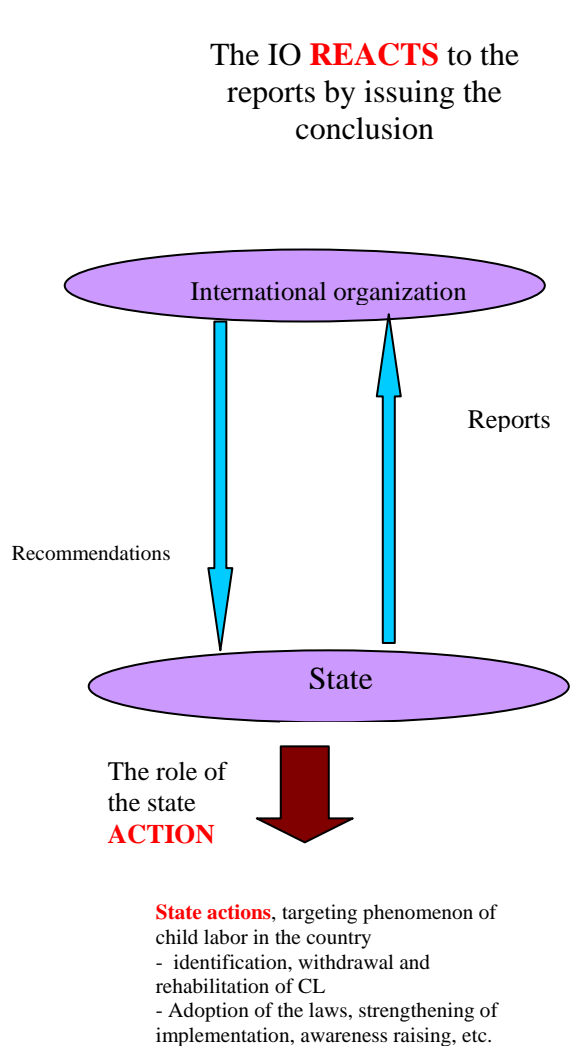


Table 4. Conventional role of IO

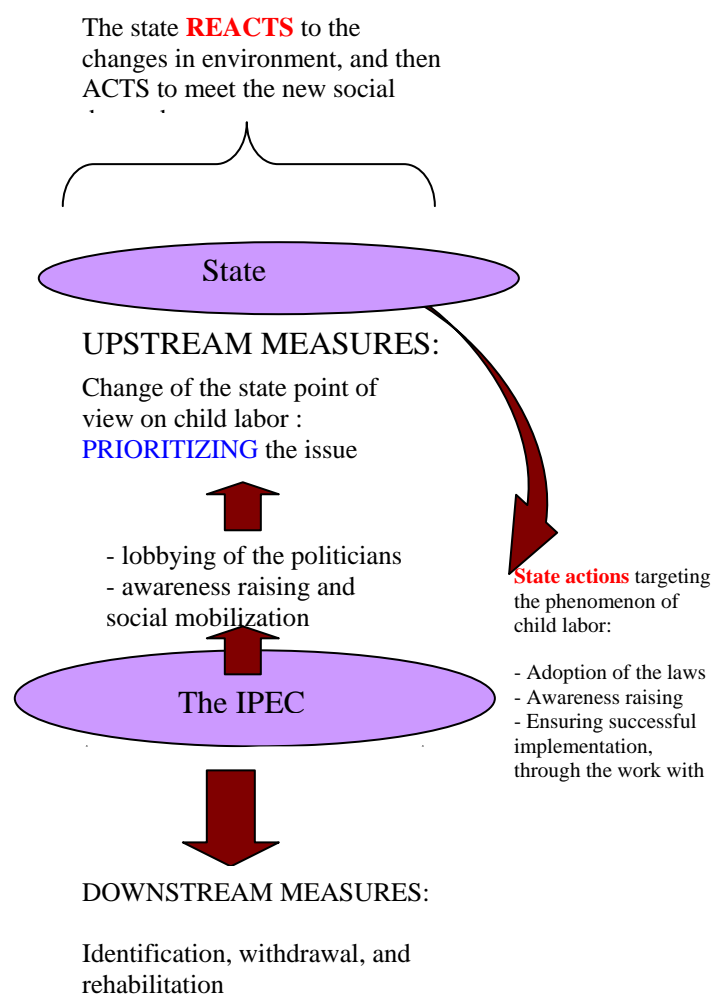


Table 5. The IPEC approach

The following tables

demonstrate the difference between the conventional role of international organizations (like of the Committee on the Rights of the Child, Council of Europe, etc.) and the IPEC. These tables show that the conventional role of the international organizations has been to *react* to the reports submitted by the states by issuing recommendations (conclusions), in which the international organization evaluated the state compliance with the international documents. In this scenario the state has born the ultimate and primary responsibility of adhering to the recommendations (conclusions). In case of a state failure to comply with the recommendations, the international organization had only political pressure at its disposal as a final tool.

The role of the IPEC is quite different. First, it intervenes directly to the instances of child labor (by identification, withdrawal, and rehabilitation of former child laborers). Second, it acts to change environment within the state by creating the grass-rooted legislative initiatives through awareness raising, social mobilization and lobbying of the politicians. The change of the environment forces the state to *react* to such changes by prioritizing the fight against child labor, which is later reflected in the adoption of the new legislation and better law enforcement.

By getting involved into the political process and setting political agenda the IPEC also provides possible answers to the practical questions on how the system of identification, withdrawal, rehabilitation and prevention could be designed. Since there is no one universal model of it (because each country has specific environment), the IPEC experience in the third countries is important in elaboration of the strategy, but measures should be carefully tailored to fit the country's specificity. Even after careful and holistic design the interventions have to be practically tested to correct the mistakes that sometimes could be revealed only by practice. Therefore the IPEC sets political agenda and provides the state with its own practically tested means of addressing the problem. In the absence of other strategies (in case the country had never adopted similar institutional changes to fight against child labor) it seems that the state would be willing to accept already designed, practically tested and bearing results models.

In the following subchapters I am going to present a legal aspect of the IPEC cooperation with Russia and Ukraine. After that I am going to expand on the specificity of the "ILO approach" by presenting the IPEC activities in both countries, like direct interventions to the instances of child labor, which target identification, withdrawal and subsequent rehabilitation of child laborers, and creation of the enabling environment for prevention. The latter concerns primarily the reduction of poverty, building capacity of

the local officers and adoption of all necessary laws, since effective eradication of child labor demands that “all necessary laws are in place”.¹⁵⁶

5.2.1 Legal Basis for the IPEC Cooperation with Russia and Ukraine

Ukraine

The legal basis of the ILO cooperation with Ukraine and Russia is different. Cooperation with Ukraine is done on the basis of the Memorandum of Understanding¹⁵⁷, which was signed in March 2006 and captures the both parties’ commitments within the Decent Work program. The Decent Work Program for Ukraine is an ILO program on different areas including child labor for period 2006-2010. It is “collective, coherent and integrated response by the UN system, both to the national priorities set out in the governments’ action program “Towards the people” enforced by the Verhovna Rada, on 4 February 2005, and the Millennium Development Goals (MDG’s)”.¹⁵⁸ In elimination of child labor the signing of the Memorandum of Understanding is a key moment, because it triggers full involvement of the IPEC in the activities on the national level. The ILO notes that signing of the Memorandum is followed by a “phased approach to action”: determining the nature and extent of child labor, devising national policies and protective legislation and creating awareness in communities and workplaces.¹⁵⁹

Russia

Russia has not signed such Memorandum; the cooperation is done on the basis of the Cooperation Agreement, signed in 1996. The cooperation agreement was amended

¹⁵⁶ IPEC Action Against Child Labor 2002-32003. Progress and Future Priorities. Geneva: IPEC, 2004. P. 58. Available at www.ilo.org (last visited on 9.09.09).

¹⁵⁷ Independent Evaluation of the ILO's Country Program to Ukraine: 2000-2006. Geneva: IPEC, 2007. P. 35.

¹⁵⁸ Decent Work Country Program. Ukraine. ILO. 2006-2007. Available at <http://www.ilo.org/public/english/bureau/program/dwcp/countries/index.htm> (last visited on 26.03.2009).

¹⁵⁹ A Future Without Child Labor, p. 69.

by Program of Cooperation, signed in 2006.¹⁶⁰ Neither of the documents contains the commitments in the field of child labor. Such absence of commitments in the legal documents in practice means absence of the formed political will on a national level, which results that cooperation is done on the project-by-project bases. This type of cooperation impedes cooperation, since before launching the project the ILO has to engage in to negotiations with authorities, which could be lengthy. Despite of these difficulties, the ILO implements downstream (direct interventions) and upstream measures (creation of the enabling environment) in Russia, as well as in Ukraine. The following subchapters will present first the downstream measures and upstream measures.

5.2. 2. The IPEC Downstream Actions

5.2.2.1. Surveys to Understand General Scope

As it has been already mentioned, the IPEC aims at understanding the general scope of child labor by conducting national or regional surveys. Such surveys could target either all working children in one, several or all occupations, or they could target all children disregarding their employment status (such surveys can also target all parents). National surveys that target all children provide evaluation of the general situation with child labor and can identify existing problems within all social groups. These surveys identify all economic and non-economic working activities, including home chores.¹⁶¹ Such survey has been conducted in Ukraine in 1999 within the IPEC Support for Accumulation of the Child Labor Statistics (hereinafter - SIMPOC) Program. The survey has been conducted by the Ukrainian government in cooperation

¹⁶⁰ Program of Cooperation between the International Labor Organization and the Russian federation. 2006-2009, signed on June 2006. Available at www.ilo.org. (last visited on 14.05.2009).

¹⁶¹ Ukraine Child Labor Country Data Brief, p. 4.

with the IPEC. The IPEC provided technical advice by elaborating the questionnaires, ensuring smooth logistics and training the officers who were conducting the survey.¹⁶²

The IPEC surveys conducted in Russia had a different character. First, the Russian surveys were limited geographically, since they covered only children working in certain locations (Leningrad region, St. Petersburg and Moscow). Second, they covered only children involved in economic activities (in exchange of money, food or other items) in the streets.¹⁶³ Third, they were done without cooperation with the state. The analysis of these surveys allows to conclude that although the restriction of the surveys are well understood (limitation on the scope of respondents and activities), the surveys significantly contributed to the understanding street child labor by revealing information on the age, sex, family status, living and working conditions of the street working children.¹⁶⁴ (The results of the surveys were discussed in the chapter on the child labor scope in Russia). These results could be later used in the IPEC lobby (this is discussed in the next subchapters).

5.2.2.2. Identification of Specific Instances of Child Labor for Subsequent Withdrawal and Rehabilitation of Child Workers

Estimations of the scope of child labor are necessary as the initial step, which has to be followed by establishment of the monitoring systems, withdrawal and rehabilitation of the former workers. The identification of specific instances of child labor is done through the child labor monitoring systems (CLMS). The CLMS can either monitor instances of child's involvement to labor (the conventional model of monitoring) or school attendance. The former puts more pressure on the stakeholders (mainly on labor

¹⁶² Child Labor Data Country Briefs: Technical Note. Geneva: ILO, 2008. P.1. Available at <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=7809> (last visited 1.11.2009).

¹⁶³ Ukraine Child Labor Country Data Brief, p. 4.

¹⁶⁴ For further information, see In-Depth Analysis of the Situation of Working Street Children in Moscow, St. Petersburg and Leningrad region.

inspections)¹⁶⁵ to identify child labor instances, because it involves identification and observation of workplaces where the children could work.¹⁶⁶ After identification this model envisages consecutive child's integration into the "meaningful alternatives to work", ¹⁶⁷ followed by tracking of identified child laborers to prevent them from reentering the work market.

The major obstacle for the implementation of this type of CLMS in both countries on the national level is the fact that the labor inspectors in Russia and Ukraine can inspect only registered businesses. A good practice has been established in two Ukrainian pilot regions (Donetsk and Kherson) where this legislative obstacle was evaded by enabling the labor inspectors to identify the instances of child labor, but instead of requiring them to punish the employer (since they don't have a legal capacity to do so), the labor inspectors were obliged to report the instances to police, ¹⁶⁸ which could withdraw the child and punish the employer. Preference of putting pressure on labor inspector in identification of child labor rather than police is explained from the prospect that police is not able to search private premises without previous notification on crime occurrence or such suspicion to avoid unnecessary police interventions to privacy.

Another way to monitor child labor is to ensure that children are in school, since as already cited Kaushik Basu noticed, "it is more effective to legislate for the compulsory education instead of simply banning child labor... One good reason for this is that a child's presence in school is easier to monitor (and thus to ensure) than a child's absence from work." ¹⁶⁹ In Leningrad region the IPEC established the School Based Child Labor Monitoring System in Vsevolozhsk District, which targeted the child's

¹⁶⁵ Overview of Child Labor Monitoring. IPEC: Italy, 2005. P. 9. Available at <http://www.ilo.org/ipecinfor/product/viewProduct.do?productId=1501> (last accessed on 14.09.09).

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Activities for Combating Child Labor and Trafficking in Children in Ukraine, p. 7.

¹⁶⁹ Basu, p. 1090.

presence in the school. The IPEC reports that about 120 children benefited from this project.¹⁷⁰

It seems that School Based CLMS can bear sound results for identification of those working children who live with their parents, since only then children are registered in the school area, and therefore, truancy could be easily identified. Considering the fact that the survey of the working street children shows that homeless children comprise a small part from the total number of working children (only 9% from all numbers),¹⁷¹ the School Based CLMS seems to be able to deliver visible results.

5.2.2.3. Actions Aiming Rehabilitation of Child Laborers

Rehabilitation involves psychological counseling, and providing children with the educational opportunities, where educational opportunities are not limited to school. Though it is advisable to return the child to the school, the child's needs have to be taken into consideration. Since a significant number of working children do not want to return to school (the surveys conducted in Russia show that around 22% of working street children do not want to return to "ordinary" school),¹⁷² it is advisable that the former child laborers have an opportunity to get other forms of education (vocational training, computer literacy courses, etc). Taking these considerations the IPEC in Ukraine managed to place more than four thousand former working children to the governmental educational vocational training facilities.¹⁷³

Moreover, the ILO uses the capacity of the local NGOs to provide educational opportunities. In Russia in the IPEC projects after the street working girls have been identified, they were offered computer courses by the local NGO, which was closely

¹⁷⁰ IPEC. The Leningrad Region, Russia. Fact Sheet, Geneva: IPEC, 2003. P.2. Available (last visited on 26.10.2009).

¹⁷¹ In-Depth Analysis of the Situation of Working Street Children in Moscow, p. 26.

¹⁷² Ibid, p.. 32.

¹⁷³ Activities for Combating Child Labor and Trafficking in Children in Ukraine, p. 8.

working with the IPEC.¹⁷⁴ The Ukrainian NGO Uspishna Zhinka (Successful Women) working together with the IPEC had provided computer literacy courses for the child laborers. These courses incorporated group therapy (physiological counseling), during which the children were given an opportunity to discuss their own life experience, hopes and dreams.¹⁷⁵ Though the NGOs might not be able to provide adequate substitute for the formal education (because of the short term duration of their programs, absence of governmental mandatory educational accreditation, entailing the NGO's incapacity to provide official school completion certificate, which is necessary for the job application), some sort of education provided by the NGOs or IPEC itself could serve as an important step in integrating children into conventional or vocational training schools, because it can trigger the child's interest in education and accustom children to the education environment, thus serving as a *liaison* and therefore ensuring a smoother mainstreaming of former child laborers into formal schooling. Since the IPEC tends to mainstream education and psychological assistance, these courses offer a simultaneous double benefit by teaching valuable working skills and psychologically and education-wise rehabilitating a child.

To conclude the current chapter it could be said that direct interventions in Russia and Ukraine cover identification, withdrawal and rehabilitation of the child laborers. However, the direct interventions involve high cost and target specific people; therefore their contribution to the society is fragmented, because although being valuable, their effectiveness is limited to the withdrawn children and their parents. But successful elimination also requires actions, aiming at a local capacity build-up to prevent child labor. The next section is going to address prevention, where prevention would target three groups: former child laborers and their families, national officers and the public.

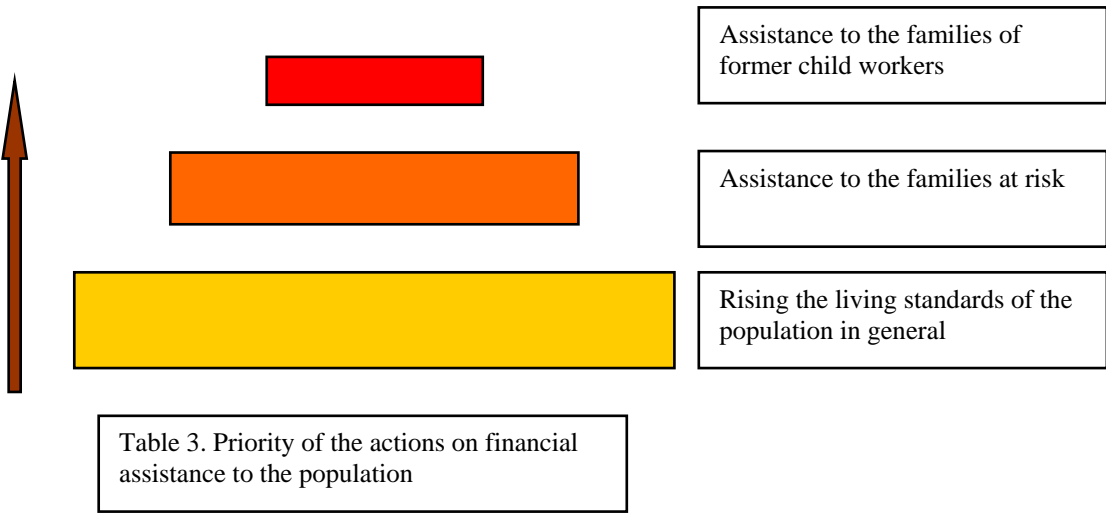
¹⁷⁴ IPEC. The Leningrad Region, Russia, p.2.

¹⁷⁵ Activities for Combating Child Labor and Trafficking in Children in Ukraine, p. 9.

5.2.3. Prevention

5.2.3.1. Economic Empowerment of Families

Though raising the general living standards is the most cost-effective way¹⁷⁶ strategy for complete elimination of child labor, it is doubtful that any state will be able to reach this aim in near future due to the lack of resources. Therefore having elevation of general living standards in mind as a final aim, the immediate actions should be concentrated on the families of the former child laborers and families at risk.



As this diagram shows in the first priority are the families whose children are former workers, because those children could return to work relatively easy as they can connect themselves with the work (especially street work) quicker and may not see education as a main priority. Moreover, as it has been showed in the previous chapter the more child works in the street the more likely he is to engage into unconditionally forms of child labor. Therefore, even if before the IPEC intervention a child was not engaged in unconditional forms, he faces a significantly higher risk of getting involved into them. Children at risk seem to have less probability to get involved into child labor than the former workers in case of financial difficulties, since they did not form a

¹⁷⁶ Time Bound Programs for Eliminating the Worst Forms of Child Labour : an Introduction (TBP MAP Guidebook II). Geneva: ILO, 2003. P. 24. Available at http://www.ilo.org/ipecinfo/product/viewProduct.do;jsessionid=0a038009cf08ece1e2a89b4402793f183a069b77ae4.hkzFngTDp6WImQuUaNaLaxD3lN4K-xalah8S-xyIn3uKmAiN-AnwbQbxaNvzaAml-huKa30xgx95fjWTa3eIpKzFngTDp6WImQuxahySc3yPaxmNcgb48OX3b4DtGj15eMbyknvrkLOlQzNp65In0_?productId=3021 (last visited on 1/06/09).

connection with the work, but they are still quite likely to be pushed by poverty to it. Therefore, the IPEC targets those children as well.

While assisting the families of the former child laborers the IPEC provides financial support and strengthens their access to the existing social services, since those families tend not to use the state resources effectively. According to the IPEC terminology, such support is called comprehensive socio-economic support.¹⁷⁷ The IPEC used the poverty alleviation programs extensively in Russia, while launching Comprehensive Rehabilitative and Preventive Model for Working Street Children and Their Families (for the children and their families at risk) in Vsevolozhsk District¹⁷⁸ and in Poverty Reduction Project in 2003 in Leningrad region.¹⁷⁹ Those programs aimed at strengthening access to the social services (social protection, health and employment services) for socially excluded families and vulnerable children,¹⁸⁰ therefore increasing the families' budget

5.2.3.2. Building Capacity of the Local Officers

During the implementation of the projects, the ILO seeks to capacitate the national officers by either including them into the projects (so they can learn from being directly involved) or providing them with trainings and seminars. In Ukraine the ILO trained 110 educational officers on child labor related issues, 85 teachers/ psychologists on children at risk of child labor, 77 career/job counselors from Public Employment Service, 64 psychologists for psychological rehabilitation of the children-victims of child labor, 25 representatives of the ministers, employers' and workers' organization, 72 labor inspections.¹⁸¹

¹⁷⁷ Unfortunately the ILO statistics does not distinguish between the children saved from the unconditional forms of child labor and hazardous labor, therefore the current thesis provides numbers, which combine jointed statistics.

¹⁷⁸ In-depth Analysis of the Situation of Working Street Children in the Leningrad Region, p.4.

¹⁷⁹ Ibid, p. 13.

¹⁸⁰ Ibid, p.4.

¹⁸¹ Steps to Elimination of Child Labor in Central and Eastern Europe, p. 30.

In Russia the major ILO sponsored activities on capacity building of the national officials are done within the projects on street working children. During the project on street children in 2002 in St. Petersburg the IPEC has completed several campaigns on educating school staff (enabling them to prevent school drops-outs which have as one of the consequences child labor), local self-governing bodies, police units on the Affairs of the Child (“детская комната милиции”).¹⁸²

Therefore, in both countries the IPEC provides trainings for the local officers. However, in Russia the IPEC targets primarily those officials, who are able to identify instances of child labor (police and teachers) and who work in the governmental sector. In Ukraine it capacitates also officers involved in rehabilitation and policy making within governmental and non-governmental sector. Hence, the scope of beneficiaries of the IPEC activities in Ukraine is broader than in Russia.

5.2.4. The ILO Lobbying

The table presented at the beginning of this chapter showed that the international organizations within the UN or Council of Europe system affect the state legislation in top-down way: those institutions suggest legislation changes, which the state can follow. This section will show that the IPEC uses a bottom-up approach to change the laws: it seeks to create the grass rooted legislative initiatives by applying the tools available to all other interest groups for lobbying: research and analysis, organizing the conferences, raising awareness, etc.

It should be remembered that the IPEC was not created to engage into the political process on the national level, therefore it would be interesting to mention when the IPEC has tried its lobbying style for the first time in early 90s in the Philippines, where the ILO has managed to push the country to deepen the country's cooperation in

¹⁸² St. Petersburg, Russia. At Glance. May, 2002. ILO: St. Petersburg. P. 2 Available at www.ilo.org (last visited on 17.04.09).

the field of child labor with the IPEC. Since that time influencing the actions of public officials is considered by the ILO a “good practice”.¹⁸³ The IPEC model, as it has been already mentioned, is similar to the advocacy strategies of the NGOs and consists of three steps: problem admittance, mass mobilization and direct lobby of the politicians.¹⁸⁴ Such ILO engagement in the advocacy on the national level is decisive feature of the IPEC approach, since none of the above discussed conventional international organizations can lobby on the national level. However, to be able to lobby on the national level the IPEC needs to gain population support, which is possible to acquire only through awareness raising campaign (a second step of the IPEC lobby), which in order to be successful has to contain arguments not on the general dangers and global scope of child labor, but on the specific instances of child labor happening in the country. Alike information could be obtained only by researches in the target country (done in the first step of the IPEC lobby strategy).

5.2.4.1. The First Step –Problem Admittance

In case the state refuses to admit the existence of child labor in the country, the ILO conducts researches to prove the contrary.¹⁸⁵ It could be logical to imagine that the IPEC would try to frame public debates on child labor by focusing on the most appalling instances of child labor existing in the state to gain public support. For instance, in Ukraine the IPEC framed public debates by focusing on the child labor in the mines.¹⁸⁶ In India or Nepal the IPEC focused on domestic workers, in Cameroon on children working on the cacao plantation,¹⁸⁷ and working street children in Russia. The IPEC focus in Russia on the working street children is tactically an advantageous step as

¹⁸³ A Future Without Child Labor, p. 23.

¹⁸⁴ Ibid.

¹⁸⁵ A Future Without Child Labor, p. 23.

¹⁸⁶ Ibid, p. 65.

¹⁸⁷ For more information see Regions and countries section on the ILO web-site. Available at <http://www.ilo.org/ipcc/Regionsandcountries/lang--en/index.htm>. (last visited on 16.09.09).

though a concept of child labor has a positive connotation in the Russian language, street work is generally perceived as harmful and commiserating.

The IPEC researches conducted in Russia and Ukraine have been already discussed in the subchapter on the IPEC surveys to understand the general scope of child labor. However, it worth mentioning that IPEC surveys have provided valuable information on the scope of child labor, occupations where child labor is used, salary of laborers, gender, family, financial and educational profile of the child workers, because exactly due to the IPEC efforts information on the street labor in Russia was presented in this thesis. Such researches have shown that that child labor is an important problem and is dangerous for the children due to the conditions in which work is performed. Such researches have also identified dangers that society faces due to child labor, because excessive work often causes truancy and may entail slip from child work to unconditional forms of child labor.

5.2.4.2. The Second Step - Mass Mobilization

After child labor scope and dangers it involves have been researched, these results are used for the social mobilization. Social mobilization is the process of accumulating the will of various actors from different sectors by awareness raising campaigns to develop a demand for political and legislative changes. Since IPEC is a department in the ILO, and ILO is a tripartite organization (which means that instead of having states as the only members, like the other UN institutions, it also includes trade unions, and employers' organizations) the IPEC uses this capacity to spread the information among trade unions and employers' organizations. The following subchapters will present how the IPEC has been using its institutional capacity to spread information on child labor among the employers' organizations and trade unions.

The employers' organizations

In addition to important human rights interest the employers' organizations are willing to combat child labor because the use of child labor creates unfair competition, since the price of child labor is cheap. The employers' organizations are a good platform for using limited IPEC capacity, since they accumulate a broad range of employers (although only registered). Thus, information sharing within the organization could ensure much broader scope of social mobilization. Thus, though the actual number of the IPEC trained inspectors is not high (for instance, in Ukraine in 2006 the IPEC conducted trainings only for 27 representatives of national employers' organizations)¹⁸⁸, the number of indirect beneficiaries is much higher.

Trade Unions

The trade unions are interested to combat child labor, because of human rights and economic aspects, where the latter occurs because child workers tend to decrease the salaries of the adults due to the lower cost of child labor. Moreover, considering that child labor abolition in Russia is often connected with the elimination of the street children, it is humanly appealing to the trade unions to advocate for elimination of child labor.

Ukraine. The ILO in both countries has successfully used the trade unions, although on a different scale. In Ukraine the ILO managed to make the trade organizations close partners.¹⁸⁹ The main cooperation between the IPEC and the trade unions is done in the spheres of mining and agriculture.

Mining. Trade unions and the ILO started investigation of child labor in mining sector in 2003, after the trade organization Confederation of the Free Trade Unions had identified it in Donetsk, where after the collapse of the Soviet Union and decrease in the production of the coal, around 8000 mines were abandoned by the state and became

¹⁸⁸ Activities on Combating Child Labor and Child Trafficking in Ukraine, p. 3.

¹⁸⁹ IPEC Action Against Child Labor 2004-2005: Progress and Future Priorities, p. 64.

family mines. These mines are used by poor families to extract remaining coal.¹⁹⁰ Most probably, the trade unions were interested to fight child labor in the mining sector because of two possible reasons: first, the horrible conditions faced by children in the mines (absence of ventilation emergency exit, high humidity and hard labor), and second, to keep production of the coal within the domain of the companies (not the families).

Agriculture. The Regional Trade Union of Agricultural Complex and Kyiv Regional Trade Union of Workers in Food and Recycling Industries are also actively involved in combating child labor. Those two trade unions took part in the IPEC Regional Training of Trainers workshop, which aimed elimination of hazardous child labor in agriculture. Those trainers who got the education during this workshop later conducted the training programs in Kherson 2006,¹⁹¹ therefore multiplying the IPEC effect.

Russia. Unfortunately the Russian trade unions are not yet so closely involved in combating child labor, nevertheless, the cooperation exists. In 2002 the trade unions managed to push for new St. Petersburg Tripartite Agreement, which was signed (St. Petersburg governor and the representatives of the trade unions and employers' organization), and for the first time it included section on elimination of child labor.¹⁹² This agreement although not being legally enforceable is an important political milestone; because it captures commitments of the parties and gives political weight to the problem of child labor.

NGOs

¹⁹⁰ Ibid.

¹⁹¹ Activities on Combating Child Labor and Child Trafficking in Ukraine. ILO: Geneva. P. 3. Available at http://www.ilo.org/public/english/region/eurpro/budapest/download/fund/ipec_ukraine.pdf (last visited on 13.08.09).

¹⁹² In-depth Analysis of the Situation of Working Street Children in the Leningrad Region, p.5.

The IPEC strategy of the public mobilization also includes NGOs. The ILO notes that in the situations where freedom of association and expression are not fully enforced and the extent and severity of child labor is unknown or concealed, the ILO should aim NGOs.¹⁹³ The NGOs in the fight against child labor can provide significant human and financial resources in child labor identification, rehabilitation of the former child laborers, and information campaigns. The analysis of the activities of Russia and Ukraine shows that in both countries such cooperation is done, although on different scales.

Russia. In Russia the IPEC mainly engages the NGOs that provide shelter and food due to the specificity of the IPEC projects there. Though such involvement is positive, there is a need of engagement of other types of NGOs that specifically deal with withdrawal and rehabilitation of child laborers, because in the existing mode of cooperation the ability of the IPEC to transfer its valuable knowledge in the field of child labor, acquired through many years experience in different countries, is limited.

In addition to this, it seems to be valuable to engage into the IPEC activities religious organizations, in particular Orthodox Church. It seems that such involvement would be successful, because a compelling majority of the children working in the streets (up to 70% in Leningrad region)¹⁹⁴ consider themselves to be religious; therefore they would tend to accept the church support. Moreover, the children working in the streets have distorted system of life values, since they are constantly exposed to physical, verbal or sexual harassment in the streets and most probably at home.¹⁹⁵ In absence of the other personal experience, it is not surprising that those children have lack of trust to the adults. Therefore, the IPEC surveys have concluded that the churches can introduce

¹⁹³ A Future Without Child Labor, p. 94.

¹⁹⁴ In-Depth Analysis of the Situation of Working Street Children in the Leningrad Region, p. 32.

¹⁹⁵ In-Depth Analysis of the Situation of Working Street Children in Moscow, p. 28.

an alternative system of values for those children, where trust, love and honesty will be dominant features.¹⁹⁶

It also noticeable that the IPEC in Russia does not target the youth organizations for spreading information on the child labor among the children, although children could later serve as the peer educators of the other children. Peer education has a potential of having significantly more effectiveness, because children tend to trust each other more than adults. Therefore peer education can be effective in delivering the IPEC messages precisely to the children at-risk.

Ukraine. In Ukraine the ILO engages a wider spectrum of the NGOs. For instance, it engages the NGOs that can provide training or counseling to the former working children, like the NGOs La Strada, Women's Consortium, and Intelectualna Perspektiva, or NGOs for starting public debates, like the NGO "Women Consortium".

¹⁹⁷ The NGOs capacity is also used for awareness raising campaigns on the dangers of child labor. For instance, the Youth Debates Society has conducted several debates on the topic "child labor impedes child development". About 120 young people from 27 regions have participated in the debates. ¹⁹⁸ Another similar youth activity was the UN Youth Summit, which took place in Ukraine in 2004. During this Summit 250 young people participated in two committees which focused on child labor issues. One committee was working on relevance of fight against child labor to the Millennium Development Goals. Another one was on the importance of social dialog as a tool for decent work and attainment of the Millennium Development Goals. ¹⁹⁹ After the Summit 22 participants served as liaison for the ILO-IPEC interventions programs in the Donetsk and Kherson regions.

¹⁹⁶ In-Depth Analysis of the Situation of Working Street Children in Moscow, p. 28.

¹⁹⁷ Ibid.

¹⁹⁸ Steps to Elimination of Child Labor in Central and Eastern Europe, p. 38.

¹⁹⁹ Steps to Elimination of Child Labor in Central and Eastern Europe, p. 40.

5.2.4.3. The Third Step: Direct Lobby of Politicians

During the first two steps the IPEC aims at forming public opinion by convincing the public that child labor is an important state problem and therefore the state should target elimination of child labor as important goal. In the third phase (step) public opinion is used to lobby politicians who are dependent on it²⁰⁰ to gain the politicians' personal commitment.²⁰¹ Though personal commitment is not a guarantee of the legislative change, politicians are incredibly important stakeholders that could enable the legislative changes. Although ILO does not specify it, it could be imagined that at this step ILO tries to persuade them on the importance of the problem, deteriorating effects of child labor and proposes certain ways to combat child labor.

5.2.4.4. Legislative Results of ILO Lobby in Russia and Ukraine

It is not surprising that currently Ukraine has gone much further than Russia on the national level partly because research and mass mobilization in Russia had a geographically and politically limited scope. However, in the Russian regions, where the ILO implemented its projects on street children, there have been some political and legislative actions.

Russia. After the project Street children in Leningrad region political pressure on the Leningrad authorities has been successful in pushing the Leningrad region to adopt the child labor policy and a plan on action with the activities, which defined the actions, roles and responsible institutions. The Government has created the Child Labor Unit within its structure, which has an authority to coordinate different institutions, responsible for the child labor identification and combating, since before that there was a clear structural gap in the coordination of the work of the governmental institutions.²⁰²

²⁰⁰ Ken Kollman, *Outside Lobbying: Public Opinion and Interest Groups Lobbying* (New Jersey: Princeton University Press, 1998). P. 81.

²⁰¹ In-depth Analysis of the Situation of Working Street Children in the Leningrad Region, p. 31.

²⁰² IPEC. The Leningrad Region, Russia. Fact Sheet, p.3.

The main feature of the IPEC ability to bring about legislative changes in Russia reflects the weakness of the IPEC in Russia – the regional character.

Ukraine. In Ukraine the lobbying campaigns were successful on both regional and national scale. On the regional scale there were the following changes: institutionalization of the child labor monitoring system in Donetsk and Kherson, adoption of the State Program to Combat Child Homelessness and Neglect for 2006–2010, which envisages state interventions which for the social and financial support of the families in risk, etc.

On the national level there are four main changes. The first is adoption of the National Plan of Action on the Elimination of the Worst Forms of Child Labor in 2004, which was the starting point for the series of the Ukrainian legislative amendments. The second is incorporation of the legal definition of the worst forms of child labor in Law on Childhood Protection. This law prohibits involvement of the children in the worst forms of child labor.²⁰³ The third touches the enforcement of the prohibition of worst forms of child labor. Article 150 of the Ukrainian new criminal code sets punishment for the exploitation of the children. Therefore, in one article punishment for engagement to all forms of child labor is envisaged (unlike fragmented punishment established by the old Ukrainian and the current Russian criminal codes). The forth change is a start of the legislative process on the law establishing the national child labor monitoring system. This law passed the first reading²⁰⁴

Therefore, the current chapter has shown that the IPEC style of affecting the state behavior is different from the traditional way international organizations used to affect the state compliance. Since IPEC was not institutionalized as a body with the capacity of reviewing the state reports, it triggers the legislative changes in a bottom-up way: it

²⁰³ Activities on Combating Child Labor and Child Trafficking in Ukraine. p. 2.

²⁰⁴ Activities on Combating Child Labor and Child Trafficking in Ukraine. p. 2.

targets the problem admittance by conducting small researches and presenting the results to the authorities and public (during mass mobilization stage) and latter it lobbies the politicians as the ultimate stakeholders in the legislative approach. This chapter has also shown that the IPEC directly intervenes to the instances of child labor by identifying, withdrawing and rehabilitating the child laborers.

6. CONCLUSION

Current thesis has clearly identified that international standards do not seek to prohibit engagement into all types of work, because essentially work bears an important educational value, since it can teach a child important life skills and provide useful, beneficial and functional knowledge. International standards prohibit child work overuse, when work jeopardizes child's health and morals, intellectual and physical development. The international documents set minimum job admission age at fifteen years (some exceptions are possible, but minimum age can not be less than fourteen in any case). However, at this age children (until the age of fifteen) are prohibited to work in dangerous occupations, where dangerous occupations can comprise of either unconditional worst forms of child labor (trafficking, debt bondage and other forms of forced labor; prostitution and pornography; forced recruitment of children for military purposes; and the use of children for illicit activities such as the trafficking of drugs) or hazardous work (harmful for health, safety or morals of the child). Because work in these occupations presents significant danger for the children' health, morals and development, the states have to take urgent actions to ensure that children are not exploited in such a way.

Before reaching the admission age a child can perform light work. Generally international documents define light work as non-dangerous work that does not impede child's schooling. From such definition it could be concluded that light work equals to non-dangerous work that does not interfere with education. In other words, following this interpretation, light work is non-dangerous work that is short in duration. Such inference is fallacious, since light work is much stricter requirement upon working activities. As the Committee on Social Rights has noted light work should be simple and short.

Light work according to the Minimum Age Convention can be done starting from 13 years; the European Social Charter (Revised) does not establish minimum age for admission to

light work. It seems that the latter approach is more beneficial, since children engage in light work throughout their childhood and such work has educational value. Therefore thorough regulation of light work is not necessary and justifiable, because essentially such works lies within child's development needs and natural right of the parent to educate a child. However, the state has to intervene when light work presents a danger to a child by either enlisting occupations where a child can work, or drawing up a list of working activities where a child labor can not be used.

The current thesis has also elaborated on the role of international organizations in regulating child labor. Historically, child labor has been considered to lie within a private relationship between parent and a child, and therefore regulation of child labor would limit a parents' discretion in child's education. The idea of interference to such relationship is relatively new, and was first legally defined in the UK in the middle of 19th century, where children started to work in the factories and negative effect of such work on children and society became obvious. It seems unlikely that at this time child labor was perceived as a potential subject of international documents.

The international silence on child labor standards was first broken by the ILO (which at that time was operating within the system of League of Nations), in 1919 by adoption of international conventions with almost non-existent enforcement mechanisms. Until the middle of XX century the elaboration of the child labor standards was done only on the level of ILO. Almost fifty years later in 1966 the International Covenant on Economic, Social and Cultural Rights elaborated child labor standards and was adopted on the General Assembly level of the UN, thereby granting to child labor a universal character. This Covenant establishes enforcement mechanism (the previous ILO conventions did not provide any) with the possibility for a special international body to review state reports. However, due to the number of extremely important issues, regulated by the Covenant, the role of the international body is fostering the state

compliance is rather limited, since the international organization can identify only the most important legislative gaps and systematic enforcement problems.

In 1989 another Convention with a universal character was adopted - the Convention on the Rights of Child, which although containing more specified provisions on child labor, has the same important pitfall – weak enforcement mechanism. It seems that the reason why the states had not envisaged a stronger enforcement mechanism on the UN level is a fear that the international body would interfere into essentially home affairs and anxiety to disclose real state practices to the attention of the world community. Since the current thesis has proved that the enforcement mechanism envisaged within the Council of Europe system on child labor is much stronger than of the UN, it could be concluded that the countries within the Council of Europe had a stronger will to surrender a part of their sovereignty to the international organization. Strong international regime of the Council of Europe allows more intrusive, holistic and detailed review of the states' compliance, because the Committee on Social Rights can use sources other than the states reports, while relatively smaller pool of participants allow more time to be spent on consideration of national legal arrangements, practice and enforcement. Such careful review of the states' practices also reinforces mutual learning among the states, since deep analysis of the legal system of the third countries can help the state to identify its own gaps and observation of the responses of the third states to the legal challenges can help a state to draft its own way to address the problem. Moreover, the system within the Council of Europe has been engineered in such a way that it reinforces trust in it, because decision making is dispersed within several independent bodies. Therefore such system has capacity of yielding better results than the other similar systems (state reports review). Stronger commitment to the system implies better compliance, because even if the state is not willing to comply there will be a significant peer pressure.

Upon ratification of the European Social Charter (Revised) President D. Medvedev has declared Russian de facto compliance with the requirements of the Charter. However, a careful analysis of the national legislation had identified several important problems, among which are insufficient legal elaboration on the light work requirements, failure to adequately enforce legislation, which comes from inspections inability to inspect those premises where labor is much more likely to happen, functional restrictions of labor inspections (insufficient number of inspectors) and absence of effective legal tools (failure of the administrative and criminal codes to strike the rights balance). Therefore while considering the states reports (followed from the Russian ratification of the Revised Social Charter) the Committee has to focus on these issues. It will be interesting to see the Russian response to the perspective conclusions of non-compliance, since although there is presumably commitment from the Russian side (otherwise it would be illogical for the state to ratify the Charter after long years of successful abstaining from it), there are loud voices, dismantling the role of Council of Europe in Russian home affairs.²⁰⁵ Though it is hoped that Russia will be reasonable enough not to disregard the Charter it is just had ratified, absence of real legal tools to enforce closer compliance becomes obvious even in such strong international regime as the one of the Council of Europe.

The current thesis has elaborated on the efforts of another international organization, which did not even had ability to review states reports, but has managed to elaborate quite effective mechanism that affects states' behavior in a bottom-up way, - the ILO and its International Program on Elimination Child Labor (IPEC). This Program targets creation of the grass-rooted legislative initiatives through either directly intervening to the instances of child labor or creating enabling environment. The direct interventions include surveys to understand

²⁰⁵ Интервью с президентом Ассоциации евроатлантического сотрудничества, Чрезвычайным и Полномочным Послом РФ/ Interview with the President of Euro Atlantic Context, Ambassador at Large 16.02.2009. Available at http://www.stoletie.ru/govorit_moskva/anatoliy_adamishin_ideya_prezidenta_medvedeva_kak_mnogocelovoy_istrebitel_2009-02-16.htm (last visited on 4.01.2009).

general scope of child labor, identification, withdrawal and rehabilitation of the child labor. In Russia and Ukraine the IPEC has been implementing all these direct actions.

Since adoption of all necessary laws is an important step in creation of the environment, the IPEC has elaborated the strategy for lobbying, which consists of three main steps: problem admittance, mass mobilization and lobby of the politicians. During the first step the IPEC researches on the instances of child labor to counter the state denial of the problem and develop the arguments that would be persuasive for the public and therefore could be later used in the second step, which consists of message spread on the danger of child labor and necessity to fight it among different stakeholders, including officials, trade unions, and employers organizations. This step has a primary importance in creating the grass-rooted demand for the legislative change. During the third stage the IPEC gains personal commitments of the politicians to lobby the laws. The IPEC has been successful in lobbying in both countries, although in Ukraine the legislative changes happen on regional and state level, while in Russia only regional laws were amended. The main lobby achievement in Ukraine include adoption of the National Plan of Action on the Elimination of the Worst Forms of Child Labor in 2004, incorporation of the legal definition of the worst forms of child labor in Law on Childhood Protection and adoption of the new Criminal Code which sets punishment for the exploitation of the children. In Russia lobby achievement include adoption of the child labor policy and a plan on action with the activities in the Leningrad region. However, a broad scope of IPEC actions essentially intervenes with state sovereignty much more than conventional organizations do. Although it could be said that my signing Memorandum of Understanding with the ILO (or any other alike documents on cooperation) the states agrees to surrender its sovereignty to the required extent, it is arguable that the state completely understands the specificity of the IPEC actions and the consequences they entail. Indeed, supranational organizations infringe on the state sovereignty (like the UN or

Council of Europe) ²⁰⁶since their creation, but the actions of ILO dilute the state sovereignty much more. Does this imply a start of new international regime with supranational governance, when the international organizations can directly and widely interfere into domestic process? This is yet to be determined. But following the current trends we see that essentially both systems (the traditional top-down and new bottom-up) have capacity of strengthening states' compliance, as both systems have proved to be efficient. However, since top-down way can bring no results due to the states' insensitivity to the international pressure, conventional systems can try to push the states to cooperate closer with the IPEC, which has a capacity to create grass rooted demand for the legislative changes.

²⁰⁶ Brahm, Eric. The Concept of Sovereignty. Available at <http://www.beyondintractability.org/essay/sovereignty/> (last visited on 3.01.2010).

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