

# La Strada

## EXPRESS

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Center for Women Rights Protection and Promotion  
"La Strada"(Republic of Moldova)

## Identification of Trafficked Persons



Edition is for free





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Dawn, Noon, Sunset and Twilight, 1979

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## A few words about this issue...

You are holding in your hands the second issue of "LA STRADA EXPRESS" magazine. This issue makes part of a series of thematic editions, planned to be published by International Center "La Strada" (Moldova) to give coverage to the issue of trafficking in persons, search and analyze best practices in counteracting this disgraceful phenomenon of modern life, work out recommendations as to how solve this issue in our country.

Just as the first issue, this one is dedicated to only one problem within the scope of the above-mentioned range of problems. The subject of our first issue was creation of a referral mechanism for trafficked people in Moldova. This issue we dedicated to **identification of trafficked people**, which is inti-

mately connected with the previous subject, and further develops thereof. Authors of the OSCE/ODIHR Practical Handbook, dedicated to the creation of a referral mechanism for trafficked persons called identification of trafficked people one of the two key elements of the above-mentioned mechanism<sup>1</sup>. That is, this issue is kind of continuation of the previous one.

Despite the importance of identification of trafficked people, this subject has been barely touched upon. Despite the fact that international standards, related to issues of trafficking in persons and work with the victims, highlight the importance of identification of trafficked people and set forth rules of conducts for the specialists, we did not manage to find a definition of this notion.

### *New in Legislation of the Republic of Moldova in the field of Actions against Trafficking in persons*

Since publication of the first issue of our magazine in February 2005, a series of important legislative measures in the field of actions against trafficking in persons have been carried out in our country.

First of all, in February 2005, the Parliament of the Republic of Moldova ratified the United Nations Convention Against Transnational Organized Crime<sup>2</sup>, as well as Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>3</sup>.

In August this year, the Government of the Republic of Moldova adopted two important Decisions, which drive organization of counteraction of trafficking in persons in Moldova to a brand new level. In early August, the Government approved a Regulation on National Committee for Combating Trafficking in persons<sup>4</sup>, which specifies the composition, functions, and status of the Committee, functions of Committee's Chairman and Secretary, frequency of meetings, etc. According to the Regulation,

<sup>1</sup> "National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons". A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, p. 16.

<sup>2</sup> Law of the Republic of Moldova No. 15-XV as of February 17, 2005 "On ratification of the United Nations Convention against Transnational Organized Crime" (Official Monitor of the Republic of Moldova, 2005, No. 36-38, p. 122).

<sup>3</sup> Law of the Republic of Moldova No. 17-XV as of February 17, 2005 "On Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime". (Official Monitor of the Republic of Moldova, 2005, No. 36-38, p. 126).

<sup>4</sup> Decision of the Government of the Republic of Moldova No. 775 as of August 1, 2005 (Official Monitor of the Republic of Moldova, 2005, No. 107-109, p. 865).

### *Significant International Event*

In May 2005, a new Convention on Action against Trafficking in Human Beings was adopted. The Convention contains commitments of the member States of the Council of Europe and other signing states in the field of prevention of trafficking in human beings, assistance, and protection of those who suffered from trafficking, criminal prosecution of those guilty in committing trafficking in persons, development of international collaboration, and other spheres of counter-actions against trafficking in human beings. The Convention pays much attention to rights of trafficked people, such as, for instance, the right for a reflection period (30 days, at least), the right for obtaining the residence permit, the right for compensation, as well as special rights of trafficked children. The Convention applies to all forms of trafficking; whether national or transnational, whether or not related to organized crime.

representatives of non-governmental and inter-governmental organizations, which actively participate to counteracting trafficking in persons, are entitled to attend the Committee's meetings with the right of the consultative vote. This is an important proof of democratic evolution of our society.

In late August, the Government approved a new National Action Plan to Prevent and Combat Trafficking in Persons<sup>5</sup>, which was developed in compliance with European standards of counteracting trafficking in persons and with taking into account best practices in this field. The Plan envisages implementation of a wide range of measures in this sphere for the period of 2005 – 2006.

And, finally, on October 20, 2005, the Parliament of the Republic of Moldova adopted the Law "On Preventing and Combating Trafficking in Human Beings"<sup>6</sup>. This law has been drafted for about two years in the atmosphere of broad publicity and with active participation of the civil society. The Law determined the institutional structure of counteraction of trafficking in persons in the Republic of Moldova, obligations of participants to counteraction, the rights of trafficked people, and measures to protect such rights, special rights of trafficked children, key avenues and principles of organization of trafficking in persons counteraction etc.

Neither international standards, nor books on this very issue contain a unified approach to the process of identification of trafficked people. There is no harmonious concept which would determine tasks, procedure of execution, and criteria to be used for identification of trafficked people. In those few publications, which touch upon the subject of identification of trafficked people, identification is most frequently regarded in totality with the procedure of official criminal prosecution of trafficking in persons crimes. At that, it is not clear what the difference between identification of trafficked people and qualification of trafficking in human beings crime is.

Although books on this specialized subject do not deny the fact that trafficked people can be identified not only by law-enforcement authorities, but also by employees of NGOs, social workers, employees of labor inspections, migration service, etc., nevertheless, recommendations on identification of trafficked people are

usually designed only for the law-enforcement employees.

Identification of trafficked people is intimately connected with definition of trafficking in persons crime, but we did not manage to find a handbook on identification of trafficked people, which would clearly show the connection between features (indicators) to be used for identification of trafficked people, with all elements of definition of trafficking in persons. Generally speaking, recommendations on use of standard features for identification of trafficked people are very cautious. The authors point out that the process of identification of trafficked people is carried out differently in each particular case. It means that a system-wide approach to the aggregate of features, which could be used for identification of trafficked people, has not been created, yet.

Besides that, the published books spotlight only the problems in the countries of destination of trafficking in persons. Meantime, in the countries of origin, like the Republic

<sup>5</sup> Decision of the Government of the Republic of Moldova No.903 as of August 26, 2005 (Official Monitor of the Republic of Moldova, 2005, No. 119-122, p. 987).

<sup>6</sup> Law of the Republic of Moldova "On Preventing and Combating Trafficking in Human Beings" No. 241-XVI as of October 20, 2005. (Official Monitor of the Republic of Moldova, 2005, No. 164 -167, p. 812).

of Moldova, there are also many problems with identification of trafficked people, and these problems are specific to our country. It is necessary to work out recommendations as to how identify trafficked people for countries of origin, too.

It is also worth pointing out that when identifying trafficked people in Moldova, it is necessary to rely, first of all, upon the definitions stipulated in the national legislation. Besides that, the country has already gained its own experience in identification of trafficked people. This information needs to be analyzed and systematized.

Thus, analysis of existing books on identification of trafficked people shows that the published books do not meet the requirements of practice in our country. There is an obvious shortage of information on this issue. It is necessary to carry out our own researches, to make publications, and work out recommendations on identification of trafficked people problems.

According to the international law and the national legislation of some countries, the person to have suffered from trafficking in persons, has certain rights, and namely: guaranteed access to a minimal package of gratuitous public services (medical services, shelter, psychological, legal, and other types of assistance). Identification of trafficked people is called to ensure a sufferer with access to society's assistance. It is important that identification be carried out precisely enough, so that namely those who really suffered from trafficking in persons would enjoy assistance.

Certainly, only the court can give the most precise answer to whether trafficking in persons crime really took place with regard to a certain person, whether this person is a trafficked

person, on the basis of results of official prosecution of crime. But the prosecution and the court proceedings can sometimes last for one and even two years, whereas assistance to the sufferers should be rendered immediately, because very often the sufferers are far from being in a good psychological and physical condition. Besides that, the criminal investigation itself depends on rendering of such assistance. Psychological and physical state of a trafficked person normalizes after receiving the necessary assistance. They start to have more faith in law-enforcement employees, to more sincerely talk about what really happened to them. Their behavior, as witnesses in the criminal proceedings, becomes more stable.

It is also worth pointing out that according to norms of international law, assistance should not depend on victim's readability to testify during the criminal proceedings. Access to the justice system is the right, and not the obligation of a human being. If a person to have suffered from trafficking in persons does not want to use the right for access to justice, this person, nevertheless, should not be deprived of the right for other types of assistance and support on behalf of the society.

We come to a conclusion that identification of trafficked people, as a procedure that grants access to the necessary assistance, should be carried out quickly, sometimes irrespective of the criminal prosecution procedure and, at the same time, with the specified degree of accuracy. During such procedure, a person that identifies trafficked people has to come to conclusion, based on a series of features, that there is a high probability this person has really suffered from trafficking in persons.

**Problems in Identification of Trafficked People:**

- a) there is no harmonious concept which would determine tasks, procedure of execution, and criteria to be used for identification of trafficked people;
  - b) there are no recommendations, designed for NGOs, as to how identify trafficked people;
  - c) there is no system of features to be used for identification of trafficked people;
  - d) there are no recommendations for countries of origin as to how identify trafficked people.
- International Center  
"La Strada"**



But how can we make the procedure of identification be quicker and accurate enough? Is it possible to create clear-cut instructions (standard operation procedures) of identification of trafficked people? What organizations can and should carry out the procedure of identification of trafficked people? How should it be carried out, and what should be taken into account? How to organize this work in such a way, as to in the best way protect the interests of victims, and, at the same time, not to bring harm to the society's interests? In this publication, we will try to step by step give our answer to this and other questions.

This publication is a result of our research, within the framework of which we tried, first of all, to generalize data of some publications on the issue and our own experience. The result of this work is laid in the first part of the publication, and it reflects the opinion of specialists from the International Center "La Strada" Moldova. Besides that, we interviewed specialists from the law-enforcement bodies and NGOs of the Republic of Moldova, whose work is related to identification of trafficked people. Just as we presupposed, the results of research showed specialists do not see eye to eye on the issue of trafficking in persons. In this publication, we will let you know, with the consent of the polled people, their opinions on this issue. In the conclusion we will also let you know opinions of some of our foreign counterparts on this issue.

In the attempt to provide the reader with the most accurate core of the

issue, we preserved the reporting format of the key material in the form of questions and answers.

Given the complexity of this item, we did not plan and did not manage to find accurate and univocal answers to all raised questions. But we hope that this publication will provide the basis for theoretical discussions among specialists, as well as will somehow contribute not only to conceptualization of the notion of identification of trafficked people, but also to elimination of gaps in the practical activity related to identification of trafficked people.

This publication is designed for specialists whose work is connected with counteracting trafficking in persons, first of all for those, who by nature of their work have to contact potential victims of trafficking and can help identify cases of trafficking in persons. We hope that in the future this material will be used for working out an instruction on identification of trafficked persons. We also hope that this publication will become a useful source of information also for representatives of official structures, which determine the country's internal policy, as well as for all those, who are interested in the issue of trafficking in persons and ways to address it.

We will be grateful for any comments on this text, as well as for additional information on this topic. Please, send your opinions to the Analytical Department of the International Center "La Strada" at the address in the second page of this publication.

*Authors' note*



# I. OPINION OF INTERNATIONAL CENTER "LA STRADA"

## I.1. Identification of Trafficked Persons – key Element in the System of Counteraction of Trafficking in Persons

### *Why is important to identify trafficked people?*

Every year, thousands of people all around the world fall victims of trafficking in persons. It is not possible to accurately estimate the number of victims, because the problem is really latent. Often, victims do not want to make public what happened to them, and, therefore, many cases of trafficking in persons remain unidentified. It happens due to various reasons. Commonly trafficked persons are afraid of slavers' revenge, which can be aimed not only at them, but also at their family members. Persons to have been subject to sexual exploitation are afraid this fact can be made public and can possibly lead to public reprimand of victims themselves. A lot of victims do not hope for triumph of justice and see no sense in appealing to governmental structures.

Often, when located on the territory of a country of destination, victims are afraid of responsibility for violation of this state's legislation as related to the established procedure of foreign citizens' stay, which they committed as to get a job. Besides that, they do not trust officials, have no idea about their rights and about the possibility to get the necessary assistance. Frequently, a psychological trauma does not let victims adequately apprehend what happened and adopt the right measures, etc. This leads to a situation in which they are considered to be

nobody, but illegal migrants. They are treated not like victims, but like law breakers, and are subject to the corresponding measures – administrative detention, penalties, and deportation. Sufferings and traumas, received during exploitation, are added by new sufferings as result of meeting law-enforcement authorities.

In such cases, sufferers are left without the necessary help and assistance, and they find it very difficult to independently get back to normal life. Even if they manage to get rid of exploiter's control, they sometimes become re-trafficked because of despair of their situation.

**That is, identification of trafficked people is necessary, first of all, for protection of these victims' rights.**

But identification of trafficked people is important for the society, too. If victims do not give testimony, then criminals, who made a fortune by selling human slaves, get scot-free and commit new crimes, and more and more new people become victims of trafficking in persons. In other words, non-identified cases of trafficking in persons lead to expansion of this problem in the society. We come to conclusion that **timely identification of trafficked people is a measure of counteraction of expansion of the trafficking in persons phenomenon, and, therefore, is necessary for protection of the entire society's interests.**

"The protection of the rights of trafficked persons under international and domestic law requires that these individuals are identified correctly and not treated as criminals or smuggled migrants."

*Amnesty International and Anti-Slavery International, "Memorandum on the draft European Convention on Action against Trafficking in Human Beings: Protection of the Rights of Trafficked Persons", 2004.*

"A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and do take place".

*Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council. Guideline 2. UN Document: E/2002/68/Add.1, May 20, 2002.*

Many international experts believe it is necessary to significantly increase the number of identified cases of trafficking in persons to ensure considerable success of trafficking in persons counteraction. Nowadays, it is recognized as a key task for the whole system of trafficking in persons counteraction.

### *How is identification of trafficked people correlated with other avenues of organization of counter-trafficking in persons?*

So that to more profoundly understand what detection or, more often referred to as identification of trafficked people is, let us try to localize this process in the system of trafficking in persons counteraction. It is necessary to point out that literary sources, dedicated to trafficking in persons, most often distinguish three main directions of counteraction of trafficking in persons:

- 1) prevention of trafficking in persons;
- 2) protection and assistance to victims;
- 3) prosecution of the guilty.

This classification is often called the three "P" concept, because all three directions start with letter "P". Despite its originality, this classification is rather relative, because these directions are intimately interconnected. For instance, successful prosecution of criminals is a good measure for prevention of other crimes etc.

So, if we take this classification as basis and try to localize identification of traf-

ficked people process in this system, then, we think, it will be correct to refer identification to protection and assistance to victims. The thing is that, according to international standards of work with trafficked persons, identification should grant victims with immediate access to assistance. At that, it should not depend on who was the first to get in contact with a presumed trafficked person and interview the person about the details of what happened: police officer, whose main task is to prosecute criminals, or employee of a specialized non-governmental organization, whose main task is to provide a victim with the necessary assistance.

Authors of the OSCE/ODIHR Practical Handbook on creation of trafficked persons referral mechanism called identification of trafficked people have the same opinion about the place of identification in the system of counteraction: "Sometimes it is a question of weeks or months before a trafficked person overcomes post-traumatic stress syndrome and is able to speak out. Therefore, the concept outlined in this hand-book incorporates the identification process as part of a protection and support programme".<sup>7</sup> The same opinion is stated in the Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response, issued by the International Center for Migration Policy Development (ICMPD, Vienna)<sup>8</sup>.

*If we try to localize identification of trafficked people amongst one of the three avenues of organization of trafficking in persons counteraction (a) prevention of trafficking in persons; b) protection and assistance to victims; c) prosecution of the guilty), then it will be right to refer identification to protection and assistance to victims. According to international standards of work with trafficked persons, identification should grant victims with immediate access to assistance. At that, it should not depend on who was the first to get in contact with a presumed trafficked person and*

<sup>7</sup> "National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons". A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, p. 17.

<sup>8</sup> Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response (ICMPD), Vienna, 2005, p. 46.



*interview about the details of what happened: police officer, whose main task is to prosecute criminals, or employee of a specialized non-governmental organization, whose main task is to provide a victim with the necessary assistance.*

It is very important for building a concept of identification of trafficked people. The thing is that if identification of a trafficked person is done by a law-enforcement officer, sometimes it is difficult to separate the process of victim identification from the process of criminal prosecution of the guilty, which is referred to other direction of counteraction of trafficking in persons.

### ***Who should identify trafficked persons?***

In practice, **identification of trafficked people is most often done by police or specialized NGOs, which provide assistance to trafficked persons.** This can be done **in the country of destination, country of transit, or country of origin of trafficked persons.**

Methods of identification of trafficked persons can be different. Victims or their family members and close ones may themselves turn to police or specialized NGO. But to do so, they have to have trust in these structures, to know about their rights, and exactly to know where to address to. That is, risk groups should be constantly informed about what should be undertaken by a person who became victim of trafficking in persons. Specialized NGOs should be equipped with Hot Lines operating on a twenty-four-hour basis. Besides that, they should also adopt special active measures intended to search for presumed victims and inform thereof about their rights.

***Identification of trafficked people is most often done by police or specialized NGOs, which provide assistance to trafficked persons. Specialists that identify trafficked persons should be well-trained and have experience in work with trafficked persons. To successfully identify victims, it is necessary to efficiently combine research and training technologies with the everyday work.***

***International center "La Strada"***

Trafficked persons can be identified during the police prompt actions, performed in the places of exploitation of presumed victims. But the effect of such method of identification of trafficked people depends on observance of certain rules of work with presumed trafficked persons (attraction of specialized assistance-rendering NGOs to the work with presumed victims, giving the reflection period for the presumed trafficked persons, and other assistance and protection measures). If a presumed trafficked person does not feel trust and inclination towards a police officer or an NGO employee, this person will not tell what really happened to him/her.

It is worth pointing out that a system of measures related to training and advanced training of specialists is important for efficient organization of identification of trafficked persons. Specialists that identify trafficked persons, should be well-trained, have experience in work with trafficked persons. Since the issue of trafficking in persons is constantly changing, it is very important to trace and analyze trends in the criminals' changing behavior, types of influence over the victim, methods of exploitation, as well as to take these trends into account in the day-to-day work. That is, it is necessary to efficiently combine research and training technologies with the everyday work. Talking about NGOs, it is obvious that identification of victims should be carried out by the most experienced organizations.

"Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) appropriate housing; (b) counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) medical, psychological and material assistance; and (d) employment, educational and training opportunities."

*Article 6, item 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Ratified by the Law of the Republic of Moldova No 17-XV as of February 17, 2005 (Official Monitor of the Republic of Moldova, 2005., No. 36-38, p. 126).*

### *What is proactive and reactive identification of trafficked people?*

**Proactive identification** of trafficked persons is understood as such methods of identification of trafficked persons, when trained specialists or organizations, which render assistance to trafficked persons, undertake dynamic actions in search of presumed trafficked persons. For this purpose, it is necessary to analyze possible places where trafficked persons can stay or address to, analyze methods of contact with presumed trafficked persons, procedure of provision of information about their rights, about organizations they can turn to for help. It is very important for increase of efficiency of organization of identification of trafficked persons, because researches demonstrate that very many trafficked persons remain unidentified.

Not only police officers and specialized NGOs, but also employees from other structures who in their day-to-day work encounter trafficked persons (border guards, social workers, employees of diplomatic missions abroad, employment services officers, doctors, etc.) could and should be attracted to primary identification of trafficked persons. Also, these specialists should undergo special training and have informational materials. Their key task should be referral of presumed trafficked persons, upon their consent, either to the police, or to a Drop-in center of a specialized NGO for carrying out the procedure of identification and provision of assistance.

**Reactive identification** of trafficked persons means a passive strategy of victim identification. For instance, one can just open a consulting center for the trafficked persons and sit and wait till victims turn to it. Such method of work will not be efficient.

### *What is the role of Hot Lines in identification of trafficked persons?*

"Hot Line" is a specially dedicated multi-channel telephone line, operating on a twenty-four-hour basis, which can be used for calling and asking for confidential assistance. To help trafficked persons, such unified national Hot Line was established in the Republic of Moldova – **0800 77777**. The Hot Line is operated by the International Center "La Strada". Calling the Hot Line is free of charge within the territory of the Republic of Moldova. It is also possible to call the Hot Line from abroad at any time of the day by dialing **(0037322) 23 33 09**.

The main task of the Hot Line and our Drop-in Center is to receive SOS-calls, both from victims, and their relatives, identify cases of trafficking in persons, and adopt necessary measures targeted to provide assistance and protection to victims. Hot Line operator, who receives such calls, should have special knowledge of identification of trafficked persons, rules of communication with victims, as well as of procedure of actions that should be carried out as to render assistance. Our Hot Line has more than once helped save trafficked persons. Often, this communication channel is the only thread, which allows our fellow-citizens, subject to exploitation abroad, get connected with their native country and receive the necessary assistance and rescue. Over four and a half years of operation of Hot Line "La Strada", more than 220 persons have been saved and managed to return to their home-country due to calling this Hot Line.

Certainly, "La Strada" employees can not independently get a person out of control of criminal elements in another country and offer this person the whole package of necessary assistance.

Our partners from international structures, law-enforcement authorities and NGOs from our country and from many other countries also participate to this work. The specifics of trafficking in persons issue and the needs of a trafficked person are such that not a single structure can manage with the issue independently; inter-departmental and inter-disciplinary approach is necessary to solve the issue. Thus, the Hot Line can and should serve as a Contact Center for the organizations, which render assistance to victims, in terms of referring the identified victims for further assistance and protection.

In its identification of trafficked persons activity, Center "La Strada" Moldova is trying to use proactive methods. In 2005, a mobile group for identification of trafficked persons was created. During the first year of its activity the group carried out 38 trips to the regions with a view of fulfilling this objective.

We have worked out a package of informational materials for the trafficked persons; the package contains information about who and in what

particular cases can call the Hot Line. This package is distributed in the places where would-be trafficked persons can address (employment offices, medical institutions, social assistance institutions etc.).

We regularly train specialists from different structures (governmental and non-governmental), who get in contact with would-be trafficked persons, we teach them how to correctly carry out primary identification of victims, provide them with necessary informational materials about victim's rights and about the regime of work of our Hot Line and the Drop-in center for trafficked persons. We try to develop collaboration with such structures in all regions of the Republic of Moldova.

Continuous efforts are required to support the Hot Line's activity. We carry out special informational campaigns, in the framework of which we try to channel as much information about the Hot Line and its objectives as possible through the Media (TV, radio, street stands etc.).





**“Article 15.** Identification of Victims of Trafficking in Human Beings

Identification of victims of trafficking in human beings shall be carried out by the competent public authorities with the support of non-governmental organizations or by non-governmental organizations that have reasonable grounds to believe that a person is a victim of such trafficking.”

*Law of the Republic of Moldova “On prevention and suppression of trafficking in persons”, No. 241-XVI as of October 20, 2005*

## I. 2. Everything Starts with Terminology...

### *What is identification of trafficked persons?*

The new Law of the Republic of Moldova “On prevention and suppression of trafficking in persons”, No. 241-XVI as of October 20, 2005, stipulates that “identification of victims of trafficking in human beings – the process of verification of persons presumed to be victims of trafficking in human beings” (Article 2). To our opinion, this definition is too short and is not quite exact. This definition makes it difficult to understand what identification is.

The Law also has a specific provision related to identification:

#### **“Article 15. Identification of Victims of Trafficking in Human Beings**

Identification of victims of trafficking in human beings shall be carried out by the competent public authorities with the support of non-governmental organizations or by non-governmental organizations that have reasonable grounds to believe that a person is a victim of such trafficking.”

But this provision envisages only who shall carry out identification of trafficked persons, and does not specify what namely the core of this process is and what the objectives of this process are. Given that this provision is included in Chapter III “Protection and Assistance of Victims of Trafficking in Human Beings”, one can nevertheless conclude that objective of identification is namely in protecting and assisting trafficked persons.

In international law, in literature dedicated to trafficking in persons and in public appearances, specialists often use the notion “identification of trafficked persons” or “victim identification”. Although we did not manage to find an official definition of identification in the international legislation, the context of application thereof makes it clear that **identification of trafficked person is understood as a complex of measures during which a specialist on the basis of data obtained from presumed trafficked person or from individuals or legal persons, which have information about illegal actions, committed against this victim, analyzes the obtained information, compares elements of the committed crime with elements of definition of trafficking in persons and comes to conclusion that this person is a victim of trafficking in persons. Identification of trafficked persons is targeted to provide victims with access to a minimal package of necessary and gratuitous assistance,**

**the amount of which is established in compliance with the legislation.**

It is necessary to point out that lack of official, internationally-recognized, definition of “identification of trafficked persons” is caused by the fact that international experts in this field do not yet have an agreement of opinion on this issue. Maybe it is because the word “identification” has a lot of meanings. For instance, some specialists believe it is not at all right to use the word-combination “identification of trafficked persons” or “identification of victims”. At that, they proceed from the analogy with the definition of person’s identity, when a person is given an identity card and assigned a unique identification number, which allows to faultlessly choosing this person out of the variety of other people.

But the word “identification” has other meanings, too. To our opinion, the notion “identification of trafficked persons” emerged hand in glove with the

notion identical, i.e. selfsame, similar, coincident. Indeed, in the course of identification, a specialist correlates the description of a specific case, which happened to the victim, with the official definition of trafficking in persons crime, and makes a conclusion whether the details of what happened coincide with the elements of crime, envisaged by the law. On the other hand, identified is, nevertheless, the description of the case, and not the victim, but, anyway, as a result, revealed or identified is the victim of crime.

Some specialists believe that identification is a complex of active measures targeted to disclose or discern trafficked persons in the environment, which nourishes trafficking in persons – illegal migrants, prostitutes etc.

There is another opinion, according to which identification is an element of other processes, very closely interconnected with identification, rather than an independent process. For example, there are opinions, according to which identification is the first stage in rendering assistance to a victim by NGO, or that identification is a stage in the investigation of trafficking in persons crime and is carried out only by police.

But to our opinion, the word-combination "identification of trafficked persons" has already been so deeply embedded not only in the vocabulary of experts in the field of trafficking in persons, but also in many international and national legal provisions, that it there is no more need to prove the necessity of existence of such definition. This definition is confirmed by practical usage. It is already late to discuss the lawfulness of its existence – it is time to state it officially.

### *What is the difference between identification of trafficked persons and classification of trafficking in persons crime?*

The notion of "identification of trafficked persons" is very close to the notion "classification of crime" from the Criminal Code of the Republic of Moldova (art. 113. Notion of Classification of Crime).

Yet, there is a row of differences between these notions: in terms of objectives of these processes, consequences, degree of responsibility, labor intensity etc.

The key objective of classification of crime is in suppression of crime. This is a responsible process, because it influences the criminal's punitive measure. This is an official process – each crime is registered in the law-established procedure. This is a complicated process, because elements of one committed crime may correspond to elements, envisaged by two and more criminal provisions. This is why an entire section from the Criminal Code (Chapter XII) is dedicated to classification of crimes. Classification of crime is done only by authorized employees of law-enforcement bodies or by the court instance. The process is lengthy, witnesses' testimonies are not taken on trust, and are subject to detailed checkout, various evidences are collected. For criminal prosecution it is very important to prove the presence of criminal intention with the guilty person, because only intentionally committed actions can be subject to criminal punishment. A crime, which was initially qualified as trafficking in persons, can be qualified during criminal prosecution or court proceedings based on another article from the Criminal Code, i.e., it may fall out that this crime will not be recognized as trafficking in persons because of lack of evidence.

#### **Article 113. Notion of Classification of Crime**

(1) Classification of crime is determination and legal establishment of exact correspondence between the elements of committed maleficent deed and the essential elements of offense, envisaged by the legal provision.

(2) Official classification of crime shall be carried out at all stages of criminal proceeding by persons who perform criminal prosecution, and by judges.

*Criminal Code of the Republic of Moldova, No. 985-XV dated April 18, 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129, p. 1012).*

Identification of trafficked persons is targeted, first of all, for provision of necessary assistance to trafficked persons. It can be carried out not only by police, but also by specialists from non-governmental organizations, which render assistance to trafficked persons and have the means necessary for this purpose. Identification of trafficked persons should be carried out quickly and, therefore, in a simplified procedure, as compared to classification of crime. Not only definition of trafficking in persons (elements) can be used for identification of trafficked persons, but also the knowledge of overall average psychological and social profile of a trafficked person, as well as characteristics of the case's circumstances. The obtained information is subject only to general verification; accurate proofs are not collected. Classification of crime is carried out in a strict compliance with norms of the Criminal Code, because those innocent of crime should not be punished. Identification of trafficked persons is a less strict process, it does not lead to criminal prosecution, and it can rely upon instructions and a certain set of features. At that, the set of features for identification of trafficked persons should be flexible, and should provide the possibility to react to challenges of time, new trends, and changes in the situation with trafficking in persons.

Talking about the degree of officiality of the procedure of identification of trafficked persons, it is worth pointing out that this procedure should not be bureaucratic; it should not turn into a kind of state registration of trafficked persons. Certainly, if an identified trafficked person is threatened by deportation from the country of residence and it is necessary to legalize the status of this victim's stay in the country, in this case the state will not

be able to avoid official recognition of this person's rights as of a trafficked person. Time will show what this procedure may become in our country. So far, the trafficked persons identified in Moldova were mainly citizens of Moldova.

Procedure of identification of trafficked persons may coincide with classification of crime, if a trafficked person is discovered by a law-enforcement officer and this officer has a possibility to refer the trafficked person to a specialized organization, which provides assistance to the trafficked persons. For instance, let us examine a case, when a trafficked person itself files to the police an application about the crime, committed against this person. If there are features of trafficking in persons crime, the police officer can classify the crime as "trafficking in persons" and, naturally, identify the victim of this crime. Knowing about the rights of a trafficked person and collaborating with a non-governmental organization that renders assistance to trafficked persons, the police officer can refer the victim to this specialized organization. The receiving party, in this case, does not verify information about the trafficked person, relying on the police officer's opinion.

But the procedure of identification of trafficked persons does not necessarily always coincide with classification of crime. For instance, during the first meeting with the police officer, the psychological state of victim is such that information obtained from this victim does not allow to accurately classify the trafficking in persons crime. But, based on some indirect indicators, which reflect overall average psychological and social profile of the trafficked person, this police officer should be able to identify a presumed



trafficked person and ensure thereof with access to necessary assistance. After receiving assistance, the victim's state and its degree of trust towards the police will improve, and, in some time, the victim will bear testimony, which will be enough for classification of crime and start the criminal proceeding. In this case identification of trafficked person will precede classification of trafficking in persons crime.

Thus, the above-said proves the need in existence of such independent notion as "identification of trafficked persons".

### *What is self-identification of a trafficked person?*

In psychology and sociology, identification means a process of emotional and other self-identification of a person with another person, group, model etc.<sup>9</sup>. This meaning of the term "identification" is closer to the notion of self-identification of the injured person or this person's perception of what happened from the standpoint of law.

In practice, self-identification of trafficked persons is impeded due various reasons. The thing is that despite the awareness-raising campaigns which are being carried out in educational institutions and the Media with a view of informing the population about the risk of trafficking in persons, and regardless of other adopted measures intended to prevent trafficking in persons, often, victims either do not know anything about these crimes, or do not associate themselves with victims of such crimes and can not give a legal estimate to what is happening. Indeed, the trafficking in persons crime is a complex one, it consists of a series of elements, and, in practice, a victim can associate what happened to him/her only with one element of the traf-

ficking in persons crime, for instance, with deception. "Yes, I was deceived" - agrees the trafficked person. And immediately adds "And who, on earth, has never been deceived? Everyone has".

Self-identification of trafficked persons can be impeded because of a psychological trauma, which does not allow victims adequately appraise the situation. They need time, calm environment, and assistance of psychologist, so that to overcome consequences of psychological trauma and recover the ability to normally think.

Besides that, most often traffickers manipulate with their victims' conscience. They humiliate victims' dignity in every possible way, convince victims in their impairment, inculcate guilt complex, misinform victims about their legal status, try to create semblance of fairness of their relations. The goal of manipulation is in making the victim think that the victim independently chooses its way and this way is the only right way for the victim. It is very important that victims should finally correctly perceive what happened and recover a normal outlook.

**Self-identification is very important for a successful identification of trafficking case by a specialist, because the degree of victim's frankness and accuracy of description of what happened, and, ultimately – identification of the victim by a specialist, will depend on that.**

### *What is useful to know about definition of trafficking in persons for identification of trafficked persons?*

As it has already been mentioned, the definition of trafficking in persons is used when identifying trafficked persons. The basis and the first interna-

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Not only definition of trafficking in persons (elements) can be used for identification of trafficked persons, but also the knowledge of overall average psychological and social profile of a trafficked person, as well as characteristics of the case's circumstances.

*International Center  
"La Strada"*

<sup>9</sup> Comprehensive Encyclopedia, M: Soviet Encyclopedia, 1981, p. 481.

“(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;



tionally recognized definition of trafficking in persons is given in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000). This Protocol is frequently called the Palermo Protocol by name of an Italian city in which this Protocol was opened for signing by all states during December 12 – 15, 2000.

For classification of trafficking in persons crime and identification of trafficked persons, law-enforcement employees

from our country use the corresponding provisions from the national criminal law, i.e., article 165 “Trafficking in human beings” and article 206 “Trafficking in children” of the Criminal Code of the Republic of Moldova, because only these provisions allow to bring those guilty to justice. Law-enforcement authorities also use provisions from the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova on appliance of legislative provision in trafficking in human beings and trafficking in children cases No. 37 as of November 22, 2004.

**Article 165. Trafficking in human beings**

(1) The recruitment, transportation, transfer, harboring or receipt of a person, with or without her consent, for the purpose of commercial and non-commercial sexual exploitation, forced labor or services, slavery and slavery-like conditions, using a person in armed conflicts or in criminal activities, removal of organs or tissues for transplantation, by means of:

- a) threat of use or use of physical or psychological violence non-dangerous for a person’s life and health, including through abduction, confiscation of documents and servitude for the repayment of a debt whose limits are not reasonably defined;
- b) deception;
- c) abuse of a position of vulnerability or abuse of power, by giving or receiving payments or benefits to achieve the consent of a person having control over another person;

shall be punished with imprisonment between 7 and 15 years, with deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 2 to 5 years, and the legal entity is sanctioned with fine in an amount of 3000 to 5000 conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the enterprise.

2) Actions provided by paragraph 1) of the present article committed:

- a) repeatedly;
- b) against two or more persons;
- c) against a pregnant woman;
- d) by two or more persons;
- e) by a decision-making person or by a person with high-ranking position;
- f) accompanied by dangerous violence for a person’s life, physical or psychological health;
- g) by way of torture, inhuman or degrading treatments to ensure the person’s compliance or through rape, physical bondage, use of a weapon or threat or disclosure of confidential information to the person’s family and other persons as well through other means;

shall be punished with imprisonment between 10 and 20 years with deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 2 to 5 years, and the legal entity is sanctioned with fine in an amount of 5000 to 7000



(d) "Child" shall mean any person under eighteen years of age."

Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime. Ratified by the Law of the Republic of Moldova No. 17-XV as of February 17, 2005 (Official Monitor of the Republic of Moldova, 2005, No. 36-38, p. 126).

conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the enterprise.

- (3) Actions envisaged by paragraphs (1) or (2) of the present article, committed:
- a) by an organized criminal group or criminal organization;
  - b) that resulted in serious bodily harm or mental illness to the person, in person's death or suicide,

shall be punished with a jail sentence of between 15 and 25 years, with deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 3 to 5 years with life imprisonment, and the legal entity is sanctioned with fine in an amount of 7000 to 9000 conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the enterprise.

4) the victim of trafficking in human beings shall be exempted from criminal liability for the offences committed by him/her in connection to this status.

Criminal Code of the Republic of Moldova No. 985 – XV as of April 18, 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129, p. 1012).

Employees of specialized NGOs have more freedom in selecting the definition for detection trafficked persons. Their key objective should be provision of all victims with access to the necessary assistance. They should flexibly react to challenges of the practice and use the broadest of all existent definitions of trafficking in persons, which more fully reflects all nuances of this crime. NGOs from the

Republic of Moldova can use provisions of both international law (definition from the Palermo Protocol), and provisions of the national law (the Criminal Code of the Republic of Moldova, new Law of the Republic of Moldova on prevention and combating of trafficking in human beings, and other), as well as recommendations contained in publications on this subject.

### **Article 2. Main Terms**

In the present law, the following main terms will be used:

1) trafficking in human beings – recruitment, transportation, transfer, harbouring or receipt of a person, by means of threat of force or use of force or other forms of coercion, of abduction, fraud, deception, of abuse of authority or a situation of vulnerability, or by means of offering or receiving payments or benefits of any kind in order to obtain the consent of a person who has control over another person for the purpose of exploitation of the latter.

Law of the Republic of Moldova "On preventing and combating of trafficking in human beings" No. 241-XVI dated October 20, .2005, (Official Monitor of the Republic of Moldova, 2005, No. 164-167, p.812)

It should be remembered about the new trends in the evolution of this crime. If, in practice, an NGO employee encountered some new elements or features of trafficking in persons, which have never been described in the nation, or international law, or

even in literary sources dedicated to trafficking in persons, but which should be referred to trafficking in persons based on the character of these elements or features, this employee should provide the victim with access to the necessary assistance. Thus, for



instance, among the NGO “La Strada” Moldova beneficiaries who have been identified as trafficked persons in 2001-2004, there were people who had been subject to exploitation as surrogate mothers or who had been forced into begging. Meanwhile, these types of exploitation, as possible objectives of trafficking in persons, were reflected in the legislation only after the new Law of the Republic of Moldova “On preventing and combating of trafficking in human beings,” came into force on December 9, 2005. If we were to be guided by the norms of legislation when identifying the victims, these people would have received the necessary assistance only after the new law came into force.



## I. 3. Elements of Trafficking in Persons

### *What are elements of definition of trafficking in persons?*

Definition of "trafficking in persons" from the Palermo Protocol is a complex one, and it is usual to divide it into three main groups of elements:

- A) **The actions of:** recruitment, transportation, transfer, harboring or receipt of persons;
- B) **By means of:** threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- C) **The purpose of exploitation,** which includes, as minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or removal of organs.

### *Do elements of international definition of trafficking in persons coincide with elements, stipulated in the national legislation of the Republic of Moldova?*

To answer this question, let us compare, element by element, the defini-

tion of "trafficking in persons" from the Palermo Protocol and from article 165 of the Criminal Code of the Republic of Moldova per each of the three groups of elements, and lay the results of analysis in Table 1.

Table 1.

	Definition of "trafficking in persons" from the Palermo Protocol	Article 165 of the Criminal Code of the Republic of Moldova "Trafficking in persons"	Differences in definitions of trafficking in persons
<b>A) Actions</b>	Recruitment, transportation, transfer, harboring or receipt of persons	Recruitment, transportation, transfer, harboring or receipt of persons	No differences
<b>B) Means of</b>	by means of the threat or use of force or other forms of coercion,  deception,  abuse of power or of a position of vulnerability or of the giving or receiving of payments	threat of use or use of physical or psychological violence non-dangerous for a person's life and health, including through abduction, confiscation of documents and servitude for the repayment of a debt whose limits are not reasonably defined;  deception;  abuse of a position of vulnerability or abuse of power, by giving or receiving payments or	1) Article 165 of the CC of the RM stipulates the following additional types of coercion:  - confiscation of documents ; - servitude for the repayment of a debt whose limits are not reasonably defined

	<p>or benefits to achieve the consent of a person having control over another person</p> <p><b>Trafficked person's consent to the intended exploitation is not taken into account, if any of the above-listed means of coercion was used</b></p>	<p>benefits to achieve the consent of a person having control over another person</p> <p>using force that is dangerous for life, physical or mental health of a person; using tortures or inhumane or degrading treatment targeted to subdue a person, or using forceful rape, physical dependence, arms, threats to disclose confidential information to the victim's family or other persons, as well as with using other means</p> <p>... with or without her consent</p>	<p>- tortures - inhumane or degrading treatment targeted to subdue a person</p> <p>- forceful rape - use of physical dependence, arms, threats to disclose confidential information to the victim's family or other persons</p> <p>No differences</p>
<b>C) Purpose</b>	<p>Exploitation includes, as minimum, the exploitation of others or other forms of sexual exploitation,</p> <p>forced labor or services,</p> <p>slavery or practices similar to slavery,</p> <p>servitude</p> <p>or removal of organs</p>	<p>for the purpose of commercial and non-commercial sexual exploitation,</p> <p>exploitation forced labor or services,</p> <p>slavery and slavery-like conditions,</p> <p>using a person in armed conflicts or in criminal activities,</p> <p>removal of organs or tissues for transplantation</p>	<p>The CC of the RM stipulates the following additional objectives of exploitation:</p> <ul style="list-style-type: none"> <li>- use of a person in armed conflicts;</li> <li>- use of person in criminal activities,</li> <li>- removal of organs or tissues for transplantation.</li> </ul> <p>The Criminal Code of the Republic of Moldova does not contain the notion of "servitude"</p>

Comparative analysis of these definitions demonstrates that elements of the definition in these documents, basically, coincide, but, at the same time, there are some differences. As the Table shows, the national legislator was more specific in Article 165 of the Criminal Code of the Republic of Moldova when defining means of coercion and objectives of exploitation,

than the Palermo Protocol. In items (2) and (3) of the same article, the Criminal Code of the Republic of Moldova envisages circumstances that aggravate the responsibility as well as circumstantiates more severe and cruel means of coercion, and their consequences for the victim.

**Palermo Protocol contains a general norm, according to which the consent**

**of a victim to the intended exploitation is irrelevant where any of the listed means of coercion were used.**

Though, the initial language of art.165 of the Criminal Code of the Republic of Moldova did not envisage anything about the meaning of the victim's consent to the intended exploitation. In practice, it would lead to a situation when, during the court proceeding, trafficking in persons crimes would be re-qualified in the trading in prostitution crime, and trafficked persons would lose the right to demand compensation for material and moral damage brought to them. Only in the end of 2005, the art. 165 of the Criminal Code was supplemented with specific amendments that eliminated this shortcoming (Law No. 376-XVI from 29.12.05, entry into 31.01.06).

**In November, 2004**, the Plenum of the Supreme Court of Justice of the Republic of Moldova generalized practice cases on trafficking in persons and trafficking in children cases, and adopted a corresponding Decision on this issue. The Plenum, in particular, explained, that: "When giving a legal classification of actions of execu-

tor of offense on the basis of art. 165 and 206 of the Criminal Code, there shall not be taken into consideration the consent of a victim for the victim's recruitment, transportation, transfer, harboring or receiving, even if the victim was informed about for what purposes the victim would be used, as well as what about the means, which are used in trafficking"<sup>10</sup>. The new Law of the Republic of Moldova "On prevention and combating of trafficking in human beings" (Article 2) also stipulates, that the consent of a trafficked person to intended exploitation is irrelevant, where certain means of coercion were used.

**It is also necessary to point out that the Palermo Protocol and Article 206 of the Criminal Code of the Republic of Moldova contain a special norm, which envisages that in case of trafficking in children, the second group of elements "means of coercion" is irrelevant, important are criminal actions and the objective.** It is presupposed that children have sensibility to an influence, and if they fell in a situation of exploitation, this is because they were subject to criminal influence, and not because it was their own decision.

**Article 206. Trafficking in children**

*(1) Recruitment, transportation, transfer, sheltering or reception of a child, or giving, receiving payments or benefits in order to obtain the consent of the person who is in control of the child for the purpose of:*

- a) commercial or non-commercial sexual exploitation, prostitution, use in the pornography industry;*
- b) forced labor or services exploitation;*
- c) slavery exploitation or in conditions similar to slavery, including illegal adoption;*
- d) using the child in armed conflicts;*
- e) using the child in criminal actions;*
- f) drawing of organs or tissues for transplant;*
- g) abandonment outside the country,-*

*shall be punished with a jail term of between 10 and 15 years with deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 2 to 5 years, and the legal entity is sanctioned with fine in an amount of 3000 to 5000*

<sup>10</sup> Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "On appliance of legislative provision in trafficking in human beings and trafficking in children cases" No.37 as of November 22, 2004. Bulletin of the Superior Court of the Republic of Moldova, 2005, No.8 p.24, item 1.



*The kidnapping of a person* implies actions contrary to the wish or the will of the victim, accompanied by change of his/her residence or temporary whereabouts, accompanied by victim's confinement.

The capturing, forced change of residence, accompanied by victim's confinement, constitute mandatory elements as means of committing human trafficking through kidnapping.

The kidnapping of a person implies the existence of the following successive stages:

- a) capturing the victim;
- b) taking the victim and transferring him/her from his/her permanent or temporary whereabouts (place of living, working, resting, treatment etc);
- c) person's confinement against his/her will or by disregarding his/her wishes.

Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "On appliance of legislative provision in trafficking in human beings and trafficking in children cases" No. 37 as of November 22, 2004. Bulletin of the Superior Court of the Republic of Moldova, 2005, No. 8 p. 24, item 5.4.)

conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the enterprise.

(2) Same actions, accompanied by:

- a) use of physical or psychical violence against the child;
- b) subjecting the child to sexual abuse and commercial or non-commercial sexual exploitation;
- c) use of torture, inhuman or degrading treatments in order to attain the child's subjection or by rape, by taking advantage of physical dependence of the child, using a weapon, threatening with divulgation of confidential information to the child's family or to other persons;
- d) subjecting the child to slavery or similar to slavery conditions;
- e) use of the child in armed conflicts;
- f) drawing of organs or tissues for transplant,

shall be punished with a jail term of between 15 and 20 years with deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 2 to 5 years, and the legal entity is sanctioned with fine in an amount of 5000 to 7000 conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the enterprise.

(3) Actions envisaged by paragraphs (1) and (2) of this article and:

- a) committed repeatedly;
- b) committed against two or more children;
- c) by a decision-making person or by a person with high-ranking position;
- d) committed by an organized criminal group or criminal organization;
- e) resulted in child's death, serious bodily injury or mental illness,-

shall be punished with a jail term of between 20 and 25 years with deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 3 to 5 years or with life imprisonment., and the legal entity is sanctioned with fine in an amount of 7000 to 9000 conventional units, with deprivation of the right to carry out a certain activity, or with liquidation of the enterprise.

(4) the victim of trafficking in children shall be exempted from criminal liability for the offences committed by him/her in connection to this status.

*Criminal Code of the Republic of Moldova (adopted April 18, 2002, entry into force June 12, 2003) No. 985-XV, as of 18.04.2002 (Official Monitor of the Republic of Moldova No. 128-129/1014, as of 13.09.2002)*

It is important to point out that many of the examined elements from the definition of "trafficking in persons" also need to be defined. To correctly identify cases of trafficking in persons in practice, one has to know the definitions of "abduction", "deception", "abuse of power", "vulnerability of position", "forced labor", "slavery", "exploitation", "abuse of vulnerable position" etc. Many of these questions were answered by the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova. On the basis of exact definition of each

element of trafficking in persons it is possible to create a system of features, which characterize each element and the trafficking in persons crime on the whole, which, in its turn, allows developing practical recommendations on identification of trafficked persons.

*What elements of trafficking in persons have not yet been fixed in the law?*

Summing up the performed analysis of definition of trafficking in persons, contained in the Palermo Protocol and

the Criminal Code of the Republic of Moldova, we would like to point out that these definitions were created as a result of examination of such phenomenon as trafficking in persons. But, unfortunately, this phenomenon is not static. Criminals reply with more devious methods to efforts of the international community that struggles against this crime. Observations of NGO "La Strada" Moldova demonstrate that the situation is constantly changing. In particular, we would like to stress the use by criminals of such method of coercion as manipulation. The definition of trafficking in persons contains methods of coercion and deception, but it says nothing about manipulation – method of persuasion, which is based on premeditated deception. Using such means, the manipulator creates a double illusion in the victim's conscious: the first illusion is that the reality is such as the manipulator depicts it, and the second illusion is that the reaction to this illusion is at victim's discretion. For instance, we know cases when future victims of sexual exploitation, before they were subject to this exploitation, would be forced into living several months in one apartment with those who already came to terms with their position. Thus, a new behavioral model would be implemented into their conscious. At the same time, they would be constantly and actively reminded that they have no other choice. As a result, the victims themselves gave consent to exploitation, without any coercion. Or, an exploited person would be paid miserable wages and would be permanently suggested, that if this person stays, he/she would be able to earn much more in the future, and if the person leave, he/she will lose everything. As a result, the exploited person "of his own free will" would work for a

long time in exchange for food and cigarettes.

Our criminal legislation does not contain such notion as manipulation. It is necessary to deeper study this type of coercion and work out counteraction measures.

*What should a possible combination of the above-named elements look like as drive the crime into the category of trafficking in persons?*

This is a very important question for practical identification of trafficking in persons. Definition of trafficking in persons is very multidisciplinary and complicated; it has embodied elements of various crimes, related to trafficked persons. It is obvious that in practice a specialist comes across different combinations of elements of possible actions, methods of coercions and objectives of exploitation, listed in the definition of trafficking in persons. So, what combination of elements can be referred to trafficking in persons?

To get an answer to this question, let us look in the "Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto". According to item 33 of part two of this Guide:

"The obligation is to criminalize trafficking as a combination of constituent elements and not the elements themselves. Thus, any conduct that combines any listed action and means and is carried out for any of the listed purposes must be criminalized as trafficking. Individual elements such as

abduction or the exploitation of prostitution need not be criminalized, although in some cases supplementary offences may support the purposes of the Protocol and States parties are

**Deceit** consists in misleading of and causing damage to a person by representing sham or distorted facts as true, with the aim to accomplish trafficking in human beings for oneself or for another person.

Deceit as means of committing a crime may consist either of actions, by communicating false information on certain circumstances or facts, or of inactions that reside in holding back real circumstances or facts (for instance, false promises to offer a legal job, dissembling the real conditions, in which the victim is forced to work etc.).

Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "On appliance of legislative provision in trafficking in human beings and trafficking in children cases" No.37 as of November 22, 2004. Bulletin of the Superior Court of the Republic of Moldova, 2005, No.8 p.24, item 5.7.)

free to adopt or maintain them if they wish to do so."<sup>11</sup>.

It is worth mentioning that a trafficking in persons crime can be identified at the initial stage – the stage of recruit-

ment and transportation, before the victims is subject to exploitation. In this case, the intention of exploitation is enough to refer this crime to trafficking in persons.

*Thus, a trafficking in persons crime includes the aggregate of:*

a) any of the following criminal actions - recruitment, transportation, transfer, harboring or receipt of persons, and

b) any of the following means - threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, and

c) any of the following purposes of exploitation - exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

*Trafficking in children crime is a combination of any of the above-listed criminal actions and any of the named objectives of exploitation (two groups of elements).*

<sup>11</sup> Legislative guides for the implementation of the United National Convention against transnational organized crime and the Protocols thereto. See: [http://www.unodc.org/pdf/crime/legislative\\_guides/Russian%20Legislative%20guides\\_Full%20version.pdf](http://www.unodc.org/pdf/crime/legislative_guides/Russian%20Legislative%20guides_Full%20version.pdf)



## I. 4. Indicators of Trafficking in Persons

### *What indicators can be used to identify a trafficked person in practice?*

This topic is the most difficult in the range of issues related to identification of trafficked persons and seems the least developed even at the international level. In publications, dedicated to identification of trafficked persons, one can not see a rigid connection between the definition of trafficking in persons (and its elements) and the features, based on which it is possible to identify trafficked persons. Besides that, for organization of this work in the Republic of Moldova it is necessary to use the national provisions of law and local experience. We tried to combine various international recommendations on identification of trafficked persons with the national legislation in the field of trafficking in persons and to create our own system of features, on the basis of which it is possible to identify trafficked persons. In doing so, we relied on the provisions of the Criminal Code of the Republic of Moldova, Decision of the

Plenum of the Supreme Court of Justice of the Republic of Moldova, No. 37 as of November 22, 2004, and the Law on Preventing and Combating Trafficking in Human Beings No. 241-XVI as of October 20, 2005.

We believe that all features, based on which it is possible to identify a trafficked person, can be conventionally divided into two groups:

- **direct indicators** of trafficking in persons, which correspond (confirm) some of the elements of the trafficking in persons definition;
- **indirect indicators** of trafficking in persons, which are based on practical data and social researches of real cases of trafficking in persons (overall average social and psychological profile of a trafficked person, atmosphere and environment, which surrounded the potential the victim etc.).

Data of analysis of direct indicators of trafficking in persons are given in Table 2.

Table 2

	<b>DESCRIPTION OF ELEMENTS OF TRAFFICKING IN PERSONS CRIME (compiled on the basis of legislation of the Republic of Moldova)</b>	<b>DIRECT FEATURES, WHICH COULD BE USED TO IDENTIFY TRAFFICKED PERSONS</b>
<b>CRIMINAL ACTIONS</b>		
Recruitment	<i>Recruitment</i> presupposes involvement of persons by selecting them for trafficking. In case of recruitment, circumstances, in which it was carried out, are irrelevant: in places of leisure, by means of non-conditional networks, by offering jobs or training, by closing a fictitious marriage etc.	The victim's story goes that a third person or employer himself offered him a job, which required the move and change of the principle residence.
Transportation	<i>Transportation</i> should be understood as transfer of a person from one place to another on the territory of a state or abroad, by feet, or using different transport means.	The victim's story goes that he was transferred by a transport means or led on feet to another settlement on the territory of a state or abroad outside his principle residence.



Transfer	<i>Transfer of a person</i> – is transfer of the victim by one person to another one on the basis of sale-purchase, exchange, rent, transfer on account of debt, donation or on the basis of other similar onerous or gratuitous transactions.	The victim's story goes that he became object of onerous transaction, which is usually applied to property assets. The former employer transferred him as a thing to a new employer with a view of obtaining financial benefit.
Harboring	<i>Harboring of the victim</i> – is placement of the victim in a secret place as to avoid disclosure thereof by law-enforcement authorities or the third persons able to report the trafficker in persons.	The victim's story goes that he was in other settlement, outside his principle residence. At that, he was harbored as to avoid contacts with other people, both official and non-official.
Receipt of a person	<i>Receipt of the victim</i> – is receiving of the victim by one person from another person on the basis of sale-purchase, exchange, rent, transfer on account of debt, donation or on the basis of other similar onerous or gratuitous transactions.	The victim's story goes that he became object of onerous transaction, which is usually applied to property assets. The new employer received him from the previous one in exchange for financial benefit.

#### METHODS OF COERCION

Threat to use physical force	Not described in the legislation	The victim's story goes that he was orally threatened by violence, including violence towards other people in his presence.
Threat to use psychological force	Not described in the legislation	
Use of physical violence non-dangerous for a person's life and health	<i>Physical violence, non-dangerous for a person's life and health</i> consists in intended bodily harm, which leads not to a short-term impairment of health or insignificant loss, but to a considerable loss of occupational capacity for work, or in intentional infliction of blows or commitment of other violent acts, which caused physical pain, but, yet, which do not entail hazard to the victim's life or health.	The victim's story goes that he would be subject to blows or other types of violent acts (he would be deprived of food and water, he would not receive the necessary medical assistance), which caused physical pain or bodily injury.  Possible presence of traces of violence on the body (scars etc.), general bad state of health.
Kidnapping of a person	<i>Kidnapping of a person</i> presupposes actions, committed against the victim's desire or will, connected with change of place of residence or temporary stay with deprivation of freedom. Capture and compulsory change of victim's place of residence with deprivation of freedom are mandatory means of committing trafficking in persons. Kidnapping presupposes the following three successive stages: a) capture of the victim;	The victim's story goes that he was subject to: a) capture; b) transfer from the victim's permanent or temporary place of residence, work, leisure, medical treatment, etc; c) detention with deprivation of freedom.

	<p>b) moving the victim from his/her permanent or temporary place of residence, work, leisure, medical treatment etc.);</p> <p>c) detention of a person with deprivation of freedom against the person's will or without taking the person's will into account.</p>	
Confiscation of documents	<i>Confiscation of documents</i> is deprivation of the victim, anyway, of documents that identify his personality, travel documents, etc. (passport, identity card, permission to stay etc.).	The victim's story goes that he was deprived of documents that identify his personality.
Servitude for the repayment of a debt whose limits are not reasonably defined	It presupposes a situation, when the victim is deprived of freedom, including freedom to move, held as hostage until repayment by victim or by a third person of legally or illegally determined debt.	The victim's story goes that he was deprived of freedom and was held as hostage until he or the third person repaid the debt whose limits were not reasonably defined.
Use of psychic violence, non-dangerous for a person's life and health	<i>Psychic violence</i> is in threatening the person's psychics, as a result of which the victim can not freely manage his will, and commits actions at will of trafficker in persons.	Post-traumatic syndrome – disordered thinking, confused consciousness, memory problems, sleep disturbances.
Deception	<i>Deception</i> means misrepresentation or infliction of harm to the person by means of presentation of false or distorted facts with a view of performing trafficking in persons in personal interests or in the interests of the third people. Deception, as a method of committing the crime, can be manifested by dynamic actions, which consist in false information about certain circumstances or deeds, as well as by negative performance, which consists in concealment, secretion of real facts (for instance, false promises regarding the place of job, concealment of real conditions, in which the victim will have to work etc).	The victim's story goes that he was misinformed regarding the place of work, conditions etc.
Abuse of position of vulnerability	<i>Abuse of position of vulnerability</i> is in trafficker in persons' use of a particular position the person finds himself because of: a) his unreliable social level of life; b) position, caused by age, pregnancy, illness, mutilation, physical or mental deficiency, mental handicap; c) his unreliable situation, caused by illegal entry or stay in the country of transit or destination. Position of vulnerability can be conditioned by such factors as: isolation of victim, his difficult economic situation, psychic, family problems or lack of social resources, etc. Abuse of victim's position of vulnerability is element of trafficking in persons. Vulnerable position should be understood as any type of vulnerability: psychic, emotional, family, public, or economic. We mean the aggregate of desperate situations, which can make a person agree to be exploited.	The victim's story goes that he knew about the place and conditions of future work, but could not refuse by virtue of hopelessness of the situation.

Abuse of power	Abuse of power is misuse by a special subject (a civil servant, who represents the public authority) of his authorities, entrusted to him by law. In this case, it is necessary to use additional classification on the basis of art. 327 of the Criminal Code.	The victim's story goes that criminal actions were committed by a civil servant, who used his official position for the personal or lucrative purposes.
Giving or receiving of payments or benefits to achieve the consent of a person having control over another person	<i>Giving or receiving of payments or benefits to achieve the consent of a person having control over another person</i> is an agreement between two persons, which are interested in achieving the consent for transfer of the victim and for using this victim for purposes, envisaged in articles 165 and 206 of the Criminal Code.	The victim's story goes that he was transferred for a fee from one person, who had control over the victim, to another person for the purpose of exploitation.
	A person having control over another person is a person, which legally or illegally controls the activity of the victim, using this power in the process of trafficking.	
Use of force that is dangerous for life, physical or mental health of a person	<i>Use of force that is dangerous for life, physical or mental health of a person</i> should be understood as intended infliction of serious bodily injury or moderate bodily injury, envisaged in art. 151 and 152 of the Criminal Code:  Bodily injury or serious harm to health, which is hazardous for human life or which has involved the loss of sight, speech, hearing, or any organ or the loss of the organ's functions, mental disease or other impairment of health, joined with considerable permanent loss of not less than one third of an occupational capacity for work or which has involved the interruption of pregnancy or which has expressed itself in the indelible disfiguring of a human face and/or neighboring parts (art. 151 of the Criminal Code).  Bodily injury of average gravity, which has not involved consequences referred to in Article 151 of the Criminal Code, but which has caused protracted injury to health or considerable stable loss of general capacity for work by less than one-third (article 152 of the Criminal Code).  Some of the above-listed dangerous actions include injuries, which as such are dangerous for the victim's life in the moment they are being caused or which, if there is no appropriate medical assistance, can lead or lead to death of the victim.	The victim's story goes that serious and average bodily injury was caused to him.
Use of tortures	The notion of " <i>torture</i> ", as one of the methods of trafficking in persons, means any action by which a person is intentionally caused either physical and mental torments, or serious pain.  Torture is intentional infliction of torment or serious physical or mental pain for the purpose of the above-mentioned objectives.  The difference between torture and other types of cruel treatment is determined based	The victim's story goes that he would be subject to tortures.

	<p>on intensity of caused pain. Gravity or intensity of caused pain is determined on the basis of the following factors: duration; physical or mental consequences; sex, age, and state of health of the victim; manner and method of execution.</p> <p>Physical and mental violence caused to the person in the aggregate with especial severeness and cruelty, as well which have caused serious suffering and pain are qualified as torture according to article 165 of the Criminal Code (deprivation of sleep, food and water, thermal, chemical cauterization, intimidation, deprivation of a person of medical assistance, of hygienic items etc.).</p>	
Use of inhumane or degrading treatment targeted to subdue a person	<p><i>Inhumane treatment</i> is cumulative action, applied to a person with a view of subduing thereof. Inhumane treatment implies any treatment, other than torture, which can intentionally cause unreasonable dreadful physical or mental sufferings.</p> <p><i>Degrading treatment</i> is any treatment, other than torture, which rudely humiliates a person in front of other person, or makes a person act against his will and conscience, or which can make the victim feel fear, inferiority, anxiety, which can humiliate a person and suppress his physical, as well as moral resistance, with a view of subduing the victim.</p>	The victim's story goes that he was subject to inhumane or humiliating treatment.
Forceful rape	<p><i>Forceful rape</i> during trafficking in persons should be understood as trafficker's attempt upon public relations in terms of freedom and inviolability of intimacies of a person regardless of sex, with a view of exploitation of people, and these actions do not require additional legal classification based on article 171 of the Criminal Code.</p> <p><i>Sexual abuse</i> with regard to a child should be understood as violent acts, compulsion to perform sexual actions, depraved actions. Such actions do not require additional legal classification based on articles 172, 173, and 175 of the Criminal Code.</p>	The victim's story goes that the victim was subject to forceful rape.
Use of physical dependence	<p><i>Physical dependence</i> is physical or mental state, caused by interaction of the victim's organism with drugs or psychotropic substances, wherein the state is characterized by changes in behavior, and other reactions that are always connected with the need of permanent or periodical use of such substances as to again feel their psychic effect, and, sometimes, to avoid sufferings.</p>	The victim's story goes that they intentionally made him dependable on drugs or psychotropic substances.
Use of arms	<p><i>Use of arms</i> means the use of any type of arms, including firearms, cold steel, or any other type of arms. Use of other items, during trafficking in persons, in the quality of arms can not serve basis for aggravating criminal liability according to item 2 of art. 165 and 206 of the Criminal Code.</p> <p>Use of arms should be understood as the use of arms with a view of eliminating the victim or</p>	The victim's story goes that he was threatened by arms, or that he was wounded.



	the people who tried to free the victim (making aimed shots, stabbing with cold arms, demonstration of weapon with a view of intimidation, brining the weapon to the victim's neck, shooting in immediate proximity to the victim etc.).	
Threats to disclose confidential information to the victim's family or other persons	<i>Threats to disclose confidential information</i> is a mechanism to control the victim by using confidential information with a view of intimidating the victim (threats to disclose to the victim's family information of intimate character, etc.).	The victim's story goes that he was threatened by disclosure of confidential information.
Holding a person as hostage for repayment of debt	<i>Holding a person as hostage for repayment of debt</i> is the state of a person, deprived of freedom, including freedom to move, who is held as hostage until he or a third person repays the legally or illegally determined debt/	The victim's story goes that he was deprived of freedom and held as hostage until he or a third person repaid the determined debt.
Use of other means		
<b>OBJECTIVES</b>		
Commercial or non-commercial sexual exploitation	Exploitation is abuse by a person to obtain profit. <i>Sexual exploitation</i> should be understood as compulsion of a person to prostitute, participate in pornographic scenes with a view of producing, distributing and putting into circulation, by any means, of pornographic materials, purchase, sale, or storage of such materials, use of other types of sexual exploitation or other actions of sexual character. <i>Commercial sexual exploitation</i> implies profitable activity, as a result of which property assets of executor or other persons increase due to compulsory use of the victim in prostitution or pornographic industry. <i>Non-commercial prostitution</i> should be understood as activity, which does not directly influence the amount of property of executor or other people, and is manifested in marriage (including polygamy), cohabitation, or other similar types of cohabitation etc.	The victim's story goes that the victim would be subject to sexual exploitation.
Exploitation of forced labor or services	<i>Exploitation of forced labor or services is:</i> a) forced inclination of victim to do the work, which the victim would not do by his/her own will and desire; b) creation of such situation, when the victim is forced to do the work, which he/she is not obliged to do; c) retention of a person in serfdom for debt repayment; d) receipt of work or services by means of deceit, coercion, violence or threats to use violence.	The victim's story goes that he was subject to forced labor.
Exploitation in slavery or slavery-like conditions	<i>Slavery</i> is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. <i>Slavery-like conditions</i> are as follows: Putting or keeping a person in such conditions, when other person possesses this person, or influencing the person by use of deception, coercion, violence or threats to use violence for the purpose of cohabitation or marriage, or retention in cohabitation or marriage.	The victim's story goes that he was in slavery or in conditions similar to slavery.

Use in military conflicts	<i>Use of the victim in military conflicts</i> should be understood as compulsory involvement of the victim into military activities.	The victim's story goes that he participated to military activities against his will.
Use in criminal activity	<i>Use in criminal activity</i> is compulsion to commit crimes.	The victim's story goes that participated to commitment of crimes against his will.
Removal of organs, tissues or other parts of the body for transplantation	<i>Removal of organs or tissues for transplantation</i> takes place in case when the victim was compelled to agree for removal of organs, tissues, or other parts of body against the Law on transplantation of organs and tissues of persons (Official Monitor of the Republic of Moldova, No. 94-95/474 as of August 26, 1999).	The victim's story goes that he was forced to agree with removal organs, tissues or other parts of body.
Forced use of a woman as a surrogate mother or for purpose of reproduction	Not described in the legislation	The victim's story goes that she gave birth against her will, and then the child was taken away.
Abuse of child's rights for the purpose of illegal adoption	Not described in the legislation	The victim's story goes that he was illegally adopted for the purpose of exploitation.
Compulsion into begging	Not described in the legislation	The victim's story goes that he would beg against his will.
Compulsion into practicing types of activities that violate basic human rights and freedoms	Not described in the legislation	

As the Table demonstrates, it is rather difficult to accurately describe elements and direct features of committed trafficking in persons crime. In practice, as a rule, there are different combinations of several elements and the corresponding features. We do not set a mission, within the framework of this publication, to trace all possible combinations and make the corresponding recommendations for identification of trafficked persons.

It is necessary to point out that in practice it is possible to encounter combined features within each of the three groups of elements. For instance, lately, employees of "La Strada" Moldova more and more encounter cases of combined exploitation, when the victim would be subject to simultaneous sexual and forced labor

exploitation. During previous years we did not encounter such cases.

Talking about recommendations, a specialist, who carries out identification of trafficked persons, should carefully study and know all elements of definition of trafficking in persons and should be able to connect them with the corresponding features. As it has already been mentioned, it is necessary to remember that trafficking in persons is always a combination of various elements of actions, methods of coercion and objectives (forms of exploitation).

### *What indirect indicators can be used in practice to identify trafficked people?*

As it has already been pointed out, there can be cases in practice when

the specialist, which identifies a trafficked person, can not immediately obtain enough information about the features of a committed crime so that to be sure that this person is really a trafficked person. This can happen due to various reasons. For example, when a presumed trafficked person does not want or can not tell the whole truth, because of fear or because this person's psychological state does not allow doing it. Sometimes information can be acquired not from the victim, but from the victim's relatives or friends, who do not possess all information. In this case the specialist should be able to use some indirect features, in particular - overall average social and psychological profile of a trafficked person, idea about the atmosphere and environment, in which the potential victim found himself etc.

**Overall average social profile** of a trafficked person includes age and sex of the victim, data about the class origin, education and profession, marital status, job placement,

and level of income. Legal status of a presumed trafficked person in the country of destination or transit is a very important indicator. As a rule, illegal migrants are those who most often become trafficked. Even if they entered a country on legal grounds, afterwards, as a rule, they stay in the country illegally, violating the established regime of stay in the country. Experienced violation, to which the trafficked person was subject in his life more than once, is also an important indicator.

**Overall average psychological profile** of a trafficked person is based on the fact that as a result of the above-mentioned methods of coercion for the purpose of exploitation a trafficked person suffers psychological traumas. An experienced specialist can discern the features of such traumas and use them when identifying trafficked persons. More detailed information on this issue is contained in the article of our colleagues from Bulgaria in the third section of this publication.



## II. OPINION OF OUR COLLEAGUES FROM MOLDOVA

With a view of finding out the opinion of specialists from the Republic of Moldova, who have theoretical knowledge and practical experience in identification of trafficked persons, we carried out a survey, using a special-purpose questionnaire. Our questions were answered by representatives of law-enforcement authorities and specialized NGOs from Chisinau, Cimislia, and Straseni. We would like to familiarize our readers with the answers to most urgent questions related to the topic under discussion, provided by the following specialists:

- *Eugen Rusu, Prosecutor, Head of Department for Protection of Constitutional Rights and Interests and Suppression of Trafficking in Persons;*
- *Sergiu Purcica, Head of On-Line Information Processing Department of the Center for Suppression of Trafficking in Persons within the Ministry of Internal Affairs;*
- *Ion Vizdoaga, Director of the Center for Prevention of Trafficking in Women (NGO), which renders legal assistance to the trafficked persons, including assistance and protection on behalf of lawyers in courts.*

### *Question 1: What are the key elements applied for classification of trafficking in persons crime?*

**Answers: A)** The key elements of trafficking in persons are as follow: **actions** (recruitment, transportation, etc.), **methods of influence** (coercion, deception, abuse of situation of vulnerability, etc.) and **objectives of exploitation** (commercial or non-commercial sexual exploitation, exploitation of forced labor, etc.). The most difficult is to prove the method of influence, which is, actually the method of committing a crime. If we fail to prove what method was used to involve the trafficked person into exploitation, we will not be able at all to prove that it was the case of trafficking in persons. This crime will be classified, for example, as trading in prostitution or organization of beggary, etc. **(Eugen Rusu)**

**B)** The objective of crime is intimately related to the notion of mental element of crime, which, in its turn, is one of the four constituent elements of offense. The mental element of crime is the criminal's internal, psychic attitude

towards the committed crime, i.e. the criminal's guilt. It is easy to prove the committed action. But it is very difficult to prove the intention, in this case = the objective of exploitation. It happens very often, that a criminal admits commitment of some actions, for example recruitment or escort of the victim to the country of destination. But at that, the criminal adds that he knew nothing about the planned exploitation. "I thought I was helping this person get a job abroad. Lord, I also fell victim to deception!"-the criminal adds. This is a classical behavior pattern of willful participants in trafficking in persons during court proceedings. **(Ion Vizdoaga)**

### *Question 2: What is the difference between identification of trafficked adults and cases of trafficking in children?*

**Answers: A)** Method of influence is irrelative for identification of trafficked children. In this case, it is important to prove commitment of actions (most often – recruitment) and objectives of exploitation. In this connection it



**Article 220. Pimping**

(1) Encouraging or forcing to prostitution or advantaging of practicing the prostitution, or making profits out of practicing prostitution by a person, as well as recruiting a person for prostitution, shall be punished by fine in the amount of 200 to 800 conventional units or by jail sentence of between 2 and 5 years.

(2) The same acts:

- a) committed in regards to a minor;
  - b) committed by an organized criminal group or a criminal organization;
  - c) that resulted in serious consequences,
- shall be punished by jail sentence of between 4 and 7 years.

*Criminal Code of the Republic of Moldova No. 985-XV, as of April 18, 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129/1014, p. 1012).*

should be mentioned that article 220 of the Criminal Code of the Republic of Moldova envisages punishment for trading the under-aged in prostitution. In contradicts article 206 of the Criminal Code. Actually, trading the under-aged in prostitution is trafficking in children. Trading the under-aged in prostitution should be excluded from article 220 of the Criminal Code.

**(Eugen Rusu)**

**B)** In the court, it is necessary to prove that the criminal acted intentionally and knew, that he dealt with a child. If it is not proven, the case of trafficking in children is re-classified into trafficking in persons. **(Ion Vizdoaga)**

*Question 3: For classification of trafficking in persons crime, is it necessary to have available all elements of all actions, envisaged by article 165 of the Criminal Code (recruitment, transportation, transfer, harboring, and receiving of persons), or is it enough to have available just one of them?*

**Answer:** It is not necessary to have only one person committing all stages (actions) of the trafficking in persons crime. By questioning the victim, it is possible to see the entire chain of this crime, but the crime can involve several criminals. One of the criminals is recruiter, the second one harbors the victim, and the third one is exploiter. Talking about actions, the most important element is transportation – not necessarily abroad, it is also possible within Moldova. In this case it will be treated as element of internal trafficking in persons. **(Sergiu Purcica)**

*Question 4: What elements do you use to differentiate cases of trafficking in persons for exploitation of forced labor (article 165 of the Criminal Code) from cases*

*of forced labor (article 168 of the Criminal Code)?*

**Answer:** The elements of transportation. Also by using this element, we differentiate slavery (article 167 of the Criminal Code) from trafficking in persons. It is very difficult to aver recruitment, because recruiters always say they did not know about the consequences of their actions, about what would happened to the recruited person in the country of destination. **(Sergiu Purcica)**

*Question 5: What difficulties do you encounter when classifying such type of crime and trafficking in persons, as removal of organs?*

**Answer:** Article 165 of the Criminal Code envisages punishment for removal of organs or human tissues for the purpose of transplantation. Meanwhile, the Palermo Protocol does not envisage such purpose. It was stipulated only in our legislation. In our practical work, we encounter difficulties, because it is necessary to aver that organs were removed namely for the purpose of transplantation, and not for other purpose, for example, for medical experiments or preparation of medicines. Otherwise, such crime will not be classified as trafficking in persons. It is necessary to amend article 165 of the Criminal Code and delete the words "for transplantation". **(Ion Vizdoaga)**

*Question 6: What cases of trafficking in persons are easier to be identified?*

**Answer:** Cases of exploitation of forced labor. In these cases victims are not ashamed of independently turn to the police and tell about everything. It is more difficult to identify cases of sexual exploitation or sale of organs, because victims of such crimes do not

want to collaborate with the police.  
**(Sergiu Purcica )**

*Question 7: What elements can be used to discern coercion in case of trafficking in persons?*

**Answers: A)** The element of decision-maker, i.e., who makes the decisions – the trafficker or the victim, and the element of freedom of movement. In case of trafficking in persons, all decisions are made by the trafficker, the victim is under constant control and is often deprived of the passport, and the right to freely move is also violated. In case of trading in prostitution, a prostitute makes her decisions independently. She may refuse the client and come back home any time.  
**(Sergiu Purcica)**

**B)** Depending on the degree of freedom of the victim. For example, we ask the victims whether she had a possibility to call her relatives or friends in the country of origin. Sometimes we directly ask: "How did they make you do what you did not want to?". There are also psychological features of coercion, about which psychologists know, or traces of violence on the body, which can be attested by a doctor. **(Ion Vizdoaga)**

*Question 8: What is the role of self-identification (i.e., victim's perception of the fact that she/he is a trafficked person) in a successful criminal case?*

**Answers: A)** I think that 90% of trafficked persons at first do not realize they fell victims of trafficking in persons. Criminals in every possible way try to engraff into their minds the idea "it is nobody's but my fault", and in the majority of cases victims are afraid to turn to the police, because they understand that they broke the law, too (for example, their documents

were not all right, they agreed to accept assistance in organizing illegal trip abroad, etc.). Investigator's task is to explain the trafficked persons their rights, including the right for compensation of damage, explain the mechanism of the committed crime and what persons are to be blamed for what happened. It is very important for the process of investigation.  
**(Eugen Rusu)**

**B)** It is of paramount importance to ensure that the trafficked person realize she/he is the victim. In this case the person will start giving evidence. The process of criminal prosecution is to a large extent conditioned by the victim's behavior and evidences.  
**(Sergiu Purcica)**

**C)** For me, as for the lawyer protecting trafficked persons' rights in the courts, it is very important that the trafficked person also fight for his/her rights. And this involves perception of being the victim of crime. This is why self-identification is very important. I would like to point out that we have analyzed the cases of trafficking in persons in which the victims independently filed applications to the police. In 99% of cases these victims were female, who independently realized they had fallen victims of such crime. It is curious that men find it much more difficult to admit they fell victims, even when we explain that to them. Particularly when sexual exploitation is involved. It is also very difficult to work with children. Children live in the world of illusions and tell us about things which have nothing to do with the realia of their life. **(Ion Vizdoaga)**

*Question 9: Is it necessary to have a standardized questionnaire (with a breakdown per objectives of exploitation) for polling the victims, or is each case of trafficking*

**Article 167.** Slavery and Slavery-Like Conditions Putting or keeping a person into such conditions, when other person possesses this person, or influencing the person by use of deception, coercion, violence or threats to use violence for the purpose of cohabitation or marriage, or retention in cohabitation or marriage shall be punished by a penalty to the amount of 200 to 600 conventional units or imprisonment from 3 to 10 years with deprivation or without deprivation in both cases of the right to hold certain positions or be engaged in certain activities for a period up to 5 years.

*Criminal Code of the Republic of Moldova No. 985-XV, as of April 18, 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129/1014, p. 1012).*

**Article 168. Forced Labor**

Compulsion of a person to work against his will or compulsion to obligatory work, retention of a person in serfdom for repayment of debt, as well as use of a person's labor or services by means of deception, coercion, violence or threats to use violence

shall be punished by imprisonment up to 3 years and application of penalty to the amount of 200 to 500 conventional units.

*Criminal Code of the Republic of Moldova No. 985-XV, as of April 18, 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129/1014, p. 1012).*

*in persons inasmuch specific as it is impossible to create a standard questionnaire?*

**Answers: A)** Certainly, each case of trafficking in persons is specific, but, at the same time, there are common elements, too. This is why it is possible to as well develop a standard model of questionnaire. It would be helpful for criminal prosecution officers and prosecutors. We develop different handbooks. For instance, we developed a handbook for prosecutors "Internal Legal Assistance", which comprises not only documents of the international law, but also the models of establishing collaboration with the law-enforcement authorities from other countries. **(Eugen Rusu)**

**B)** Certainly, it is necessary to have a model for questioning presumed trafficked persons, but it should be sufficiently flexible. It should be created with taking into account all possible elements of trafficking in persons. **(Ion Vizdoaga)**

*Question 10: What are the particularities of interviewing trafficked persons?*

**Answer:** It is important to establish human contact. Sometimes we talk for 2-3 hours. At the first stage of the discussion I try to make the trafficked person recall that she/he is a personality, that she/he has rights, regardless of the past exploitation, that she/he was reduced to dust... Then this person should feel the desire for recompense towards those, by whose guilt this person suffered. The desire for recompense should prevail the sense of fear. **(Sergiu Purcica)**

*Question 11: Should a psychologist take part to interviewing a trafficked person?*

**Answers: A)** It is up to the investigator to decide whether it is necessary. **(Eugen Rusu)**

**B)** It depends on the case. Sometimes we can not understand the victim's behavior, we do not know to what extent we should trust her evidence, and we turn for help to psychologists from NGO. Psychologists do help us. **(Sergiu Purcica)**

**C)** Sometimes we are not sure whether the person who turned to us is really a trafficked person. We feel that this person is not telling the truth or is telling just partial truth. But, anyway, we start rendering assistance and refer this person to the drop-in center for trafficked persons. There is an experienced psychologist working there, who, on the basis of psychological features, makes a conclusion whether this person is a victim of trafficking in persons. **(Ion Vizdoaga)**

*Question 12: Do you use information about cases of trafficking in persons for identification of new cases of trafficking in persons? Do you acquire and process information about cases of trafficking in persons?*

**Answers: A)** It is done, but chaotically. We need a system of data accumulation. It is necessary to create a special data base with information about trafficked persons and traffickers. This would really help us identify new cases of trafficking in persons. **(Eugen Rusu)**

**B)** It is necessary to study the issue of trafficking in persons, collect data, analyze, make certain conclusions and recommendations. It will help make prevention and fighting of trafficking in persons more efficient. We plan to open an analytical department, in which 5 persons will be working. **(Sergiu Purcica)**

**C)** We have a data base, in which we include information about each case of trafficking in persons with which we work. It is a multi-purpose data base.

Since we provide to trafficked persons free of charge lawyer's assistance in courts, we want to use our data base for development, generalization and analysis of practice of the courts, and for development of methodological recommendations in the sphere of court practice on cases related to trafficking in persons. We use this data base for training new collaborators. **(Ion Vizdoaga)**

*Question 13: What is needed for improvement of identification of trafficked persons?*

**Answers: A)** Increase of policemen's level of professionalism. In police, there is a problem of staff turnover. It is impossible to attain a high level of professionalism in identification of trafficked persons, if people, who deal with such issues, are different every day. Besides that, it is necessary to have on board a trained specialist in each region, who would be responsible for prosecution of trafficking in persons cases. These specialists should be working steadily, and the level of their professionalism should be constantly growing. **(Eugen Rusu)**

**B)** All participants to the fight against trafficking in persons should increase their knowledge about aspects of trafficking in persons: policemen, prosecutors, and judges, particularly in the regions. Workshops, trainings, and practical lessons are needed. People often retire, find other jobs. It is constantly required to teach new employees how to differentiate cases of trafficking in persons from other crimes. Literature and handbooks on this topic are needed. **(Sergiu Purcica)**

**C)** I can share experience of our Center. When our employee contacts a presumed trafficked person, one of the first questions is whether the victim knows about other people, who are in

the same situation as the victim is. Very often, the answer is positive. Then we do our best to help all victims. We had a case in Turkey, when we started to work with one victim, and afterwards we identified seven more trafficked persons and provided them with the necessary assistance. **(Ion Vizdoaga)**

*Question 14: What do you think about the collaboration between NGO and the police? To what extent such collaboration is possible, necessary, and efficient?*

**Answers: A)** I think such collaboration is necessary and useful for the criminal prosecution for trafficking in persons. NGOs can help establish human contact with the trafficked person. As soon as the specialist, who interviews the victim, generally understands that he is dealing with a trafficked person, he should ask: "What assistance do you need? What problems do you have? What can we do for you?" If the trafficked person receives the necessary medical, psychological, and other assistance, if the victim is offered a place in the special asylum or another place for residence, if the victim feels a friendly support, this victim will be able to calmly tell everything in detail about what happened. The investigation will be carried out quicker and with more success. **(Eugen Rusu)**

**B)** Collaboration with NGOs is very important, first of all, for the governmental structures. We have different approaches and vision, and NGOs help us look at the problem from a different standpoint, work out a correct style of discussion with the trafficked persons, a correct method of prevention of offenses etc. **(Sergiu Purcica)**

**C)** It is important to establish daily practical cooperation between NGO and police on particular cases of trafficking in persons. Practice always



brings along more benefit, than theoretical knowledge that were obtained during workshops. Such collaboration has become traditional for our organization. But we know that policemen do not invite use in all cases, and not at the initial stage. It would be good if we were invited at the stage of identification of each case of trafficking in persons in the police office. We would also like to participate to the operative raids of police designed for identification of trafficked persons. Establishment of contact with the victim should not be started with drawing up protocol. NGO's employees should have a possibility to first of all talk, estimate the amount of assistance necessary for the concrete victim, and promise access to such assistance. In this case the victim will be more candid, and the quality of identification will improve. For instance, in Germany the policeman must call an NGO employee within one hour, if he gets in contact with the presumed trafficked person. **(Ion Vizdoaga)**



## III. OPINION OF OUR FOREIGN COLLEAGUES

### III. 1. New Challenge in Identification of Trafficked Persons in the Czech Republic

*This article generalizes the theory of identification of trafficked persons and the practical experience of NGO "La Strada" Czech Republic. Since 1995, this Czech NGO has been carrying out programs in the field of counteraction of trafficking in persons: prevention of this phenomenon, assistance to trafficked persons, as well as awareness-raising campaigns about the problem of trafficking in persons and lobbying of victims' interests. NGO "La Strada" Czech Republic is running a specialized asylum for trafficked persons and a hot line for the risk group and trafficked persons. This article is dedicated to the problems of terminology, as well as to practical aspects of identification of trafficked persons.*

In October 2004 a new definition of human trafficking complying with the Trafficking Protocol was introduced in the Criminal Code of the Czech Republic<sup>12</sup>. On the one hand, it meant an important step forward in extending the definition to include forms of trafficking other than just sexual exploitation and to include trafficking within the national borders. On the other hand, it seems to have significant impact on identification of presumed trafficked persons.

Even under preceding provisions of criminal law, the system of identification in the Czech Republic was far from ideal. However, after increased attention started to be paid to the issue after 2000 at least partial achievements in this respect were made. But following the adoption of the new definition, it seems, the identification of presumed trafficked persons will be more difficult than ever before.

The problem does not seem to be so much in the *action*<sup>13</sup> and *means*<sup>14</sup>, component of the trafficking definition, but in the exploitation part of it.

In the new definition trafficking for the following purposes is penalised:

- a) Subjecting another person to sexual intercourse or to other forms of sexual abuse or exploitation;
- b) Slavery or serfdom;
- c) Forced labour or other forms of exploitation.

Forms of exploitation, mentioned in item A, are already known to the law-enforcement specialists, because they more or less correspond to the previous definition. Those under B and C are the new ones introduced by the amendment to the Criminal Code in 2004, and they create problems when applying them in practice.

Apart from difficulties with meeting requirements of extended scope of the definition due to lack of personnel and material resources, in the law enforcement agencies' opinion the major problem lies in application of the definition to real life cases. They say such terms like **slavery, serfdom or forced labour are not as such transposed in**

<sup>12</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.

<sup>13</sup> recruitment, transfer, transport, harbouring or receipt of a person

<sup>14</sup> threat or use of force or other forms of coercion, of abduction, of fraud or deception, abuse of power or position of vulnerability



**Petra Burcikova,**  
President of NGO "La Strada" Czech Republic

**the national legislation**, and their definitions have to be derived from the international legislation

It is worth pointing out that definitions of the above-mentioned terms are already provided in various international conventions, such as League of Nations Slavery Convention of 1926, the ILO Forced Labour Convention No. 29 of 1930 and the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery of 1957. On the basis of these definitions it is possible and necessary to work out the corresponding amendments to the national legislation. At that, it is certainly necessary to take into account recommendations of the International Labor Organization (ILO) with regard to appropriateness of application of the ILO Convention for successful realization of the Palermo Protocol<sup>15</sup>.

Getting back to the problem of application of the new definition of trafficking in persons, in most cases the major difficulty is seen in the difficulty to draw a sufficiently clear line between acts constituting forced labour, slavery, serfdom or other forms of exploitation and therefore, in most instances representing a criminal offence; and poor working conditions or low wages which usually are violations of labour law regulations. As a result, to identify a person trafficked for purposes other than sexual exploitation is a major challenge. Moreover, it is utterly impossible to do so without a clear understanding and consensus among relevant actors on how best to differ between criminal offence of trafficking for non-sexual purposes and violation of labour laws.

As an example, let us examine the following case.

An unemployed Ukrainian woman A. made acquaintance in her country with a man who promised her help find a well-paid job at a private enterprise in the Czech Republic. He promised her she would legally work 8 hours per day, and she would be provided a separate room for residence. Relying on these promises, she borrowed from her friend a large (for A.) sum of money, and soon came to the Czech Republic. There she finds out that she will live in barracks, without closing any labour contract, and that she will work illegally 12 hours per day for a far less wages than she was promised. Besides that, considerable sums of money will be withheld from her wages to pay for residence and food. As a result, this woman works at the enterprise for several months, and payment of wages is delayed under any pretences. She can not independently leave the territory of the enterprise, because she is constantly watched, and, besides that, her passport is with her employer, and she is always threatened with denunciation to authorities and deportation. She is very afraid of that, because she will not be able to gain the necessary amount of money in Ukraine and repay the debt; at the same time, she is not sure she would be paid the earned money.

In such a case, there is not much room for doubts whether it falls within the scope of trafficking in persons. All elements of this crime are present:

- a) action - recruitment;
- b) methods of coercion:
  - at the stage of recruitment - deception;
  - at the stage of exploitation – removal of documents and abuse of the situation of vulnerability of smuggled migrant;

<sup>15</sup> "Trafficking in persons and forced labor exploitation". Handbook for legislative and law-enforcement authorities. ILO, Geneva, 2005

c) objective – exploitation of forced labor.

What is more uncertain is whether they will be able to identify her as a trafficked person. The reasons are numerous, and they can include the following.

Identification through the police is difficult, for one thing, because most of the establishments where people are forced to work either work illegally, are well hidden and difficult to locate, or operate as perfectly legal companies and unless there is a concrete suspicion, the police would not be allowed to enter them.

Identification through labour offices is also complicated because of the lack of personnel at their disposal to allow for regular preventative controls and, also because there is no officially pronounced position of the authorities. The legislation does not envisage obligatory provisions to control working conditions of migrant workers, except for making sure their working and residence permits are valid. Nobody examines the presence of elements of trafficking in persons crime for the purpose of exploitation of forced labor.

Trade unions are not very effective in this respect either, as there are little chances of unionisation among migrant workers in 3D (difficult, dirty and dangerous) jobs. Moreover, unions generally tend to protect nationals against influx of migrant workers, and not to defend these workers' rights.

Identification through hotlines and drop-in centres operated by specialized non-governmental organizations depends on the ability of a person in a forced labour situation to assess her/his situation as a more severe one than just "the difficult times on the way to brighter future".

After this not very positive account of possible ways of identification of people trafficked for forced labour one may think that the situation is hopeless. Let us hope it is not.

The number of identified trafficked persons might increase if the all above mentioned actors manifested their interest towards this problem and worked towards a shared goal of identifying the maximum number of people finding themselves in a forced labour situation.

Thus, finding effective methods of identification of trafficked persons for the purpose of forced labor remains to be an important public challenge. As for the problem of use of forced labor, as such, the most far-reaching response to this situation seems to be to finally acknowledge the need for migrant labour in the destination countries and provide migrants with simple legal ways of getting a job. Not only would it significantly reduce the chances of criminal groups to exploit vulnerable people and obtain profit, but it would also allow a destination country to do its share in addressing root causes of trafficking in persons.







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Bulgaria, "Animus" As-  
sociation, member of  
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"La Strada"

## III. 2. Psychological Aspects of Identification of Trafficked Persons

*This article is prepared by our colleagues from "Animus" Association – a Bulgarian NGO, which works with victims of violence and trafficked persons. Within the Association, there is a twenty-four Hot Line and a round-the-clock Crisis Center for women, adolescents, and children – victims of violence and trafficking. Employees of "Animus" Association carry out a long-term therapeutical program, a social program, a program for protection of rights of victims of violence and trafficked persons, as well as a therapeutical program for couples with interpersonal problems, related to violence.*

*Donka Petrova is a clinical social work at the Crises Center of Animus Association and a doctoral student in the field of educational psychology.*

*Nadya Kojuharova is a psychotherapist at the Animus Association and national coordinator of La Strada - Bulgaria.*

### *What made us start the systematization of psychological indicators for identification of trafficked persons?*

In the beginning of this summer we were contacted by a partner NGO in Germany and asked for assistance on a difficult case: 9 Bulgarian girls who had been imprisoned in Germany after a police action declared in front of the policemen they had been forced to prostitute and that they needed help. Our colleagues had done their best to help them – as victims of trafficking these girls were not regarded as criminals and were released and provided with return tickets to Bulgaria and some money. Now, as they were about to return we were asked to continue the work with them here, in Bulgaria.

We agreed and made all the necessary arrangements to meet them at the Airport, to accommodate them in a safe place - the Crisis Center of the "Animus" Association. We assumed they'd need crisis intervention, practical assistance and a plan for safety. It was a case that required the mobilization of our full working potential

because of the number of the victims and the urgency of the occasion.

So we arrived at the airport expecting to meet a group of traumatized and deeply confused young women who would need our utter support. The reality proved quite different. We faced a few self-assured and street-wise girls who behaved as if in full control of the situation. In front of the airport police they openly declared they had chosen freely to work as prostitutes in Germany and no-one has forced them into anything. And they didn't need our help because their relatives would come to pick them up from the airport. Which was exactly what happened.

So there we stood quite puzzled and very disappointed. Had these girls been lying to us? This the first time that we'd encountered such a situation in our practice. After so much effort we were alone at the airport in the middle of the night. What's more, we had to bear the almost hostile attitude of the airport police and the angry remarks that we are wasting our time and resources on some "whores" and thieves who were using us.

This case made us think about the necessity to create a system of features for a correct identification of trafficked persons. Certainly, the most important are features related to description of cases of trafficking in persons (actions, methods of coercion, forms of exploitation). Yet, these features depend, as a rule, on evidences of the trafficked person. Relying on our own experience as consultants and psycho-therapists, we tried to determine some **independent psychological features of trafficking in persons, i.e., the features, which are characteristic to behavior and emotional reaction of trafficked women.**

*Why the problem of the identification is so important today?*

For a long time in Bulgaria, NGOs were the only ones who were interested in the issue of trafficking in persons and protection of trafficked persons' rights. But gradually, due to their efforts this problem started attracting more public attention and concern. New laws have been introduced – laws, guaranteeing protection and special status for the victim – which means that even if they are caught participating in illegal activities but their participation is not voluntary, they are not subjected to legal prosecution. Besides that, the new laws also envisage direct measures for assistance, protection and recovery of the victims, which require funding from the national budget.

It is worth mentioning, that the more formalized by laws and institutionalized the care for the victims becomes, the stronger the emphasis on identification of the "real" victims. And even if our team can put up with the disappointing experience at the airport, the same reaction cannot be expected from the institutions. Such cases can only lead to restrictive measures and limited access to the resources – even

for the ones who need them the most. For instance, after this occasion it is very possible that the airport police can treat the next group of trafficked girls as "common whores and criminals" and not to offer them any help.

So, in our view, the proper identification of trafficked persons is important not to so much in order to protect the governmental institutions from deceit but to make sure the victims get the access to the help they need and have the legal right to receive.

*What psychological signs can be used for identification of trafficked persons?*

The "Animus" Association/ La Strada Bulgaria employees have been helping trafficked persons for several years, now. We have a possibility to observe many cases, make hypothesis, and make conclusions about the state of trafficked persons, and about typical behavior and reactions.

What attracts instant attention is the fact that **trafficked women behave in a different manner from the victims of other kinds of violence.** Their behavior is unpredictable and many a time provoking irritation and even anger in the consultant, not so much willingness to help and protect them. The key to understanding them has to do with the unconscious reconstruction of the traumatic experience.

*When asked why she allowed again her boyfriend involve her into the unpleasant and humiliating situation of trafficking in persons in which she had been forced to render sexual services, one girl replied: "It's like a dirty dress you are trying to wash again and again but you can't."*

The behavior of trafficked persons, however different the cases, has this striking similarity – it is always directed

towards the attempts to overcome the traumatic experience; even if it is already behind them in their inner reality it remains a dominant force. And if we examine their actions and reactions carefully we will discover in them what words cannot express – the signs of the trafficking, of physical and psychological violence and humiliation, of enforcement and sexual assault, of isolation and deprivation of freedom and control of their life.

**All trafficked persons have many symptoms of the post-traumatic stress – flashbacks, intrusive thoughts about the traumatic event. Long-term cognitive disturbances are common – disorganized thinking, confusion, memory problems. Sleep disturbances are also very common. These women often report about distressing nightmares – of them being chased, captivated, even murdered; what is more, they find it hard to fall asleep and are very easily awakened. Very often they stay awake at night and sleep till midday.**

**Another sign you can notice very quickly in these women is their high levels of anxiety.** During the first days after their arrival they demonstrate agitation, restlessness, high levels of arousal, extreme emotional responses.

**Quite as often the trafficked persons behave in a very claustrophobic manner** – maybe not in the clinical sense of the word, but still they become extremely worried when they have to stay in closed rooms and small premises. Such places obviously actualize in them the feeling of restriction, of loss of freedom and control they have experienced with the traffickers. So they often react with demands to get outside, to leave for somewhere – even if they don't have another place to go. *"Wherever my feet lead me"* – you can hear such words from victims of

trafficking much too often: they are almost compulsively drawn to leave.

**Very often trafficked persons are apt to be "compulsive" – a form of behavior, when people do things involuntarily, drawn by irresistible attraction.** For instance, they may be compulsively drawn to shopping – especially clothes and cosmetic products, even though they have almost no money. So within days they are often left with no money at all. This is possibly self-indulgence – reactionary to the long time when they had neither the money, nor the opportunity to buy themselves things and in a more abstract sense – to gratify themselves. Compulsive may seem also the way they are attracted to smoking, eating, drinking – often way too much of everything. A possible explanation is that the trafficking in persons, as a situation of long and permanent abuse, generates high and overwhelming anxiety in the victims. Although self-destructive at its core, such self-indulgent behavior provides at least temporary relief of this anxiety and overpowering emotional pain – that's why in psychological texts it is often referred to as "tension reduction behavior".

**Another common emotional characteristic of the victims is their intense anger, even rage.** At the time of the abuse the victim needs to mobilize all her efforts to stay alive, to survive physically. That's why frequently the natural emotional responses to such a humiliating experience are repressed, pushed into the unconscious. The anger against the violators cannot receive free outlet – this would be much too dangerous for the victim – so it remains unconscious for a very long time. Trafficking in persons is a prolonged situation of abuse – physical and sexual: let us try to imagine the humiliation and brutal violation of

sexual abuse – and then to imagine it as constant and inevitable! It is a situation in which the victim is totally and utterly deprived of control over her own life, every attempt to act independently may be dangerous, even life-threatening. It will be severely punished – the 'rebels' can be beaten up, locked away, put through even greater humiliations. The message the traffickers are conveying by such "punishing actions" is: "Don't even think about disobeying!" Soon these women start thinking: "Why should I even try, everything will be in vain." This results in a feeling of complete powerlessness. When such victims are finally in a non-threatening environment, they sooner or later get in touch with their long suppressed anger. Now an outlet is possible – it does not constitute a danger any more. And more often than not this outlet is extreme, "explosive" – expressed uncontrollably, overpowering, affecting the whole body.

We provided for N.N., who was a trafficked person, medical examinations and tests, including an examination by a gynecologist- something she did not want at all, despite our attempts to convince her it will be for her own good. In front of the doctor's office she started getting more and more irritated and angry. After the examination she was completely overwhelmed by this anger – in the taxi she was talking to herself quietly, but furiously and began scratching on the seats with her nails; in the street she was already screaming and cursing - and not at someone in particular, but in a somehow impersonal manner: "Who do they think they are! How dare they put me through this, they have no right! "

**Our experience has led us to believe that trafficked persons generally are more susceptible to traumatization and victimization. The trigger to such susceptibility is usually a sexual abuse**

**in early life, which they were subject to before getting in the situation of trafficking.**

In some of the cases this is a sudden disruptive incident:

*I.L. is a girl from a "good" family – and had led a relatively calm 'normal' in the traditional sense life until at the age of 15 she was brutally raped by a stranger. Feeling (in her own words) dirty and in a way invalidated by the experience, she distanced herself from almost everybody around her, left her home and school and went on to live on her own while still 15 years old. In her attempts to leave the past behind and start anew I. decided on working and abroad and got in contact with a agency that promised to find her job in Germany. But on her arrival there, the 'job' turned to be involuntary prostitution.*

In other occasions the sexual abuse was part of a series of early traumatizing events:

*I.Z. was raised in a small village by a highly abusive father (the mother had left him) – he used to beat her up regularly, to lock her in, and to tie her to the fence in their yard. One day she and her older sister escaped from him and went to live with their mother in a near-by city and the sister found herself a job as a waitress. When I.Z. was 13 she was raped by a client at the disco where her older sister worked. In the next few years I. did all she thought she could to escape from this environment and at 16 married a young man and became pregnant. But then her husband left her. I.Z. felt abandoned once again – and trying to support herself and the child she set her mind on working as a prostitute. After some time she was "kidnapped" (as she puts it) by some pimps, locked in an apartment and then was forced to travel*



to Germany and work there – without pay. Although she started voluntarily, at this point she was exploited, thus becoming a victim of trafficking persons.

Sexual abuse in childhood and adolescence can seriously impair the emotional development of an individual, the forming of the personality. It directly attacks the very foundations of the still immature individual, it lowers the victims' self-esteem, leaves them feeling helpless, lost and without any control whatsoever – over their own bodies and their own lives.

Thus it creates deep-seated vulnerability – these people are more likely to develop later on in life PTSD, traumatic identity, and borderline personality disorder. It has often been pointed out that one result of childhood sexual abuse is revictimization that further damages the individual: and a situation of trafficking inevitably actualizes all of the old traumas that have not been worked through.

In many cases there is an association between a history of early sexual abuse and high-risk sexual behavior later on in life: so many of these women are more likely to get involved in potentially dangerous sexual experiences – multiple partners, unsafe sex. Traumatic sexualization impairs normal sexual development and sex often is viewed as a potential weapon and as a way to achieve other goals, such as money, control.

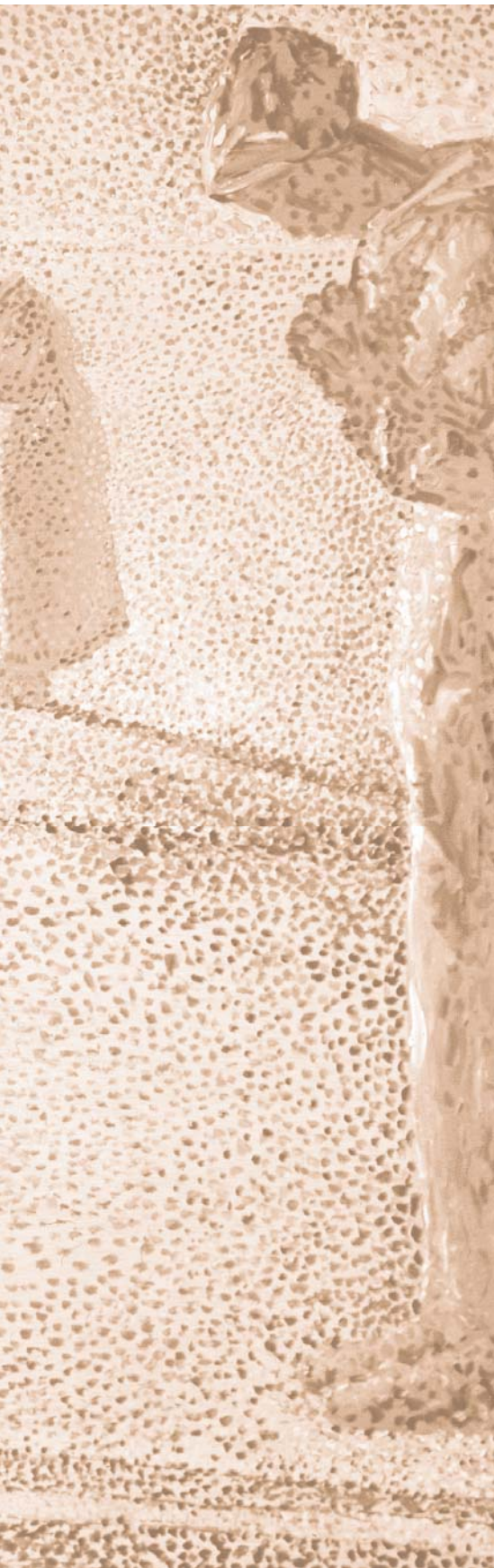
**The women survivors of trafficking in persons often display their sex appeal.** They apply a lot of make-up, wear tight clothes, and behave in a flirtatious manner with the men they meet. However absurd it may sound after so much sexual abuse, they obviously find it very important to be able to attract men's attention whenever

possible. This might serve them as a way to regain some feeling of control. But much too often it is the only known to them way of relating, of searching contact with others – for victims of sexual abuse, sex may become a substitute for real communication and affection – things they most probably have never had in their lives.

It should also be pointed out that **many of the women who have survived trafficking in persons enter into relationships with very cruel partners**, and frequently end up in a situation similar to the trafficking – with them being dependant, abused and controlled.

Why does this happen? **Unconsciously these women are drawn to situations that carry the potential risk of more abuse; situations more or less replicating the traumatic ones.** This phenomenon is usually referred to as "repetition compulsion". It is part of the attempts our conscious mind makes to recover from the trauma by gaining different kind of experience in similar situations, and by trying to rearrange things in completely new, healthier manner.

The psychological trauma attacks the very core assumptions of an individual about himself/herself and about the world. The whole model of the world of the victim is shaken and in most cases – destroyed, resulting in a loss of feelings of direction and meaning. So it comes as no surprise **that usually victims lack perspective and ability to plan their future, they frequently lack a mental representation of future.** When we ask them how do they see their future, what do they want from it, often the answers are very vague and unclear – "If somebody could help me", "I can not decide myself. What do you think I should do?", "I wanna put my life in order. What can you do



for me?" For years they have had no control over their lives – they have not made decisions, nor made judgments, nor tested the reality themselves – their reality was "constructed" by others. So when they finally return to this reality, they may have lost the competences it requires, the ability to operate within it.

All the signs mentioned above suggest sexual abuse and exploitation. They are very common and very informative. But of course they cannot be noticed easily: this requires special training and understanding of the psychological mechanisms humans use to get over traumatic events. And it requires time. Trafficked persons have to take their time to relax, to feel safe. Only then they can be expected to reveal their experiences. This is impossible to happen within an hour or soon the airport. This is why we cannot expect from police officers to make a psychological assessment of the people who ask for their assistance. Obviously, it is the sphere of collaboration between the NGO's psychologists and the police. We are ready and eager to share our own experience with all the colleagues who are interested – with the hope that this shared experience will help provide access to the necessary for those who need this help very much.



### III. 3. Identification of Trafficked Persons through Hot Line

"ASTRA" NGO was one of the first to touch upon the problem of trafficking in persons in Serbia. Founders of this organization proclaimed that its objective would be counteraction of trafficking in person, reduction of this specific form of violence by means of carrying out educational and preventing campaigns, rendering direct assistance to trafficked persons. One of the most important avenues of "ASTRA" NGO activities is the research trafficking in persons phenomenon and elaboration of recommendations as to how counteract this phenomenon. A hot line designed to save trafficked persons operates within "ASTRA" NGO.

If we compare methods used by different NGOs to consult trafficked persons on the Hot Line with a view of providing such persons with assistance, we will see that these methods are very similar, despite the fact that in the majority of cases these methods would be created independently by each organization, on the basis of own experience. It is explained by the fact that they had to solve similar tasks in their practical activity.

First of all, all those who worked on the Hot Line had to solve a key question: how to identify a trafficked person during a telephone conversation? Indeed, not only trafficked persons and their relatives call the Hot Line, but also would-be migrants, who need consulting on question related to the trip abroad. Usually, hot lines are multi-functional, they are designed to be not only the SOS-lines, but also a means for prevention of trafficking in persons. Successful work of the entire organization largely depends on skills and knowledge of the Hot Line operator and on the methodology, which is used for identification of trafficked persons, because very often namely the Hot Line is the NGO's main channel of information about the trafficked persons.

We would like to share our results in the field of basic principles and procedures, which has been worked out and applied by "ASTRA" NGO for identification of trafficked persons through the Hot Line.

From the very beginning of Hot Line existence, employees of "ASTRA" NGO hold on to the following **basic principles of consulting on the Hot Line:**

- **Anonymity,**
- **Confidentiality** and
- **Individual approach to each case.**

The methods of work we apply to beneficiaries depend on the type of information we receive. When somebody is calling the Hot Line, the operator should determine what type of information was received:

- a) Information about presumable trafficked persons, or
- b) The call is related to prevention of trafficking in persons, and education.

If during conversation with the person calling the Hot Line we find out that it is about a presumed trafficked person, we try to collect as much information, as possible. We ask the caller different questions as to determine whether this case is related to trafficking in persons. It can be determined based on the following features taken from the definition of trafficking in persons:

- possible location of the presumed trafficked person (evidence of transportation);
- did recruitment take place (whether she/he was offered a job abroad);
- was there transfer-receipt or harboring of presumed victim;

- is there information that this person is subject to violence, threats, or other types of coercion;
- was there deception, bribery, abuse of power or vulnerability of situation;
- degree of restraint of liberty, can this person freely leave or is she/he isolated and constantly watched;
- did they remove identification documents from this person;
- was she/he made work without payment or return the wages (or the bigger part) to the employer (situation of exploitation);
- and other.

We are also very interested in information about methods of recruitment and transportation of this person, as well as information about the people with whom she/he contacted at that time. But the conversation should be carried out delicately, and in such cases we do not insist that the person calling the Hot Line have all the information about the presumed trafficked person.

So, if we do not have complete information about location of the person, about possible recruitment, application of violence and exploitation, such beneficiary is identified as presumable trafficked person until additionally received information proves availability of all signs of trafficking in persons.

If we have partial or complete information about the method of recruitment, the place of location, methods of coercion, and type of exploitation, such beneficiary is immediately identified as a trafficked person, and we launch the procedure of search and provision of assistance to this person.

Sometimes we receive calls from people, who managed to independently escape from the situation of violence.

In this case, the same criteria are applied for identification of the trafficked person. At that, it is of no importance for us how much time has passed from the moment the victim managed to escape from the situation of violence till this person's calling the Hot Line. Even if it happened several years ago, we anyway try to help such person solve his/her problems.

As for the calls related to prevention and education, i.e., the calls from people who plan to go abroad to study, find a job, get married, etc., we try to do our best and provide these people with information about the possibilities of legal migration, without any risk for these people. We try to maintain communication with these people until we get a confirmation that their trip abroad ended successfully, they are in safety in the place of destination they named in advance.

It is worth mentioning that the books on identification of trafficked persons more often describe cases when the police are the first to contact a trafficked person, carries out preliminary identification, and refers the victim to specialized NGOs for further assistance. That is, the main role in identification of trafficked persons is given to the police. NGOs only de facto confirm this identification. Meanwhile, many victims, who were not identified by employees of law-enforcement authorities, or who have never come in sight of these authorities, have been identified based on the above-named method via the Hot Line of NGO.

Since due to various estimations the number of non-identified trafficked persons remains rather high, it is necessary to constantly make efforts as to find new methods of identification of victims. And the role of the Hot Line in this case should not be neglected.





## Conclusion

Summing up this thematic edition, dedicated to the issue of identification of trafficked persons, it is necessary to point out that, despite the importance of this work for organization of the entire system of counteraction of trafficking in persons, a lot of theoretical aspects of this issue and the practical application thereof, remain unclear.

The notion "identification of trafficked persons" does not have an official definition, is differently interpreted by specialists, and needs further conceptualization. Objectives and tasks of identification of trafficked persons, obligations of participants to this process, as well as the place of identification of trafficked persons in the system of counteraction of trafficking in persons have not yet been determined. Currently, it is rather difficult to draw a clear-cut line between identification of trafficked persons and classification of trafficking in persons crime. There has not yet been worked out a scientifically based system of features for identification of victims, which would establish a logical connection between identification and the definition of trafficking in persons, as well as with practical data and data of sociological researches on the issue of trafficking in persons.

Literature on identification of trafficked persons is mainly dedicated to problems, which appear in the countries of destination. We did not manage to find recommendations on identification of trafficked persons in the countries of origin. Moreover, we did not manage to find recommendations for NGO as to how identify trafficked persons; generally, such recommendations are designed for law-enforcement authorities.

Participants to counteraction of trafficking in persons in our country have not yet developed a common approach to identification of trafficked persons. There is no nation-wide mechanism of identification of trafficked persons. Researches of situation with trafficking in persons in Moldova are sporadic, there is no unified data base about the victims, systematic analysis of signs of trafficking in persons and development of the corresponding recommendations do not take place.

For efficient organization of the work related to identification of trafficked persons in our country, it is necessary to:

- draft a precise concept of identification of trafficked persons, based on the national legislation and targeted to solve the problems that appear in our country;
- work out a system of signs (direct and indirect) for identification of people, who suffered from various types of trafficking in persons crime, based on the definition of trafficking in persons, practical data obtained during identification of trafficked persons, psychological and sociological researches in this field;
- work out and approve standard (uniform and compulsory for all governmental and non-governmental structures) procedure of identification of trafficked persons;
- extend practical collaboration between specialists from governmental and non-governmental structures, whose employees contact with presumable trafficked persons;
- create a well-defined coordination of work related to identification of trafficked persons;

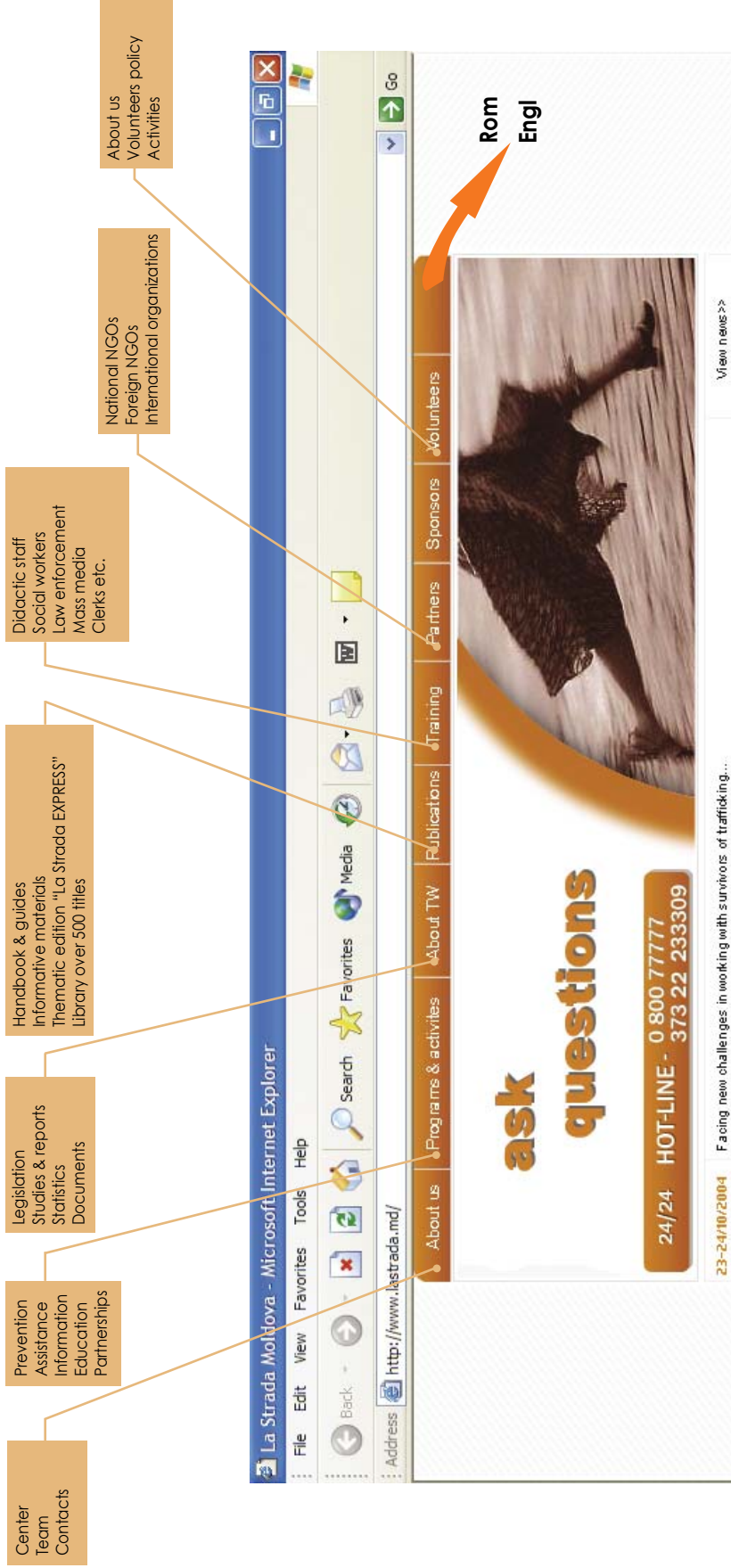
- use and develop proactive methods of identification of trafficked persons, study and promote best practices in this field;
- develop the system of training and advanced training of specialists, who participate to identification of trafficked persons;
- adopt measures as to develop self-identification of trafficked persons, improve the image of law-enforcement authorities in the society;
- adopt necessary measures with a view of creating a system of informational management and research of situation of trafficking in persons in our country; systematically process information and work out recommendations as to how improve identification of trafficked persons;
- study the trends of evolution of trafficking in persons and inform specialists, who participate to identification of trafficked persons, about such trends.

***Recommended action at the national level***

*Providing guidance to facilitate the accurate identification and appropriate treatment of the victims of trafficking in human beings, in ways which respect the views and dignity of the persons concerned.*

*OSCE Action Plan To Combat Trafficking In Human Beings, approved by Decision №557 of the OSCE Permanent Council (PC.DEC/557) as of July 24, 2003, Chapter V, item 3.2.*





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