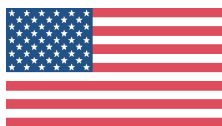


# **ANALYTICAL STUDY ON THE INVESTIGATION AND TRIAL OF CASES OF TRAFFICKING IN PERSONS AND RELATED OFFENCES**

Chisinau 2013



# **ANALYTICAL STUDY ON THE INVESTIGATION AND TRIAL OF CASES OF TRAFFICKING IN PERSONS AND RELATED OFFENCES**

**International Organization for Migration (IOM)**

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# FOREWORD

A global phenomenon, trafficking in persons did not by-pass Moldova. As a new democracy that emerged after the collapse of the Soviet Union, the country had to confront a whole range of social and economic problems during its transition period. Trafficking fed on these problems pushing thousands of women, men and children into exploitation in various countries of the world and procuring traffickers and exploiters huge profits.

A problem of this magnitude required a proportionate response - consistent efforts to prevent and prosecute the crime, as well as to protect and assist those who became its victims or risk falling into exploitation. The International Organization for Migration (IOM) has been part of these efforts in Moldova since 2000 when it opened its office in the country. The work you have in front of you is building on this experience but also on an understanding of the huge work still to be done.

Over the years IOM, established strong links with government agencies working to prevent and fight trafficking, including the Ministry of Interior's Centre for Combating Trafficking in Persons (CCTiP) and the Ministry of Labour, Social Protection and Family (MLSPF). IOM showed commitment to preventing trafficking by being a key player in providing protection, assistance, repatriation and rehabilitation to victims of trafficking in Moldova and a lead agency in developing the National Referral System (NRS) for assistance and protection of victims and potential victims of trafficking. Since the beginning of its programme in Moldova, the IOM helped in the assistance and protection of over 3,000 victims of trafficking and over 6,000 potential victims of trafficking – vulnerable persons who are exposed to a real risk of being trafficked.

Our efforts, however, showed that the focus on the protection of victims can often lead to only partial success, where victims have insufficient access to justice, where the justice system mistreats victims or where investigation, prosecution and conviction of perpetrators are inappropriately carried out and there is a risk of impunity. IOM understood that ensuring accountability of those guilty of trafficking, while guaranteeing the access of victims to legal remedies are among the underlying principles of government's response. This is why preventing impunity of criminals and, even more so, complicity of government agents in such crimes should be a priority.

This understanding led to the idea of the project "Preventing Corruption and Impunity in the Fight against Trafficking through Empowering the Media and Fostering Cooperation between Civil Society and Law Enforcement Agencies", the overall purpose of which was to prevent impunity in trafficking in persons cases by increasing transparency in investigation, prosecution and trial processes through detailed analyses of judicial processes of trafficking cases, capacity building initiatives and increased cooperation between stakeholders, including the media and civil society. The present Study was designed as a crucial part of the overall project. It was conceptualized by Ms Irina Todorova, the IOM Moldova Prevention and Protection Program Coordinator, who was also coordinator to this project, together with Mr Ion Vizdoga a leading lawyer and legal expert on trafficking in persons cases, to whom I am very grateful for their meticulous work in designing and advocating the concept of this work. The proposal received the financial support of the United States Department of State and made it possible to produce the work we are presenting hereby.

*The Analytical Study on the Investigation and Trial of Cases of Trafficking in Persons and Related Offences* is unprecedented for Moldova. Previous efforts to monitor the activity of the judiciary revealed the existence of certain problems, including those related to transparency.<sup>1</sup> Such problems are even sharper in trafficking in human beings cases, as these often pose problems of privacy vs. public scrutiny of the courts proceedings, thus offering much room for corruption, biased qualification of the criminal acts and abuses of victims' rights. However, no exclusive insight into the cases of trafficking had been undertaken before the present work and we do hope that the findings of this Study have addressed this knowledge gap.

A thorough analysis of the last years' trafficking cases processed and closed by the Moldovan judiciary,<sup>2</sup> revealed the main problems pertaining to investigation of this crime at various stages of criminal procedure as well as provided important insights as to the phenomenon of trafficking in Moldova, but also the issues the Moldovan criminal justice system has to confront in general. The analysis was not confined only to cases

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<sup>1</sup> See OSCE Analytic Report on Observance of Fair Trial Standards and Corresponding Rights of Parties During Court Proceedings, available at: <http://www.osce.org/moldova/32535>

<sup>2</sup> Starting from 2006, when the Moldovan Criminal legislation was adjusted to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children to 2010.



qualified as trafficking in the Courts – related categories of crimes<sup>3</sup> were also scrutinized in order to have the issue of biased qualification addressed in an as comprehensive as possible a manner. Significant attention was paid to identifying indications of corruption and incompetence where such doubts appeared, but also to the realization of the victim’s rights, including compensation rights and the requirements of due process. A crucial input of the Study is its recommendations, which come to address the identified lacks in the criminal justice’s response to trafficking in a comprehensive multileveled manner.

Altogether, 380 cases were processed by a team of leading criminal justice experts under the guidance of IOM. The findings and recommendations were consulted and validated with the main anti-trafficking actors in Moldova. Even before the publication of the present work, the findings were taken into account in counter-trafficking work, including when designing training modules for law enforcement. Furthermore, based on the results of the Study, IOM developed a *Practical Guide for investigation of crimes of trafficking in persons* for investigators and prosecutors, which contains detailed instructions on how to properly conduct investigation and prosecution in trafficking cases while avoiding errors such as those identified in the study. In other words, huge efforts were put into this publication and, consequently, huge results are expected.

This work would not have been possible without the support of the United States Department of State, its Office to Monitor and Combat Trafficking in Persons, and the United States Embassy in the Republic of Moldova, whose support was the basis for the entire project, and to whom we are profoundly grateful. We are also thankful to the Moldovan Supreme Court of Justice (SCJ), the central depository of all courts cases archive – an indispensable partner in this project who was open and supportive of the initiative and provided the IOM experts with in-kind assistance in their work at the SCJ premises. We would also want to thank the Moldovan General Prosecutor’s Office for their support, particularly through the very helpful and insightful inputs and comments on the Study. Last, but definitely not least, I would like to thank the team of IOM experts who worked on this initiative, for their enormous work and dedication, as well as those members of the IOM team who participated in realizing this product.

**Antonio POLOSA**  
Chief of Mission  
IOM Moldova

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<sup>3</sup> Besides the two trafficking offences contained in the Criminal Code - Trafficking in children and Trafficking in human beings – the study also addresses the offences of Pimping, Illegal crossing of the state border, Organization of irregular migration (migrant smuggling), Forced labour and Illegal taking of children out of the country.

# INTRODUCTION

This Study is being published in the framework of the project „Preventing Corruption and Impunity in the Fight against Trafficking by Empowering the Media and Fostering Cooperation between Civil Society and Law Enforcement Agencies 2010-2013”, financed by the United States Department of State and implemented by the International Organization for Migration (IOM). It contains findings, conclusions and recommendations of the team of five experts contracted by IOM and of the two IOM representatives based on a comprehensive analysis of 380 finished criminal cases (2006-2010) conducted by four of the experts on the following crime categories: trafficking in human beings (article 165 of the Criminal Code of the Republic of Moldova, hereinafter CC), trafficking in children (article 206 CC), pimping (article 220 CC), illegal crossing of state border (article 362 CC), organization of irregular migration (article 362/1 CC), illegal taking of children out of the country (article 207 CC) and forced labour (article 168 CC). The analysis aimed to evaluate the quality of investigations and trials of cases of trafficking and related cases at all stages of the criminal proceedings, to identify the number of convictions and reclassifications of cases, explore how victims' rights are protected within the criminal process, see whether incidences of corruption occurred within the analysed cases, and make recommendations on possible solutions to identified problems.

The Study has been developed in 7 phases:

## *1. Contracting the team of experts*

The leader of the team of experts, a well-known and experienced attorney in the anti-trafficking field, was contracted at the initial phase of the project. Before beginning the study of the cases, IOM selected and contracted 4 legal experts (all of them being at the same time attorneys and professors, two of them former prosecutors, with relevant experience).

## *2. Development of template forms with indicators*

The template form, which would be filled with data from each separate case, was developed by the leader of the team of experts in coordination with IOM and the United States of America Embassy in the Republic of Moldova (US Embassy). The form contained indicators on the profiles of the accused person and the victim, data on procedural actions, data on defence of accused person and representation of the injured party, compensation to injured/civil parties, data regarding the time frames within the criminal process, sentencing, international cooperation and so on.

## *3. Accumulation of criminal files*

In order to obtain access to these files, IOM, the leader of the team of experts and representatives of the US Embassy held a series of meetings with the Supreme Court of Justice and the General Prosecutor's Office. As a result, an Agreement of Cooperation was signed between IOM and the Supreme Court of Justice, which provided that the Supreme Court of Justice would collect the requested finalized criminal files from all of the regions of the Republic of Moldova and make them available to experts contracted by IOM.

## *4. Training of experts*

IOM organized several meetings where the team leader provided training and held discussions with experts on the indicators contained in the template forms. The leader of the team was in permanent contact with the experts in the course of their work on the files at the Supreme Court of Justice.

## *5. Filling out the forms*

After the template forms had been developed and the files accumulated by the Supreme Court of Justice, the team of experts started to examine the files. A separate form was filled out at the end of examination of every new file. At the end, there were 380 filled out forms. Given the fact that the criminal files could not be taken out of the Supreme Court of Justice premises, as convened under the Agreement of Cooperation, the Supreme Court of Justice arranged a separate furnished room for the IOM experts working with the case files and all data was collected by the experts at the Supreme Court of Justice premises. The experts were provided by IOM with all necessary equipment and supplies to facilitate the data collection (such as laptops, photocopier, scanner, paper, and the like).

## *6. Systematization and compilation of the data*

Each expert systematized the data from the case forms in a single statistical report (separately for each relevant article of the Criminal Code). The developed statistical reports were sent to the leader of the team of experts. Based on the statistical reports systematized by the experts, the team leader developed the compiled statistical reports for the thematic chapters of the Study.

## *7. Drafting of the Study*

In the course of about 30 working sessions (held at the IOM Moldova Mission's premises) all of the indicators obtained in the process of the study were analysed in detail by the group of experts and described in the draft Study, with relevant examples that exhibit both positive practices and deficiencies at different phases of the criminal process. This sessions brought together all of the experts, the team leader and an IOM representative. At the end of these working sessions the group of experts submitted to IOM the draft Study titled "Analytical Study on the investigation and trial of cases of trafficking in persons and related offences", which was subsequently validated within a round table with the US Embassy and other IOM partners and main actors in the counter-trafficking field such as General Prosecutor's Office, Supreme Court of Justice, Permanent Secretariat of the National Committee on Combating Trafficking in Human Beings, Centre for Combating Trafficking in Persons and the On-site Adviser (former United States of America federal prosecutor) at the Centre contracted by IOM under another United States Department of State funded project, USAID, Border Guard Service, and International Centre "La Strada" and adjusted in line with the comments and suggestions received from the aforementioned counterparts.

The Study is structured in 4 parts:

Part I: Background, Objectives and Methods – an introductory section dedicated to the general background for the Study, objectives and the methodology used by the experts to undertake the analysis of criminal case files and to develop the Study.

Part II: Summary of Findings – presenting the most important general findings of the Study;

Part III: Recommendations – summarizing the main recommendations developed on the basis of the findings of the Study;

Part IV: Specific Findings – contains eight chapters on the specific findings of the report. Each chapter is focused on a single crime and contains data obtained exclusively from the studied files on that particular crime category, except for chapter IV.8, which analyses the issue of corruption:

IV.1 Trafficking in children (article 206 CC) – 23 cases filed against 31 persons

IV.2 Trafficking in human beings (article 165 CC) – 129 cases filed against 171 persons

IV.3 Pimping (article 220 CC) – 112 cases filed against 125 persons

IV.4 Illegal Crossing of State Border (article 362 CC) – 89 cases filed against 107 persons

IV.5 Organization of irregular migration (article 362/1 CC) – 19 cases filed against 23 persons

IV.6 Forced Labour (article 168 CC) – 6 cases filed against 9 persons

IV.7 Illegal taking of children out of the country (article 207 CC) – 3 cases filed against 6 persons

IV.8 Indices of corruption in cases of trafficking in persons and pimping.

# PART I: BACKGROUND, OBJECTIVES AND METHODS

## *Legislative background*

Before the new Moldovan Criminal Code 2002 entered into force, trafficking in human beings was criminalised under the previous Moldovan Criminal Code of 1961. First, in 1997, trafficking in children was incriminated as separate offence. Later, in 2001 the trafficking of adults was added as a distinct crime in the Criminal Code. When the new Criminal Code was adopted in 2002, trafficking in children (article 206) and trafficking in human beings (article 165) were included as separate crimes, the former (article 206) being considered as an exceptionally serious crime (providing maximum punishment – life detention). In the new Criminal Code, the means provided by the first paragraph of article 165 concerning the trafficking of adults constitute aggravating circumstances for article 206 (since in the case of children the means element is not necessary for the trafficking to occur).

The decision of the Moldovan Government to criminalize trafficking in children as separate crime from trafficking in human beings was dictated by its willingness to comply with its international commitments under the Convention on the Rights of the Child, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to slavery and other international treaties according to which states are encouraged to take all positive actions to ensure that the child (who is considered more vulnerable than an adult) is protected from and against all forms of exploitation and slavery.

Thus, currently the Criminal Code of the Republic of Moldova contains two articles addressing the crime of trafficking in persons, as defined in the article 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 (Palermo Protocol) and the European Convention on Action against Trafficking in Human Beings (European Convention) – “Trafficking in human beings” (article 165 of the CC) and “Trafficking in children” (article 206 of the CC).

It has been accepted that the criminalisation of trafficking in human beings in the Moldovan Legislation is generally compliant with the international definitions and requirements<sup>4</sup> and the criminalisation of trafficking in children within a specialised provision was welcomed by experts.<sup>5</sup>

Besides the crimes of trafficking in person, Moldovan legislation also provides for the punishment of a series of related crimes, of interest to the present Study, particularly: pimping (article 220 CC), illegal crossing of the state border (article 362 CC), organization of irregular migration (article 362/1 CC), forced labour (article 168 CC), illegal taking of children out of the country (article 207 CC).

While it is being recognized that forced labour is considered a form of trafficking in persons according to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Study is within the context of the Moldovan Criminal Code whereby articles 165 and 206 define trafficking with the purpose of forced labor and services and article 168 defines forced labour as separate crime when elements of trafficking are absent. Currently there are problems to distinguish the two offences due to an existing deficient formula of article 168 and a new formula of article 168 is being developed.

## *Background, purpose and objectives of the Study*

The present Study developed under the aforementioned United States Department of State funded project “Preventing Corruption and Impunity in the Fight Against Trafficking through Empowering the Media and Fostering Cooperation between Civil Society and Law Enforcement Agencies” is based on an in-depth analysis of criminal cases on trafficking in persons<sup>6</sup> and related criminal offences that were tried in the period between 2006 and 2010.

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<sup>4</sup> UNODC, Issue Paper – Abuse of a Position of Vulnerability and Other Means within the Definition of Trafficking in Persons, Vienna 2012, p. 33

<sup>5</sup> OSCE ODIHR, Review of the Legislation on Combating Trafficking in Human Beings (14 December 2011), Opinion-Nr.:TRAFF-MOL/189/2011,p. 27 (para 93)

<sup>6</sup> In the present Study, “trafficking in persons” is used a generic term that comprises both the crime of “trafficking in children”, as described in article 206 of the Moldovan Criminal Code, and “trafficking in human beings”, as included in article 165 of the Criminal Code.

The Study has been designed, inter alia, as a continuation of the efforts made in 2006 for conducting the Study “Trafficking in Persons: An In-Depth Analysis of Archived Criminal Case Files in Moldova for 2004 – September 2005”, in the context of a series of observations and recommendations made by the partners of the Government of Moldova and taking into account the new trends of the phenomenon of trafficking.

An in-depth study of the criminal cases on trafficking in human beings and trafficking in children, in particular, was needed in order to address the insufficiencies and irregularities in the work of Moldovan law enforcement agencies in preventing and combating these crimes, as noted in the US Department of State assessments contained in its 2008 and 2009 Trafficking in Persons Reports. The findings of these reports show that there is lack of information on the number of investigations and convictions of traffickers, on the sentences ended through amnesty as well as the reasons and ways by which trafficking cases are being re-classified as pimping or other crimes. Most often, the reports submitted yearly by the Government of Moldova to the international community, still only quote statistical data on the number of criminal cases initiated and number of persons charged, without elaborating on the problematic areas described above. While efforts to assist victims, such as the implementation of the National Referral System for Assistance and Protection of (Potential) Victims of Trafficking in Human Beings are examples of good practice, the recent investigations and sentences in trafficking cases indicate that there is still certain confusion in the way the judicial response to trafficking is conducted in Moldova. Regrettably, trafficking is still often mistaken for pimping, forced labour<sup>7</sup> or organization of irregular migration (migrant smuggling) and traffickers are treated much better than minor accomplices or even in some cases victims. All these issues are addressed in the present Study.

At the same time, this new Study was designed to provide an analysis of the attitude and behaviour of law enforcement bodies and courts with regard to victims of human trafficking. Taking into account the findings of a report of the Organization for Security and Co-operation in Europe (OSCE) 2008,<sup>8</sup> according to which authorities are often neglectful, indifferent, inconsiderate and even aggressive towards victims, this Study examines the conduct of law enforcers and courts in treating victims and identifies gaps in performance in order to prevent such unacceptable behaviour in the future.

In light of the above-mentioned issues, the present Study attempts to accomplish the following basic objectives:

1. Gather information to identify underlying causes for reclassification of trafficking cases into other less serious offences, such as pimping, organization of irregular migration (migrant smuggling), forced labour and illegal taking of children out of the country. Specifically, the Study examines the factors used by law enforcement bodies and the courts in determining how to charge a trafficking case, how law enforcement bodies and the courts establish the means element of a trafficking case, especially deception and abuse of position of vulnerability and what problems do law enforcement bodies and the courts face as a result of changing patterns and practices of traffickers.

2. Verify the hypothesis that criminal investigation bodies tend to focus on small players in less significant trafficking cases rather than pursue leaders and masterminds in more complex trafficking cases (organized crimes).

3. Determine the extent to which criminal investigation bodies and courts respect the fundamental rights of trafficking victims (including the right to compensation) as well as the fundamental rights of accused persons in the criminal process.

4. Identify problems that make it difficult for law enforcement bodies to seize assets of the traffickers pursuant to article 106 of the Criminal Code.

5. Find whether corruption is a significant factor in investigating and prosecuting crimes of trafficking in persons and related crimes.

6. Determine the difficulties that criminal investigation bodies and courts face in the context of adjusting the domestic legislation to the requirements of international rules governing incrimination, investigation, trial and conviction of trafficking in persons and related crimes.

7. Assess the level of professionalism of criminal investigators, prosecutors and judges in investigating, prosecuting, trying and convicting cases of trafficking in persons and related crimes.

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<sup>7</sup> Under the Moldovan Criminal Code, forced labor and trafficking in persons for labor exploitation are different criminal offenses (see a more detailed explanation under the “Legislative Background” above).

<sup>8</sup> „OSCE Analytic Report on Observance of Fair Trial Standards and Corresponding Rights of Parties During Court Proceedings”, <http://www.osce.org/moldova/32535>.



## *Methods and follow-up*

The Study is based on the analysis of 380 criminal cases that were completed and closed in the period between 2006 and 2010. These case files were collected by the Supreme Court of Justice from all Moldovan rayons<sup>9</sup> and were analysed using a set of indicators developed in accordance with the objectives of the Study. A team of four experts analysed the criminal case files under the two trafficking articles of the Criminal Code (165 – “Trafficking in Human Beings” and 206 “Trafficking in Children”) as well as related crimes, such as pimping, illegal crossing of the border, organization of irregular migration/ migrant smuggling, illegal taking of children out of the country and forced labour.

The data for each case was gathered through the use of a special template form with indicators developed for this purpose in consultation with partners. The indicators were designed to collect data on a wide range of relevant information in connection with each case analysed, including the profiles of criminals and victims, the investigative and procedural steps taken by law enforcement authorities, the conduct of the defence of the accused and the quality of the legal representation of victims, as well as whether compensation for damages was requested and obtained, the extent to which legal time frames were observed, whether appropriate sentences were properly imposed, the extent of international cooperation and other relevant aspects.

The data thus collected was analysed and systematized to accomplish the objectives set. As a result, each expert submitted a statistical report to the leader of the expert team, who in turn analysed and compiled them into the present Study.

The findings of the Study and the recommendations proposed hereby are to be made use of for the development of comprehensive guidelines for investigation of trafficking in persons and related crimes by law enforcement bodies.

The Study is of interest to police officers, investigators, prosecutors, judges, members of local and multi-disciplinary teams of the National Referral System for assistance and protection of victims and potential victims of trafficking in persons (NRS), Permanent Secretariat of the National Committee on Combating Trafficking in Human Beings and for other national and international counter-trafficking actors.

The findings and recommendations of the Study have been at the centre of counter-trafficking actions during the year 2012, after being presented in a round table to relevant state and non-state partners in October 2011. They were presented to investigators, prosecutors and judges who work on cases of trafficking in persons from different Moldovan rayons. This was made during official presentations as well as through a series of trainings organized by IOM and the IOM On-site Advisor (American prosecutor with extensive experience in counter-trafficking) in cooperation with National Institute of Justice, General Prosecutor’s Office and Centre for Combating Trafficking in Persons. The main findings and recommendations of the Study were also presented to community police from different Moldovan rayons and to members of NRS multi-disciplinary teams at rayon and community level within IOM trainings. During 2012, the results of the study were also presented within the continuous trainings for prosecutors and judges organized by National institute of Justice (the only state institution which has a special mandate in providing initial and continuous training to prosecutors, judges, bailiffs, etc.) and will be integrated into the up-coming continuous trainings organized by the Institute.

In addition, based on a series of international and domestic recommendations,<sup>10</sup> including the recommendations from the present Study, the Permanent Secretariat of the National Committee on Combating Trafficking in Human Beings (PS) of the Republic of Moldova initiated at the end of 2012 year the process of harmonization of the domestic legal framework in the field of preventing and combating trafficking in persons in line with these recommendations and with relevant international standards in the field and selected the IOM experts who developed the present Study and the guidelines for law enforcers as experts to develop concepts and amendments to relevant laws and bylaws.

In light of the same findings and recommendations, the above-mentioned Permanent Secretariat, also with IOM support and with funds provided by the United States Government, initiated a process of reviewing the current situation on compensation of victims of trafficking in persons.

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<sup>9</sup> “Rayon” is a territorial-administrative unit in the Republic of Moldova composed of villages (communes) and towns, united by territory and by economic, social and cultural relations. Moldova has 32 rayons in total.

<sup>10</sup> These include the US Department of State 2012 Trafficking in Persons Report, the Report by OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings following her visit to the Republic of Moldova and the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Republic of Moldova (2012 GRETA Report on Moldova).

## PART II: SUMMARY OF FINDINGS

### II.1 LEGAL CHARGING OF CRIMINAL ACTIONS

Moldova being a country of origin for victims of trafficking in persons,<sup>11</sup> in most of the cases this crime is manifested by recruitment, transportation, transfer, harbouring or receiving the victim. This means that evidence of exploitation or purpose, which must be proved in a trafficking case, may be difficult to obtain in Moldova. As a result, criminal investigation bodies and prosecutors may be unable or unwilling to charge a case as trafficking, but instead will classify the crime under a related statute carrying a lighter sentence.

According to the compiled information of the analysis, charges were brought against 31 persons under article 206 of the Criminal Code ("Trafficking in children"), only 18 of them (58 %) being convicted based on the same article.

At the same time, 171 persons were accused under article 165 of the Criminal Code ("Trafficking in human beings"). After examination of their cases in court, the actions of 51 of the accused persons (in 30 % of cases) were reclassified under related crimes with milder punishments. Of the total number of persons charged with trafficking in human beings, only 47 per cent were punished with imprisonment. At the same time, of the total number of those charged with trafficking in human beings, 88 per cent were convicted (58 % - under article 165 of the Criminal Code and 30 % - under other articles from the Criminal Code), while 12 per cent were acquitted, granted amnesty or had their cases dismissed. Of the persons accused of committing the crime of trafficking in human beings, 47 per cent were sentenced to imprisonment for an average term of five years and six months.

With regard to related crimes, the study revealed the following situation: of the 125 persons investigated under article 220 of the Criminal Code ("Pimping"), 86 per cent were convicted based on the same article and only 8 per cent of those were sentenced to prison. Of the 23 persons accused under article 362 of the Criminal Code ("Organization of illegal migration"), 78 per cent were convicted, but only one was sentenced with imprisonment. All of the nine persons accused of forced labour under article 168 of the Criminal Code were convicted, only one being sentenced to imprisonment.

Special concerns are raised by the very frequent reclassification of cases from trafficking to pimping and other crimes: in 30% of the cases of trafficking in human beings and in 22% of cases of trafficking in children. The reclassifications may be taken as a sign of the authorities' failure to distinguish between the two crimes, of the lack of consistency of prosecutors in pushing their charges and advocating their respective positions in court (the study shows that in 19 % of the cases the prosecutor would give up on his/her initial classification of the case), a failure of the evidence, or even as a sign of corrupt behaviour.

#### **Recommendations:** <sup>12</sup>

- *the Supreme Court of Justice should harmonize the judicial practice in cases related to trafficking in human beings and trafficking in children by revising and updating the current Decision of the Supreme Court of Justice Plenum (no. 37 of 22 November 2004);*
- *the Supreme Court of Justice should develop and adopt an explicative (interpretative) decision on the recommended practices in examining criminal cases of forced labour;*
- *criminal investigators, prosecutors and judges should receive training with particular focus on the distinction between crimes of trafficking in persons and pimping, forced labour and other related crimes, including on complex 'borderline cases'.*

<sup>11</sup> For the purposes of the present Study, the authors will use the generic term *trafficking in persons* to refer to the crime defined in the article 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, which includes both trafficking in adults in minors. When referring to the crimes as defined in the Criminal Code of the Republic of Moldova, the terms *trafficking in children* (article 206) and *trafficking in human beings* (article 165) shall be used.

<sup>12</sup> Recommendations are brought in this part of the Study in order to show how they relate to specific findings of the study. The full list of recommendations proposed by the authors, some of which go beyond the specific issues described in this part, are systematized in the Part II of the present Study.

## II.2 INVESTIGATION

One of the goals of the Study was to establish the degree to which enforcement bodies observe and protect both victims' rights and the rights of other participants in the criminal proceedings.

The findings show that most trafficking investigations are reactive. At present, there is a lack of efficient mechanisms to proactively identify victims and uncover trafficking operations. Investigation bodies heavily rely on victims' testimony, uncorroborated and unconfirmed by other evidence which puts significant burden on the victim, while providing a very poor probative basis for the prosecution.

The case analysis also indicates that victim protection is insufficiently ensured and victims' rights are often not observed. This is shown by the fact that the criminal investigation body often insists on repeated interviews with victims, both in the initial phase of the criminal investigation and later in the process. During confrontations and additional hearings (both often legally unjustified), investigators tend to ignore the provisions of article 58 (8) 1) of the Code of Criminal Procedure (hereinafter CCP), that exempt the victim from the obligation to make statements. On the other hand, the investigators fail to resort to hearings of victims by investigating judges pursuant to article 109 of the CCP, which allows evidence to be secured without resorting to multiple interrogations.

Children victims of trafficking were not explained their right to refuse participation in confrontations in accordance with article 113 (6) of the CCP. In cases on trafficking in children 60 per cent of the victims (minors) were subjected to confrontation procedure. Confrontations were conducted with 43 per cent of the victims of trafficking in human beings, most of them (88%) requiring the victim to confront the person accused of trafficking. The case analysis indicates that confrontations are undesirable because of the risk of re-traumatizing the victim and are inefficient for securing evidence. This is especially true for minor victims who are at greater risk of re-victimization and re-traumatisation.

In spite of these risks, only 5 per cent of the analysed files contained information on the existing threats to the victim's security.

### **Recommendations:**

- *investigators should (be instructed to) verify and reconfirm the victims' statements with other pieces of evidence;*
- *in each case, investigators should inform the victim in an accessible language about his/her right to abstain from making statements as well as to be assisted by a trustworthy person and a lawyer provided/covered by the state;*
- *investigators should make efficient use of the special means of hearing the victims – such as special technical devices or concealing the identity of the victim.*

The study has shown that in the majority of cases investigators resorted to photo line-ups, ignoring the provisions of article 116 of the CCP, according to which photo line-ups are only admissible where the suspect is hiding from the criminal investigation body or he/she is impossible to locate. This reduces the probative value of the material thus gathered and compromises the process in general.

**Recommendation:** *investigators should, as a rule, abstain from photo line-ups when the trafficker is reachable and an ordinary line-up can be arranged. However, this should be carried out with proper guarantees in place that would avoid re-traumatizing the victims or any other harmful impact of the procedure.*

The case analysis also indicates irregularities admitted by investigators and prosecutors with regards to a range of procedural requirements. These irregularities include: indictment reports that are not approved by the superior prosecutor; failure to indicate the date when the indictment report was drafted; failure to indicate the number of page(s) of the concrete procedural document(s) from the indictment report when making reference to it/them; lack of well-reasoned analysis applying the evidence to the elements of the charge; inclusion in the list of evidence of documents that are not recognized as evidence under article 93 of the CCP; files that lack documents confirming the application of preventive measures against the defendant; situations where the same person is heard as a witness and then interrogated as a suspect (in violation to article 63 (7) of the CCP); interrogations of minor witnesses in the absence of a



supportive adult (pedagogue); initiation of criminal investigations without a proper initial report; making use of copies of procedural documents of poor quality and lacking proper certification; failure to draft procedural documents for annexing documents as evidence in the case in line with article 157 (2) of the CCP; authorizing body searches of persons without identifying the person to be searched (such as blanket search warrants); reading the accusation to the suspect in the absence of counsel for the defence; failure to respect the 48-hour term provided by the law for reading the accusation, in line with article 282 CCP; unjustified extensions of the investigation period and others.

**Recommendations:**

- *investigators and prosecutors should in all cases conduct and prepare in written form the analysis of the evidence included in the indictment report;*
- *investigators and prosecutors should receive capacity-building in investigating cases of trafficking in persons and related offences with proper attention being paid to the problematic areas identified above.*

The Study revealed cases where several criminal files were opened on the same facts but which were later joined in a single case, in the majority of the cases, by the court. The investigators resort to this tactic in order to inflate the number of cases initiated by them rather than concentrating on the quality of criminal investigation.

**Recommendation:** *all the criminal files on the same traffickers should be merged into a single file at the stage of criminal investigation, while in the special case where authorities fail to identify the entire trafficking network, the file should be severed for each of the persons involved in trafficking.*

Most of the victims that were deceived into trafficking in human beings were also in a position of vulnerability (63 %). According to their testimonies, they were in a difficult financial situation that the traffickers were aware of before initiating the recruitment. In 19 per cent of the analysed cases, victims were recruited exclusively through abuse of their vulnerable position. In the majority of cases, however, proof of vulnerable position is not supported by evidence other than victims' own statements. The failure to conduct an investigation to verify the abuse of a position of vulnerability weakens the prosecution and makes conviction less likely.

**Recommendations:** *investigators should (be instructed and trained to) secure evidence additional to the testimonies of the victim in order to prove the existence of his/her position of vulnerability which the traffickers abused (assessment reports by social workers, testimonies from neighbours or relatives, reports of psychological examination and the like).*

In most of the cases, the criminal investigation body does not take enough concrete steps to identify the heads of the trafficking networks, justifying their lack of action by the fact that these criminals are foreign citizens residing in a foreign country (of destination/exploitation). However, while the criminal files often contain data about the identity of these criminals (nicknames, first names, approximate addresses and the like), Moldovan law enforcement bodies make insufficient use of the inter-State relations to identify the heads of criminal organizations and groups, and to gather evidence and prosecute the traffickers in the destination country.

**Recommendations:** *law enforcers should inform their colleagues in destination countries about the trafficking cases as well as cooperate with them in identifying and bringing to justice the exploiters and the persons involved in trafficking cases on the territory of the receiving states.*

## II.3 TRIAL

Of the 171 persons accused under article 165 of the Criminal Code (“Trafficking in human beings”), only 99 (58%) were convicted by a final judgment based on this article. In 20 per cent of the cases, prosecutors changed their position on the legal classification of the criminal actions of the accused persons (from article 165 CC to related crimes). The remaining reclassifications were ordered by the court (in 22% of the cases). In trafficking in children cases, a similar proportion of cases were reclassified by the court to less serious related crimes (out of 31 persons accused under article 206 of the Criminal Code, only 18 were convicted by final judgment based on this article).

The high number of reclassifications initiated by the prosecution suggests a lack of consistency and determination by the prosecutor to actively pursue trafficking cases. Moreover, in cases where the court recharged the case to a less serious crime, the prosecutor would often fail to submit an appeal to that decision, in spite of the request to maintain the initial classification.

**Recommendations:** *superior prosecutors should verify each case of reclassification of criminal actions of the accused on the initiative of the inferior prosecutors.*

One of the findings of the study was that, while, prosecutors had requested an average penalty of 14 years of imprisonment against traffickers (both under articles 165 and 206 of CC) the courts applied an average prison term of 5 years and 6 months (under article 165 CC) and 7 years (under article 206 CC).

At the same time, the analysis shows that in 41 cases tried under article 165 of the Criminal Code, courts made use of the provision of article 79 CC that allows the judges to apply a penalty milder than the one provided for in the law. In other 9 cases a milder punishment was decided upon as result of plea-bargaining (under article 80 CC) between the prosecutor and the defendant. Thus, half of the total number of those convicted for committing the crime of trafficking in human beings under article 165 CC received a milder punishment than the one provided for in this article.

On the other hand, the study found that during the trial, the victims/injured parties are not properly protected from interference by the traffickers or their associates. This can be a determining factor for victims to change their testimonies during the proceedings. In none of the analysed cases did the court resort to special means of hearing witnesses and victims – use of special interviewing equipment, provision of increased security measures, concealing victims and witnesses’ identities, and other means. Although the legal framework provides for a series of such protection measures for victims-witnesses who testify in criminal proceedings on trafficking cases, these measures are not regularly made use of. One reason for this could be that, while in the pre-trial phase prosecution is highly interested to secure evidence, during the trial this interest is less pressing.

**Recommendations:** *courts should apply measures to protect victims of trafficking as provided for in the Law on Protection of Witnesses and Other Participants in the Criminal Process (Law no. 105 of 16.05.2008).*

It was found that about one third of all court hearings had been postponed. Such delays can demoralize some of the participants and influence the quality of justice delivered. Moreover, the cases reviewed did not contain evidence of sanctions being imposed for unjustified absence from the hearings.

**Recommendations:** *courts should comply with reasonable time frames for trying cases as well as apply sanctions to those participants who unfoundedly avoid participation in court meetings.*

The case analysis indicates that the quality of justice delivered in trafficking cases is undermined by procedural irregularities, such as, non-compliance with the rules on the composition of the panel of judges (cases under article 206 (3) CC that should have been heard by a panel of 3 judges, in compliance with article 30 (3) CCP, had been examined by one judge only); inconsistent/uneven interpretation and application of the legislation and neglect of requirements of procedural documents; incomplete or unclear decisions (where the criminal sanction provided for depriving the criminal of the right to exercise certain functions or activities, the sentence did not specify which function or activity that was); the sentence imposed contains erroneous or incomplete information regarding the criminal records of the accused, and so on.

**Recommendations:** *judges should receive training that would focus on their capacities and responsibility in dealing with cases of trafficking in persons and related crimes.*

## II.4 VICTIM COMPENSATION

One out of two victims in the analysed cases of trafficking in human beings (article 165) and one out of five victims in cases of trafficking in children (article 206) claimed that they suffered material and moral damage as result of their exploitation.

According to the data gathered within the case analysis, in cases of trafficking in human beings the courts sustained victims' civil claims in 29 cases. Ten claims were rejected and another 16 were not referred to in the court decision. The fact that the court does not pronounce a decision on a certain issue means its merits have not been resolved.

The average amount of awarded damages was about MDL 11,000 (USD 916)<sup>13</sup> in trafficking in human beings cases, and about MDL 45,000 (USD 3,750) in cases of trafficking in children.

Of the total number of 68 victims (injured parties) in cases of organization of irregular migration (migrant smuggling), 76 per cent have been recognized as civil parties (claimants of damages) within the criminal procedure. The average amount of damages granted was MDL 86,000 (USD 7,166) each.

Out of 32 persons recognized as civil parties in forced labour cases, 5 were granted damages in the phase of the criminal investigation and only in one case the court sustained (in principle) the claim of damages. The other claims were either not mentioned in the decisions or were left unexamined.

At the same time, it was observed from the files analysed that both investigation bodies and courts are hesitant to use forensic psychological expert examination in order to establish the severity of moral damages suffered by victims of trafficking, in particular where the victims were minors. It appears that no such examinations have been conducted in the analysed cases. Yet the conclusions of such experts could be extremely useful for justifying the claim of moral damages caused by the crime, especially given that the forensic psychological expert examination, unlike other forms of forensic expert examination, may yield valuable results even after a significant period of time.

At the same time the study identified a direct relationship between the legal assistance provided to victims and their claims for compensation, including the outcome of such claims. However the study also identified that investigators and prosecutors often fail to inform the victims about their right to receive such assistance, failing thus to fulfil their positive obligations under the Law on Preventing and Combating Trafficking in Human Beings (Law no. 241 of 20.10.2005).

### **Recommendations:**

- *it is important that Moldova accedes to the European Convention on the Compensation of Victims of Violent Crimes;*
- *within criminal proceedings, criminal investigators, prosecutors and judges should resort to specialists and experts, particularly psychologists (including those who provided assistance to the victims during the recovery period), to assess the level of damages suffered by the victims of trafficking in persons;*
- *the Code of Criminal Procedure (articles 60 and 62) as well as other relevant laws should be amended so as to provide for the recovery of damages by victims of violent crimes from special funds created by the state (currently there is no such fund in place);*
- *law enforcement bodies should immediately apply sequestration on the property of persons accused of human trafficking, in order to ensure the damage claim and to allow special confiscation with regards to assets procured through criminal means;*
- *investigators and prosecutors should be instructed to inform the victim about his/her right to benefit from free of charge legal assistance guaranteed by the state.*

<sup>13</sup> For readers' reference, an approximate rate 1 USD = 12 MDL was used.

## II.5 INTERNATIONAL COOPERATION

The study has shown that in only 16 per cent of the trafficking cases, authorities requested international legal assistance through rogatory letters. In cases where such cooperation was requested, this was followed by extradition, hearing of witnesses, seizure of documents, site research and other investigation procedures. The small number of such requests shows that there are problems in conducting international cooperation, which may be related to the fact that responses to such requests tend to be excessively delayed as well as incomplete.

In most of the cases, international cooperation is limited to gathering operative information through international specialized bodies, such as INTERPOL, EUROPOL, SECI or EUBAM, which provide timely responses. However data that is gathered this way is often disqualified as inadmissible evidence at the request of the defence. Nevertheless, where this data is confirmed with other evidence, other than the victim's testimony, the likelihood that it would be admitted as valid evidence by the courts significantly increases. There were also cases where rogatory commissions did not comply with the legal requirements.

**Recommendations:** *Moldovan authorities should resort more actively to international legal cooperation in trafficking and related cases, including by resorting to joint investigation teams as provided by article 540<sup>2</sup> of the Criminal Procedure Code.*

## II.6 PREVENTION

It is recommended that the findings of this Study related to the profile of the traffickers are used for preventive measures. At the same time the profile of the victim as established in the Study (from 23 to 30 years of age, unemployed, originating from the rural area) may help identify persons at-risk of being trafficked (potential victims) and provide them with necessary assistance and protection through the National Referral System (NRS) for the protection and assistance of victims and potential victims of trafficking in human beings, so as to reduce their position of vulnerability and the risk of being trafficked. Moreover, given the possibility that many of the victims are not identified as such (and therefore are deprived of the rights associated with this status), the profile of the victim could be further used to identify survivors of trafficking after their return in the home country as well as victims and potential victims in the reach of the traffickers. At the same time, such information will be crucial for designing targeted information campaigns on the risks of trafficking.

The profile of the victim also suggests that securing employment for youth is also an important preventive measure. Among other potential solutions to this issue, it can be suggested that the pre-university educational system should be adjusted to provide for more one speciality and more opportunities for employment after graduation.

## II.7 CORRUPTION

It is generally recognized that trafficking in persons and pimping (but also other crimes considered in this Study) are forms of organized crime which usually involve entire networks of criminals, but also often benefit from the assistance of state officials, representatives of authorities who, by speculating on the supply and demand of this peculiar market, seem to draw huge profits from their services. Thus, trafficking often implies corruption of those responsible for maintaining public order.

In some cases, traffickers resort to such officials to obtain documents that would allow the transportation of victims over the border of Moldova. In other cases, traffickers or victims themselves resort to go-betweens to facilitate the process of obtaining identity papers or crossing the state border. Of particular concern with this regard are the situations where border police or border guards, identify (potential) victims of trafficking among those crossing the border, only to ask for bribes in exchange of permission to cross the border. Moreover, traffickers, pimps and migrant smugglers often seek and find protection of certain officials, including representatives of law-enforcement bodies, to secure their illegal activity, their so-called “businesses” and the safety of the respective criminal groups. Such officials are liable for collateral crimes such as forging official documents, abuse of official position, passive and active corruption and others.

Given this background, the case analysis also focused on identifying indices of corruption that could have occurred in the course of the crime as well as in the prosecution or trial of trafficking cases.

It was very hard for experts to establish signs of corruption only from the analysis of criminal files. However four cases were identified, where circumstances indicate that representatives of law enforcement bodies committed actions of corruption. In one case, a public official was convicted for forgery of official documents in relation to a case of trafficking in children and convicted to three years of imprisonment with conditional suspension of punishment for one year of probation period. In another case, of pimping (though the actions of criminals in the case may have amounted to trafficking), a witness confessed a case of bribery of policemen by pimps. Authorities undertook no further actions in this case. In the third case, suspicions are raised by a plea-bargaining in a trafficking case that led to a milder punishment for traffickers (5 years of imprisonment with suspension of the sentence), even though bargaining was not legally possible in the case. The same prosecutor who pleaded for the milder punishment appealed the decision, which raises serious doubts as to the consistency and integrity of such behaviour. Finally, in yet another case a policeman was allegedly bribed to allow the trafficker and the victim to cross the state border at the Chisinau Airport. Despite the fact that in the course of the investigation conducted on the case of trafficking the fact of corruption was brought to the attention of authorities, no further actions were taken to inquire on the bribery component of the crime. At the same time, as previously mentioned, a serious issue that raises concerns is the number of cases where the criminal actions, initially identified as trafficking in human beings, are later recharged as pimping or other related crimes (about 30 % of the cases), so that in many cases the criminals would end up being punished only by fine. Such cases may be explained by the fact that the law enforcers either lack professional capacity or are corruptible.

**Recommendations:**

- *criminal investigation bodies should resort to conducting criminal investigations on all allegations or suspicions of corruption in criminal cases of trafficking in persons and related crimes and officials who are found to have committed acts of corruption in such cases should be dully convicted and sanctioned;*
- *border guards officers, police officers, investigators, prosecutors and judges should be sanctioned for failing to report a corruption incident and/or for failing to initiate criminal investigations on such an incident;*
- *police officers, investigators and prosecutors should be trained in conducting efficient and results-driven investigations on allegations or suspicions of corruption in cases of trafficking and related crimes;*
- *victims of trafficking in persons as well as victims of other crimes should be properly informed (in writing) by the investigators and prosecutors conducting the criminal investigations how to report a corruption incident occurred in the course of investigation or trial of the case.*



## **PART III: RECOMMENDATIONS**

### **III.I AMENDMENT OF THE NATIONAL LEGISLATIVE FRAMEWORK**

#### **A.VICTIM COMPENSATION**

Compensation of damages to survivals of trafficking in persons was identified as a major issue in the present Study. The need of effective guarantees to ensure that victim's rights are respected should be addressed at the highest (legislative) level, including by undertaking the following:

1. Signing and ratifying by the Republic of Moldova of the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.
2. Developing an efficient legislative, regulatory and institutional mechanism for the implementation of this Convention, including amending the Code of Criminal Procedure and other relevant laws by introducing legal provisions that would regulate the right to and the procedure for recovery of damages suffered by the victims of violent crimes from a special fund created by the state with this purpose (examples may include but are not limited to: retaining a percentage of insurance premiums that would be transferred to the special fund or financing the fund from the assets confiscated from the convicted criminals).

#### **B.THE IRREGULAR MIGRANT AND THE MIGRANT-VICTIM**

While the main focus of the study was the analysis of the situation of trafficking in persons, the authors have identified a series of issues that relate to the rights of the migrants generally, which require legislative attention. Thus, in order to protect the rights of migrants and adjust Moldovan legislation to the standards set in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and other international treaties to which Moldova is part, it is recommended that the following:

1. Article 362 (4) of the Criminal Code should be amended so that the list of categories absolved of criminal liability for the illegal crossing of borders is extended to include also the victims of migrant smuggling, in line with the requirements of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.
2. A new paragraph should be added in the text of article 362/1 of the Criminal Code that would exempt victims of migrant smuggling from the criminal liability as well as from accountability for administrative contraventions provided for in articles 332 and 333 of the Contraventions Code.
3. Article 64 of the Law on Foreigners (no. 200 of 16.07.2010) should be complemented with a new paragraph (3<sup>1</sup>) that should read as follows: "Investigating judges may order public custody of a foreigner against whom criminal proceedings have been launched for illegal crossing of the state border with his/her placement in the Centre for the Temporary Placement of Foreigners, in line with the procedure set in the Code of Criminal Procedure".
4. Article 65 (2) of the Law on Foreigners, should be amended to read as follows: " (2)The Centre is a specialized structure, managed by the authority responsible for foreigners, having the purpose of providing temporary accommodation to foreigners who were declared undesirable or against whom the measure of return or expulsion was ordered and those taken in public custody, or foreigners who are suspected / accused of illegally crossing the state border".
5. Article 68 (1) e) of the Law on Foreigners, should be amended to read as follows: "e) foreigners who are or have been victims of trafficking in human beings or migrant smuggling".
6. Article 41 of the Code of Criminal Procedure ("Competence of the investigating judge") should be

complemented with a new point 4<sup>1</sup>) that should read as follows: “4<sup>1</sup>) ordering public custody of aliens suspected of committing the crime of illegal crossing of the state border (article 362 of the Criminal Code) within the Centre for the Temporary Placement of Foreigners”.

7. A new article should be introduced in the Code of Criminal Procedure: “Article 199<sup>1</sup> Public custody over foreigners”, that should read as follows:

“(1) Taking foreigners into public custody includes the placement of foreigners who are suspects, accused or defendants in cases of illegal crossing of the state border and migrant smuggling, in the Centre for the Temporary Placement of Foreigners.

(2) Public custody can be ordered by the investigating judge at the request of the public prosecutor in line with article 305. The order of the investigating judge as to the application of public custody or denial of the prosecutor’s request may be challenged with cassation according to the procedure set in article 311.

(3) Public custody over the foreigner who is suspected of illegally crossing of the state border can be ordered for a period of up to 10 days subject to extension, in case of necessity, at the request of the public prosecutor, after the indictment. The duration of public custody in the case of foreigners who are accused or tried for the commission of this crime will not exceed 30 days. The maximum period over which a foreigner who is accused or tried may be detained at the Centre for the Temporary Placement of Foreigners shall not exceed 6 months”.

8. Alternatives should be identified for the temporary placement of victims of migrant smuggling.

9. Article 273 of the Code of Criminal Procedure and the Law on the State Border of the Republic of Moldova (Law no. 215 of 04.11.2011) should be amended so as to provide the head of the authority for supervising state border with the status of a body authorized to ascertain the crimes of illegal crossing of the state border.

## C. JURISPRUDENCE

In order to ensure consistency in applying the legislation on combating trafficking in persons and related crimes, it is recommended that the following:

1. The Supreme Court of Justice should harmonize the judicial practice in cases related to trafficking in human beings and trafficking in children by revising and updating the current Decision of the Supreme Court of Justice Plenum (no. 37 of 22.11.2004) “on the application of legislation in cases related to trafficking in human beings and trafficking in children”.
2. The Supreme Court of Justice should develop and adopt an explicative (interpretative) decision on the recommended practices in examining criminal cases of forced labour.

## III.2 INSTITUTIONAL/ORGANIZATIONAL MEASURES IN INVESTIGATING TRAFFICKING IN PERSONS AND RELATED CRIMES

### A. ENHANCING CRIMINAL INVESTIGATION

To ensure that the main purpose of criminal investigation – establishing the truth – is achieved, including by ensuring the prosecution of those guilty of committing crimes, by collecting sufficient judicially admissible evidence, and by other means, and that the criminal investigation becomes more efficient, the criminal investigation bodies are expected to:

1. Be able to identify and investigate the acts of all persons known to have been involved in crimes of trafficking, while avoiding the current practice of limiting the criminal prosecution to those few who are within their reach and thus easier to prosecute.

2. Make use of other evidence besides victim testimonies to prove the victim's position of vulnerability (social worker's report, testimonies by neighbours and relatives, psychological examination and the like).
3. Verify the testimonies provided by victims and witnesses in cases of trafficking in persons and pimping (confrontations, verification of testimonies at the crime scene, line-ups and so forth) to secure reliable evidence.
4. Make use of special means for taking testimonies of the victims, as provided by articles 109 and 110 of the Code of Criminal Procedure.
5. Avoid the use of photo line-ups, where the person (trafficker) is reachable and live line-up is possible.
6. Order and carry out psychological examinations of victims of trafficking in persons, the results of which can be used for substantiating the claims of moral damages and for ascertaining the application of violence against the victim.
7. Include in the indictment report all the pieces of evidence in the case and their detailed analysis in compliance with article 296 of the Code of Criminal Procedure.
8. Document and verify the information received from other public bodies in order to ascertain the facts of the case, in line with the requirements of article 157 of the Code of Criminal Procedure, examine and attach them to the case file according to the law.
9. Employ proactive methods of investigation in dealing with cases of trafficking in persons and related crimes.
10. Increase the use of undercover operations through, the involvement of undercover police officers, while avoiding entrapment or other provocations, and reducing the participation of victims in undercover work.
11. Make use of the data about the profile of the victim to identify other (potential) victims in the reach of the traffickers and use the data on the traffickers profile to conduct more proactive investigations.
12. Merge within one single case, in compliance with article 42 of the Code of Criminal Procedure, those criminal cases where the same suspects/accused appear; this should be done in the phase of criminal investigation, so as to ensure the reasonable timing and the efficient investigation of cases of trafficking in persons.
13. Adopt the special investigation and trial procedure for flagrant crimes in cases of pimping and illegal crossing of state border in order to simplify and optimize the criminal process.
14. Receive on-going training on investigating cases on trafficking in persons and related crimes.
15. Engage as much as possible female-prosecutors and female-investigators in interviewing female victims and injured parties, which is a more efficient approach for helping them clarify the data related to victim's trafficking for all types of exploitation and proved to be very efficient in one of the studied cases.

## B. SUPERVISION BY THE SUPERIOR PROSECUTOR

In order to avoid errors and abuse by criminal investigation officers and prosecutors in charge of state accusation, as well as in order to improve the quality of procedural acts, it is recommended that:

1. Special attention should be paid by the prosecutor to the drafting and approval of the indictment, given the frequency of cases where this procedural document drafted by the prosecution lacks a proper analysis of evidence and is thereby rejected.
2. Superior prosecutors should verify the legality of each case where the inferior prosecutors reclassified the criminal actions of the accused and take adequate actions to address such situations.
3. Superior prosecutors should ensure that reasonable time frames of the criminal investigation are properly observed and eventual extensions are properly justified in line with the legislation, so as to curb the current vicious practice of unjustified delays within the process.
4. Superior prosecutors should ensure the legality of the procedural time limits within which the person has the status of accused, taking into account the case law of the European Court of Human Rights;<sup>14</sup> that the superior prosecutors ensure that legal requirements regarding criminal procedures are consistently observed when the accused is charged under the law.

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<sup>14</sup> When criminal investigation is started *in personam*, the period in which the person can be maintained under the status of *the suspect* starts running from the moment the criminal investigation starts.



## C. IMPROVING THE QUALITY OF JUSTICE

Efficient examination by courts of cases of trafficking and related crimes as a matter of priority represents an essential condition for both guaranteeing the protection of rights and interests of the participants in the criminal procedure and ensuring the criminal liability of perpetrators. It is therefore recommended the following:

1. Participants in the proceedings who fail to take part in court hearings without justification should be subjected to penalties. The application of this measure will prevent excessive delays in the course of the trial that may discourage other participants.
2. Any decision issued by court should be properly substantiated and motivated. This means *inter alia* that an analysis and an assessment of each piece of relevant evidence should be conducted, including through corroboration with other evidence. In their decisions, courts should make reference to factual and legal circumstances that had led to a particular judicial outcome, including to international legal norms in the domain of combating trafficking in persons.
3. When finding obvious violations of the rules on the legal classification of crimes by the criminal investigation bodies (for example classifying an act as pimping under article 220 of the Criminal Code where article 165 –“trafficking in human beings”– should normally apply) as well as where other significant violations occur, courts should adopt the corresponding interlocutory decisions.
4. In certain cases, appellate courts should extend the duration of detention warrants in cases where the defendants had been subjected to preventive arrest (remand custody) by the trial court. This recommendation is necessary because often, when reading the conviction sentence prescribing imprisonment, the trial court does not extend the period of remand custody, but only indicates that this preventive measure is being maintained, without specifying the period for which it applies. At the same time, the legislation in force expressly requires that the extension of custody in the phase of court proceedings, including in appeal, does not exceed 90 days.
5. Mechanisms should be put in place to oversee the compliance of investigation bodies and courts with the requirement of reasonable time limits within the criminal proceedings. The study identified only one case in which the court had ruled on the violation of the reasonable time requirement at the criminal investigation stage, while the failure to observe such time limits hasn't been documented through court acts.
6. Judges and other relevant court staff should be provided with initial and continuous training on matters of trafficking in persons and on investigation, prosecution and trial of crimes of trafficking in persons.

## D. VICTIM PROTECTION

Protection of victims is one of the main goals and duties of law enforcement bodies when investigating cases of trafficking in persons. The following recommendations are proposed with regard to enhancing the protection afforded to victims of this category of crimes:

1. In each case the victims should receive full information about their specific rights including the right to remain silent, the right to be assisted by a trustworthy person, the right to counsel, including assistance by a state-funded attorney and other rights. A way to institutionalize this practice is for the victim to sign a standard information sheet with detailed explanations of these rights. We note here that the files analysed within the study did not contain any indications of the fact that victims of trafficking in persons had been effectively informed about their rights during the criminal investigation.
2. Victims of migrant smuggling should be explained their right to a chosen counsel (including in writing). The study shows that only very few victims of this crime benefited from legal assistance, so that most of the victims could not efficiently formulate and adjudicate their material and moral claims.
3. Witnesses-women in prostitution in cases of pimping should also be clearly explained (in writing) about their legal right to have an attorney. *De facto*, in the analysed cases there were no documented cases when the criminal investigation body informed the witness about the right to have an attorney.
4. In cases of trafficking in children the presence of the legal guardian of the child should be ensured at all times within the criminal proceedings.
5. Given the fact, that the case files do not contain written statements of consent by the victims to be recognized as injured parties in the case (according to article 59 of the Code of Criminal Procedure), it would be recommendable to introduce such a requirement in order to prevent abuse and violations.

6. In order to avoid inflicting additional psychological suffering of victims, it is advisable that the criminal investigation body does not resort to repeated hearings of victim's statements or confrontations with the accused. The investigators may make use of special methods for hearing testimony – such as special interviewing equipment, concealing the identity of the victim and the like.
7. Law enforcement bodies should immediately apply sequestration on the assets of persons accused of human trafficking, in order to ensure the damage claim and to allow special confiscation with regards to assets procured through criminal means.
8. Depending on the seriousness of the existing or potential risk to the safety of the victims of trafficking, authorities should apply protection measures as provided for in the Law on Protection of Witnesses and Other Participants in the Criminal Process (Law no. 105 of 16.05.2008).

## E. INTERNATIONAL COOPERATION

Taking into account the transnational nature of trafficking in persons and some of the related offences, international cooperation should play a particularly important role in the efficient investigation of these crimes. Such cooperation will significantly contribute to uncovering and bringing to justice the entire trafficking network, including its branches in destination countries. For this purpose, law enforcers should ensure the following:

1. Exchange information with their counterparts in destination countries and cooperate with them in identifying and prosecuting exploiters and other criminals involved in trafficking schemes as well as resort to joint investigation teams as provided by article 540<sup>2</sup> of the Criminal Procedure Code.
2. Resort to international rogatory letters on each case of exploitation in a foreign country as well as in cases of migrant smuggling.

## F. PREVENTION OF TRAFFICKING IN PERSONS AND RELATED OFFENCES

Prevention of trafficking in persons and related offences, in the broadest sense, may include a range of concrete targeted measures, including legislative and socio-economic ones, designed to minimize the factors that feed the crimes at its roots, as well as to reduce the risks to which the potential victims are exposed. Among the recommendations proposed with this regard are the following:

1. Relevant amendments in the criminal legislation should be adopted which would provide that persons who received services of victims of trafficking in persons while being fully aware that she/he was a victim and did not report are criminally liable and sanctioned accordingly.<sup>15</sup>
2. Institutions operating within the framework of the National Referral System (NRS) for the Protection and Assistance of Victims and Potential Victims of Trafficking in Human Beings should continue to identify and assist the most vulnerable persons who are at risk of being trafficked, particularly those who fit the profile of the victim (from 23 to 30 years of age, unemployed, originating from the rural area). They should also carry out information programmes targeted at the risk group (but also at the general population such as high school students) on the risks of irregular migration and the danger of trafficking in persons.
3. The pre-university educational system (10<sup>th</sup> to 12<sup>th</sup> grades) should be adjusted to provide for more opportunities for employment after graduation.
4. Programmes on economic empowerment of young women should be implemented by the Government aimed at addressing some of the underlying causes of trafficking in persons, such as discriminatory treatment of women, especially in the social and economic life, for example, through the provision of business trainings, especially in the rural areas, as well as through supporting their business initiatives through grants and preferential credits.

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<sup>15</sup> Currently these persons cannot be sanctioned because the Criminal Code in force does not stipulate it expressly.

## G. CORRUPTION

Aiming at eliminating incidents of corruption in cases of trafficking in persons and related cases as well as sanctioning officials who have committed acts of corruption in such cases, which would contribute to a more efficient investigation of these offences, it is suggested the following:

1. Criminal investigation bodies should resort to conducting criminal investigations on all allegations or suspicions of corruption in criminal cases of trafficking in persons and related crimes and officials who are found to have committed acts of corruption in such cases should be duly convicted and sanctioned.
2. Border guards officers, police officers, investigators, prosecutors and judges should be sanctioned for failing to report a corruption incident and/or for failing to initiate criminal investigations on such an incident.
3. Police officers, investigators and prosecutors should be trained in conducting efficient and results-driven investigations on allegations or suspicions of corruption in cases of trafficking and related crimes.
4. Victims of trafficking in persons as well as victims of other crimes should be properly informed (in writing) by the investigators and prosecutors conducting the criminal investigations about how to report a corruption incident occurred in the course of investigation or trial of the case.

## **PART IV: SPECIFIC FINDINGS**

This section presents the detailed analysis of the specific findings of the study on the basis of which, the general findings and recommendations were developed. Each chapter of this part focuses on one of the crimes provided for in the Criminal Code of the Republic of Moldova on trafficking in persons and related offences.

### **IV.1 TRAFFICKING IN CHILDREN**

#### **I. BACKGROUND**

The analysis of the phenomenon of trafficking in children, as the one provided in this chapter, is particularly important for the Republic of Moldova, but also for other countries. Given that the victim of this crime is a child and children represent a very vulnerable category, the Government of Moldova has the duty to ensure his/her protection in line with its national and international commitments.

The first attempt of the national legislation to legally address the issue of trafficking in children within the framework of the criminal law was made in 1997, when the previous Criminal Code (of 1961) was amended to include article 113/1 "Selling of and trafficking of children", prohibiting trafficking in children.

The need to study and criminalize trafficking in children is dictated by the scale of this phenomenon in the recent years in the Republic of Moldova that poses a serious threat to human rights and endangers the demographic security of the country.

Imposing criminal liability for such acts is the direct result of the commitment undertaken by the Republic of Moldova internationally to prevent and combat trafficking in children by all means, including through criminal justice.

Nevertheless, the issue of trafficking in children remains a serious problem as shown by the disturbing statistics on the number of children that become victims of trafficking for exploitation purposes. In spite of the recent increased attention and involvement of institutions tasked with prevention and prosecution of trafficking of children, the capacity of the Government to adopt efficient measures to prevent this phenomenon, to protect and promote children's rights is still limited.

In the recent years, negative consequences of the transition process have led to a prompt and substantial decrease of the living standards of a large portion of the population, especially families with children. Migration is resorted to as a solution to poverty. An increasing number of young people view migration as the only chance for a better life. But the opening of the borders after the collapse of the Union of Soviet Socialist Republics (USSR) not only led to an increase in economic, cultural and political cooperation between Moldova and other states, but also to the expansion of organized crime across the borders.

Trafficking in children is closely connected with the complex socio-economic situation in Moldova, but also with the existence of a "market" (demand) in countries of destination such as Russian Federation, Ukraine and other. Being in a precarious situation caused by poverty, unemployment, low salaries and sometimes also psychosocial trauma as a result of domestic violence, including physical and psychological abuse, incest and rape, minors are ready to take high risks in search for a better life and tricked into trafficking. In such conditions, parents also encourage their children to work abroad and they usually consent for their children to be helped with crossing the border and searching a job abroad. Regrettably, in many cases their children do not get to the promised jobs and some of them end up in trafficking for labour and sexual exploitation as well as for begging. At the same time, minors are frequently exploited in labour and sexual exploitation on the territory of the Republic of Moldova (internal trafficking).

#### **Article 206. Trafficking in children<sup>16</sup>**

*Recruitment, transportation, transfer harbouring or receipt of a child, as well as giving or receiving of payments or benefits to achieve the consent of a person having control over a child, for the purpose of:*

- a) commercial or non-commercial sexual exploitation, prostitution, use in the pornography industry;*
- b) forced labour or services exploitation;*
- b<sup>1</sup>) begging or for other abject purposes;*
- 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) removal of organs or tissues;*
- g) abandonment outside the country;*
- h) selling or buying.*

*shall be punished with imprisonment for a period between 8 to 12 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 a legal entity shall be sanctioned with a fine in an amount of 3000 to 5000 conventional units<sup>17</sup> [USD 5,000 to USD 8,333], with deprivation of the right to exercise a certain activity, or with liquidation of the enterprise.*

*(2) Same actions, accompanied by:*

- a) use of physical or psychological violence, use of firearms or threats of their use;*
- b) sexual abuse and violence;*
- c) abuse of authority or of vulnerability of the child, threatening to disclose confidential information to the child's family or to other persons;*
- f) removal of organs or tissues;*

*shall be punished with imprisonment for between 10 to 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 a legal entity shall be sanctioned with a fine in an amount of 5000 to 7000 conventional units [USD 8,333 to USD 11,666], with deprivation of the right to exercise a certain activity, or with liquidation of the enterprise.*

*(3) Actions envisaged in paragraph (1) or (2):*

- a) committed by a person who has previously committed the same action;*
- b) committed against 2 or more children;*
- c) committed by a public official or by a high public official;*
- d) committed by an organized criminal group or by criminal organization;*
- e) that resulted in serious bodily injury or mental illness of the child, his/her death or suicide;*
- f) committed against a child under 14 years of age,*

*shall be punished with imprisonment for between 15 to 20 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 detention for life, and a legal entity shall be sanctioned with a fine in an amount of 7000 to 9000 conventional units [USD 11,666 to USD 15,000], with deprivation of the right to exercise 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 with this status.*

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<sup>16</sup> Trafficking in children was incriminated as separate offence in the Moldovan Criminal Code of 1961 before trafficking of adults (in 1997). Later, in 2001 the trafficking of adults was added as a separate crime in the Criminal Code. When the new Criminal Code was adopted in 2002, trafficking in children (article 206) and trafficking in human beings (article 165) were included as separate crimes, the former (article 206) being considered as an exceptionally serious crime (providing maximum punishment – life detention), where the means provided by the first paragraph of article 165 constitute aggravating circumstances in article 206. The decision of the Moldovan Government to criminalize trafficking in children as separate crime from trafficking in human beings was dictated by its willingness to comply with its international commitments under the Convention on the Rights of the Child, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to slavery and other international treaties according to which states are encouraged to take all positive actions to ensure that the child (who is considered more vulnerable than adult) is protected from and against all forms of exploitation and slavery.

<sup>17</sup> According to article 64 of the Criminal Code of Moldova any fine established as penalty under the Criminal Code is measured in “conventional units” (c.u.). One conventional unit equals to 20 MDL (1.66 USD).

## 2. PROFILE OF THE ACCUSED PERSON

Total number of accused persons: 31

Number of convicted persons: 18

Number of acquitted persons: 3

Number of persons with sentence of dismissal of the criminal proceedings: 3

- 1 (unchallenged ordinance for exemption from indictment);
- 2 (death).

For seven persons actions were legally reclassified as follows:

- 3 – under articles 166, 168 and 220 of the Criminal Code;
- 4 – under article 302 (2) let. a) of the Criminal Code.

Persons accused of trafficking of children have the following profile:

### **Sex:**

**Women: 58 per cent**

**Men: 42 per cent**

The data collected shows that women are more often involved in the process of recruitment. This is due inter alia to the fact that some of them have themselves experienced sexual exploitation in the past. A large number of them have established relationships (family relations and others) in destination countries, being familiar with the language, legal framework and traditions of those countries. Therefore, these women have an increased ability to deceive potential victims into trafficking. Moldova being a country of origin, women are more involved here in the recruitment process (initial contact with the victim) making use of their knowledge of the psychology of the girls. Men are usually involved in later stages - such as transportation since in the case of Moldova victims are trafficked to be exploited abroad. These numbers may, however, also indicate the fact that criminal investigation bodies do not discover the entire trafficking network, but rather limit themselves to those involved in recruitment and sometimes transportation.

### **Average age of the accused persons:**

**Women: 31 years of age (max. 56 years of age, min. 19 years of age)**

**Men: 36 years of age (max. 50 years of age, min. 18 years of age)**

The average age of 31 years for women may strengthen the aforementioned conclusion – that many female traffickers have been previously trafficked and sexually exploited themselves, taking into consideration the fact that, according to findings of the study, the average age of a victim of trafficking in human beings is 23 years of age. The age difference further confirms that some of the female traffickers may have been integrated into criminal groups and from victims became traffickers.

### **Employment:**

**Employed: four persons**

- women – 0 persons
- men – four persons.

**Unemployed: 27 persons**

- women – 18 persons
- men – nine persons

Most of the accused persons were unemployed, which means that trafficking in children could have been their only source of income. The fact that none of the accused women were employed confirms the above-mentioned hypothesis of their probable integration in the criminal networks of the destination countries.



## Criminal profile:

With regards to the criminal profile of the accused person, out of the total number of 31 accused persons:

- **32 per cent had been previously convicted for different categories of crimes with an average punishment of 13 years of imprisonment;**
- **16 per cent had been previously convicted for pimping;**
- **3 per cent had been previously convicted for trafficking in children;**
- **13 per cent had been previously convicted for theft, illegal cutting of woods and other offences;**
- **36 per cent had not been previously convicted, according to the data in the case files.**

Thus, the majority of traffickers (accused persons) have switched from other categories of crimes to trafficking in children, probably because this crime is more profitable and involves less risk (minors can be easily manipulated into avoiding cooperation with authorities).

As already mentioned, deceit through false promises of job opportunities abroad is the main method of recruitment of girls with the purpose of trafficking for sexual exploitation.

At the same time, victims' statements show that in most of the cases the first link in the trafficking chain is a woman. These persons tend to display their material welfare and resort to stories of how easy it is to earn money abroad having a job that does not require special professional training.

When the recruiter is a man, he is on average 36 years of age, looking and behaving as a person with a high social status (expensive clothes and jewellery, money). Usually, his role is to seduce the girl and convince her to accompany him abroad where he would be able to easily find a job for her.

In both cases, elements that characterize the recruiter are very important: the age and the method of approaching future victims. The appearance of high social status and stories of successful migration to lure the victim are common elements as well.

At the same time, in many cases, it is the relatives or friends who convince the family of the victim to approve for their child's travelling abroad. The majority of the boys that were trafficked into labour exploitation had been taken abroad this way. There were also cases where victims later became recruiters themselves.

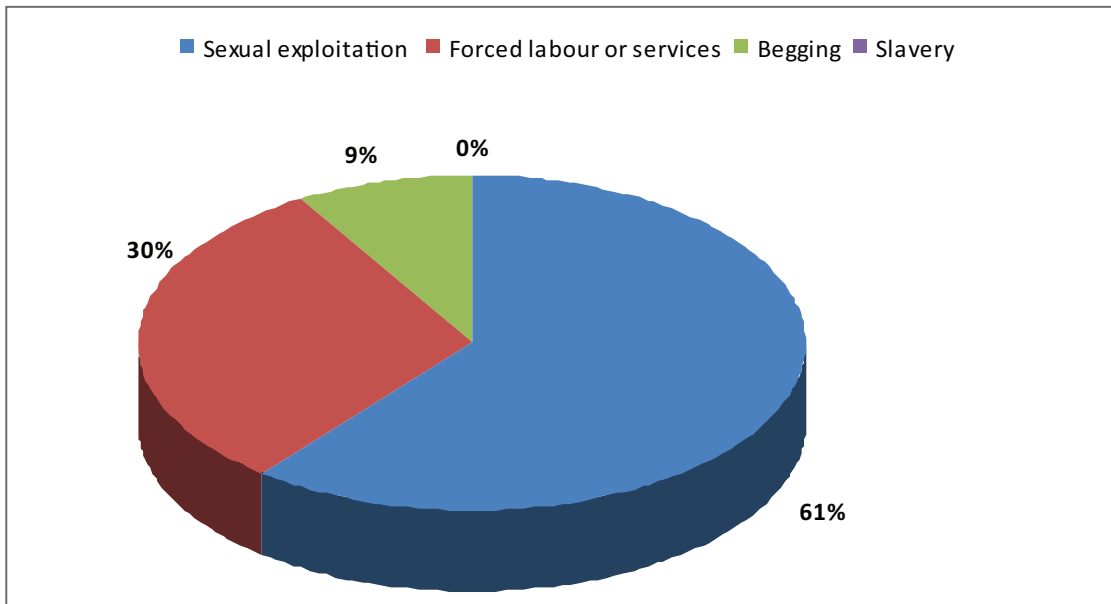
**To sum up, the following profile of a child trafficker can be drawn as follows:**

- A woman of about 31 years of age (the age may vary between 19 and 56 years), unemployed, with unfinished education, not married, without a stable source of income, in some cases with a criminal record;**
- A man of about 36 years of age (the age may vary between 18 and 50 years), usually unemployed.**

## 3. MEANS AND PURPOSES

The *Mens rea* element of the crime of trafficking in children takes the form of direct intention. In order for the act to be classified as trafficking in children, at least one of the trafficking purposes should be present at the moment when the crime is committed (not all of the special purposes need to be in place). From the analysed case files on trafficking in children it was concluded that children are mainly trafficked for the purpose of sexual exploitation, labour and begging, as indicated in Figure 1 below.

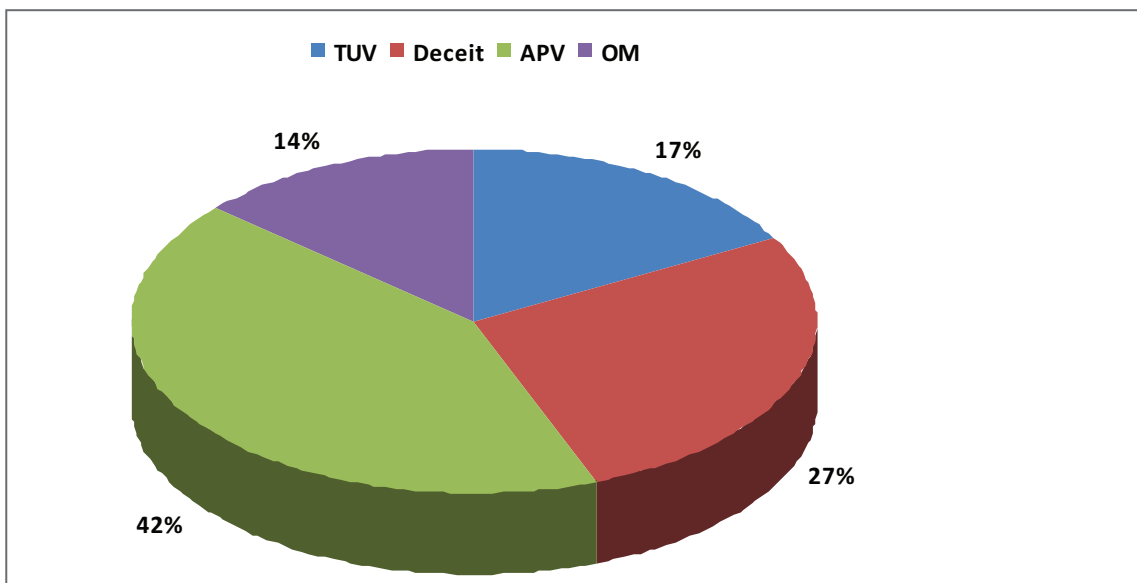
Figure 1: Purpose of exploitation of victims of trafficking in children



Based on the testimonies provided by the victims (as included in case files) the following means of trafficking were identified in proportions indicated in Figure 2:

- threats to use violence (TUV),
- deceit,
- abuse of the position of vulnerability (APV),
- other methods (such as kidnapping, use of violence) (OM).

Figure 2: Means of trafficking



The case files show that traffickers mostly resort to abuse of the position of vulnerability and deceit when recruiting minor victims. These methods are also applied to influence parents and obtain their consent for the child to be taken abroad. In the vast majority of the criminal cases analysed the position of vulnerability had been proven through victim's statements. Unfortunately, no other types of evidence are administered for this purpose.

When analysing the cases of trafficking in persons (both articles 206 and 165 Criminal Code), the expert team has paid particular attention to the precise identification of the constitutive elements of the crime, by thoroughly individualizing both the acts through which the crime of trafficking is committed and the *means* used to commit these acts. The analysis shows that the range of acts by which the crime of trafficking may be



committed is wide enough to include a series of illegal actions, that would not otherwise be classified as separate crimes, but which are undoubtedly facilitating trafficking in persons for exploitation purposes. Hence, the main criminal act in the case of trafficking in human beings (article 165 CC), regardless of its concrete form such as recruitment, transportation or other form, has to be accompanied by the means element, where the means described in article 165 (1) (a and c) also play the role of aggravating circumstances for the crime of trafficking in children (article 206 CC). The situation is qualitatively different in the case of trafficking in children (article 206 CC), where all the means used to influence the consent of the victim are aggravating circumstances and not conditions for the legal qualification of the crime. Accordingly, in the text of article 206 CC the wording “with or without victim’s consent” is redundant. What makes it different from article 165 is the fact that the child lacks full legal capacity and thus is never free to give his/her consent for being recruited, transported, transferred, harboured or received. Neither is the person who has control over the child free to give this consent, because the purpose of such consent (one of the purposes mentioned in article 206 (1) CC) is against the law. In the case of the crime of trafficking in human beings, on the other hand, victim’s consent is invalid because of other reasons – it is annulled through the constraints to which he/she is subjected to or by other methods of non-aggressive influence (deceit).

#### 4. PROFILE OF THE VICTIM

The victim of the crime analysed hereby has a special status. Only a person aged under 18 at the moment the crime was committed can be found to be a victim under article 206 CC. This fact marks the main difference between trafficking in children and the crime stipulated at article 165 CC (trafficking in human beings).

Most of the victims in the case files analysed were between 15 and 17 years of age, most of them girls. As a rule they had poor education, having quit school. These children come especially from vulnerable families, where poverty underlines all of the other problems (alcoholism, abuse, physical and verbal violence).

The family can also be characterized as having a low-level education. The relationship between the children and their families is weak, making them more vulnerable to outside influences.

The total number of victims in the files analysed within the present study is 37, which have the following profile:

##### **Sex:**

**Girls: 84 per cent**

**Boys: 16 per cent**

The larger number of female victims is explained by the fact that the majority of cases of trafficking in children are committed with the purpose of sexual exploitation, whereas male victims are more frequently exploited for labour or begging. At the same time, it has been established that most of the criminal investigation officers and prosecutors participating in the cases analysed were male. Taking into account that the majority of the victims are girls, the participation of female criminal investigation officers and prosecutors would be advisable for this category of crimes. Hence, there is a need to develop policies that will encourage and promote more female officers and prosecutors working on such crimes.

##### **Average age of the victim:**

**Girls: 15 years of age (max. – 17 years of age, min. – 6 years of age)**

**Boys: 16 years of age (max. – 17 years of age, min. – 10 years of age)**

The average age of 15 for girls is explained by the fact that sexual exploitation occurs at the moment of sexual maturity, whereas the average age for boys is conditioned by the physical development that is fit for labour exploitation.

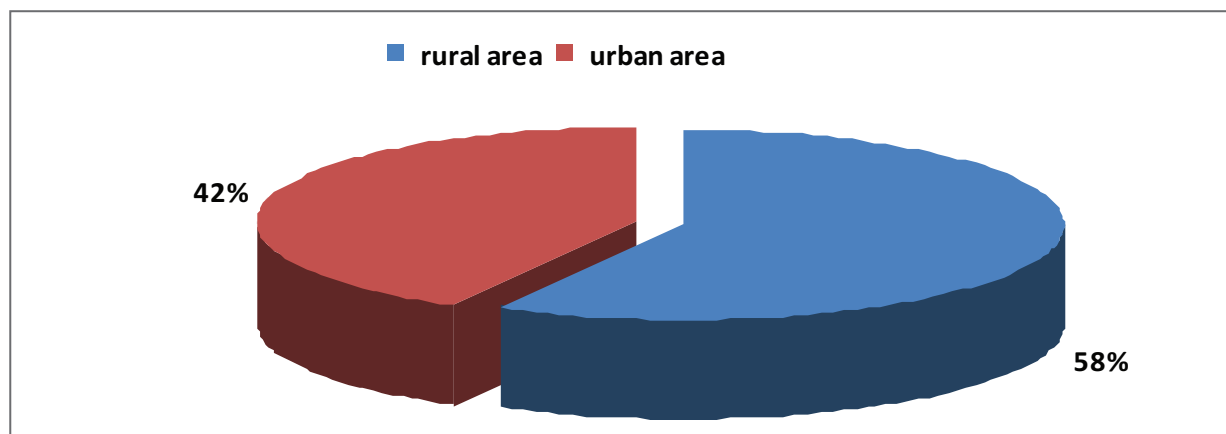
##### **Employment:**

**Employed: two persons**

**Unemployed: 35 persons**

The high number of unemployed victims shows their vulnerable position. Coming from poor families, they were probably looking for means to survive, given that in rural areas, where most of them come from (Figure 3), the employment opportunities are scarce and the income is low.

Figure 3: Environment of origin of victims of trafficking in children



### Education:

**Unfinished middle school (until ninth grade) – 34 persons**

**High school (grades 10-12) – three persons**

The socially vulnerable situation in the families of the majority of victims generates difficulties with school and professional training. This, on the other hand facilitates their recruitment through false promises of income opportunities. Lack of education and limited awareness of the risks of migration, along with the vulnerabilities associated with age, lead to a certain naivety in the face of false promises by recruiters. This way, for example, some victims accepted to work abroad as sellers in a country without knowing its language or traditions.

### Relationship between the victim and the accused person:

In most of the cases, prior to recruitment, victims and traffickers knew each other well, sometimes even being relatives (see Figure 4). This proves that recruiters were usually aware of the victims' socially vulnerable situation, which ensured successful recruitment.

In other situations, parents themselves were involved, unaware of the true intentions of traffickers, in the trafficking of their own children, by giving written consents for their children to be taken abroad, without contemplating the risks of such a decision. In some cases, friends or recent acquaintances approached the future victims with promises of well-paid unskilled jobs outside the country (usually babysitter, waitress, seller or house keeper). Victims were usually approached in locations frequently visited by children and adolescents (in clubs, on the street or even at their homes).

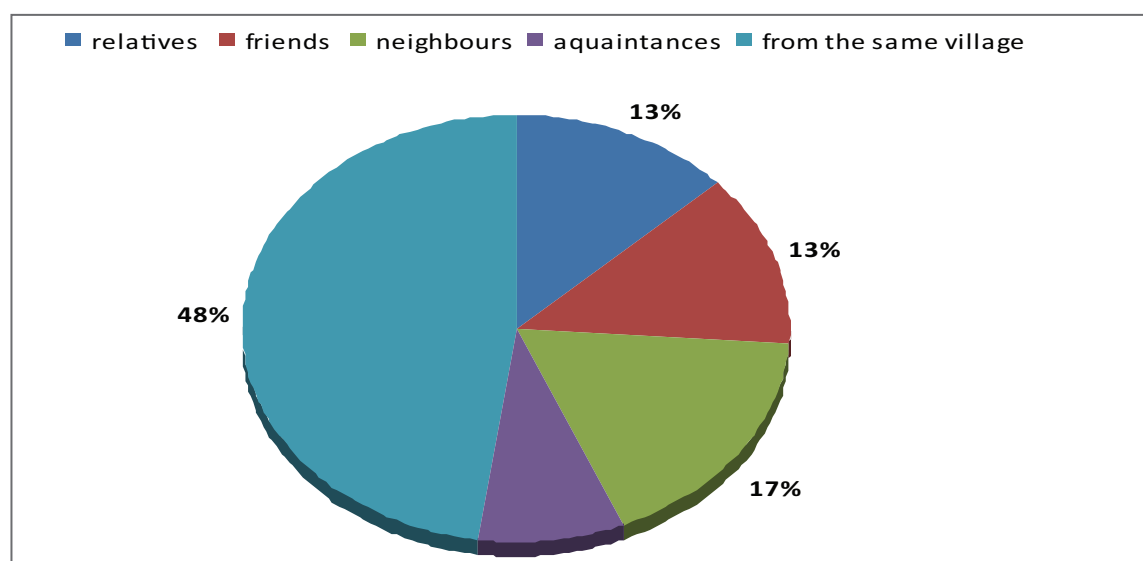
In most of the cases recruiters do not leave too much time for victims to think about their proposal - the preparations to leave the country are hasty (two or three days). This way, they do not let the victim carefully consider the offer or seek advice from other persons to get more information about potential threats.

At the same time, there were cases where recruiters targeted children who were already engaged in prostitution. In their case, the traffickers promised jobs that involve „innocent” sexual activities in private clubs or spa salons, or higher income from engaging in prostitution abroad. In some cases recruiters were even buying the children from the local pimps.

In the cases of trafficking in children for the purpose of labour exploitation, the child's family is often directly or indirectly involved in the process. There were frequent cases where parents left the country with their children, becoming victims of labour exploitation along with their children. In such cases migration was seen as the only solution for a decent life, sometimes as the only chance for survival. The departure of the family was organized in advance, by arranging transportation, the crossing of the border (legally, in most cases) and securing a point of contact in the destination country. Usually, the family prepares their departure based upon the experience of their relatives, friends or acquaintances that have been abroad or currently work in a foreign country.

In cases where the family is somehow involved in the process of trafficking, children do not object, being convinced that it is their duty to help the family have a better future.

Figure 4: Relationship between the victim and the accused person



## 5. REPORTING THE CRIME

The choice of investigation methods in cases of trafficking in children (and of trafficking in human beings) is in direct relation with the risks faced by the victims. There are three main methods that can be employed in the investigation of cases of trafficking in persons: **re-active** investigation, based upon victim's statements; **proactive** investigation, based upon the information gathered through special investigation activities; and **preventive** investigation, based upon pre-emptive actions.

Regardless of the investigative method used, the state has a positive obligation to conduct efficient criminal investigation in cases of child trafficking. This duty derives from article 19 of the Code of Criminal Procedure and, especially in the case of trafficking, results from article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, prohibiting slavery, servitude and forced labour. The same is applicable for cases of trafficking in human beings (art. 165 CC).

According to the data gathered, in most of the cases – 73 per cent, the criminal investigation is initiated after the complaint of victims or their relatives and only in 27 per cent of cases – based on a notification or the report of the criminal investigation body. Two cases were initiated based on the complaints of both the victim and her parents and in one case the victim's complaint was supplemented by the report of the criminal investigation body. However, in most of the cases the crime was only discovered *post-factum* – after it was already consumed.

To summarize, one in four criminal cases is being investigated in a proactive manner. Taking into account that Moldovan law-enforcers have been fighting the crime of trafficking since 1992, after such a long period of time, they should have been able to develop more efficient proactive investigative methods for this category of crimes. Scarce financing, lack of political will and proper legal framework as well as other factors have slowed down such developments and, consequently, many victims have been trafficked in other countries.

## 6. PROCEDURAL ACTIONS

### 6.1 Hearing the victim, the injured party and the civil party

#### ***Victim:***

The study shows that victims in 70 per cent of the criminal cases (representing 62% out of the total number of victims) were requested to provide “explanations” before the initiation of the criminal proceedings. As a rule, relevant authorities that possess information that a crime has been committed summon the victims and request them to provide testimony, after which they are being “recommended” to submit a criminal complaint. This situation confirms the proactive character of the actions of law enforcers in identifying the victims of trafficking in children, but also indicates the uselessness and procedural flaws that stem from demanding such „explanations”.

According to article 58 (8) 1) of the CCP, the victim of trafficking is exempted from the obligation to make statements. However, the analysis of case files showed that, contrary to these regulations, 13 per cent of the total number of victims was heard during the criminal investigation phase. The rest of the victims benefited from the right to protection. On the one hand, these drawbacks show that criminal investigation officers, while rushing to gather evidence, fail to inform the victims (the injured party) about their right to refuse to testify. On the other hand, the Figures indicate that criminal investigators are insufficiently familiarized with the criminal procedure legislation. In cases initiated on the grounds of article 206 CC, where the victim has the special quality of being a minor, it is even more relevant to apply the above-mentioned legal provisions, with a view to avoid re-victimization, and moral re-traumatisation.

#### ***Injured party:***

The same observations are true in the case of testimonies of injured parties, taking into account the fact that 87 per cent of the total number of trafficked people have been interviewed in this capacity, without prior notice of their right to refuse to provide testimony.

In most cases analysed within the study, the interviewers would focus their questions on general matters related to the facts of the crime. In none of the cases, did the investigator inquire on other important circumstances that would help push the investigation forward. For example, no control questions were asked, despite the fact that such questions are crucial for any investigation, especially given the fact that injured parties often modify their statements with time and that statements often provide the main evidence for the decision on the case.

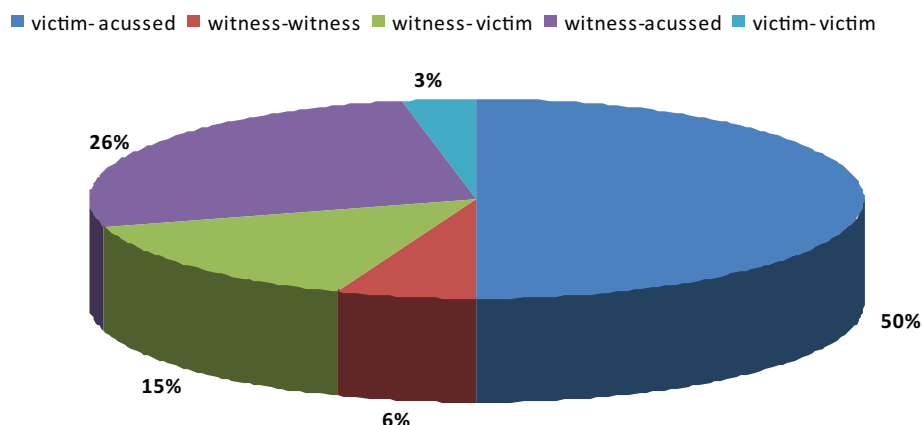
#### ***Civil Party:***

The study shows that out of the total number of injured parties only 8 per cent have requested compensation for moral and/or material damages by submitting a civil claim within the criminal proceedings.

### 6.2 Confrontation

Confrontations were conducted in 77 per cent of cases as detailed in Figure 5 below.

Figure 5: Confrontation



Research has shown that 65 per cent of the total number of victims participated in confrontations. Although international standards<sup>18</sup> recommend avoiding confrontations between the accused person and the minor victim as much as possible, these recommendations have not been fully respected. Moreover, there were no cases in the materials analysed, where the minor would be explained his/her right to refuse to participate in the confrontation under article 113 (6) CCP.

At the same time, the analysis of the cases shows that most often confrontations do not result in new evidence for the investigation. On the contrary, they may have negative impact both on victims, exposing them to the risk of re-victimization and on the overall quality of the criminal investigation, because they can lead to the victim's denial of statements made at an earlier stage.

Although international standards on children's rights recommend avoiding direct contact between the victim and the trafficker in order to prevent re-victimization and traumatising, the study has shown that these recommendations are often neglected by the criminal investigation bodies when investigating child trafficking cases.

### **6.3 Verification of statements at the crime scene**

This technique of gathering evidence was used only in 18 per cent of the cases of child trafficking included in the study. The infrequent use of this action can be explained by the fact that it is usually resorted to only when investigators know where the victim was harboured. At the same time, since in many cases the victims' statements are the basis for the subsequent conviction and, given the possibility of false statements (there were such cases identified as part of the study), it is crucial that investigators employ methods to test such statements, including by means of above-mentioned criminal investigation action.

### **6.4 Presentation of objects for identification**

Objects were presented to victims and witnesses for identification in only 5 per cent of the criminal investigations conducted within the cases of trafficking in children that were analysed in the present study. This small number is due to the peculiarities of the crime which make the procedure useless in most of the cases.

### **6.5 Presentation of persons for identification (line-ups)**

Line-ups are frequently used in criminal investigations of trafficking in persons, given the nature of the crime – where different persons are involved in different phases of trafficking. The study has shown that in 60 per cent of all cases line-ups with suspects/accused were conducted by the investigator for their identification by the victim. At the same time, out of the total number of victims, only to 37 per cent were presented persons for identification.

The study has shown that in the majority of cases investigators resorted to photo line-ups (61% of the cases where line-ups were conducted). In 39 per cent of the cases line-ups were conducted by presenting persons.

According to the provisions of article 116 of the CCP, photo line-ups are only admissible where the suspect is hiding from the criminal investigation body or he/she is impossible to locate. Therefore the probative value of the material thus gathered may be compromised and the court may declare it inadmissible.

### **6.6 Witness testimonies**

Unfortunately, despite the rapid development of scientific/forensic methods designed to properly investigate and substantiate with evidence the commission of different crimes, the study shows that the testimony remains "the queen of evidence". At the same time, the use by criminal investigation body of confrontations, line-ups, repeated and incomplete interviews (without informing the injured party and witnesses of their procedural rights and guarantees) increases the likelihood that initial statements will be changed later in the process, while the failure of investigators to corroborate testimonies with other pieces of evidence decreases the value of the evidence for the sentencing.

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<sup>18</sup> i. IOM Handbook on Direct Assistance for Victims of Trafficking, 2007; ii. Handbook Trafficking in human beings for police, prosecutors and judges Protection of victims' rights in criminal proceedings and beyond, Marjan Wijers, 2008 - [http://bim.lbg.ac.at/files/sites/bim/HANDBOOK\\_AGIS\\_EN.pdf](http://bim.lbg.ac.at/files/sites/bim/HANDBOOK_AGIS_EN.pdf).

Unfortunately, in none of the cases analysed did the authorities make use of the special means for hearing witnesses and victims – special technical equipment<sup>19</sup>, increased security measures for victims and witnesses, concealing victims' identities and the like. Although the legal framework provides for a series of such protection measures for victims that testify within criminal proceedings on trafficking cases, these measures are applied only sporadically. Another procedural possibility that is often ignored by the investigators is the hearing of victim testimonies by investigating judges in the conditions set by article 109 of the CCP, which would allow them to secure evidence without resorting to multiple interrogations and thus to prevent re-victimization and sometimes even to ensure a more efficient delivery of justice, since in some cases victims or witnesses are out of the country at the moment of trial.

The comparative analysis of the witness hearing procedures shows that the witnesses for the accusation were considerably more numerous than those for the defence, the ratio being 90 per cent to 10 per cent. One explanation to this difference is the fact that witnesses for the defence are usually presented and heard only in the trial phase, being concealed during the criminal investigation phase. This tactical approach is used by the defence to avoid the verification by the criminal investigation body of the truthfulness of these witnesses' statements. This also indicates the lack of legal leverages of state accusation to conduct additional criminal investigations (at the trial stage) to identify false statements.

The study also shows that direct witnesses, those who testify on the factual circumstances directly related to the crime, make up 52 per cent of the total number of witnesses. Out of these, seven per cent are witnesses for the defence and 45 per cent are brought by the accusation. Indirect witnesses, who testify about indirect circumstances of the crime, are present in almost each case file, constituting 48 per cent of the total number of witnesses, three per cent being defence witnesses and 45 per cent representing accusation. At the same time, there are frequent cases where indirect witnesses' statements are not related in any way to the circumstances of a case, lacking relevance and substance.

The predominant use by the prosecution of witness and injured party's statements as evidence in court may be a reason for the frequent legal re-framing of actions of trafficking in persons as elements of other crimes, which are usually less serious.

In 20 per cent of cases, witnesses for the accusation and victims were either relatives or friends. In many cases, the only pieces of evidence besides the statements made by the victim were those made by their relatives, but which were based on victim's own testimony. Sometimes, convictions are made on the limit, being mostly based on the victim's testimony, even though the accusation presented other witnesses.

## **6.7 Crime scene investigation. Search and Seizure**

### ***Crime scene investigation***

In 55 per cent of case files, investigations at the crime scene were conducted in order to discover traces of the crime and relevant material evidence as well as to establish circumstances in which the crime was committed and other circumstances relevant for the investigation. In 15 per cent of the cases, authorizations from an investigative judge were needed to perform these actions, hence only one third of these investigations have been fully authorized.

However, the utilization of this method of investigation for this category of crimes leads to few results and the resulting evidence is of very low probative value. None of these actions resulted in identification or seizure of relevant material objects that would help elucidate the circumstances of the crime. Thus, the investigative reports from the crime scene did not contain any relevant information on evidence.

### ***Search and seizure***

Searches were conducted in 18 per cent of the cases, 80 per cent of which led to the discovery of objects. In 50 per cent of these searches, the objects seized were relevant for the case materials. All of the searches were

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<sup>19</sup> In 2012 IOM with the financial support of the United States Government procured and installed in three prosecutors' offices and three courts of appeal in Chisinau, Balti and Cahul (covering three different regions of Moldova - Center, North and South) video conferencing equipment, which became fully operational by end of 2012 year and which enables interviewing victims of trafficking in persons and other crimes from distant secured locations outside the court premises in compliance with the provisions of the Moldovan Code of Criminal Procedure, in this way ensuring the safety and protection of victims from and against any threats from accused persons.



authorized by the investigating judge, except for one, which was done on the spot (*flagrante delicto*) based upon a motivated order, authorized ex-post facto by the judge within the legally prescribed time frame of 24 hours.

The study finds that searches and seizures as a rule produce relevant evidence for the investigation of trafficking. However, law enforcement agencies do not resort to these actions as often and as consistently as they could. This is the case for both trafficking in persons and other crimes.

## **6.8 Wiretapping and surveillance**

In only one case (5% of the examined files) the investigators resorted to wiretapping. The procedure was duly authorized.

Although criminal investigation in trafficking cases often starts long after the act is consumed, wiretapping can yield important results if it is part of a well-planned series of special investigation and criminal investigation actions. As a rule, investigators wiretap the discussions between the victim and the trafficker, being less active in pursuing the traffickers relationship with other (potential) criminals to further uncover their criminal activity.

Surveillance measures are as a rule undertaken in the initial stage of the investigation of cases of trafficking in persons. The purpose of these measures is to identify the network of criminals involved in the crime. Surveillance (mobile or static) is conducted on a case-by-case basis. Static surveillance is used in all places where criminal actions are reasonably expected to take place, based on the evidence available. These may include places where victims are recruited, travel agencies and the like. Static surveillance can help identify the method used to recruit victims, the persons involved in different criminal activities, the number of victims or potential victims and the way traffickers communicate with each other.

Bearing in mind that surveillance poses a risk to the confidentiality of the operation, it is highly important to establish legal grounds that justify the detention or arrest of the trafficker. The primary purpose of such surveillance methods is to obtain confidential information and minimize the risk of being uncovered.

## **6.9 Expert examination**

Expert examinations are very important in cases that involve minors. That is why, in some cases, when there is a need to determine the age or the psychological condition of a person, the law provides for mandatory expert examination. Besides the right to propose such an examination, parties are also entitled to recommend an expert who should participate in the examination.

If the parties are willing to cover the expenses for the expert they invite, the criminal investigation body or the court can deny the request only if the circumstances stipulated in article 89 (1) 1-5) of the Code of Criminal Procedure are present. Failure to conduct an expertise when law requires it is a ground for quashing the court's decision.

The forensic psychiatric examination of minors is an extremely difficult procedure from both medical and legal points of view. One reason for this is that minors often exhibit peculiar behaviour patterns and some manifestations of mental illnesses in them may differ significantly from adults.

Only in one (5%) of the examined case files both a psychiatric examination and a drug screening were conducted. This shows that criminal investigation bodies use this evidential procedure rarely, because the investigation of the crime often starts after a significant time period since the crime is committed, so that it is difficult or even impossible to confirm the character of the damages caused to the victim.

The files examined do not contain any record on the use of forensic psychological examination to establish psychological damages caused through the exploitation of the trafficked child. The conclusions of the expert psychologist can be very useful in substantiating compensation claims for moral damages. Moreover in contrast with forensic, psychiatric and drug examinations, the psychological examination can be conducted even after a long period of time, maintaining its relevance.

## **6.10 The quality of procedural acts**

The study team identified a series of deviations from the criminal procedural legislation. Among them:

- cases where the indictment report is not approved by the superior prosecutor (in two cases);
- cases where the list of evidence contains items that are not recognized as evidence under article 93 of the CCP, such as explanations, victim's complaint, the report done by the police officer and the like (in approximately 50% of case files).

Below are some examples of other violations:

*a. In the case of M., two other persons (A. and E.) were recognized as suspects. It could be seen from the case materials that these persons had been accused under article 165 CC in another police station. The file contains statements against them made by M. and other persons, who testified about their involvement in the trafficking process. However, charges against the two were dropped, without any explanations as to the reasons for this decision.*

*b. In the case of N., both the victim and the suspect V. recognized the train attendant that took the victim and transported her without any ticket or documents. However, there was no legal action against him.*

*c. In another case, the fact that authorities failed to cancel an order to drop criminal charges led to the cessation of the entire proceedings through the decision of the Court of Appeal.*

*d. In many cases, prosecutors do not list all the pieces of evidence in the indictment report, but include the mention "other evidence or other materials related to the case".*

*e. A minor victim P.D. was interviewed without the presence of the pedagogue or counsel, as required by law.*

## 7. RIGHT OF DEFENCE AND REPRESENTATION

### 7.1 Procedural status of the trafficker

#### ***Suspect***

Thirty two persons were recognized as suspects in the cases of trafficking in children included in the present analysis. Seventeen of them have been detained in police custody, arrest (apprehension) reports being drafted in compliance with the law. In the analysed cases, 30 ordinances had been adopted recognizing the quality of a suspect. According to article 63 (1) CCP, a person can be recognized as a suspect with one of the following procedural acts, depending on the case: arrest report; order or decision to apply a non-detention preventive measure; order to recognize a person as a suspect. However, the cases included in the study show that the criminal investigation bodies often adopt two procedural acts to recognize a person as a suspect, so that every second arrest report (15 persons) is doubled by an ordinance to recognize a person as a suspect.

#### ***Accused***

In the course of criminal investigation 31 persons were charged for trafficking in children and 43 indictment ordinances have been adopted. The larger number of indictment ordinances in comparison to the number of persons accused is explained by the fact that ordinances are very often used to justify the need to apply a preventive measure in the form of remand detention immediately after the expiry of apprehension period. The quality of the initial indictment ordinance is different than the final one, the later containing more sustained evidence confirming the crime of trafficking. The average period for maintaining the status of the accused is 70 days.

### 7.2 The right of defence

In the course of the study no violations of the right to have an attorney for the accused person, chosen or provided, have been identified. The accused persons have been provided with legal assistance at all stages of the criminal process (criminal investigation, court proceedings, including in appeal and cassation).

The study has shown that at the initial phase of the criminal investigation, 65 per cent of suspects had a private attorney, while 35 per cent were provided with an attorney by the state. After the charges were pressed, 40 per cent of the accused persons have chosen contract attorneys, while 60 per cent of them benefited from the services of the attorney provided by the state. Thus, we can see that, as the criminal investigation advances, the number of accused persons who chose to be assisted by a private defender decreases. There can be several reasons for that such as lack of financial resources, loss of trust in a contracted attorney and so on.

Another factor to be taken into account is that, based on the analysed data, those who are suspected/accused of trafficking in children in Moldova are most often only involved in the actions of recruitment and transportation (when present), so that do not generally obtain considerable financial resources from their criminal activity (of trafficking), as opposed to the exploiters in the destination countries who receive the bulk of the money.

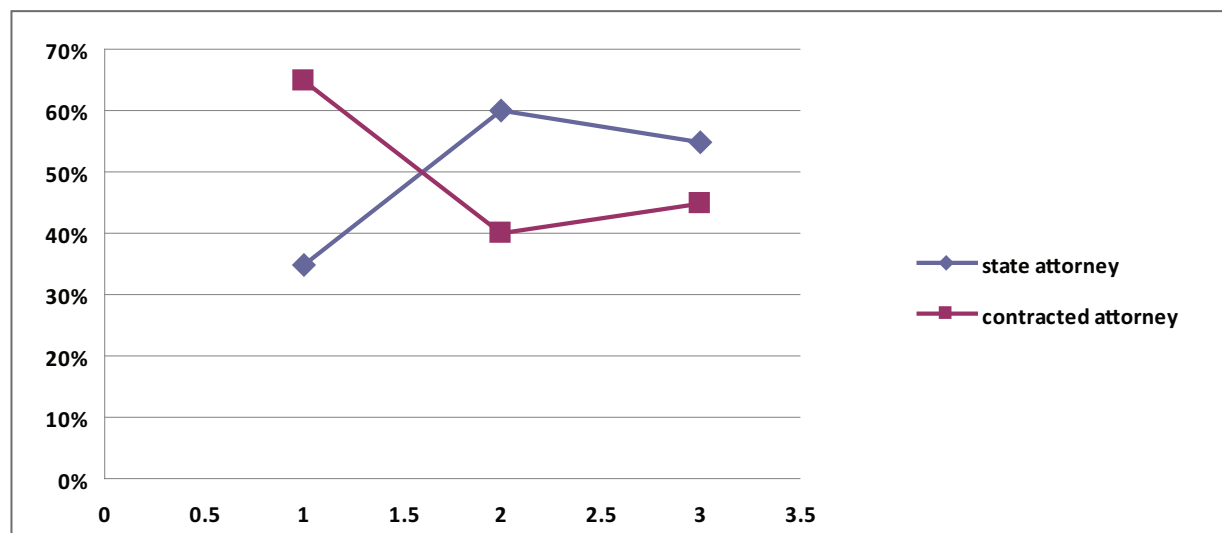


In the trial stage the proportion of private and state-funded attorneys is 45 per cent to 55 per cent, showing a greater balance than in the initial phases of the criminal process. These Figures also show that 5 per cent of the accused chose state-funded attorneys over private ones in the trial stage, which indicates a certain shift in the trust of the accused for the attorney's services.

In none of the cases did the criminal investigation body order the attorney to be substituted or dismissed.

For a better analysis, the data on the right to defence is presented in Figure 6:

Figure 6: Defence of the accused person



### 7.3 Representation of the victim

Out of the total number of victims (37) from analysed files, only one third benefited from the services of an attorney.

At the same time, the case files show that, as a rule, it is the NGOs who provide legal assistance for the injured parties in cases of trafficking in children. At the same time, the law provides for the right of the victim of a very serious or exceptionally serious crime to be assisted by a state-funded attorney when the person cannot afford to pay for one (article 58 (4) 2) CCP). However this right is, in most of the cases, not properly explained to the victim and his/her representatives and thus is often only theoretical. It would be expected that such state-provided assistance should follow a written request from the victim. But victims cannot write such requests simply because they are not aware of such a possibility.

It is therefore necessary that in such cases, a special information note explaining this right should be handed to the victim, under signature. A mere inclusion of this right in a general list of other procedural rights should be considered insufficient and inefficient, as this would render this right purely formal and useless. Indeed the situation when the representatives of the criminal investigation body or the courts fail to explain to the victims, in an accessible language, the essence of their right to free-of-charge legal assistance generates deficiencies in the protection of the child's fundamental rights and the reparation of the damages caused through the crime of trafficking.

### 7.4 Victim compensation

According to the principle of a fair trial, justice has the purpose not only to punish those guilty of committing crime, but also to fully repair the damages caused to the victim by this crime. Moreover, according to article 219 (8) CCP, the claims of persons that were directly harmed by the illegal act punishable by the criminal law have priority when compared to the claims of the state against the criminal.

In a number of criminal cases of trafficking in children victims initiated civil actions against perpetrators. Out of the total number of cases on trafficking in children, every fifth victim has claimed compensation for the damages caused through this crime.

The data on compensations can be summarized as follows:

- total amount of claimed damages (material and moral) – MDL 309,000 (USD 25,750),
- minimum claimed amount – MDL 7,000 (USD 583),
- maximum claimed amount – MDL 72,000 (USD 6000),
- average claimed amount – MDL 77,250 (USD 6,437).

The sum of the moral damages claimed at the criminal investigation stage by those 20 per cent of victims was of MDL 259,000 (USD 21,583). The same amount was requested in the courts, whereas the amount granted by the courts was only of MDL 60,000 (USD 5000). In the appeal stage, courts granted compensations in the sum of MDL 252,000 (USD 21,000).

The reduced number of cases where victims claimed compensation for the damages caused by the crime of trafficking is in direct relationship with the reduced number of victims that were assisted by an attorney. This is confirmed by the fact that in most of the cases where victims were represented by lawyers they initiated civil actions for the compensation of damages.

## 7.5 Measures to protect the victim

Even though a particular feature of this crime is that victims are often influenced by blackmail, threats or other illegal actions, only in 13 per cent of cases of trafficking in children, there was information to confirm the imminence of such risks. The following measures to protect the victim were taken:

- an order of personal protection was issued,
- protection of victims goods was ordered,
- protection of the family, life and health of the victim was ordered.

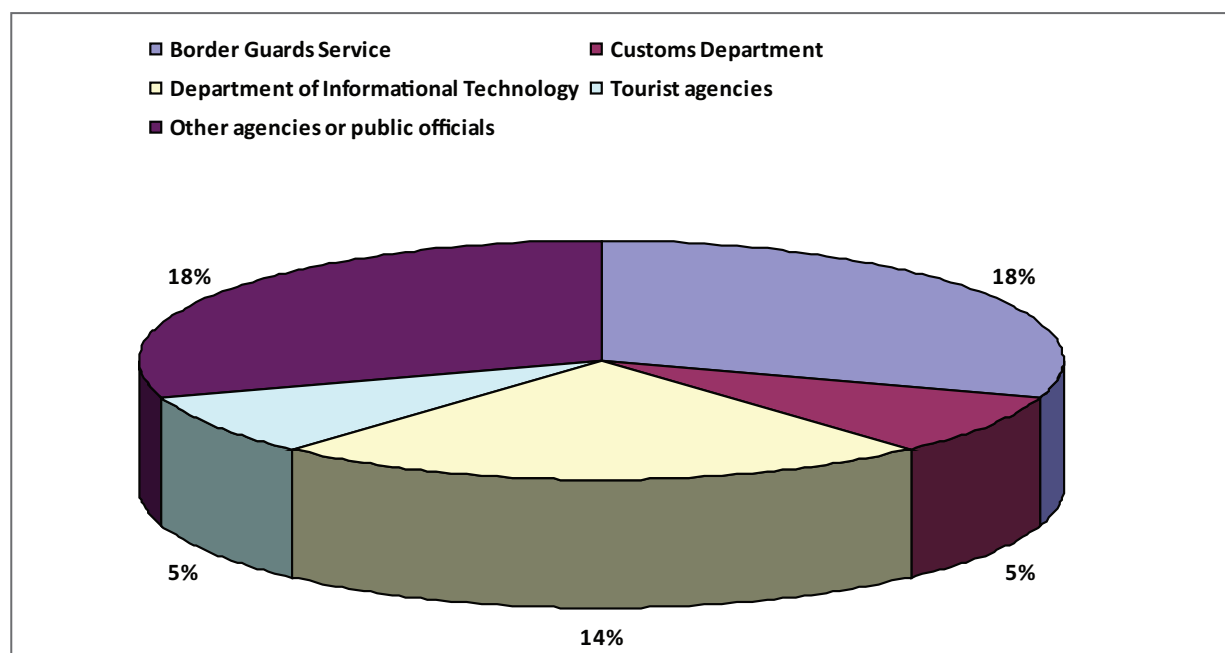
One of the conclusions reached in the study is that, while in the pre-trial phase, prosecution is highly interested in the protection of the victim so as to secure evidence against perpetrators (including by keeping the victim's testimonies unaltered), during the trial this interest is less pressing and the victims are left unprotected and may determine them to change their testimonies.

## 8. NATIONAL AND INTERNATIONAL COOPERATION

### 8.1 Interdepartmental cooperation for the investigation of child trafficking

The results of the study show that criminal investigation bodies requested information from a range of institutions and organizations in order to find out circumstances that were relevant to the given criminal case, as follows from Figure 7 below.

Figure 7: Interdepartmental cooperation



In the vast majority of cases, state bodies do provide information at the official request of the criminal investigator. However, the documentation of this information is still troublesome. In the absolute majority of cases such data is simply reflected as „information” without being presented with necessary signs of an official document (signature, stamp, registration number and the like) and, in most cases, without being supported by special orders to include them as evidence in the criminal case (in accordance with article 157 (2) of the Code of Criminal Procedure).

## 8.2 International legal assistance

Cooperation in conducting joint investigations can take place in the form of a rogatory commission and by transferring obtained information through operative means. Such data is exchanged at the level of the General Prosecutor's Office, Ministry of Interior and Ministry of Justice. When the law requires the authorization by the investigating judge of certain procedural measures, the same requirement applies to the exchange of certain information. Thus, in the case when there is a restriction to use a category of information, as when the information represents state, commercial or banking secret, it will be only sent upon authorization by the investigating judge, following a motivated request of the prosecutor. Data regarding the use of rogatory commissions in analysed cases of trafficking of children are indicated in the table below.

**Table 1: Requests for international legal assistance**

Number of requests	Requested state	Answer in less than 2 months	Answer in between 2 and 6 months	Answer in more than 6 months	No answer
6 (27% of the total number of cases)	Ukraine-2 Russia- 3 Poland -1	1	4	1	

Requests of the rogatory commission in the context of this study have been successful even if the answers were partial in most of the cases.

Analysing the judicial practice, the study showed that in cases of trafficking in persons the existing legal framework on international legal assistance in this field is not correctly applied by the criminal investigation body, the court, and by their counterparts from other countries. For example, the requests of rogatory commissions are not filled in the required form (sending requests to the wrong bodies, such as a division within the Ministry of Interior) or there are no further actions on the requests for search or citation of persons. In one case, Moldovan authorities requested the verification of information on the involvement of a Moscow police officer in sexual exploitation of children. Instead of undertaking identification measures, the competent bodies of the Russian Federation, requested additional information regarding the position held by this officer. This kind of answer marks a formal attitude of these bodies towards the existing commitments in this field.

Insufficient use of international legal assistance mechanisms leads to modest results in combating the trafficking in persons. Usually, recruiters, those who harbour, transport or transfer the victims are prosecuted, whereas persons that are directly exploiting or managing the trafficking activity and get the lion's share in the profits escape criminal liability.

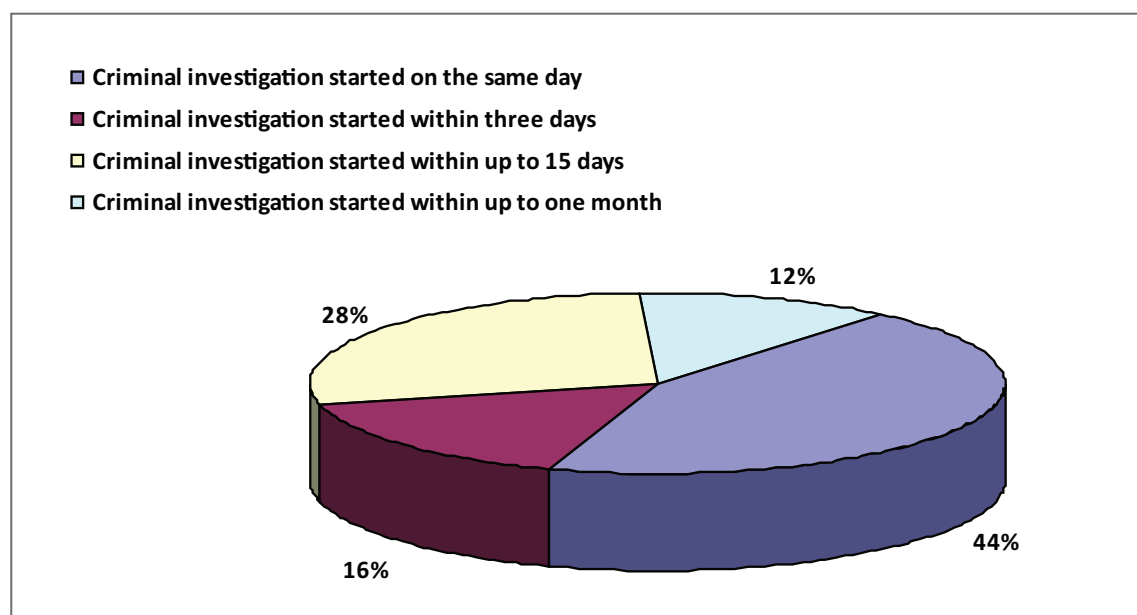
Another form of international legal assistance is the institution of extradition. In the case of trafficking, given the dynamics of the movement of traffickers, determined by the particular features of this crime, this form of international cooperation is used less frequently. The European Convention on Extradition (of 13 December 1957) and its two additional Protocols (of 15 October 1975 and of 17 March 1978), and the Convention against Transnational Organized Crime, establish some guidelines with this regard, which are also included in the Moldovan Code of Criminal Procedure (articles 541-550, 559<sup>1</sup> and 138<sup>1</sup>). In light of the above-mentioned conventions, persons charged with trafficking in persons can be extradited. In cases examined by the study, there were 2 cases of extradition, which represent 9 per cent of the total number of cases.

## 9. PROCEDURAL COERCIVE MEASURES

### 9.1 Detention in police custody (apprehension)

The study has found multiple gaps in the procedural recording of arrest and detention in police custody of persons suspected of committing the crime of trafficking in children. Arrest reports do not always state the legal grounds and motives for the person's apprehension, the reasonable suspicion and references to the applicable law. In many cases reports contain general standard phrases quoted from the CCP, without any reference to the specific circumstances of the case. The frequency of various grounds for police detention in cases of child trafficking, is provided in Figure 8 below:

Figure 8: Grounds for retention stipulated in the CCP



The legislation prescribes that detention by police should take place only for a short period of time not exceeding 72 hours (minors – 24 hours) and that the person detained has to be brought in front of the investigating judge as soon as possible to examine the possibility of further detention or, depending on the case, to set the detained person free. According to the study, in almost all of the cases the persons were detained for the maximum period of time provided by law – 72 hours.

### 9.2 Preventive arrest (remand custody)

Preventive arrest consists in the detention of the suspect, accused, defendant in places and under the conditions provided by the law. The grounds and conditions for keeping a person in remand custody, as well as for the extension of the period of this measure are stipulated in articles 185 and 186 CCP.

In the analysed cases, 23 persons were recognized as suspects at the criminal investigation phase, with an average period of detention of six days.

In 77 per cent of the studied case files under article 206 CC, 21 requests for obtaining detention warrants have been submitted, 90 per cent of which have been approved. The average period of time for remand custody of the accused was 35 days. This period of time indicates a positive practice, especially compared to the overall average period of time of the criminal investigation, which is about eight months.

In 10 per cent of the case files, the prosecutor appealed the court's refusal to issue a detention warrant.

The average period of time for keeping defendants under custody on remand during the trial at first instance court was of 96 days and of 196 days during appeal hearings.

When issuing a prison sentence providing deprivation of freedom, the court often mentions the fact that the remand custody has been maintained but fails to indicate the period of detention. Such cases raise

questions as to the precise moment from which the duration of remand custody is calculated: either from the point of extension based on the court order providing for the period of remand detention, or starting from the moment the sentence is pronounced. Sometimes this can lead to situations where detention is continued without a properly adopted extension of the preventive measure, which goes against article 5 of the European Convention on Human Rights.

#### Outstanding cases:

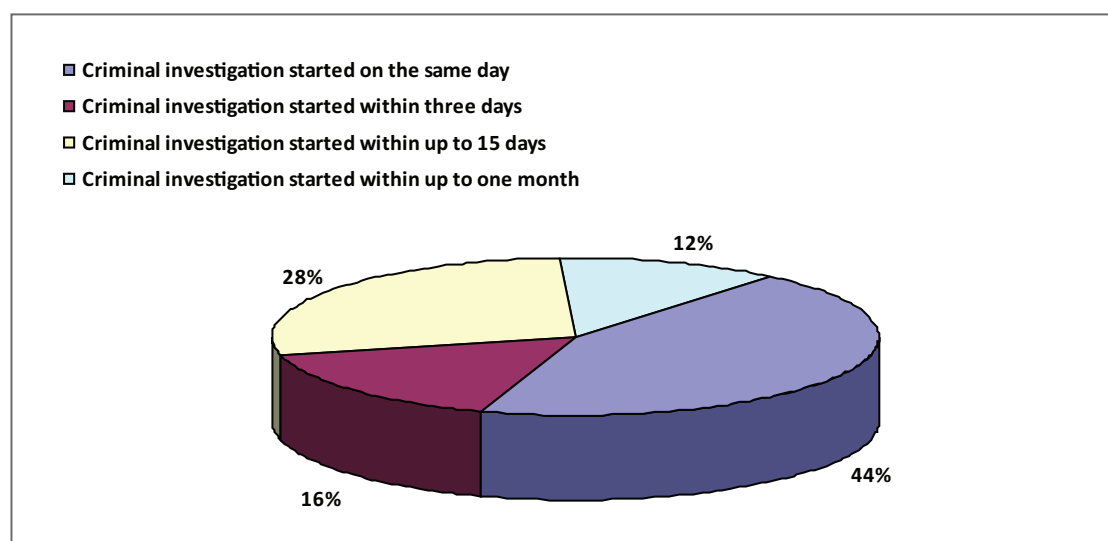
*A criminal case launched on the grounds of art 206 and 165, contained no data on the application of remand detention, no request of the prosecutor, no decision by the investigating judge and no detention warrant, despite the fact that the content of the indictment showed that the defendants were still in pretrial detention. The sentence applied included imprisonment for eight months and nine days, but the defendants were set free from court because at the moment of court proceedings seven months and one day had passed since the investigation was initiated.*

## 10.TIME FRAMES FOR CONDUCTING CRIMINAL PROCEEDINGS

According to the legislation of the Republic of Moldova, criminal investigation and court proceedings are to be conducted within reasonable time limits. The following findings were made based on the inquiry on cases of trafficking in children.

With regards to the period of time from the moment the complaint was filed to the date the criminal investigation was launched, the following trends were identified:

Figure 9: Time frames for initiating criminal investigation



The average period of time from the initiation of criminal investigation to the moment of pressing charges is five months, and it takes additional months – usually up to eight – to send the case to the court.

The time necessary for the court examination of cases under article 206 CC is on average of:

9 months – for first instance court,

5 months – for appeal,

3 months – cassation,

10 months – cassation in annulment.

If one would generalize all the time frames, starting with the criminal investigation and ending with examination in courts, on average the term of a case examination is of several years, which includes the use of appeals procedures. The average period of time from launching the criminal investigation to the pronouncement of a final sentence (at first instance court) is approximately 17 months. Cases that included ordinary and extraordinary appeals, the case examination lasted on an average for three years. In one case, the maximum examination period of an appeal was two years and four months.

According to the studied cases it was concluded that the extension of the time for criminal investigation was mostly done without proper justification. These delays are often justified with the “necessity to conduct further actions within the criminal investigation”. In other cases more concrete prolongation reasons are brought up, such as the need to interview the witness, to obtain phone conversation transcripts, time necessary for translations, and so forth.

## II. COURT PROCEEDINGS

The total number of hearings that took place in the context of the 23 analysed files was 225, which means that, on average, there were approximately 10 hearings per each case.

The analysis of the duration of proceedings in first instance courts shows the following:

**1. The period of time from the date of sending a case to the court and the date of the preliminary hearing** – 23 days on average for each case. Hence, the period of time for transfer and holding preliminary hearings respects the time frames provided by the law.

**2. The period of time between the date of sending the case to court and the date the sentence is read** – 253 days on an average for each case.

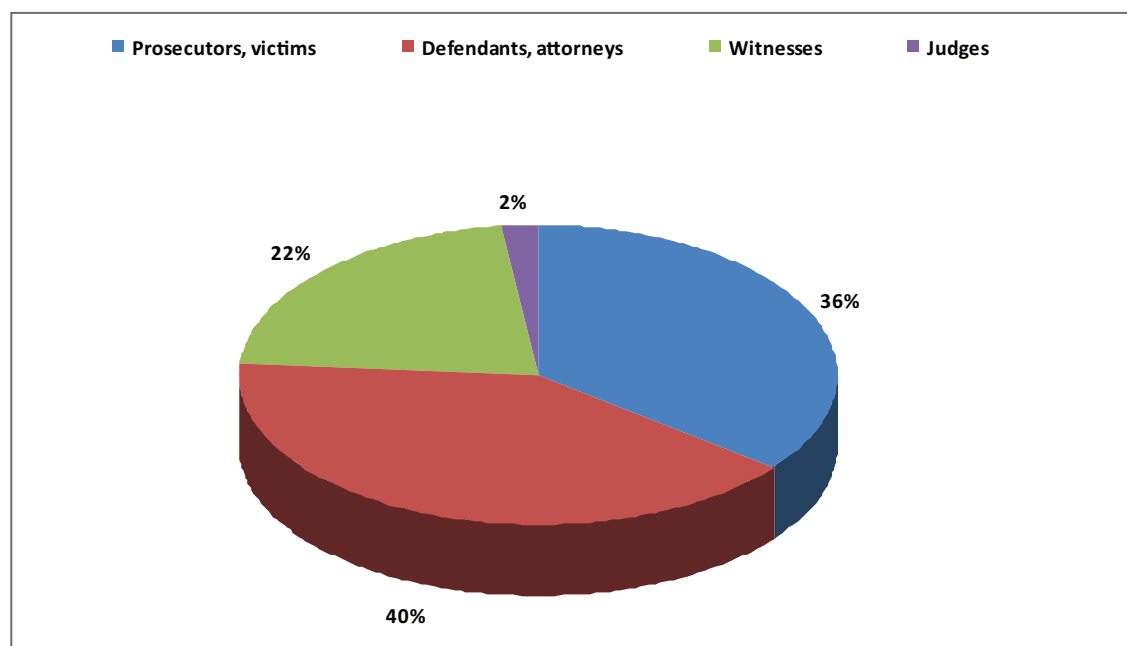
**3. The period of time from the pronouncement of the sentence to the final editing of the decision** – 26 days on an average for each case. Thus, this Figure indicates that judges do not follow the time frames set by law for drafting the sentence, which is of 10 days according to article 343 CCP.

## 12. PARTICIPATION AND THE BEHAVIOUR OF PARTIES IN COURT HEARINGS

The study shows that out of the total number of hearings, 146 (64%) had been postponed, because of different reasons such as:

absence of the judge – 2 per cent of hearings,  
absence of the prosecutor or of the victims – 36 per cent of hearings,  
absence of the defendant or the attorney – 40 per cent of hearings,  
absence of witnesses – 22 per cent of hearings (Figure 10).

Figure 10: Percentage of postponed hearings



In conclusion it can be said that approximately two thirds of all court hearings did not take place. The fact that case hearings are frequently postponed discourages and demoralizes participants in proceedings, which influences the quality of justice (for instance, witnesses don't come to further hearings, the quality of statements is decreasing over time).

## 13. SENTENCING

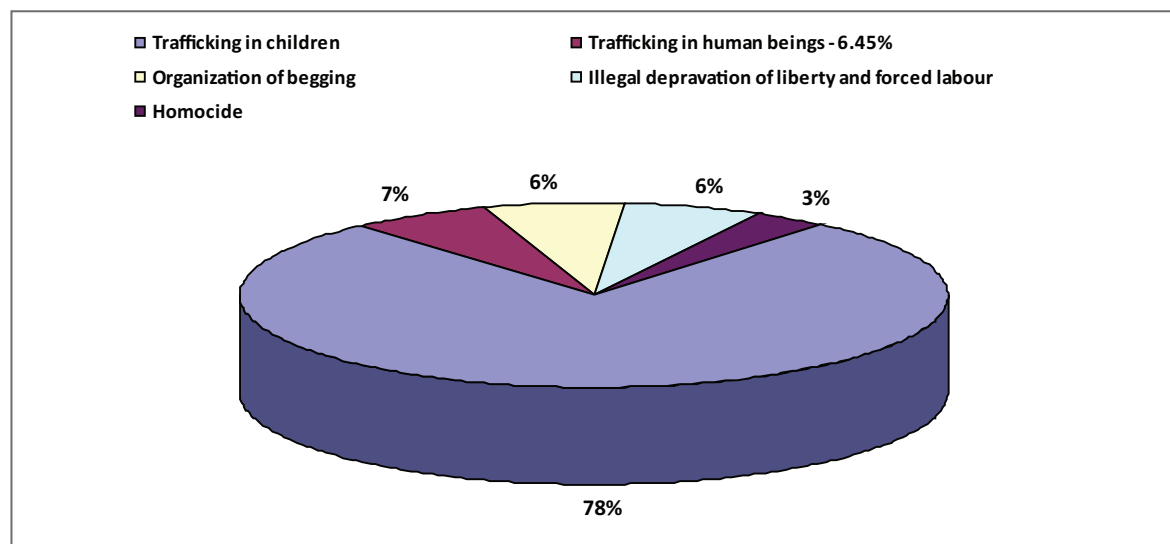
### 13.1 The position of the state prosecutor

Representing accusation on behalf of the state, the prosecutor is guided by the law and his own conviction determined by the evidence adduced within the court hearings.

In the cases analysed within the present study, in his pleadings the prosecutor has requested the following classification of the defendants' actions:

- 77.42 per cent - trafficking in children (article 206 CC),
- 6.45 per cent - trafficking in human beings (article 165 CC),
- 6.45 per cent - organization of begging (article 302 CC)<sup>20</sup>,
- 6.45 per cent - illegal deprivation of liberty and forced labour (article 166 and 168 of the CC),
- 3.23 per cent – homicide (article 145 CC) (Figure 11).

Figure 11: Classification of defendant's actions



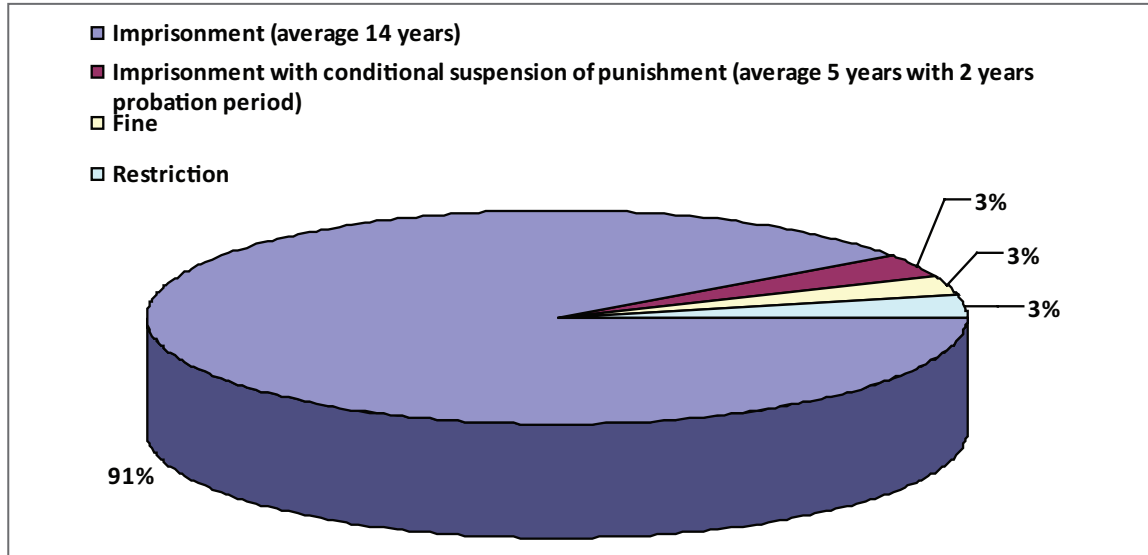
<sup>20</sup> Under the Moldovan Criminal Code beside trafficking in children (article 206 CC) and trafficking in human beings (article 165 CC) for begging purposes, there is another criminal offence – organization of begging (article 302 CC). The main distinction between the two crimes resides in the purpose: in case of organizing begging, the purpose is exclusively expressed in *obtaining unjust material profit for oneself or for another*, while in case of trafficking in children/human beings, the perpetrator's goal is to *exploit the victim through begging*. Another distinction between the two crimes is the fact that in case of organization of begging the victim can retain certain part of the begged goods, while in cases of trafficking for begging purpose, as a rule, victims do not get any benefits (except in rare cases and only in very insignificant amounts). One distinction between article 165 CC and art 302 CC is the fact that the person engaged in begging consents to it. It should be noted, however, that article 302 CC does not apply when the person engaged in begging is a minor as his/her consent is irrelevant. In such a case the acts are classified as trafficking in children (article 206 CC). Organizing begging can occur when the parent begs together with his/her child. **These 6.45 per cent of cases of classifying trafficking in children cases into organization of begging referred to situations when parents practiced begging (with their will) taking their children with them.** Given the fact that article 302 CC is too ambiguous, law enforcers practiced reclassifications, as is ascertained in this Study. Therefore, the IOM experts, who developed the present Study, already drafted a new formula of this article and submitted to the Permanent Secretariat of the National Committee for Combating Trafficking in Persons.



The prosecutor requested the following sanctions in court:

- imprisonment for 28 defendants (out of 31) - for an average of 14 years;
- imprisonment with conditional suspension of punishment for one defendant – an average of five years of prison with a probation period of two years;
- fine for one person;
- restriction for one person (Figure 12).

Figure 12: Sanctions requested by prosecutor



In the studied cases there were no records of changing the punishment requests during the trial with the view of asking for a harsher punishment, nor there were any records of that would show that the prosecutor introduced additional evidence.

### 13.2 Legal classification of crimes by the court

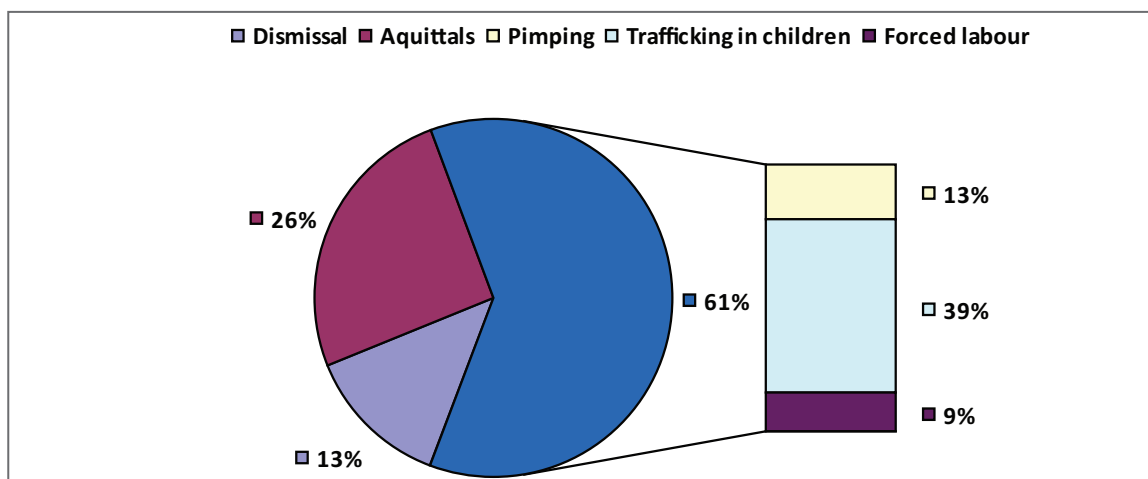
In the cases included in the study sample, courts of first instance adopted the following sentences (Figure 13):

**Conviction** – 14 sentences (61%), out of which 39 per cent classified the act as trafficking in children (article 206 CC), 13 per cent - pimping (article 220 CC) and 9 per cent - forced labour (article 168 CC).

**Acquittal** - six (26%)

**Dismissal of criminal proceedings** – three (13%)

Figure 13: Sentences adopted by first instance court



In the end, out of the 31 persons accused under article 206 CC, only 18 were finally convicted for this crime, which represents 58 per cent. Hence, in 19 per cent of cases the classification of the crime in the final sentence did not coincide with the prosecutor's position (in 77% of cases the prosecutor has requested the case to be classified under article 206 CC and only in 58% of cases under this article a final sentence of conviction was pronounced).

None of the first instance courts has included any reference to the national legal norms that specifically regulate trafficking in persons, or to the international conventions in the field to which the Republic of Moldova is party. Although this fact could not be interpreted as an error on behalf of the courts, it still represents a gap in the process of application of the legal framework in force.

### 13.3

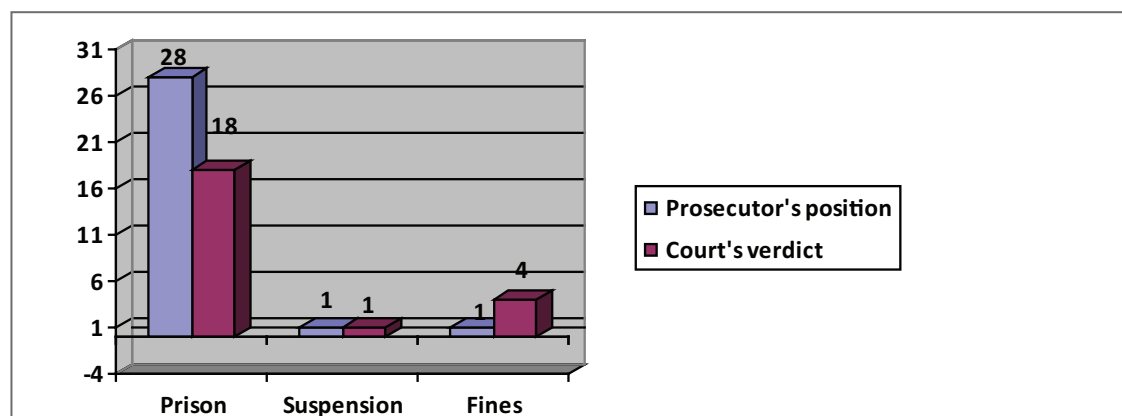
### Punishments

Courts of first instance have applied the following punishments in the cases included in the present Study:

- imprisonment for 18 defendants (out of 31) to an average of seven years,
- imprisonment with conditional suspension of the punishment for one defendant,
- fine for four persons - an average of MDL 12,000 (USD 1000) each,
- interdictions for two persons.

Courts have often taken a different position than that of the prosecutors' regarding the punishments, as shown in Figure 14 below:

Figure 14: Position of the prosecutor compared to the position of the court

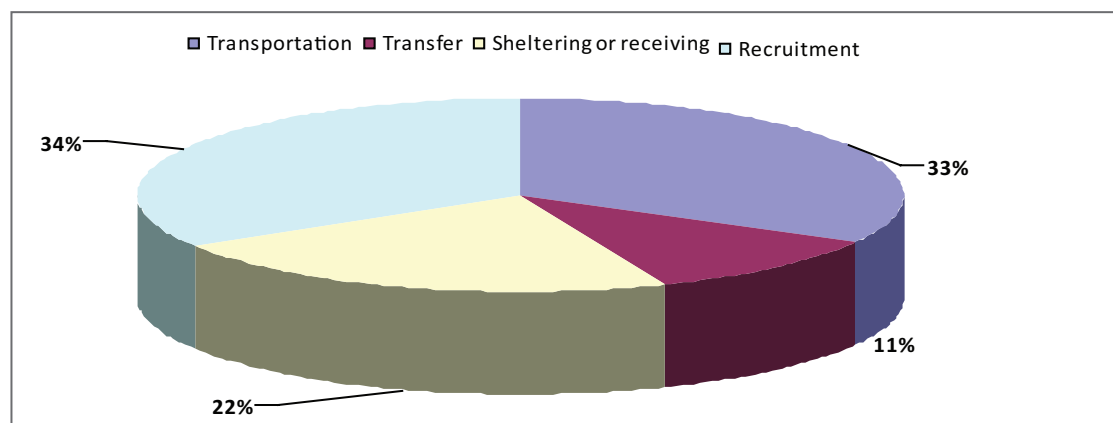


The analysed cases did not contain records as to the aggravation of the indictment in court. Nor was any additional evidence introduced.

### 13.4 Criminal acts according to court decisions

Courts of first instance have classified defendants' actions as trafficking in children as indicated in Figure 15.

Figure 15: Incriminating actions according to sentence (article 206 CC)



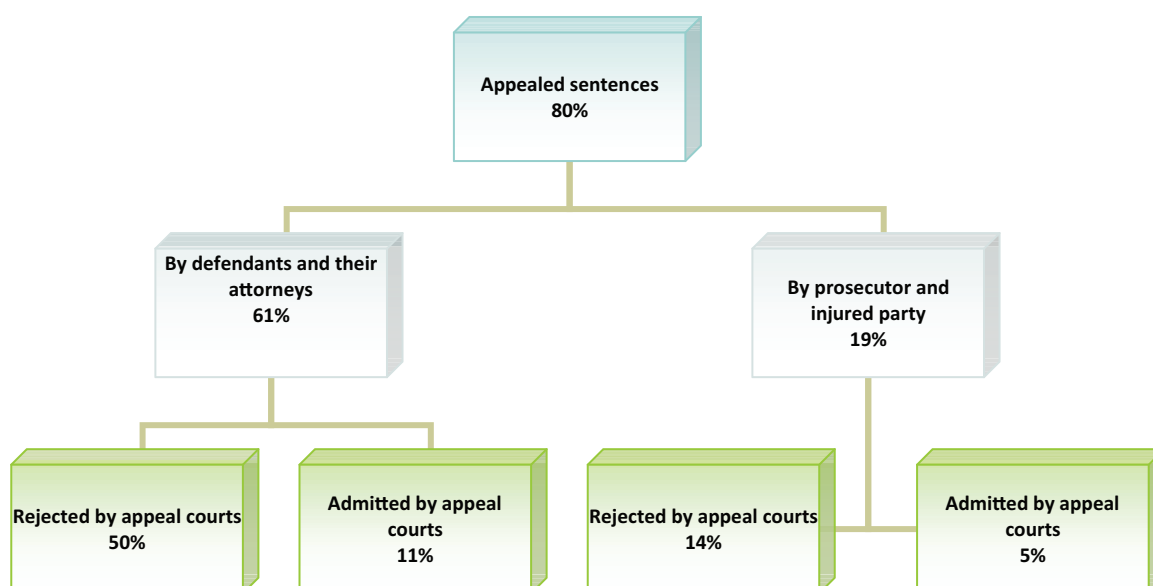
The data included in the chart above confirms the position of Moldova as a country of origin for trafficking in children, because the incriminated acts reflect initial phases of the process of trafficking, while lacking further steps of exploitation. Cases of harbouring and transfer of victims are explained by the fact that the majority of victims are from rural areas and harbouring takes place in urban areas, usually in the cities of Chisinau, Balti or Cahul.

## 13.5 Appeals

### *First appeal*

The study has showed that 80 per cent of the sentences pronounced by the courts of first instance were challenged in appeal. The majority of appeals were motivated with failed classification of the criminal act, the illegal character of the sentence, disagreement with regards to the punishment set by the court of first instance, and others (see Figure 16).

Figure 16: Appeals



In conclusion, it can be said that most frequently appeals are initiated by the defence side, the majority of which (82%) are rejected on the basis of lacking necessary argumentation.

In terms of the arguments employed, appeals in 31 per cent of the cases under article 206 of CC were grounded on the incorrect classification or on the illegality of the sentence. The vast majority of appeals initiated by the defence are rejected because of their weak motivation.

### *Second appeal*

The study showed that 80 per cent of sentences, which were challenged in appeal, were also further challenged in second appeal (cassation) with the Supreme Court of Justice, 60 per cent being challenged by defendants and their attorneys, and 20 per cent - by the prosecutors.

Only three such actions submitted by the prosecutor were admitted. Appeals initiated by defendants or their attorneys were not approved. Most often, the defendants and their attorneys do not mention the legal grounds stipulated by article 427 of CCP for submitting an action in second appeal, but are merely repeating the ones mentioned in the first appeal. As a result, the court examining the second appeal (Supreme Court of Justice) rejects these challenges as inadmissible.

### *Extraordinary legal remedies – Appeal for annulment (“recurs în anulare”).*

In six cases the defendant/attorney made use of the extraordinary appeal procedure by the application for annulment. Five of these were declared inadmissible, and one was partially admitted. Thus, only a small

number of legal errors were addressed through this procedure (5%). In the rest of the cases, the Supreme Court of Justice confirmed the legality of the decisions by inferior courts.

### **13.6 Outstanding cases**

In the course of case analysis, the following outstanding cases were identified:

*a. Cases where courts disregarded the legal requirements for the composition of the trial court. Three cases on article 206 (3) CC have been tried by a single judge, while article 30 (3) of CCP requires in such cases a set of 3 judges.*

*b. Cases where law enforcement bodies disregard the legal requirements for procedural acts and adopt contradictory interpretation of legislation. In one case the sentence to stop the proceedings in the case of M. was grounded on the lack of confirmation of the indictment by the superior prosecutor while the file contained the letter by which the superior prosecutor had sent the case to court. The sentence was adopted in the preliminary hearing.*

*c. Lack of clarity of the sentence. One sentence incorrectly mentions the activity which is prohibited to be exercised by the convicted person.*

*d. Lack of consistency in the position of the prosecutor. For example, in one case the court has re-classified the case from article 206 CC to article 220 CC, and the prosecutor did not object, even though that reclassification was contrary to the prosecutor's position. In another similar case the court provided for a punishment 500 conventional units [833 USD], in a case on a serious crime and the prosecutor did not object to the sentence even though the latter requested a punishment with imprisonment for 10 years.*

## IV.2 TRAFFICKING IN HUMAN BEINGS

### I. BACKGROUND

Trafficking in human beings is a complex phenomenon of our days, an underground phenomenon with global dimensions, and a cause of countless human tragedies. Regardless of how incredibly cruel this crime may seem, it is still real and human beings are being sold and re-sold as mere objects, for further exploitation.

In the framework of the European Union, the issue of trafficking in persons is topically included in the area of Justice and Home Affairs, being a component of the larger issue of combating organized crime. From the political perspective, trafficking in persons appears as a distinct topic on the agenda of European Justice and Home Affairs, given that the European Parliament has started adopting its first resolutions on women's situation in general and trafficking of women in particular.

It can be stated that trafficking in persons became an important matter on the political agenda of the European states in 1999 when the European Commission published its first statement on this topic. Since then, European institutions developed a series of policies, regulations and financial schemes which shifted issues like prevention and prosecution of trafficking in persons to the centre of attention.

Internationally, in accordance with article 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 (Palermo Protocol, 2000, ratified by the Republic of Moldova on 16.10.2005), trafficking in persons is defined as "recruitment, transportation, transfer, harbouring 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". The Palermo Protocol further provides that "exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

Domestically, the first legal act that approaches trafficking in human being as a distinct type of crime and which criminalizes activities which facilitate trafficking is the Law nr. 450 of 30.07.2001 which complemented the Criminal Code from 1961 with article 113/2 that introduces a new crime by incriminating trafficking in human beings. Four years later the Law on Prevention and Combating Trafficking in Human Beings (Law no. 241 of 20.10.2005) was adopted, which defines the notion of trafficking in human beings in more precise and regulates more explicitly prevention and combating of trafficking in human beings as well as rehabilitation and reintegration of the victims of trafficking in human beings.

#### **Article 165. Trafficking in human beings**

*(1) Recruitment, transportation, transfer, harbouring or receipt of a person, with or without the person's consent, with the purpose of commercial or non-commercial sexual exploitation, through forced labour or services, for begging, slavery or in conditions similar to slavery, for use in military conflicts or in criminal activities, for removal of organs or tissues, by means of:*

*a) threat to use or use of physical or moral violence not dangerous for the life and health of the person, including by abduction, by forfeiting of documents or servitude for the purpose of paying a debt, the amount of which was not set within a reasonable limit, as well as through the threat of disclosure of confidential information to the family of the victim or to other persons, both individuals and legal entities;*

*a) fraud or deception;*

*b) 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,*

*shall be punished by imprisonment for 5 to 12 years with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 5000 conventional units [5,000 USD to 8,333 USD] with the deprivation of the right to practice certain activities or the liquidation of the legal entity.*

*(2) Same actions committed:*

*a) by a person that had previously committed the action mentioned in paragraph (1);*

*b) against two or more persons;*

*c) against a pregnant woman;*

d) by two or more persons;  
 e) by a public official or by a high public official;  
 f) with use of violence dangerous to the person's life, physical or mental health;  
 g) by use of torture, of inhuman or degrading treatment to ensure the subordination of the person or by use of rape, physical dependence, weapons,

shall be punished by imprisonment for 7 to 15 years with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 5000 to 7000 conventional units [8,333 USD to 11,666 USD] with the deprivation of the right to practice certain activities or the liquidation of the legal entity.

(3) Actions mentioned in paragraph (1) or (2):

a) committed by an organized criminal group or by a criminal organization;  
 b) that resulted in severe bodily injury or a mental disorder, in death or suicide,  
 shall be punished by imprisonment for 10 to 20 years with the deprivation of the right to hold certain positions or to practice certain activities for 3 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 7000 to 9000 conventional units [11,666 USD to 15,000 USD] with the deprivation of the right to practice certain activities or the liquidation of the legal entity.

(4) The victim of trafficking in human beings shall be exempted from criminal liability for any crimes committed by him/her in relation to this procedural status.

Trafficking in persons, as a form of organized crime, always needs to be viewed in connection with other crimes, in order to correctly classify the illegal act.<sup>21</sup> When speaking about trafficking in human beings, we need to also take into consideration the connected crimes of slavery, illegal crossing of state border, illegal detention, and the like.

In this sense, of special importance are:

- proper knowledge of the phenomenon of trafficking in human beings,
- clear regulation of the elements that constitute the crime of trafficking in human beings,
- the capacity to consistently identify the constitutive elements of the crime of trafficking - the act, the means and the purpose, in order to distinguish practices which constitute trafficking in persons from other illegal activities incriminated as distinct crimes.

Thus, the major distinction is the fact that, while in the case of trafficking in human beings, all three elements aforementioned should be present (so that all the illegal activities that allow and even contribute to achieving trafficking of a person, including all forms of exploitation, are taken into account), in the structure of related crimes included in the Criminal Code only some of the illegal activities are mentioned (for example, encouraging, determination, facilitating prostitution – pimping; or forcing a person to work or provide service against its will – forced labour or organization of begging).

## 2. PROFILE OF THE ACCUSED PERSON

Number of accused persons: 171

Number of convicted persons: 99

Number of acquitted persons: 14

Cases that were dismissed: 7 persons, out of which:

- 1 (non-abolished ordinance for exemption from indictment),
- 3 (because of the death of the person),
- 3 (amnesty)

Number of persons whose indictment have been reclassified: 51 (30 %) from trafficking in human beings (article 165 CC) into:

- pimping (article 220 CC of 2002, 105/2 CC of 1961) – 39 (22.8 %);
- organization of begging (article 302 CC of 2002) – 5 (3 %);
- forced labour (article 168 CC of 2002) – 4 (2.3 %);
- fraud, illegal business activity (article 122 CC of 1961, article 190, 241 CC of 2002) – 2 (1,2 %);
- illegal crossing of state border (article 362 CC of 2002) – 1 ( 0,6%).

<sup>21</sup> As a rule, trafficking in persons is a transnational crime (at least in the Moldovan context). At the same time trafficking can also be a simple crime, but these are rare cases and in Moldova it appears as **internal trafficking**.

The following common features of persons accused of committing trafficking in human beings were identified:

### **Sex:**

**Women: 67 per cent**

**Men: 33 per cent**

Mostly women (two thirds) are involved in the recruitment process. This is due inter alia to the fact that some of them have themselves experienced sexual exploitation in the past. A large number of them have established relationships (family relations and others) in destination countries, being familiar with the language, legal framework and traditions of those countries. Therefore, these women have an increased ability to deceive potential victims into trafficking. Moldova being a country of origin, women are more involved here in the recruitment process (initial contact with the victim) making use of their knowledge of the psychology of the women. Men are usually involved in later stages - such as transportation (when present). On the other hand, these numbers may as well indicate the fact that criminal investigation bodies do not discover the entire trafficking network, but rather limit themselves to those involved in recruitment and sometimes transportation.

### **Average age of the accused persons:**

**Women: 29 years of age (max. 61 years of age, min. 17 years of age)**

**Men: 31 years of age (max. 60 years of age, min. 18 years of age)**

Comparing the average age of the trafficker-woman with the one of the trafficker-man we can see that women are of a younger age, much like in the case of trafficking in children. The study also shows that the average age of the trafficker of human beings (woman and man) is lower than in cases of trafficking in children, both for women - by 2 years and for men – by 5 years. One of the explanations may be that when recruiting adult persons, in most of the cases persons of the same age as the one of the potential victims are involved.

### **Employment:**

**Employed: 22 persons (12%)**

**Unemployed: 149 persons (88%)**

The low number of employed persons shows that the basic income of these persons mostly comes from illegal activities such as trafficking. Similarly to cases of child trafficking, in the analysed cases, the majority of the unemployed traffickers are women (two thirds of employed traffickers are men). This is explained by the fact that a number of male traffickers provide transportation services (such as taxi drivers), and in the process of trafficking in human beings usually play the transportation role whenever it is present. For employed male traffickers, the main activity is legal (taxi driver), whereas the criminal activity – transportation of victims – represents an occasional source of income. At the same time the legal job is a method of hiding the illegal activity of trafficking.

Female traffickers are usually unemployed. They mostly participate in the recruitment process, which does not require the implication of official employment as a cover up. The study proved that employed women traffickers in most cases work in the domain of services for population such as travel agencies, nursing and the like.

### **Criminal profile:**

Regarding the criminal profile of the trafficker, according to the information from the analysed cases, out of the total number of 171 accused persons, 77 per cent have not been previously convicted and 23 per cent have been previously convicted, as shown below:

- **9 per cent - for trafficking in human beings,**
- **3 per cent - for trafficking in children,**
- **10 per cent - for pimping,**
- **1 per cent - fabrication, possession, sale or use of false official documents, imprints, stamps or seals.**

Prior convictions of current traffickers reflect a high incidence of recidivism, which means that the criminal law did not achieve its objective of special prevention and re-education through those past convictions.



At the same time, it was found that out of all the persons who have been previously convicted, 17 per cent have spent from 3 to 4 years in prison.

Victims' statements show that, in most cases, the first link in the trafficking network is a woman. These persons tend to display their material welfare and resort to stories of how easy it is to earn money abroad having a job that does not require special professional training, usually as a dancer, „in consummation”, as a waitress, babysitter, house-keeper or the like. The similar age with the victim's (the average is 29 years for traffickers and 23 years for victims) facilitates a more open dialogue in the process of recruitment, including discussions on the possibility of providing intimate services at victim's own choice and risk.

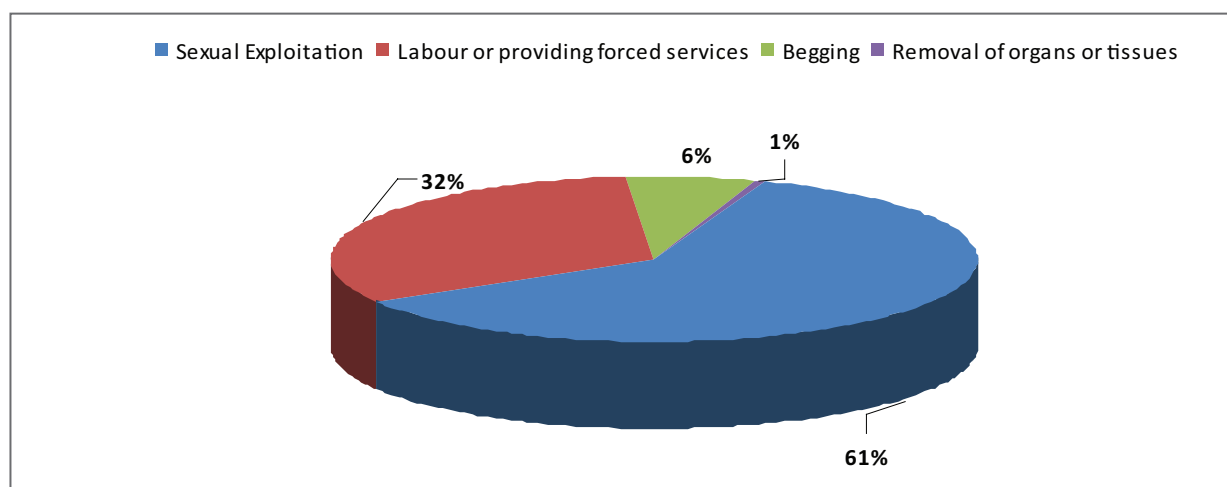
When the recruiter is a man, he is of an average of 31 years of age, looking and behaving as a person with a high social status (money, car, and other expensive items). Usually, his role is to identify and transport the victim.

At the same time it was found that, out of 114 women accused of committing this crime, 29 according to their statements had been previously exploited within the same trafficking networks that they later joined, having close ties with the criminal world in the destination country. In most cases these persons accept their exploitation and consider it as being normal, without being aware of their own victimization.

### 3. MEANS AND PURPOSES

The *Mens rea* element of the crime of trafficking in human beings is direct intention. In order for the act to be classified as trafficking in human beings at least one element of each category (acts-means-purposes) need to be present for trafficking to take place. The purposes of trafficking in the analysed cases are indicated in Figure 17 below.

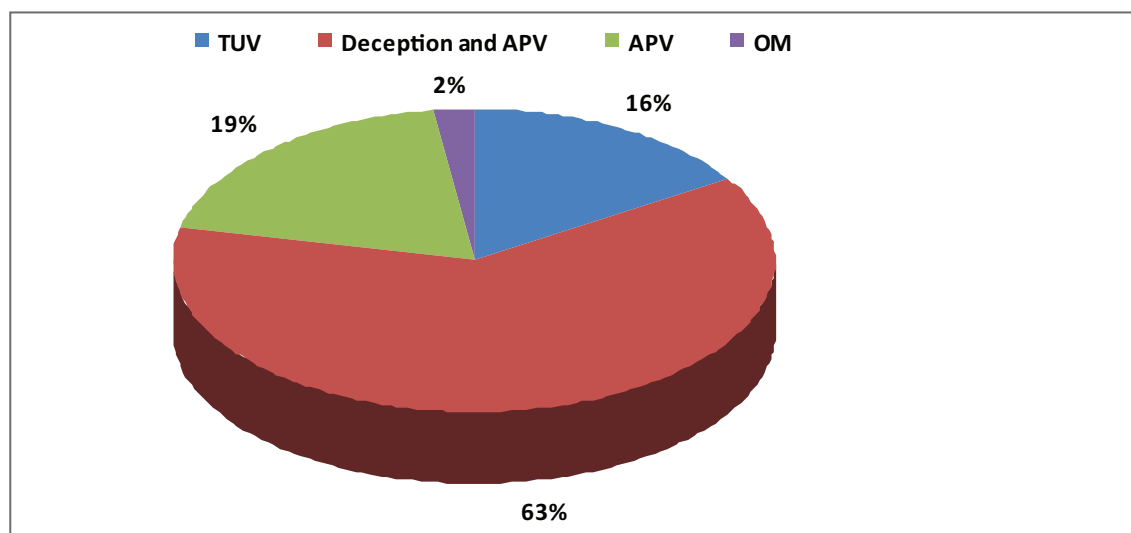
Figure 17: Purpose of exploitation



Based on the testimonies provided by the victims (as included in case files) the following means of trafficking were identified:

- a. threat to use violence (TUV),
- b. deception,
- c. abuse of a position of vulnerability (APV),
- d. other methods (such as rape, use of violence and other methods)(see Figure 18)

Figure 18: Methods of trafficking



The statements of victims show that deception is the most common mean used by traffickers in the process of recruitment, which proves that traffickers mostly use non-violent means. This kind of recruitment method is very difficult to prove by evidence during the trial (usually the victim states that she was deceived about the activity she was supposed to practice, whereas the trafficker declares that the victim knew from the beginning that she would provide intimate services and has consented to it).

Being tempted by promises of high earnings, women sign contracts (as dancers, babysitters, women engaged in prostitution, or even without specifying the activity). Men become victims of trafficking in human beings with the purpose of providing forced labour in industry (construction, agriculture).

The majority of victims recruited by fraud or deception were in the position of vulnerability (63%), speaking out of their difficult financial situation, a fact known by the trafficker before the initiation of recruitment. In 19 per cent of studied cases, victims were recruited exclusively by the abuse of the position of vulnerability. In the vast majority of cases the position of vulnerability is proven only by victims' statements. Unfortunately, there is no other evidence administered with this regards.

Based on a victim's statements from a criminal case included in the study it was found that: *In 2001, in Chisinau, an acquaintance proposed to the victim (G.I.) to work in the city of Dubai as a waitress, telling her that she knew a woman L. who could help. L. asked her about the passport and told her she needed USD 1,000 for the ticket and a new passport and that the money will be held from her first salary. L. bought her a passport and a ticket to Dubai. In Dubai she met a Ukrainian woman S. who introduced her to an Arab man and told her that he suffered huge expenses for procuring her visa. S. took her passport and told her that she would return it back only when G.I. will be leaving the country. It was she who also said that in Dubai she would be working "in consummation" and prostitution. Later, S. told her that she had paid USD 10,000 for each girl and that they were to work in order to recover the money. G.I. and another girl refused to work but, after being locked in and threatened, seeing no other way out, they were forced to accept these conditions and to work in a disco-bar. The clients were paying USD 600-700 per night. A regular client T. bought her back for USD 9,000 and bought her a ticket to Chisinau.*

#### 4. PROFILE OF THE VICTIM

Only a person who was 18 or older at the moment the crime was committed can be found to be a victim under article 165 CC.

In Moldova, the category most affected by the phenomenon of trafficking are young women who are promised by traffickers well paid employment or scholarships abroad but then forced into prostitution. The traffickers get the money, while these women and girls are raped and physically and morally assaulted.

Some victims are transported across many borders and re-sold several times. For example, in one case, *the victim C.G. in 1999 was introduced by O. and A. to L. in a bar in Chisinau where they committed to help her get*

to Italy to find employment. In 2000 together with a group of girls she went to Serbia through Romania. In Serbia they were accompanied by a young couple from Iasi (Romania), spending at their place 2 weeks, while waiting for the visa. In Belgrade the couple introduced the girls to another Romanian who was to accompany them from there on. The couple told them that they each owed USD 2,000 for transportation to Italy. The victims' passports were given to the Romanian citizen from Belgrade. They drove for 2 days through the mountains until they arrived in Macedonia and were transferred to a group of 5 Macedonian men who had to escort and transport them further to Italy. In such a way they were transferred 3 or 4 times until they arrived to a man A. who took them to his house where there were 20 girls from different countries including Moldova. It was only there, that they realized they were sold into slavery. The victim C.G. was sold to an Albanian (F.) and had to work in a bar „in consummation”<sup>22</sup>. Occasionally she was forced to provide sexual services. F. told C.G. that he paid USD 2,000 for her and if she wouldn't agree to work he would sell her to other traffickers. In 2 weeks F. received 6 more girls from Moldova and Romania. Victims were paid 40 per cent from the price of USD 50 per hour that F. was charging. In December of 2000 she was apprehended by police and kept in custody, after which the police re-sold her to A. Then A. sold her to another trafficker („owner”) who used to beat and rape her. In a similar way she has been re-sold many times, while being sexually exploited in 14 bars. In 2003 she and a Romanian girl escaped and went to the police in the city of T. The local police transferred them to the IOM Mission in the country for protection and assistance.

According to the information from the materials of the cases, the total number of victims is 309, which have the following profile:

### **Sex:**

**Women: 68 per cent**

**Men: 32 per cent**

The large number of female victims is explained by the fact that sexual exploitation of women and girls is the most frequent form of trafficking in human beings, male victims being usually exploited for labour or begging. At the same time it has been established that the majority of criminal investigation officers and prosecutors conducting the criminal cases were males. Taking into account that the majority of the victims are women, the participation of female criminal investigation officers and prosecutors would be advisable for this category of crimes. Hence, there is a need to develop policies that will encourage and promote more female officers and prosecutors working on such crimes.

### **Average age:**

**Women: 23 years of age (max. 53 years of age, min. 18 years of age)**

**Men: 30 years of age (max. 55 years of age, min. 18 years of age)**

The average age of 23 years for a female victim indicates that women were exploited at very young age. In most cases, female victims of 30 and older were exploited for forced labour. On the other hand, the average age of male victims is the one when they are mostly fit to work, being exploited for labour in most of the examined cases.

### **Employment:**

**Employed: 19 persons**

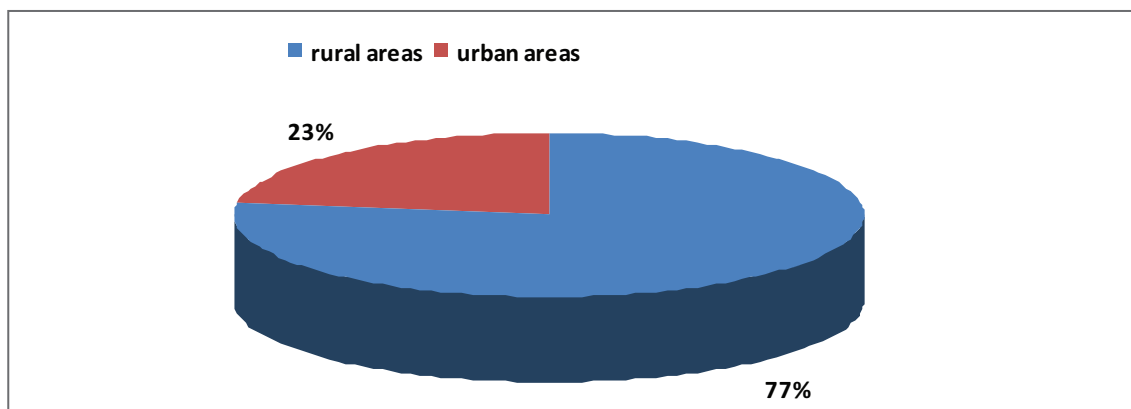
**Unemployed: 290 persons**

The majority of victims were unemployed being in search for a job. This can be explained by the fact that most of the victims in the analysed cases come from rural areas (see Figure 19) where employment opportunities are even more limited and salaries are less encouraging than in cities.

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<sup>22</sup> “In consummation” – is a term (slang) used by victims of trafficking and traffickers when victim is offered a job to work in a bar as accompanying lady and receives money from how she manipulates the clients to buy more drinks at higher prices, and in many cases these persons are engaged in sexual exploitation, this job hiding in fact the sexual services.

Figure 19: Environment of origin of victims of trafficking in persons



### Education:

**Middle School: 100 persons**

**High school: 101 persons**

**No data: 108 persons**

Most of the victims only went through middle school or high school; they are very poor and looking for jobs, which facilitate the recruitment process for the trafficker, who in all of the cases promises a well-paid job and legalization of stay in the destination country.

Based on the analysis of the files, the following profile of the victim can be drawn:

- **Female victim** - a young 23-year-old woman, unemployed, with incomplete education, previously married, with a child, without a secured place to stay, subjected in the past to domestic violence, from the rural area, looking for a source of income, easily manipulated, in a position of vulnerability that makes her assume certain risks by accepting dubious offers. She is more cooperative than men with law enforcement bodies in a criminal process. The female victims were as a rule sexually exploited in Turkey, Russia, Northern Cyprus (recognized by Turkey), United Arab Emirates, the Former Yugoslav Republic of Macedonia (FYROM), Bosnia and Herzegovina, UNSC resolution 1244-administred Kosovo, Israel or Italy.

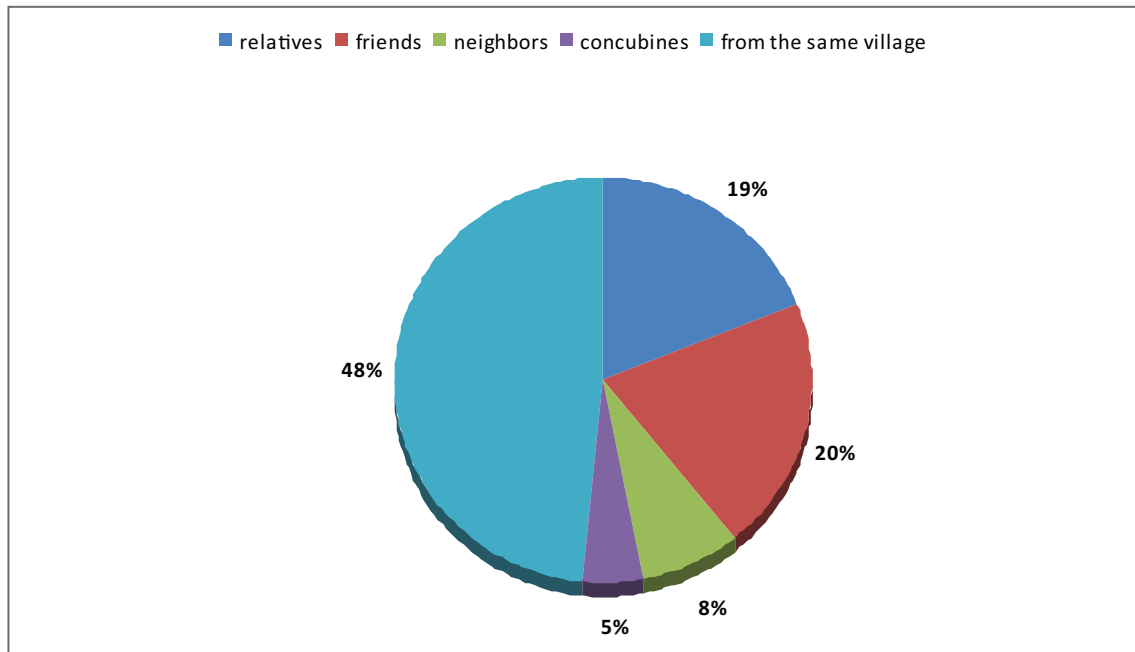
- **Male victim** - a young 30-year-old man, able to work, graduated high school, unemployed and looking for sources of income, married, from the rural area, being in a relatively better material situation in comparison to a female victim; when accepting traffickers' offer the male victim is determined by the will to ensure a decent living for himself and his family. Male victims are less cooperative with law enforcement agencies in the course of criminal investigations and in most cases do not claim material damages from traffickers. The male victim is exploited for labour (construction, agriculture) in Russia and Ukraine.

### Relationship between the victim and the accused person:

In most of the cases analysed, the victim and the accused person had been well acquainted before recruitment, a fact that facilitated the process of convincing and misguiding the victim, the latter manifesting excessive trust. In almost half of the cases (Figure 20) the victim knew the trafficker, both living in the same village. Under these circumstances, the victim was easily convinced by the appearance of prosperity of the recruiter, whereas the trafficker knew about the position of vulnerability of the victim.

Regardless of the relationship - friends, neighbours, and other persons - these are usually persons that are trusted by the victim. Often, recruiters are women, who can gain trust from other women easier. Moreover, they are well aware of the situation of the potential victim.

Figure 20: Victim-accused person relationship



During the study, the authors of the Study have interviewed (based on a questionnaire they developed in advance) two victims of trafficking in human beings from two criminal case files included in the sample of the study. Attempts were made to get in touch with other victims for interviews, but they were either unreachable or refused (because she had gotten married and did not wish to recall the trafficking experience). The two interviews are briefly reproduced below:

**INTERVIEW WITH VICTIM I.R. HELD ON 15.07.2011**

- Why did you lodge the complaint on the issue of trafficking with the law enforcement body?

I.R. To punish the person who sold me into sexual slavery

- Have you submitted the complaint on your own initiative or you have been influenced by someone to do so?

I.R. On my own.

- Did the law enforcement body clearly explain to you your rights and the risks of the criminal trial on the trafficking case?

I.R. No

- Did the law enforcement body explain your right not to make statements as a victim on a case of trafficking in human beings?

I.R. No

- Have you been subjected to influence or pressure to change your statements in the process?

I.R. No

- Do you consider that the trial lasted for a reasonable time?

I.R. Reasonable (less than one year)

- Have you requested compensation for the moral or material damages suffered as the result of the crime?

I.R. Yes, both moral and material, but I did not get any compensation.

- Have you been threatened during the trial?

I.R. Yes, by traffickers.

- Did you feel defended during the trial (by the attorney)?

No. During the court hearing my lawyer told me that I wrote a letter where I refused any compensation and that I wilfully went to prostitute myself. I've tried to tell him that I did not do these things, but the man showed me a letter written by someone and allegedly signed by me. I have previously signed a letter that Mr. F. (the attorney) gave to me, but I did not read what was written there because I trusted him.

- How would you describe the attitude of policemen, prosecutors, judges and other participants in the trial towards yourself?

I.R. Negative. I was embarrassed during trial. Mr. F (the attorney) took me to the city E., and left me there. I was by myself during the trial. I could not outweigh all the traffickers and their attorneys who were in the court room.

- Do you think that all the persons who were guilty of you being trafficked were convicted?

I.R. No, three other traffickers have not been convicted

- Do you think that the punishment imposed on traffickers is proportionate to the crime they committed?

I.R. I don't know how they were punished.

- How efficient was justice made in your case?

I.R. Not efficient.

- Are you satisfied with the assistance services provided to you as a victim?

I.R. I am satisfied by the social assistance and partially satisfied with the legal assistance.

#### INTERVIEW WITH VICTIM O.A. HELD ON 01.08.2011

- Why did you lodge the complaint on the issue of trafficking with the law enforcement body?

O.A. I did not know that I could ask the law enforcement body to defend my interests. I filed the complaint only when I found out that the (female) trafficker has sold another girl from my village. When I found out about this case I wanted this person who sold me to be punished because I was cheated, I was humiliated and forced to do things that I did not want to do, I was beaten, I had to get an abortion against my will and wanted this person who sold me to be punished.

- Have you submitted the complaint on your own initiative or you have been influenced by someone to do so?

O.A. On my own.

- Did the law enforcement body clearly explain to you your rights and the risks of the criminal trial on the trafficking case?

O.A. Yes, but not clear enough.

- Did the law enforcement body explain your right not to make statements as a victim on the case of trafficking in human beings?

O.A. Yes, but not clear enough

- Have you been subjected to influence or pressure to change your statements in the process?

O.A. Yes. By the attorney of the trafficker, who proposed to give me money so I withdraw my statements and forgive S., the girl who sold me.

- Do you consider that the trial lasted for a reasonable time?

O.A. Reasonable

- Have you requested compensation for the moral or material damages suffered as the result of the crime?

O.A. Yes. I've requested material and moral compensation, but did not receive any.

- Have you been threatened during the trial?

O.A. No.

- Did you feel defended during the trial (by the attorney)?

O.A. Yes, but I did not have an attorney, but I had the defence from the prosecutor Mrs. B.

- How would you describe the attitude of policemen, prosecutors, judges and other participants in the trial towards yourself?

O.A. Positive. It seemed positive to me, although I did not fully understand many things. I was very emotional during the trial and even before the court hearing. I did not manage to say a lot of things, for example how the trafficker's attorney came to me to offer money and others. I was very afraid.

- Do you think that all the persons who were guilty of you being trafficked were convicted?

O.A. Yes. The trafficker that was here in Moldova was convicted, but those from Turkey – I don't know.

- Do you think that the punishment imposed on traffickers is proportionate to the crime they committed?

O.A. Not proportionate. I did not receive any moral or material compensation for what I have suffered. There has been 2 years since the trafficker was punished and now she is free and her relatives are threatening me.

- How efficient was justice made in your case?

O.A. Partially efficient.

- Are you satisfied with the assistance services provided to you as a victim?

O.A. I did not get any assistance services. I was deported and was not aware of such services. In 2009 the Centre of IOM offered to assist but I refused because my mother died and I had to take care of the household.

## 5. REPORTING THE CRIME

According to the data collected from the analysed files, in the majority of cases – 73 per cent, the case had been initiated based on the complaint by the victims or their relatives and only in 27 per cent of cases based on the report of the criminal investigation body. In six cases the criminal investigation was launched on both grounds (for example based on complaint and report), while there also were cases where collective complaints were lodged. In files that had both the complaint and the report, the report usually shows the presence of another episode of trafficking (another victim). In these six cases the investigation was launched based upon the report of the criminal investigation body and cannot be recognized as a proactive method of investigation, because the crime has already been consumed and the victim exploited, which is contrary to the criminalist methodology that has the following definition of classic proactive method: the identification of victims and their release before their exploitation, who are interviewed as victims afterwards.

Because of the actuality of the issue of trafficking in human being, the law enforcement agencies of the Republic of Moldova are determined to take to special note this type of crime, which is permanently in the centre of attention of the international community (because of its transnational element). As a result, according to the studied files, law enforcement bodies make efforts to proactively identify victims by checking those who cross check points at the state border. These methods, however, are considered to contradict the Moldovan legislation because of the fact that the task of the criminal investigation body is to identify the criminals and not the victims. Hence, in a 2008 case, the victim L.T. declared that she *was retained in the Chisinau airport only for responding to the policemen that she was going to Istanbul to provide sexual services*. Later she was taken to the police station and forced to provide “explanations”. These kind of half-legal methods usually generate violations of the rights of other people that leave the country with the same destination. Thus, according to one of the files, there was a situation in the Chisinau airport where an alleged victim was identified by the Border Guards Service agents, who in order to identify the alleged trafficker took 3 persons off the plane and forced them to provide “explanations”. Later it was proven that none of these persons had any relation to the crime of trafficking.



## 6. PROCEDURAL ACTIONS

### 6.1 Interviewing the victim, the injured party and the civil party

#### ***Victim***

According to paragraphs 3 and 4 of the article 19 of the Law on Prevention and Combating Trafficking in Human Beings (Law no. 241 of 20.10.2005), the state, by means of its competent bodies and organizations, carries out prompt and adequate measures to identify and refer victims of trafficking in human beings to protection and assistance services, providing them with a reflection period of 30 days. The provision of the assistance and protection services is not conditioned by the will of the victim to provide statements and participate in the process of traffickers' prosecution.

As a rule, victims are not fully aware about the organizational structure and the identity of those involved in the trafficking process. This fact can lead to failed criminal proceedings, which can in turn impose higher risks for the safety of victims-witnesses who can expect retaliation against them or their families from traffickers or their accomplices. This way, in many cases the victims have a lot to lose and little to win when submitting complaints or testifying as witnesses.

Although the legislation in force provides some additional guarantees for the victims, such as the right not to appear when summoned by investigators or not to provide explanations, in most of the cases these guarantees are not respected. *For example, in one case the victim refused to make statements regarding her trafficking experience because she was about to get married and did not want to disclose information regarding her trafficking and exploitation in Moscow. The prosecutor issued an ordinance not to initiate criminal investigation, which was cancelled afterwards by the ordinance of the General Prosecutor, and the victim was called to testify and be interviewed on the same crime, but already reclassified to art 220 CC (pimping).* It can be seen in this case that, even though the law provides for the right to refuse making statements, the criminal investigation bodies, by reclassifying the offence from trafficking to pimping and summoning the victim as a witness (that cannot be exempted from the obligation to make statements) imposed her to make statements. In such cases there is a violation of the rights of victims of trafficking in human beings that are guaranteed by law.

The case analysis shows that only 10 per cent of victims were interviewed in the phase of criminal investigation under the procedural status of *victims* of the crime, the rest being interviewed as injured parties.

The study shows that in 49 per cent of the cases, victims (62% out of the total number of victims) were requested to provide "explanations" before the initiation of the criminal proceedings. Similarly to the situation described in the previous chapter, as a rule, relevant authorities that hold information on the commission of the crime summon the victim requesting them to provide explanations, after which they are being "recommended" to submit a criminal complaint. This situation confirms the proactive character of the actions of law enforcers in identifying the victims of trafficking, but also proves the futility and flaws that stem from demanding such „explanations“.

#### ***The injured party***

The data of the study shows that 94 per cent of the total number of trafficked persons were interviewed as injured parties right after the initiation of criminal investigations and their recognition in this capacity. Although, the criminal procedure legislation requires that recognition as an injured party is possible only with the consent of the victim, in the cases included in the study, there was no evidence that would show whether such consent was provided and whether the victim was informed beforehand of his/her rights, especially those guaranteed through article 58 CCP (not to appear when summoned and not to provide explanations). Thus, in the majority of cases victims are recognized as injured parties by the ordinance of the criminal investigation body without their informed written consent. Afterwards, if the injured party refused to make further statements from various reasons or requested to withdraw the complaint, a criminal investigation was initiated against him or her on grounds of article 313 CC (Refusal or Evasion of a Witness or an Injured Party to Make Statements). In one case, the injured party denied the fact of writing a complaint and refused to make any further statements. As a result, she was convicted in accordance with article 313 CC. This kind of cases could be avoided if the victims were to be informed in advance of their rights and their consent was in written form.

Similar to the cases of child trafficking, the interviewers tend to focus their questions on general matters regarding the facts of the crime. In none of the cases, did the investigator inquire on other important circumstances that would help better conduct the investigation. For example, no control questions were asked, despite the fact that such questions are crucial for the investigation, especially given the fact that injured parties often modify their statements later and that statements often form the basis of the evidence for deciding the case.

Unfortunately, in almost all of the cases the interviewing of the female injured party/victim was done by male prosecutors or criminal investigators. In some cases, even if the leading prosecutor of the case was a woman, the interviewing was still conducted by male officers.

A recommended positive practice was noted in one case where the interview with a female injured party was conducted by a female-prosecutor and a female-criminal investigator, with the assistance of a female-attorney. As a result, the right questions were asked with the purpose of verification, control and clarification of data related to victim's recruitment, transportation and sexual exploitation.

The study also found that the requirements set in article 109 CCP for regulating the hearing of the injured party (and of the victim) by the investigation judge are also not applied. During the court examination of a criminal case, the readout of the statements made by the witness-victim during the investigation process is possible only in limited cases (article 371 CCP). That is why, when the victim is not present during trial, very often, the statements it provided during criminal investigation are losing their value as evidence. Many times this led to the reclassification of the indictment to a less serious crime. On the other hand, one can also observe the trend to use the statements obtained during criminal investigation in the absence of the person during the trial, in violation of the conditions on admissibility of statements.

Sometimes there are cases of useless repeated hearings of the injured party. For example *in one case, during the criminal investigation phase, the victim was interviewed three times. At the third hearing she declared that she has nothing to add to what she had stated previously. In turn, the investigating officer abstained from further questioning, ending the interview.* Such examples, along with non-application of art 109 CCP raise the question of how careful are criminal investigation units in avoiding re-victimization.

### **Civil party**

According to the Code of Criminal Procedure, the statements and the hearings of the civil party and the civilly accountable party should be conducted according to the regulations on hearing the accused, which are to be applied accordingly. The civil party should provide explanations regarding the initiated civil action. The studied files show that only 14 per cent of the victims were interviewed in this capacity. In contrast with the victims in cases of child trafficking, adult victims more often claim reparation of the moral and material damage.

Although all of the injured parties suffered material and moral damages as a result of trafficking and exploitation, only one in seven victims submitted claims for compensation.

In some cases, even if at the initial phase of the proceedings the injured parties had some material and moral claims, these were later dropped which may suggest that certain compensations were made outside the court, which are not reflected in the case files. Most often, there is an informal negotiation between the injured party that presses material claims and the trafficker. Thus, when heard as an injured party in the investigation phase, the victim would claim material and moral damages, and is recognized through the ordinance of the investigation body as a civil party indicating the amount of compensation claimed. However, during court proceedings, the victim fails to initiate a motivated and evidenced civil action.

## **6.2 Confrontation**

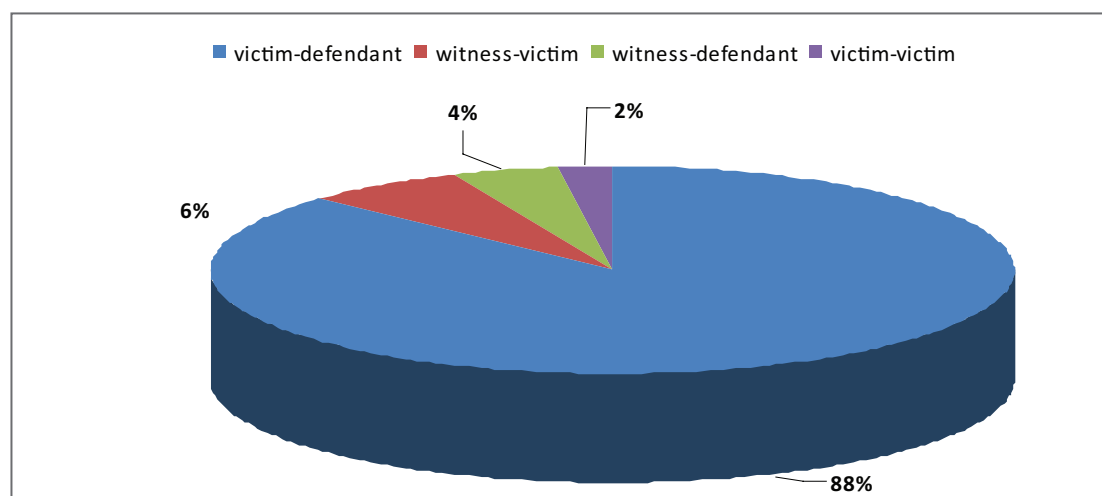
According to article 113 of the Code of Criminal Procedure, should divergences exist between statements made by heard persons in the same case, confrontation of these persons is done whenever it is necessary to learn the truth and exclude divergence. Confrontation was conducted in 57 per cent of cases of trafficking in human beings included in the study sample.

At the same time, international standards recommend avoiding confrontation between the victims of trafficking in human beings and their traffickers. These recommendations are aimed at avoiding re-victimization and providing adequate protection to survivors of trafficking.

The results of the study show that 43 per cent of all victims have been confronted, the vast majority of which (88%) were confronted with persons accused of committing trafficking in human beings (see Figure 21).

Contrary to above-mentioned recommendations, the criminal investigation body resorts to this procedural action often enough. Besides the risk for victims that this entails, the case files show that these confrontations are in most cases useless and inefficient – each party kept its previous position. The study also found that sometimes the criminal investigation does not prepare this investigative action in a proper manner.

Figure 21: Confrontation



Even if international standards on the rights of the victims of trafficking in human beings recommend avoiding direct contact between the victim and the trafficker with the purpose to avoid re-victimization and trauma of the victim, the study shows that these recommendations are neglected by the criminal investigation body when preparing cases of trafficking.

### 6.3 Verification of statements at the crime scene

This probation procedure was used in only 0.6 per cent of cases of trafficking in human beings that were examined. This can be explained by the fact that at first sight, in most cases, it may seem that there is no specific place where the crime had been committed.

On the other hand, this procedure may be helpful in verifying and strengthening some of the statements made in the course of the investigation, given the fact that in a significant number of cases the only evidence besides the statements made by the injured person were the testimonies of the victim's relatives made based on his/her own words. In this context, the evidential base of this type of crimes is insufficient most of the times, and the conclusion of guilt is not convincing enough because it has not been proved beyond a reasonable doubt.

This way, in many cases, the victim's statements are the only evidence for the accusation and even these are sometimes vitiated. An example in this sense can be a case where the action of the defendant was reclassified to article 220 CC due to the fact that the defence managed to bring a witness who confirmed that the victim was engaged in prostitution on a contract basis not being forced by anyone and that her complaint was filed for revenge purposes because of the allegedly bad working conditions. If it had not been for this witness, most likely that the defendant would have been convicted under article 165, as it occurred in many other similar cases. That is why there is a need to verify such statements and, hereby, to use on a larger scale this evidential procedure, which at the same time strengthens the accusation side.

### 6.4 Presentation of objects for identification

Although the legislation on the criminal procedure provides for a large variety of objects (spaces, cars, and the like) to be presented for recognition, this probation procedure has not been made use of. Even though, given the specific features of this crime, this procedure would probably be used less frequently than in the case of other crimes, the fact that criminal investigators never resorted to it is still unjustified, bearing in mind the probation issues mentioned in section 6.3 above.

## **6.5 Presentation of persons for identification (line-ups)**

The study has shown that 20 per cent of the victims have been shown accused persons for recognition. In most cases, line-ups are used to support the need for police custody of the accused.

The study has shown that in the majority of cases investigators resorted to photo line-ups, so that out of the total number of line-ups (60), 93 per cent have been realized by photo presentation and 7 per cent by presentation of persons.

According to the provisions of article 116 of the CCP, photo line-ups are only admissible where the suspect is hiding from the criminal investigation body or he/she is impossible to locate. Thus the probative value of the material thus gathered may be compromised and the court may declare such evidence as inadmissible.

There were cases where the picture of the alleged perpetrator had been showed to the victim before the line-up was conducted, which automatically invalidates the result of the procedure.

## **6.6 Hearing witnesses**

According to the data included in the study, in 129 cases 539 witnesses were interviewed during criminal investigation – which comes to an average of 4 witnesses per criminal case. Out of the total number of interviewed witnesses, 56 per cent were direct witnesses.

The comparative analysis of the witness hearing procedures shows that the number of witnesses for accusation was considerably higher than for defence, the ratio being 90 per cent to 10 per cent.

Indirect witnesses were interviewed in almost every case, representing 44 per cent of the total number of witnesses. Out of them, 9 per cent were on the accusation side and 91 per cent testified for defence. At the same time 17 per cent of those who testified for the accusation were relatives of the victims or otherwise connected with them. At the same time 27 per cent of those testifying for the defence were related/connected to the accused person.

Making a comparative analysis of witnesses interviewed in the criminal investigation phase with those interviewed during the trial phase, it can be concluded that during trial the number of witnesses from accused side is decreasing, while the numbers for the defence witnesses is increasing, which could explain to a certain extent the reclassification of the defendant's deed to a less serious offence. In most cases the defence side avoids presentation of its witnesses during the criminal investigation phase, and presents them only during trial, after the hearing of the accusation witnesses.

## **6.7 Crime scene investigation. Search and Seizure**

### ***Crime scene investigation***

In 9 per cent of case files, investigations at the crime scene were conducted in order to discover traces of the crime and relevant material evidence as well as to establish circumstances in which the crime was committed as well as other circumstances relevant for the investigation. In 38 per cent of these investigations objects were collected that were relevant to the case. The small number of investigations at the crime scene can be explained by the fact that in most cases the meetings between the victims and traffickers at the recruitment phase take place in public places (such as bars, cafeterias, parks and the like), and the transportation of the victim takes place by public transport such as plane, train and car.

### ***Search and seizure***

Searches were conducted in 31 per cent of the cases, 53 per cent of which led to the discovery of material evidence. In 62 per cent of these, the objects seized were relevant for the case. All of the searches were conducted on the basis of the authorization from the investigating judge, except for one, which was done on the spot based upon a motivated order, authorized ex-post facto within the legally prescribed time frame of 24 hours.

The study finds that searches and seizures as a rule produce relevant evidence for the investigation of trafficking. However, law enforcement agencies do not resort to these actions as often and as qualitatively as they could both in cases of trafficking in persons as well as other crimes.

Taking into consideration the particularities of this crime, investigations at the crime scene and searches are necessary and more relevant for the places of victims' exploitation, namely in the destination countries at locations where the victims were held and exploited.

## 6.8 Interception and recording of communication (wiretapping) and surveillance

In 13 per cent of the examined files interception of conversations took place with proper authorization, provided either before the interception or *ex-post facto*.

The main purposes followed by criminal investigators when undertaking such investigation methods is to obtain confidential information while minimizing the possibility that the surveillance is discovered.

This method could be especially useful in cases of proactive investigation. Among the reasons for the fact that only in 20 per cent of cases a proactive approach was employed, is also the infrequent utilization of wiretapping and surveillance.

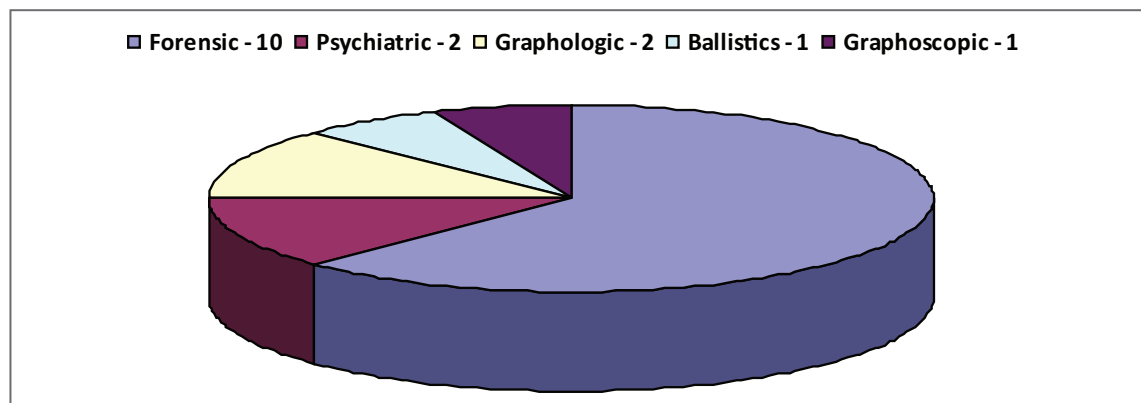
Due to similarities of this crime with that of child trafficking, the conclusions mentioned in chapter IV.1 of the Study, are also valid in the case of trafficking in human beings.

## 6.9 Expert examination

When there is a need to clarify some facts or circumstances in the case and the knowledge of an expert is needed, the criminal investigation body or the court may order, at the request or ex officio an expert examination.

In 12 per cent of the analysed cases different types of expert examination had been ordered as indicated in Figure 22 below.

Figure 22: Expert examinations



A relatively low number of expert examinations have been conducted in the cases analysed, especially forensic and technical and scientific tests. One of the main reasons for this is that investigations are usually being conducted after a significant time has passed since the period of exploitation.

The study did not find any example of psychological expert examination of the mental damages caused to the victim as a result of exploitation. The expert's conclusions can be useful to justify the request of compensation for moral damages caused by this crime, especially taking into consideration that, compared to other types of expert examination, psychological inquiry can be conducted and still be relevant even if done after a longer period of time.

## 6.10 The quality of procedural acts

The study identified some deviations from the criminal procedure legislation, which often have an important and, sometimes, decisive role in bringing a case to its resolution. Examples of important deviations include: termination of criminal proceedings on the ground that the indictment has not been confirmed by the superior prosecutor (see the example provided in Chapter IV.1); termination of criminal proceedings on the ground that the ordinance on dropping the prosecution was not cancelled, and other situations. Avoidance of such mistakes is an important matter and is not just a mere formality.

Examples of other procedural deviations include:

- Indictments drafted recklessly and/or in violation of the legal norms such as:
  - unconfirmed by a superior prosecutor;
  - failure to mention the date when the indictment was drafted;



- failure to indicate number of page from the case-file when there are references to specific procedural actions, absence of evidence analysis;
  - failure to indicate the information on preventive measures applied against the defendant (for example there was a case when the term of remand detention expired before the date when the indictment was drafted, which in consequence puts the court in the situation of being unaware of the detention or freedom of the defendant);
  - lack of some procedural documents regarding the application of preventive measures against the accused/defendant, even where the indictment provides that he is already in pre-trial detention.
- Hearing a person as a witness before the person was recognized as suspect in the case (contrary to article 63 (7) CCP), though later the person was reassigned the status of a witness.
  - Hearing a witness who is minor without the participation of the pedagogue.
  - Launching a criminal investigation before the complaint is filed by the injured party, without any other crime notification act in this regard (such as the report of the criminal investigation body), which creates doubts regarding the legality of the way the criminal investigation was initiated.
  - Inclusion to the file of uncertified copies of procedural documents or other materials of poor quality.
  - Failure to draft the procedural acts that would confirm the inclusion of certain pieces of evidence in the case file. For example:
    - Case 1. A letter written in Turkish was seized. Although there was no report on the fact of seizure, the letter was nevertheless used as evidence and even analysed by a graphologist.*
    - Case 2. A photo was attached without drafting of the procedural act on its provenience ( 1. Report on the search and seizure, 2. Ordinance for the inclusion in the case as material evidence).*
    - Case 3. As result of an authorized search of a house, a number of objects were seized, but there are no procedural acts on their inclusion in the case files, although in the indictment they are mentioned as material evidence.*
    - Case 4. In another case the material evidence – 2 videotapes – was wrongfully documented and registered and, consequently, were not examined in court.*
  - Initiation of criminal investigation on grounds of both article 165 CC (trafficking in human beings) and article 314 CC (coercion to make false statements) within the same ordinance.
  - Absence in the case file of the attorney's mandate, both in the criminal investigation phase and during trial, although the reports on procedural actions and the court proceedings mention attorney's participation.
  - Issuance of blanket warrants for body search.
  - Reference in the indictment to the fact of disappearance of the injured party for more than 3 years, but no note on the attempt of law enforcement bodies to find this person.
  - Data that indicates that the criminal investigation body has conducted special investigative actions not covered by proper confirmations or authorizations, which raises doubts as to the legality of such actions. For example, in some cases where victims recorded their conversations with traffickers before the launch of criminal investigation, there are signs that this has been done under the supervision of the criminal investigation body, however, according to the procedural documents, the recording was done on the victim's own initiative.
  - Interviewing of persons without an interpreter (for example the person is Russian speaker, but the report of the interview is drafted in the state language without any reference to the participation of an interpreter). This is a serious violation of procedural rights of the participants in the criminal proceedings, which may lead to the absolute invalidity of the given procedural act.
  - Two line-ups were conducted with the same person and after the victim had been shown the photo of the person to be identified during the line-up; photo line-ups using three images, while according to article 116 (3) CCP line-ups are to be conducted with at least 5 photographs.
  - Failure to recognize the injured party as civil party (plaintiff in the civil proceedings), despite the fact that the person claimed she had suffered material damages, because the criminal investigation body failed to inform the victim of the right to submit a written request under article 221 CCP.
  - Recognition of the injured party as civil party without a written request required according to article 221 CCP, which speaks of civil parties' unawareness of fundamental procedural rights; as a result, during the trial, the court did not examine the civil claim made by the injured party.
  - Initiation of several criminal investigations based on the same unlawful act but with many victims and merging them afterwards, usually during the trial stage. These actions are taken by the criminal investigation body in order to fulfil quantitative indicators regarding the number of cases started and sent to court, while disregarding the quality of criminal investigation.



- Sentences containing wrong information regarding the criminal record of the defendant. For example, the sentence mentions that the accused person's criminal record is clean, but in fact he was previously convicted for aggravated theft. Even where this element of criminal history has expired, it needs to be included in the sentence because it may indicate some characteristics of the personality of the defendant, which is important for individualizing the punishment.

- Some of the analysed cases were lacking the list of evidence, contrary to article 345 CCP; in other cases the indictment, contrary to article 296 CCP, did not contain an analysis of the evidence (for example, the indictment does not contain statements of the only witness from prosecution side).

- In many cases, prosecutors do not list all the pieces of evidence in the indictment, but include the mention "other materials". In other cases, in the "evidence" chapter of the indictment, reference is made to procedural acts lacking probative value (ordinances on the initiation of criminal investigation, recognition as accused, victim's complaints and the like). In one case, a confrontation report in which the accused refused to make any statements is mentioned as evidence. In other cases, the following were listed as pieces of evidence, but were not annexed to the materials of the file as documents/material evidence, in compliance with article 157 of the CCP:

- information from the „Registru" ("State Registry") database about the crossing of the border by F.S. and P.A.;
- list of phone calls, although it was not collected, examined or attached to the materials of the case as piece of evidence;
- list of the passengers of an airplane;
- information presented by the Chisinau International Airport, by which the fact of departure of the injured parties to Turkey is confirmed;
- information provided by Banks;
- information from passports, flight tickets, emigration cards, boarding passes; list of incoming-outgoing phone calls; copies of the materials in the criminal case;
- un-certified copy of the passport, without the seizure ordinance and report.

- According to the statements made by the injured party, there were more people involved in criminal activities (for example the victim was accompanied to the market by a lady for one week and was beaten by several persons), but there is no information in the file on any actions undertaken to identify these persons, there are no orders from the prosecutor to the criminal investigation officer to identify all criminals and initiate separate proceedings against these criminals. This deficient practice indicates to the fact that the objective of the criminal investigation - to identify and charge any person that committed a crime - is not fulfilled.

## 7. RIGHT OF DEFENCE AND REPRESENTATION

### 7.1 Procedural status of the trafficker

#### ***Suspect***

One hundred and fifty two persons were recognized as suspects in the cases of trafficking in human beings included in the present analysis. One hundred and thirty eight ordinances had been adopted recognizing the quality of suspect and 83 arrest (apprehension) reports have been drafted in compliance with the law. Four decisions to apply preventive measures were issued. Thus, in 73 cases two procedural acts were issued at the same time to attribute the status of a suspect to the same person.

The study has shown that in many arrest reports and ordinances for the recognition of the person as a suspect there is no reference to the criminal law under which the person is apprehended. They rather only make reference to direct or indirect indications by witnesses, without legal classification of the deed and indication of the reasons for conducting the arrest.

The data of the Study shows other violations regarding the recognition of the person as a suspect such as the following:

- *the person was recognized as a suspect based on the arrest report, but no other official documents justifying the detention were issued after the expiration of the 72 hours in which the person may be held in police custody, and later that person is indicted in violation of the time frames provided by law;*

- the document that recognizes the status of suspect is missing, even though the person is heard in this capacity (interviewing report of the suspect is attached to the case file).

### **Accused**

In the course of criminal investigations, 169 persons were indicted and thus received the status of accused for which 237 indictment ordinances were adopted. The accusation has to be brought to the accused by the prosecutor in the presence of the lawyer within 48 hours from the moment of issue of the ordinance of pressing the charge, but not later than the day in which the accused has shown up or have been brought by force (article 282 (1) CCP). Twenty four accusation orders with overdue terms were identified, but the defence attorneys did not react to these procedural violations. The average period of maintaining a person in this capacity is of 38 days, which shows that in the analysed cases there is a short period of time from the moment of indictment to the moment when the case is sent to court.

The study has identified a series of violations regarding the position of the accused:

- *The indictment ordinance did not contain the time when the indictment was made in violation of article 282 (2) CCP.*

- *The accusation was brought without a defender present, while criminal investigation was conditionally suspended, which is another violation of the right to defence.*

- *Deficient practices of the prosecutor regarding the reclassification of trafficking to pimping. For example in 2 cases the criminal investigation was conditionally suspended based on the reclassification of the actions under article 220 CC which was later cancelled by the General Prosecutor. In another case, the court has reclassified the offender's actions from article 165 CC (1) let. b), c) to art 220 (1) CC, with application of a fine of 200 conventional units, and prosecutor who supported the initial accusation did not challenge the sentence.*

- *Exceeding the legally prescribed limit of 48 hours for bringing the accusation in accordance with article 282 CCP, without any documents that justify the extension of the term. For example, in one case, the indictment ordinance was issued on 6 May 2008 while the accusation was read on 22 May 2008.*

- *Issuing several indictment ordinances with identical content on the same criminal act, with only the date changed (for example: in a case the ordinance was issued on 14 June 2007, and the other ordinance was issued on 15 June 2007), which represents a useless and unjustified action from the legal perspective and which creates confusion regarding the changing of the indictment.*

- *The indictment ordinance does not contain any reference to article 165 CC as the legal classification of the deeds, even if the article is mentioned in other documents (the indictment, the ordinance to initiate criminal investigation, sentence). In the same criminal case with many victims, the prosecutor has made a legal classification of the deeds of the defendant simultaneously under art 165 CC and under art 220 CC, motivating his action by the fact that some victims recognized that at the time of recruitment they knew of the type of activity they were to be involved in (namely prostitution), whereas others did not recognize that, even though all of them were sexually exploited in the same conditions.*

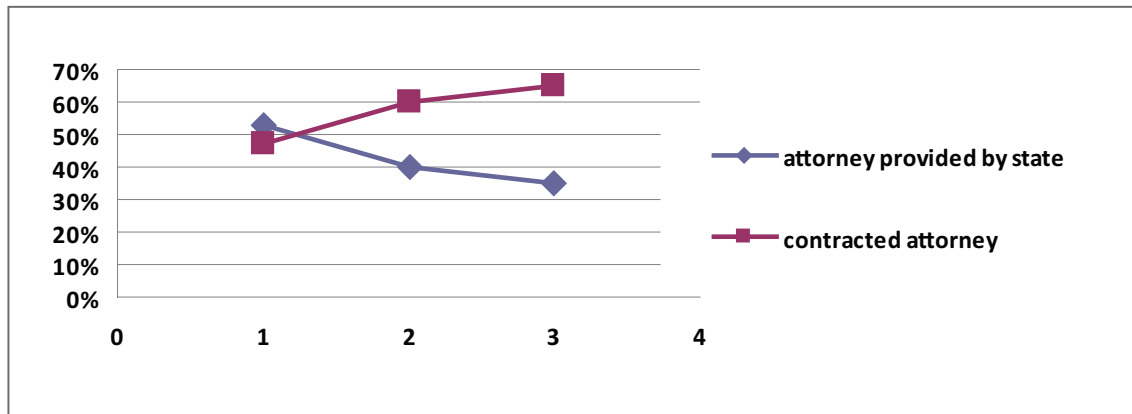
## **7.2 The realization of the right to defence**

The study's data show that at the initial phase of the criminal investigation 47 per cent of the suspects had a chosen defence attorney, and 53 per cent - a state appointed one. After the accusation was brought to them, 60 per cent of accused persons have chosen their own attorneys, and 40 per cent benefited from the services provided by a public defender. Hence, there is an increase in the number of contracted legal assistance with further advancement of the criminal investigation. The percentage of services of chosen and appointed attorneys during trial hearings is 65 per cent versus 35 per cent. It was found that during trial the trust of the defendant increases 5 per cent for contracted attorneys, compared to accused person, the former opting for chosen attorneys. The analysed data indicates inter alia that the majority of suspects/accused/defendants in cases of trafficking in human beings became more aware of the gravity of the charges and the potential punishment, and therefore were more motivated to have a contracted attorney.

In the course of the study, cases were identified where within the same case, the defendant had both chosen and public attorneys, and there were cases when more than one attorney was contracted.

The chart in Figure 23 was prepared to reflect the situation in the field of defending accused persons in the course of criminal proceedings:

Figure 23: Defence of the accused persons



### 7.3 Representation of the victim

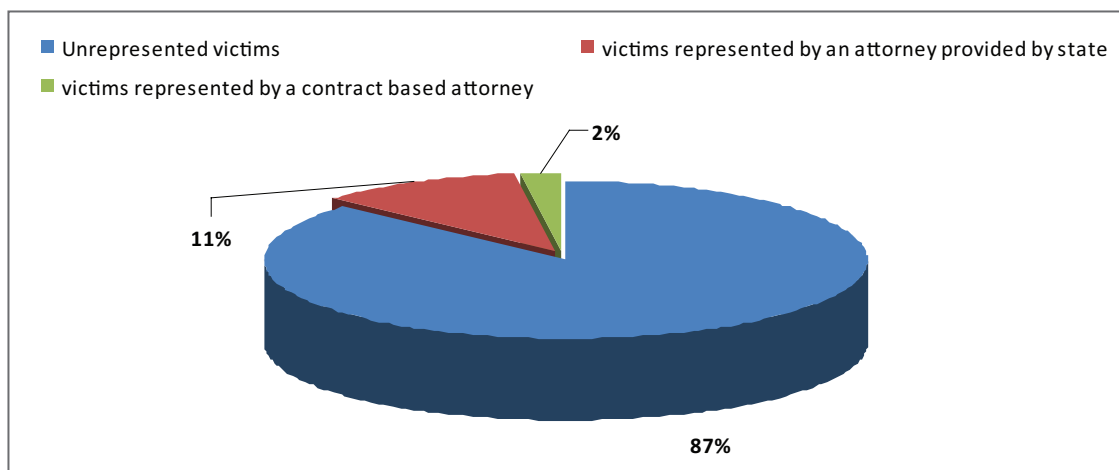
In the course of a criminal process, victims of trafficking in human beings need to benefit from counselling and representation, included the one guaranteed by the state, in front of criminal investigation bodies and the courts.

Only 13 per cent of the total number of victims were represented by an attorney, out of which 11 per cent were assisted by public attorneys (de facto contracted by NGOs and international organizations), both during criminal investigation and hearings in the trial courts, whereas 2 per cent were represented by chosen attorneys. Hence, even if the Law on Prevention and Combating Trafficking in Human Beings provides certain guarantees to victims of trafficking in human beings, these are mostly declarative in nature. The state representatives – the criminal investigation officer and the prosecutor – do not pay necessary attention to clearly explaining the victims their right to be represented by an attorney, including one appointed by the state.

While studying the files, it has been established that declarative are also the provisions from article 58 (4) 2) CCP, which provide for the positive obligation on behalf of the state to guarantee the assistance of an attorney to the victim of a very serious and exceptionally serious crimes, if the victim cannot afford one. This situation generated controversies also in the judiciary practice, where some courts left it for the victims to decide on the possibility to benefit from qualified legal assistance. For other victims (usually due to their own persistence) an attorney was appointed.

Besides an attorney, during criminal investigation and trial, victims of very serious and exceptionally serious crimes also have the right – according to article 58 (4) 3) CCP – to be accompanied by a trustworthy person, who does not have a direct interest in the outcome of the case, such as a psychologist, reintegration adviser, social assistant or pedagogue. In practice, however, in cases of trafficking in human beings, courts rarely invite social assistants or psychologists to assist adult victims in order to diminish the psychological impact of the proceedings on the victim. Therefore, the right of the injured party in this regards is mostly declarative in nature.

Figure 24: Representation of the victims



## 7.4 Compensation provided to victims

According to the study the courts have admitted in principle 29 civil actions.

At the same time 10 civil actions were rejected on grounds of unjustifiably exaggerated compensation claims. In 16 cases the courts did not come up with any decision.

According to principle of fair trial, the justice has the role to not only punish the offender in a crime, but also to fully repair the damage caused to the victim. One in every two victims of trafficking in human beings, in the cases included in the study, has informed the criminal investigation body and the court of the fact that as a result of exploitation, they suffered material and/or moral damages. Material and/or moral damage to the victim were established in 31 per cent of cases.

The claims submitted by the victims can be systematized as follows:

Minimum claimed amount -	MDL 900 (USD 75)
Maximum claimed amount -	MDL 450,000 (USD 37,500)
Average claimed amount -	MDL 45,000 (USD 3,750)

The total material compensation claimed by victims who lodged civil actions during criminal investigation was MDL 1 846 177 (USD 135,848), USD 16,000 and 10,000 Ukrainian hryvna (USD 1,266), out of which at this phase of the process only MDL 3,800 (USD 316) were awarded.

The total material damage claimed during examination in the court of first instance was MDL 1 420 642 (USD 118,386), USD 16,000 and 10,000 Ukrainian hryvna (USD 1,266), out of which MDL 538,065 (USD 44,838) and 3,000 Ukrainian hryvna (USD 380) have been awarded.

Material damage claimed by victims during the examination of appeals was MDL 41,345 (USD 3,445), out of which MDL 7,425 (USD 618) were adjudicated in addition.

Total moral damage claimed by victims of trafficking in human beings during criminal investigation was MDL 2 165 500 (USD 180,458), out of which at this phase of the case only MDL 138,900 (USD 11,575) were compensated.

Moral damage claimed by victims during examination in court of first instance was MDL 1 785 900 (USD 148,825), out of which MDL 286,000 (USD 23,833) were adjudicated.

In appeal, the amount of requested moral damage was of MDL 609,500 (USD 50,791) which was partially admitted by the court in the amount of MDL 32,500 (USD 2,708).

Hence, out of the total amount of material compensations initially claimed, only 15 per cent were awarded to the victims. Out of the total amount of moral compensations initially requested, in the end the victims received 21 per cent.

The discrepancy between the moral and material compensation provided is explained by the lack of evidence that would prove the existence and extent of moral damages caused by the exploitation of the victim. At the same time, it should be noted the moral damages do not require as high a level of probation as the material damages.

Out of the total amount of the material and moral compensations claimed by victims, only 17 per cent were admitted.

### **Outstanding case:**

*In one case, the court has reframed the defendant's actions from article 165 CC to article 220 CC and, at the same time admitting the civil action initiated by the victim of trafficking in human beings, granting moral compensations in the value of MDL 10,000 (USD 833).*

According to the decision of the Supreme Court of Justice Plenum no. 37 from 22.11.2004, in cases of pimping, the woman in prostitution does not have the status of a victim and, therefore, cannot claim any compensation for damages supported. In the above-mentioned case, the court has adopted a contradictory decision.

## 7.5 Victim protection measures

Even though victims of this category of crimes are often subjected to blackmail, threats or other illegal acts, only in 5 per cent of cases of trafficking in human beings the files contained information about such risks. In this context, the following measures to protect the victims were taken:

- four ordinances for providing personal protection,
- ordinance for protection of goods of the victim,
- protection of the life and wellbeing of the victim and her family was ordered.

The study showed that protective measures had been applied only in the criminal investigation phase. In the court examination phase, the injured party is unprotected, a fact that often determines the victims to change their statements. In cases where protection measures were carried out, they have been cancelled soon afterwards, on the ground that some of the conditions imposed on the victim were not respected (maintaining a permanent contact with law enforcers, not leaving the home at night and other requirements).

Besides protection measures, article 110 of the CCP also regulates the use of special methods of interviewing as a protection mechanism, which are not being used unfortunately.

There were cases where protection measures were not applied despite the obvious necessity to do so, for example: *in one case the victim and her father reported that they had been threatened. No actions were taken in response and as a result the victim radically changed his/her statements in court.*

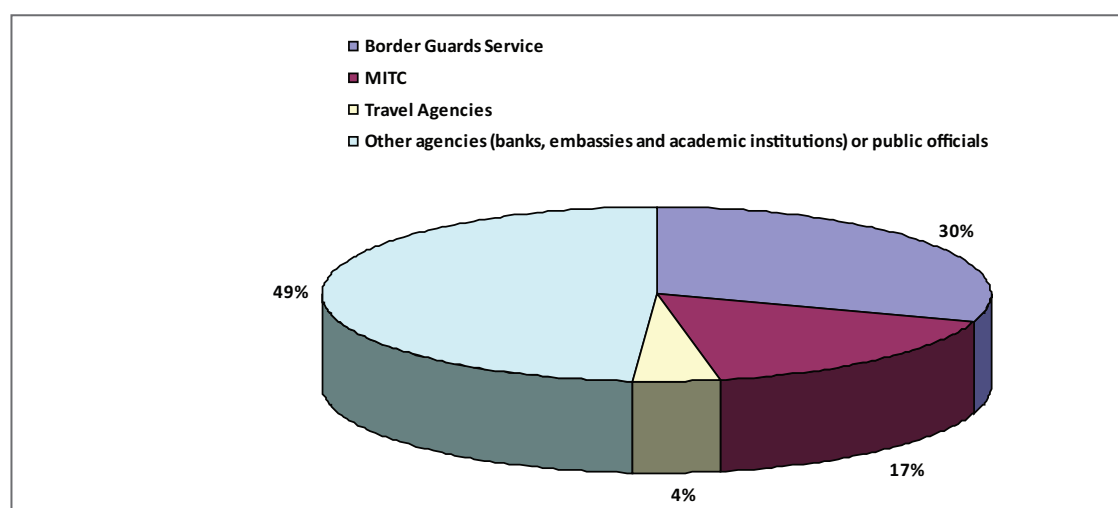
*In another case, B.A., mother of the injured party B.O. informed the investigators of the fact that her daughter had been threatened and then left the territory of the Republic of Moldova. The injured parties have requested to move the examination of the case to another city, because the defendants were pressuring them. The prosecutor did not take any action to ensure their security. During the trial the prosecutor changed his position and reclassified the traffickers' actions as pimping. Moreover, because of the absence of the injured parties, the prosecutor has requested that the interviewing report of the injured party is read out. Thus, during the trial, the prosecutor read aloud the victims' statements provided during the criminal investigation. The court was critical of the statements and the defendants were convicted under article 220CC. This is an interesting case also because of the fact that the injured party declared that the traffickers were undoubtedly aware that at the moment of recruitment the victim was 17 years of age, because traffickers used a birth certificate of a different person to help her cross the border. The state prosecutor, instead of modifying the accusation to a harsher punishment in court has actually reclassified the deed from article 165CC to art 220CC, basically into a milder crime.*

## 8. NATIONAL AND INTERNATIONAL COOPERATION

### 8.1 Interdepartmental cooperation

The results of the study show that the criminal investigation bodies have requested information from different institutions and organizations in order to establish relevant circumstances, as follows from Figure 25 below.

Figure 25: Interdepartmental cooperation



In the great majority of cases, state bodies provide information at the official request of the criminal investigator. However, documentation of this information it is still troublesome. In the absolute majority of cases such data is simply reflected as „information” without being presented with necessary signs of an official document (such as signature, stamp, registration number and the like) and in most cases they are not supported by special ordinances to include them as evidence to a case in accordance with article 157 (2) of the Code of Criminal Procedure.



## 8.2 International legal assistance

Trafficking in persons is an increasingly international phenomenon, transcending national frontiers. This explains the difficulties faced by the criminal investigation in most such cases because of the heterogeneous character of the various national criminal systems, including differences in procedures, as well as certain reserve of national authorities towards their counterparts from other states.

Cooperation in conducting joint investigations can take place in the form of a rogatory commission and by transferring obtained information by operative means. Such data is exchanged at the level of the General Prosecutor's Office, Ministry of Interior and Ministry of Justice. In cases when the law imposes restrictions on the authorization by the investigating judge of some procedural actions, these are being applied as well for the exchange of such data. So, in the case when there is a restriction to use transferred information, special conditions being imposed or in cases when the information represents state, commercial or banking secret, it will be only sent upon authorization for transfer issued by the investigating judge, following a motivated request of the prosecutor

The result of the study show that only in 16 per cent of cases of trafficking rogatory letters were sent as indicated in Table 2 below.

**Table 2: Requests for international legal assistance**

Number of Requests	Requested State	Answer in less than 2 months	Answer from 2 to 6 months	Answer after 6 months	No answer
20	Ukraine - 2 Russian Federation - 12 Poland - 1 Turkey - 4 Italy - 1	4	11	2	3

Thus, the study showed that the following actions were undertaken in response to the requests of international legal assistance:

- three persons were extradited,
- 10 interviews were held (for instance with witnesses),
- 11 documents were found and transmitted,
- 1 investigation of the crime scene took place.

The reduced number of requests shows that there is a problem with international cooperation. One of the reasons of this is the relatively long period of time in which the answers are provided as well as the incomplete content of the answers.

In most of the cases, international cooperation is limited to gathering operative information through international specialized bodies, such as INTERPOL, EUROPOL, SECI or EUBAM, which provide timely responses. However data that is gathered this way is often disqualified as inadmissible evidence at the request of the defence. However, if this data is confirmed with other evidence, other than the victim's testimony, it is admitted by the courts as valid evidence.

### **Outstanding cases:**

*The victim, located in Moscow, complained to a client that she was being exploited. The client, after threatening the trafficker, made him return the passport to the victim so that the victim was able to return to Moldova. In the process of criminal investigation, the General Prosecutor's Office sent a letter rogatory to the Russian Federation in order to arrange an interview with the person that helped the victim return her passport. This witness was interviewed and declared that together with his friend they went to the trafficker to obtain the victim's passport. The trafficker initially refused by arguing that the victim still owes him money, but changed his mind afterwards. Then, the witness bought the victim a ticket to Chisinau and gave her 300 rubles for road expenses. During the examination of the case in the court of first instance, the court rejected the readout of the report of the interview with this witness, motivating its decision by the need for his presence in the courtroom, in line with article 371 CCP, which stipulates two possible situations where reading out of statements in trial is allowed. As a result of this, the court has reclassified the crime from article 165 CC to article 220 CC.*

In other cases, the courts accepted reports on witness interviews held by international rogatory commissions, and recognized these reports as evidential material. Thus, the study finds a certain inconsistency in the judicial practice with regards to the probative role of evidence resulting from international legal assistance procedures.

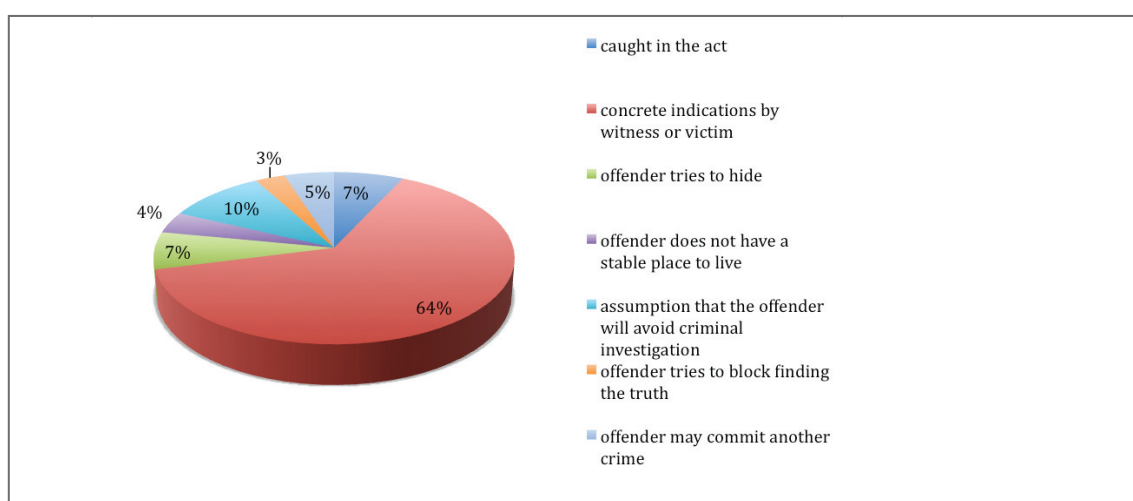
Additionally, there were cases of deficient implementation of rogatory procedures. For example: the rogatory letter does not indicate the date and is addressed to the General Prosecutor's Office in Italy, while being signed by an ordinary local prosecutor, a fact which contradicts article 531-534 CCP.

## 9. PROCEDURAL COERCIVE MEASURES

### 9.1 Detention in police custody

The study has found multiple gaps in the procedural recording of apprehension and detention in police custody of persons suspected of committing the crime of trafficking in human beings. Apprehension (arrest) reports do not always state the legal grounds and motives for a person's apprehension, the reasonable suspicion and references to the applicable law. In many cases reports contain general standard phrases quoted from the CCP, without any reference to the specific circumstances of the case. The frequency of various grounds for police detention in cases of trafficking in human beings, according to this study, is provided in Figure 26 below:

Figure 26: Grounds for retention as stipulated in CCP



The legislation prescribes that detention by police should take place only for a short period of time not exceeding 72 hours (24 hours for minors) and that the person detained has to be brought in front of the investigation judge as soon as possible to examine the possibility of further detention or, depending on the case, to set the detained person free. According to the study, in almost all of the cases the persons were detained for the maximum period of time provided by law.

### 9.2 Pre-trial detention/remand custody

In 54 per cent of the cases, 113 warrant requests were submitted for detaining suspects and accused persons, out of which 92 were approved.

In 7 per cent of cases, the prosecutor challenged the refusal of the court to issue a detention warrant. Only in one case the Court of Appeal decided to overturn the decision of the inferior court and issue the warrant.

In the criminal investigation phase 80 suspects were subjected to remand custody with an average duration of six days. The total number of accused persons in pre-trial detention was 79, with an average period of detention of 39 days.

In the trial phase, 50 defendants were in remand custody, with the average detention period being 102 days. During the appeal, 40 convicted persons were held in remand detention for an average of 117 days.

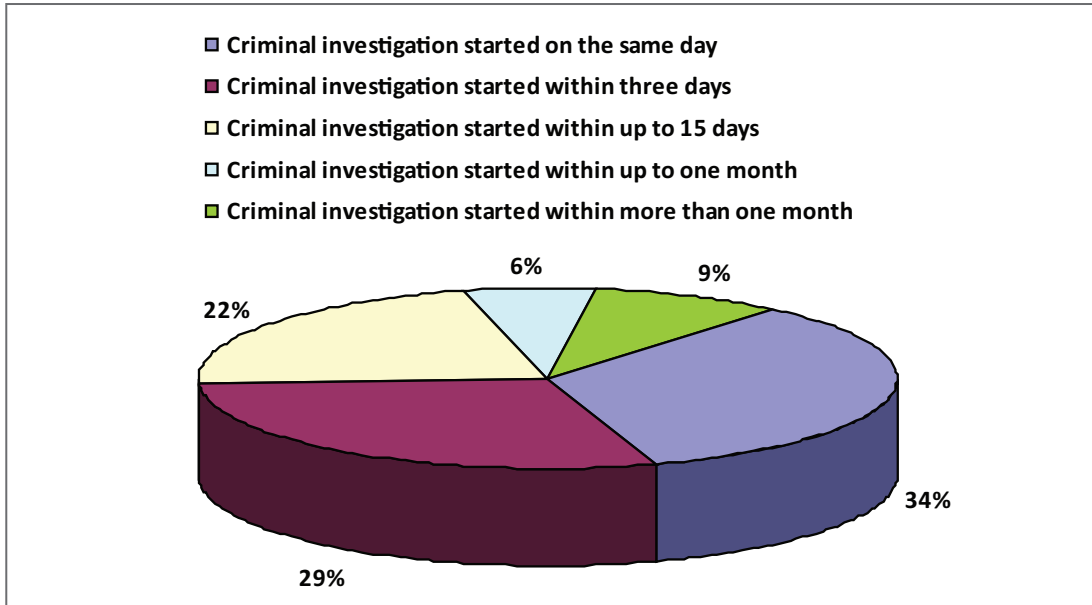


## 10. TIME FRAMES FOR CONDUCTING CRIMINAL PROCEEDINGS

### Criminal investigation

In the cases included in the study sample, the period of time from the date the complaint had been lodged to the moment criminal investigation under article 165 was initiated is indicated in Figure 27.

Figure 27: Time frames for initiating criminal investigation



The average period of time from the initiation of criminal investigation to the moment of indictment is eight months, and it takes additional months – usually up to one month– to send the case to the court.

It was found that authorities often extend the term of criminal investigation based on formal rather than justifiable reasons. In other cases the term is extended in spite of the fact that there is no extension request by the criminal investigation officer. In yet other category of cases there are no documents that would indicate to the sequence of the extension of the criminal investigation periods (for example only 2 initial terms are fixed, and the rest of the period of criminal investigation remains undocumented).

### Trial

The time necessary for the court examination of cases under article 165 CC, is on average of:

7 months - first instance court,

4 months - appeal,

4 months - cassation,

10 months - annulment cassation.

Thus, the study has shown that an average period of more than 16 months passes from the initiation of criminal proceedings and until the sentence is pronounced. In cases where ordinary and extraordinary remedies are resorted to, the criminal proceedings lasted on average two years and 10 months.

## 11. COURT PROCEEDINGS

On average, there were approximately 13 court hearings per each case in the cases analysed.

The analysis of the duration of proceedings in first instance courts shows the following:

**1. The period of time from the date of sending a case to the court and the date of the preliminary hearing** – 28 days on average for each case.

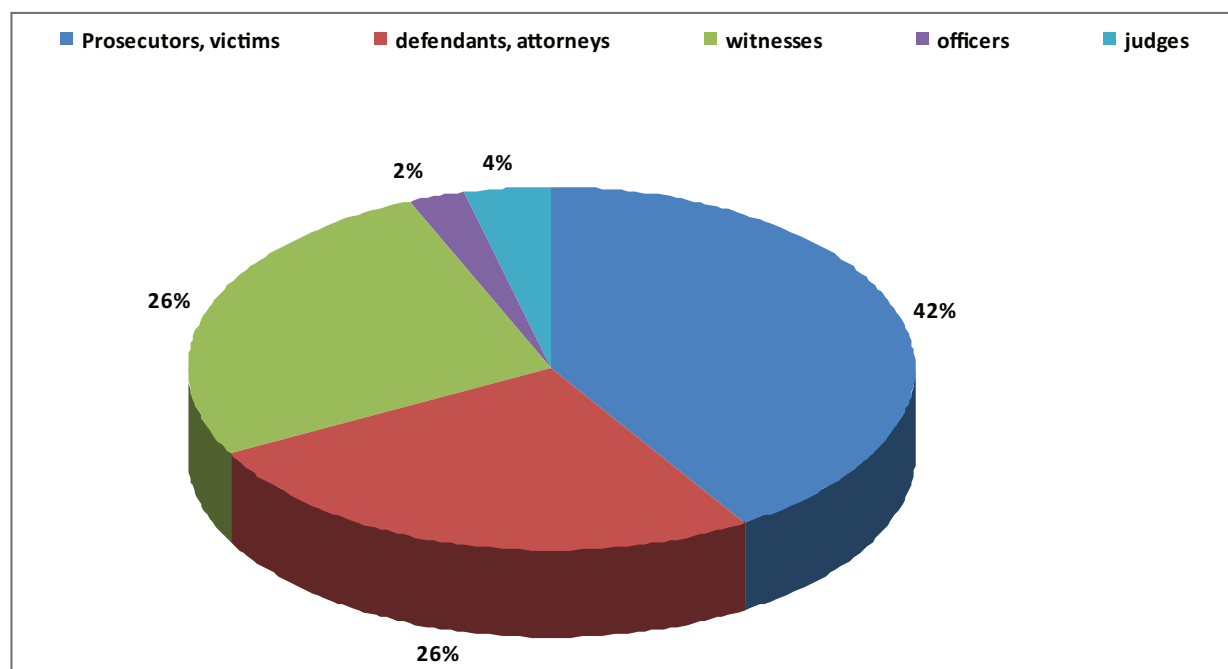
**2. The period of time between the date of sending the case to court and the date the sentence is read –** 204 days on average for each case.

**3. The period of time from the pronouncement of the sentence to the final editing of the decision –** 27 days on average for each case. This indicates to the fact that judges do not follow the time frames set by law for drafting the sentence, which is of 10 days according to article 343 CCP. In one case, for example, *the judge pronounced the sentence on 30 May 2007 but only wrote the decision down on 29 December 2007, so the sentence was edited after seven months.*

## 12. PARTICIPATION AND THE BEHAVIOUR OF THE PARTIES TO COURT HEARINGS

The study shows that in those 129 cases analysed, a number of 498 hearings had been postponed, which represents 29.4 per cent out of the total number of hearings. The motives for hearings to be postponed are indicated in Figure 28 below.

Figure 28: Percentage of postponed hearings



In conclusion it can be stated that approximately one third of all court hearings did not take place. The fact that cases are frequently postponed discourages and demoralizes the participants, which influence the quality of justice (witnesses no longer come to other hearings, the quality of statements is decreasing over time).

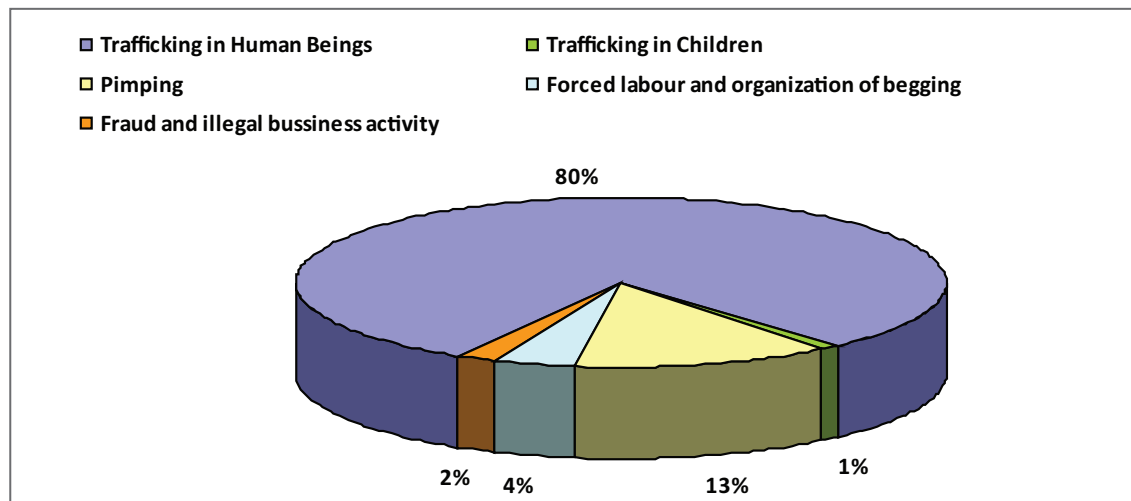
## 13. SENTENCING

### 13.1 The position of the state prosecutor

Representing accusation on behalf of the state, the prosecutor is guided by the law and his own conviction determined by the evidence adduced within the court hearings.

In the cases analysed within the present study, in his pleadings the prosecutor has requested the following classification of the defendants' actions (see Figure 29):

Figure 29: Classification by prosecutors:



The prosecutor asked for the following punishments:

- imprisonment for 121 defendants (out of 171) for an average of 14 years;
- imprisonment with conditional suspension of execution for 18 defendants for an average of four years of prison with probation period of three years;
- fine for 14 defendants for an average of 486 conventional units (MDL 9,720 = USD 810);
- restrictions for 22 defendants;
- confiscation for one defendant;
- expelling for one defendant.

The classification made by the prosecutor for the actions of the defendants had a significant impact on the sentence and the outcome of the criminal proceedings. According to the analysis made, the prosecutor is not consistent in his position, “giving up” his initial position on the classification of the crime in 19 per cent of cases.

The inconsistency is also frequent with regards to the punishment requested. Here are a few examples in this regard:

- In one case, the victim was trafficked to Egypt and then to Israel, being sold to different exploiters (four times). The prosecutor classified the act according to article 165 (2) CC (aggravated trafficking in human beings) and asked for imprisonment for a period of 15 years. The court convicted the defendant based on the same article but only applied a fine of MDL 20,000 (USD 1,666). Nevertheless, the prosecutor did not challenge the sentence and the sanction given by the court.

- In another case, the prosecutor concluded a plea bargain with the defendant, who pleaded guilty under art 165 (2) d) CC. During the trial, the prosecutor requested the application of provisions of the Criminal Code on plea bargaining (article 80, 79, 90 CC) and of a final punishment of 5 years of prison with conditional suspension. The court has accepted the plea bargaining and applied the punishment requested by the prosecutor. Afterwards, the same prosecutor challenged the sentence in the Court of Appeal, motivating that the plea agreement was illegal and the sentence – which was in fact based on his earlier request – needed to be revised. The Court of Appeal rejected prosecutor’s appeal.

There were also cases where the prosecutor had a more principled position, coming with additional evidence in two cases according to article 327 CCP. At the same time, defenders adduced additional evidence in eight cases.

### 13.2 Legal classification by courts

Given the frequent reclassification of crimes from trafficking in human beings to pimping, it is important to note that the need to distinguish between the elements of the two crimes comes when trafficking in human beings or trafficking of children is committed with the purpose of sexual exploitation. The first difference is in the specific purposes pursued by the offenders when committing the crime. Thus, while in the case of pimping the objective of the criminal is practicing of prostitution by another person, in the case of trafficking in human beings it is the sexual exploitation of the victim, including her *exploitation in prostitution*.

In this context it becomes necessary to explain the meaning of the act of „exploitation of victim in prostitution“. In states where prostitution is legalized, this activity would mean providing prostitution services with the violation of the laws on labour conditions, salaries, health and security. However, in the Republic of Moldova the exploitation of the victim in prostitution also has a different meaning. Thus the literature in the domain provides that “if the victim did not have the freedom to take the decision to engage in prostitution, the act cannot fall under the definition of the crime of pimping, because it was realized through constraint and not through determination”. Generally, this opinion reiterates the idea reflected in section 15 of the decision no. 37/2004 of the Supreme Court of Justice, according to which in case of pimping “there are relations between the women engaged in prostitution and the pimp that are based on *free will*”. In the same manner, section 4.1 of the above-mentioned decision defines commercial sexual exploitation emphasizes the element of constraint in contrast to determination. The same interpretation is also included in the Law on Preventing and Combating Trafficking in Human Beings (article 2 (3) let. c)), which mentions as an example of exploitation *obliging someone to engage in prostitution*. Thus, the actions established by the law for article 220 CC of „determination to prostitution“ is not compatible with the one in the context of article 165 CC or article 206 CC of “constraint to prostitution”. The difference between determination and constraint to prostitution is crucial: in case of constraint the victim cannot manage its own actions, being forced to follow the will of the criminal; in case of determination to prostitution the person has an alternative, by either choosing to follow the will of the criminal or not to. Unfortunately, the judicial practice reflects some confusion in relation to these two notions.

According to some opinions, which are also supported by the authors of this Study, the constraint to prostitution is possible in 2 situations:

- 1) when the criminal forces someone to engage in prostitution when that someone has decided to stop this activity. Thus, pimping can be followed by trafficking in human beings, creating an accumulation of criminal acts; this transformation takes place when the constraint to prostitution replaces the determination to prostitution, because the victim decides to stop engaging in prostitution;

- 2) when the criminal forces someone to engage in prostitution under his own or another person’s control, regardless of the will of the victim.

Besides these two situations, we do not exclude a situation where the victim has not previously engaged in prostitution and the criminal forces her to engage in this activity under his or another person’s control. An example in this regard, from the analysed case files, could be the following: *according to the statements of the injured party S.G., in April 2006 she worked at the clothes factory in the city B. where she met R.I. The latter proposed her to go to Turkey to work also at a clothing factory, mentioning that he she had a Turkish friend I. who would help them there. Afterwards, from the money received from I., she bought the necessary documents for departure and a plane ticket, but because R.I. was not able to leave the airport’s premises on the grounds of being previously deported, the injured party S.G. met the Turkish man alone. I. put her into a hotel in Istanbul, and took her documents, informing her that in order to return the accumulated debt for getting the documents and buying the ticket, she will have to engage in prostitution. Because she did not want to engage in prostitution herself, refused to eat and to comply with the demands of I., she has been beaten until she understood that there is no other way out and that she will have to engage in prostitution. I. was getting all the money, telling her that she will be paid for her services when she will return the debt.* In this case, the courts have correctly interpreted the criminal law, keeping the classification of the act proposed by the prosecutor, as falling under art 165 CC.

Here, as it occurs in other situations, the will of the criminal is in contradiction with the will of the victim.

Coercing into prostitution needs to be viewed separately from determination to prostitution, the latter consisting of the proposal to continue this activity for a higher payment, promise by the criminal of certain benefits, incentives, privileges, including abroad. These offers are also possible in the context of pimping and are not characteristic to trafficking in human beings, because they are not damaging the victim’s position and do not place her in a no-escape situation.

Besides the purpose of the crime, a second fundamental difference between pimping and trafficking in human beings consists in the outcome wanted by committing these offences. Thus, in the case of pimping, the criminal benefits from victim’s prostitution, but the latter gets a substantial proportion of benefits as well. The situation is different in the case of trafficking in human beings, where the entire activity is exclusively aimed at victim’s exploitation, and all or most of the benefits are appropriated by the criminal, so as to amount to exploitation.

In many cases, after being exploited victims returned home with an insignificant amount of money and sometimes even only with a flight ticket, being sent home because of their health condition or pregnancy.

Separating trafficking in persons (article 165 and article 206 CC) from organization of begging (article 302 CC) is basically achieved on the same criteria. Hence, the different purposes pursued by offenders in committing each of these crimes represent the first distinction between them. In case of the crime of organization of begging, the purpose is exclusively expressed by the fact that the offender or someone else gets unjustified material benefits. In case of trafficking in persons, however, the objective is to exploit the victim for begging by the usage of means of trafficking, the victim having no benefits at all in the majority of cases (in rare cases victim receives certain benefits but remains in the trafficking situation due to persistence of other circumstances).

Second, the difference between the organization of begging and trafficking in persons consists in the outcome wanted in each case. So, by committing the crime of organization of begging, the offender obtains benefits from victim's begging. However, the victim does get a substantial portion of the benefits. In case of trafficking in persons, the benefits obtained are entirely (or in a significant proportion) taken by the offender, which amounts to exploitation.

Thirdly, in the case of organization of begging the victim consents to practice begging, in agreement with the offender that they will share benefits. In case of trafficking in human beings (and trafficking in children), there is a different situation: the will of the victim is vitiated, because of the influence from the offender, materializing in any of the ways established by article 165 (1) let. a)-c) and article 165 (2) let. f), g) of the Criminal Code.

In the case of trafficking in human beings/trafficking in children, the transportation (when it occurs) of the victim can take place both inside the country as well as outside its borders. Reiterating the recommendations contained in the Decision no 37/2004 of the Supreme Court of Justice, it can be mentioned that in cases of trafficking in human beings and trafficking of children the movement of the victim across the border can be either legal or illegal.

It is obvious that, if the trafficker is taking the victim across the state's border legally, his actions will only be classified according to art 165 CC (trafficking in human beings) or article 206 CC (trafficking in children). However, in case of illegal crossing by the victim of the state frontier, where the offender organizes the passage of the person across the state frontier outside of the checking points, without a passport or special authorization from the governmental institutions, these actions being connected to the crime of trafficking – the offender's actions will be classified as both article 165 (article 206) CC and article 42 (3), article 362 CC (illegal crossing of state borders). In cases where there will be violations of the regime of crossing border only through checking points, administrative liability will be added (article 332 (2) of the Contraventions Code).

The following **conviction sentences** were adopted by the courts in the studied cases:

- o **58 per cent (99 persons)** - trafficking in human beings (article 165 CC);
- o **30 per cent (51 persons)** were legally reclassified as other crimes:
  - pimping (article 220 CC of 2002, 105/2 CC of 1961) – 39 (22.8 %);
  - organization of begging (article 302 CC of 2002) – 5 (3 %);
  - forced labour (article 168 CC of 2002) – 4 (2.3 %);
  - fraud, illegal business activity (article 122 CC of 1961, article 190, 241 CC of 2002) – 2 (1,2 %);
  - illegal crossing of state border (article 362 CC of 2002) – 1 ( 0,6%).

**As a result, out of 171 persons accused of committing the crime prosecuted through article 165 CC, only in the case of 99 persons final conviction sentences were pronounced on this article, which represents 58 per cent. Thus, in 22 per cent of cases the legal classification included in the final decision did not coincide with the prosecutor's position (from 80 % of cases where the prosecutor requested application of article 165 CC, only 58% had final convictions based on this article).**

Similar to the findings in cases on trafficking in children, the study has shown that none of the courts of first instance made any reference to the national legal norms that regulate trafficking in persons, or to international agreements to which the Republic of Moldova is a party. Although this fact could not be interpreted as an error on behalf of the courts, it still represents a gap in the process of application of the legal framework in force.

The study has shown that courts have applied article 79 CC – a lighter punishment than it is prescribed by law – in 41 cases. At the same time milder punishments based on plea bargaining were imposed by the court in nine cases.

*In a case of trafficking of 10 victims that were returned from the United Arab Emirates, the defendant was accused based on article 165 (2) CC (aggravated trafficking in human beings), and on article 220 (2) CC (pimping). When drafting the sentence, the court has excluded trafficking episodes with other two victims, without and any reference to them, indicating only that the prosecutor refused to accuse the defendants on these counts,*

whereas one of the victims has changed her statements. By excluding these episodes, the court has reclassified the criminal act from article 165 (2) let. a), b) of the CC to article 165 (1) let. a), b) of the CC. As a result, the court applied the punishment provided by article 90 CC – 5 years of prison with conditional suspension of punishment, and on article 220 CC established the punishment in the form of a fine of MDL 10,000 (USD 833).

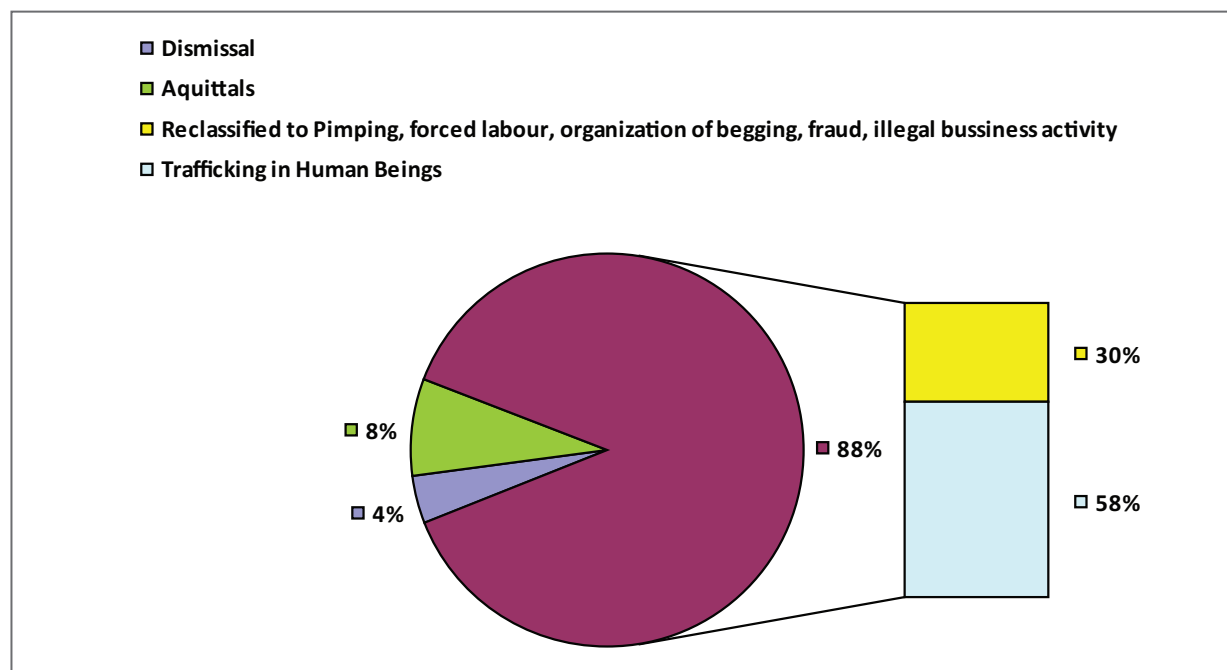
At the same time, the courts pronounced sentences of acquittal and of stopping further examination, as follows:

- **acquittal:** 8 per cent (14 persons) out of the total accused persons for reasons such as absence of elements of the crime;

- **stopping further examination (dismissal):** 4 per cent (7 persons) out of the total number of accused persons for reasons such as death, amnesty and order to stop further investigation which was not cancelled.

Figure 30 below summarises the first instance courts sentences in cases of trafficking in human beings under article 165 of the Criminal Code.

Figure 30: Sentences adopted by first instance court

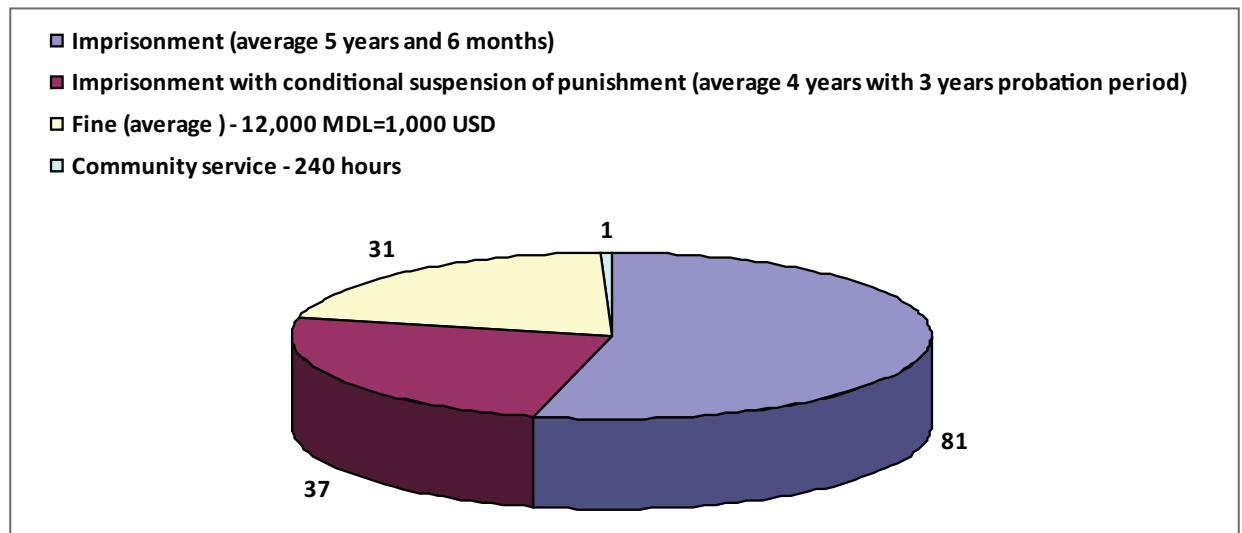


### 13.3 Punishments

Statistics of punishments in relation to the sentences of the court are the following:

- imprisonment: 81 persons (out of 150 convicted) with an average term of five years and six months;
- imprisonment with conditional suspension of punishment: 37 persons with an average term of four years with a probation period of an average of three years;
- finest: 31 persons, an average of MDL 12,000 (USD 1,000) each;
- community service: one person for 240 hours (Figure 31).

Figure 31: Punishments

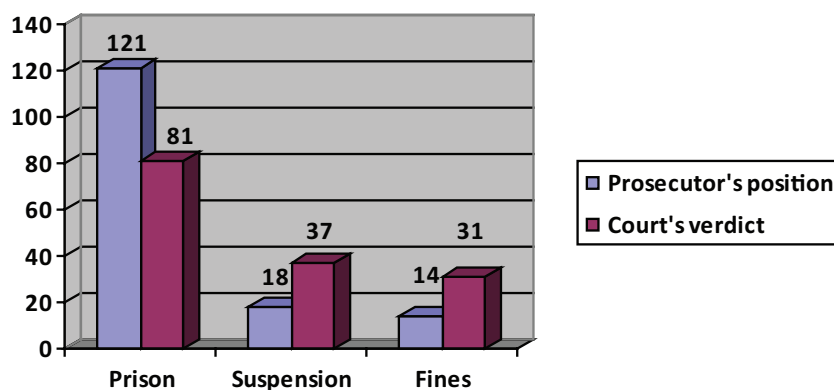


The court also applied additional punishments such as:

- interdictions (to practice certain activities or to hold certain positions): for 20 persons,
- expulsion: for one person.

Courts have often taken a different position than that of the prosecutor regarding the punishments, as shown in Figure 32 below:

Figure 32: Position of the prosecutor compared to the position of the court



It can be observed that the prosecutor requested an average term of 14 years of imprisonment for traffickers, while the court has applied the average punishment of five years and six months of prison.

In many cases where interdictions were imposed by sentences, their nature is not clear. Some of them do not clarify the forbidden type of activity, while others include activities which are not related to the committed crime. The above-mentioned situation demonstrates a deficient and inconsistent judicial practice on the issue of application of these complementary punishments.

#### Outstanding cases:

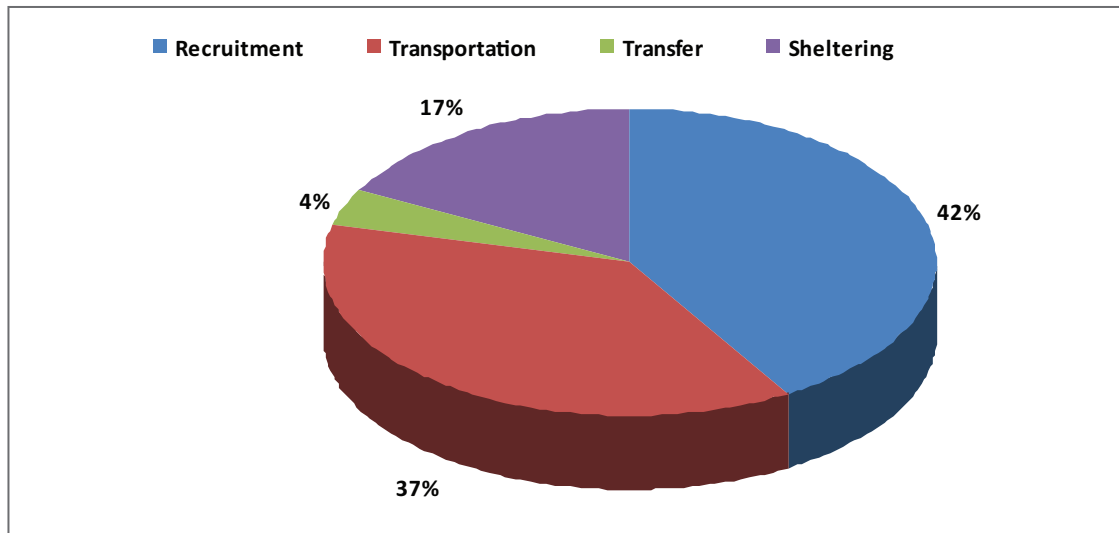
In two cases, article 96 CC was applied: postponing the execution of punishment for pregnant women and women with children younger than 8 years of age, although the punishment to be applied was higher than 5 years of prison, which excludes the application of the rule on postponing.

### 13.4 Criminal acts according to court decisions

Courts of first instance have classified defendants' actions as trafficking in human beings and related crimes. According to the data from the studied sentences we can see how the courts incriminated actions of trafficking (see Figure 33).



Figure 33: Actions incriminated according to the sentence for article 165 CC



In comparison with cases of trafficking of children, in cases of trafficking in human beings there is a lower number of convictions for harbouring and transfer, whereas recruitment and transportation are much more frequent. This situation occurs because of the fact that minors, compared to adults, are supervised more intensively before they reach the destination location.

The data included in Figure 33 above confirms the position of Moldova as a country of origin for trafficking in human beings, because the incriminated acts reflect initial phases of the process of international trafficking (recruitment and transportation), while lacking further steps of exploitation, that take place in countries of destination.

Only in one case the court's decision included references to international standards in the field of preventing and combating trafficking in human beings, as follows:

- International Convention for suppression of trafficking of women and children, adopted in Geneva on September 20, 1921;
- International Convention on suppression of trafficking in women on October 11, 1933;
- Convention for suppression of trafficking in persons and exploitation for prostitution, adopted at the United Nations General Assembly on December 1, 1949;
- Convention on combating trafficking in persons with exploitation by prostitution by third parties of March 21, 1980.

### 13.5 Appeals

#### *First appeal*

The study has showed that 76 per cent of the sentences pronounced by the courts of first instance were challenged in appeal. The majority of appeals were motivated with failed classification, the illegal character of the sentence, disagreement with regards to the punishment set by the court of first instance, and others:

**47 per cent of the appeals have been submitted by defendants and attorneys, of which:**

- 20 per cent were rejected by the court of appeal
- 23 per cent admitted by the court of appeal
- 4 per cent partially admitted by the court of appeal

**25 per cent - by the prosecutor, of which:**

- 13 per cent – admitted by the court of appeal
- 10 per cent – rejected by the court of appeal
- 2 per cent – partially admitted by the court of appeal

**4 per cent - by the injured parties or their attorneys:**

- 1 per cent admitted by the court of appeal
- 3 per cent rejected by the court of appeal

In conclusion, it can be stated that most frequent cases of appeal are initiated by the defence side (each second sentence). Out of these, two thirds of appeals are admitted.

### ***Second appeal***

The study showed one in every two sentences, which were challenged in appeal, were also further challenged in second appeal:

- 24 per cent being challenged by defendants and their attorneys,
- 15 per cent being challenged by the prosecutor,
- 3 per cent being challenged by the injured parties or their attorneys.

Only five of these actions submitted by the prosecutor were admitted. Eight appeals initiated by defendants or their attorneys were approved and two were partially admitted.

### ***Extraordinary legal remedies – appeal for annulment (“recurs în anulare”).***

Annulment applications were made in seven cases (nine persons) by the defendant/attorney. Two of them were rejected and seven were admitted. Thus, similarly to cases of trafficking in children, only a small number of legal errors were addressed through this procedure (5%). In the rest of the cases, the Supreme Court of Justice confirmed the legality of the decisions issued by inferior courts.

## IV.3 PIMPING

### I. BACKGROUND

Prostitution and pimping had spread to a very large scale, constituting networks that transcend the national level acquiring a transnational dimension, being closely connected to trafficking in persons, especially trafficking of women with the purpose of sexual exploitation.

Pimping and prostitution have been and are in a constant interdependence. Prostitution may lead to pimping and vice versa.

Even though pimping is recognized as an illegal act from criminal perspective, it has not been defined in the legal doctrine as precisely as other illicit activities. Some legal experts have included pimping in the category of phenomena which are qualified by the European Convention on Human Rights as the right to dispose of one's own body. However, pimping actually suspends this right from the moment the person sells her body, so that the right to use one's own body is transferred to another person, mainly the buyer – the owner of a brothel.

These considerations indicate that an in-depth analysis is needed of this phenomenon.

#### **Article 220. Pimping**

*Encouraging or determining a person to engage in prostitution or facilitating prostitution, or benefiting from the prostitution of others*

*shall be punished by a fine in the amount of 200 to 800 conventional units or by imprisonment for 2 to 5 years*

*The same actions:*

*a) committed by an organized criminal group or a criminal organization;*

*c) committed against two or more persons;*

*d) committed with violence not dangerous to the life and health of the person or with the threat of such violence against the person practicing prostitution or his/her relatives or close persons;*  
*shall be punished by imprisonment for four to seven years*

### 2. THE PROFILE OF THE ACCUSED PERSON

Number of accused persons: 125

Number of convicted persons: 108

Number of acquitted persons: 2

There were 15 accused persons against whom the criminal investigation was stopped for different reasons, as follows:

- 2 – due to death of the accused persons,
- 6 – due to amnesty applied,
- 6 - through application of art 55 CC (exemption from criminal liability for administrative liability),
- 1 expiry of the limitation period.

The persons accused of pimping share the following profile:

#### **Sex:**

**Women – 70 per cent**

**Men – 30 per cent**

It was found that more than two thirds of the subjects of this crime were women. This is explained by the fact that the majority of defendants in such cases were previously involved in engaging in prostitution abroad.

Usually they were charged with pimping with the prostitution abroad. On the other hand, in cases where sexual services were provided in Moldova, the pimps were mostly men. However, these cases were fewer in comparison to those of the first group (25% in a representative sample of cases chosen randomly).

### **Average age of the accused persons:**

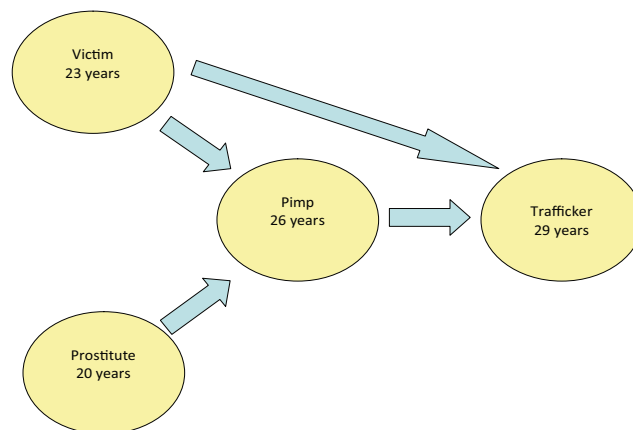
**Women – 26 years of age (max. 71 years of age, min. 18 years of age)**

**Men – 35 years of age (max. 58, min. 20 years of age)**

The average age of female pimps is lower than that of female traffickers. Taking into consideration that in both cases sexual exploitation or providing sexual services mostly occurs abroad, we can conclude that the pimp usually engages in prostitution abroad, determining and facilitating the engagement in prostitution for other persons as well. As the pimp advances in age and establishes close relationships with exploiters from abroad, she shifts from prostitution to pimping, and then to trafficking in persons with the purpose of sexual exploitation.

Thus, a possible scenario is that a woman of 20-23 years of age is initially either a victim of trafficking in persons, or a woman in prostitution, becoming afterwards a pimp (at about 26 years of age) and then a trafficker (at the age of 29).

**Figure 34: Probable scenario of victims becoming traffickers**



### **Employment:**

**Employed: four persons (3%)**

**Unemployed: 121 persons (97%)**

The fact that almost all the pimps are unemployed confirms the above-mentioned conclusions, the income of these persons originating from criminal activity.

Earnings acquired from pimping are sufficient to secure a certain financial situation, without the need to have a job. This confirms that the highest profits from the result of practicing this illegal activity are gained by the person who controls or facilitates the activity of providing sexual services.

### **Criminal profile:**

According to the information accumulated within the study, out of the total number of 125 accused persons, 30 per cent have been previously criminally convicted, among which:

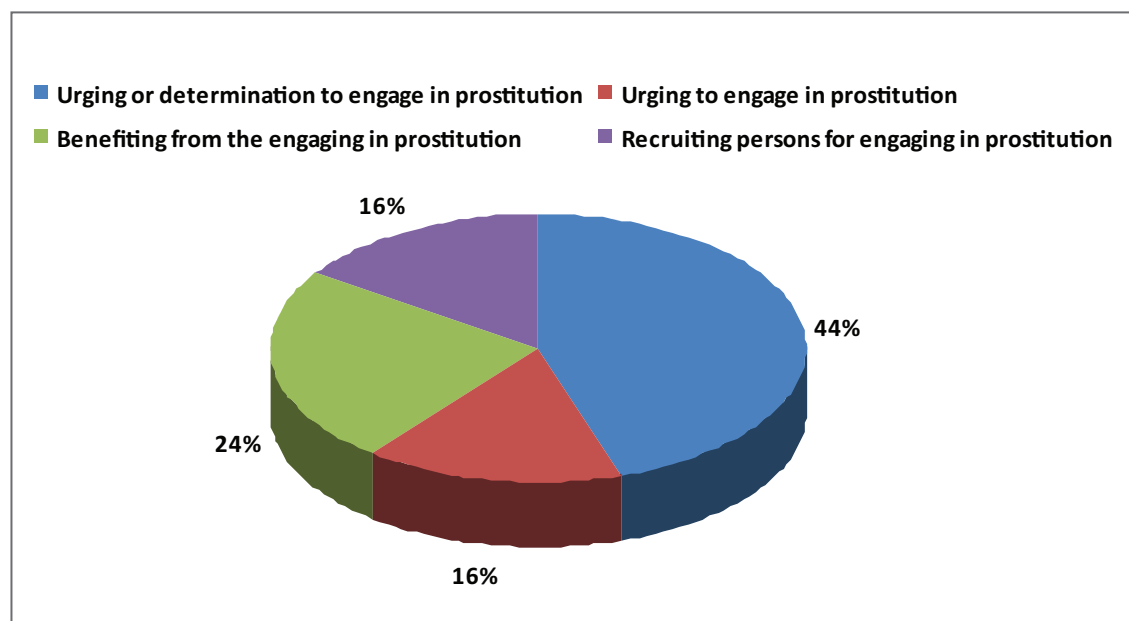
- **10 persons – for pimping,**
- **six persons – for theft,**
- **two persons – for trafficking in persons,**
- **two persons – for drug trafficking,**
- **one person – for rape,**
- **one person – for illegal crossing of the state border.**

Thus, one in every three pimps has a criminal record for committing crimes similar or related to pimping.

In these circumstances, we can see a significant incidence of recidivism among these criminals, which shows the fact that lighter punishments, previously given to these criminals did not fulfil their objective of deterrence and re-education, established by the criminal law.

Based on the studied cases, the courts incriminated the acts committed by pimps as indicated in Figure 35 below.

Figure 35: Actions incriminated by sentences for article 220 CC



Thus, the action that is most often punished under article 220 CC is encouraging or determination to engage in prostitution. This is due to the fact that the majority of cases of pimping referred to actions of engaging in sexual services outside of the borders of the Republic of Moldova.

### 3. PROFILE OF THE PERSON THAT ENGAGES IN PROSTITUTION

According to the legislative provisions and the Decision of the Supreme Court of Justice Plenum no 37 of 22.11.2004 „regarding the practice of applying legislation in cases of trafficking in human beings and trafficking in children”, in criminal cases of pimping, the person who provides sexual services is regarded as a witness. The capacity of victim or the injured party cannot be applied in their case. At the same time, these persons usually receive administrative sanctions for engaging in prostitution. According to the study, such sanctions were applied only in cases of provision of sexual services on the territory of Moldova, where providers of sexual services were caught in the act of committing a crime.

The total number of witnesses-women in prostitution in the materials of the study is 181. Out of this number there were identified the following common features of witnesses-women in prostitution:

#### Sex:

**Women: 100 per cent**

**Men: 0 per cent**

#### Average age:

**Women: 20 years of age (max. 38 years of age, min. 14 years of age)**

It is important to note that situations where minors were engaged in prostitution were qualified according to article 220 (2) of the Criminal Code, while no actions were taken to sanction the persons who had sexual relations with them, under article 174 CC (sexual relations with a person that is under the age of 16).

## Employment:

**Employed: 14 persons (8%)**

**Unemployed: 167 persons (92%)**

The percentage of unemployed witnesses-women in prostitution explains their motivation for involvement in this activity, having no other source of income. Unemployment and young age confirm the position of vulnerability of these persons, a similar vulnerability issue being common to victims of trafficking in persons. At the same time, a considerable number of unemployed persons were enrolled in educational institutions (high school, college, university) while engaging in prostitution in parallel prostitution.

## Education:

**Middle school: 62 persons (34%)**

**High school: 58 persons (32%)**

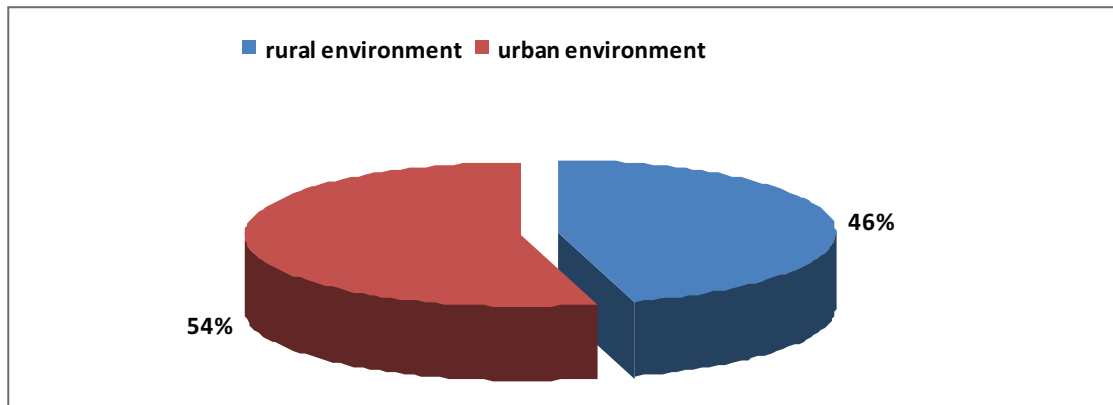
**Higher unfinished (university students): three persons (2%)**

**No information: 58 persons (32%)**

The study shows that the level of education of witnesses-women in prostitution is similar to that of victims of trafficking – yet another proof that the profile of the victim of trafficking in persons (age, origin, education, employment) is very similar, almost identical, with the one of witnesses-women in prostitution. In comparison with victims of trafficking in persons, witnesses-women in prostitution do not drop school and often decide to provide sexual services to earn money for subsistence and affording school fees. Nowadays, the pre-university education system in the Republic of Moldova (high school, college) often separates children from parents at an early age of 15, because the schools where they can learn a profession are mostly situated in the big cities. Vocational training opportunities in their native location would contribute to reducing the risk for young girls to be involved in engaging in prostitution or to be recruited for sexual exploitation.

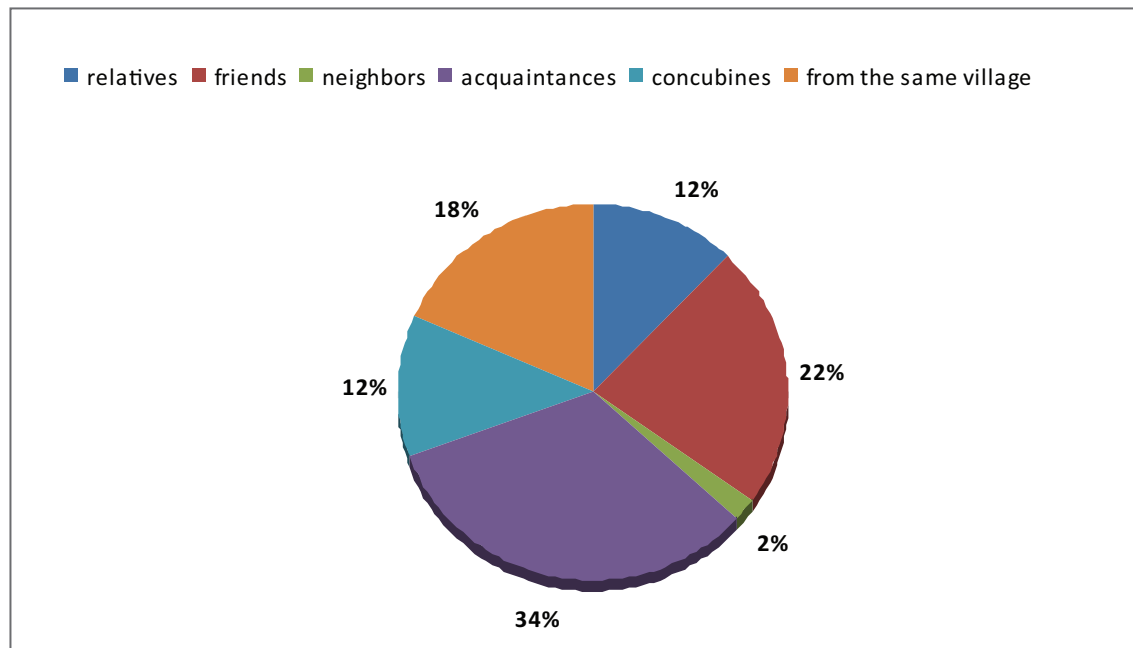
Even though Figure 36 shows that more than a half of witnesses-women in prostitution come from the urban area, nevertheless the vast majority of them have their origins in the rural environment, having temporary residence in cities (for the period of studies for instance).

Figure 36: Environment of origin of the witnesses/ women in prostitution



The study has shown that in the majority of cases witnesses-women in prostitution are in close relationship with the pimps and most often are being encouraged, determined or assisted to engage in prostitution by relatives, friends or concubines (see Figure 37). They engage in prostitution not only to ensure their own subsistence, but also to support the entire family (a relative, a cohabiting partner).

Figure 37: Relationship between the woman in prostitution and the pimp



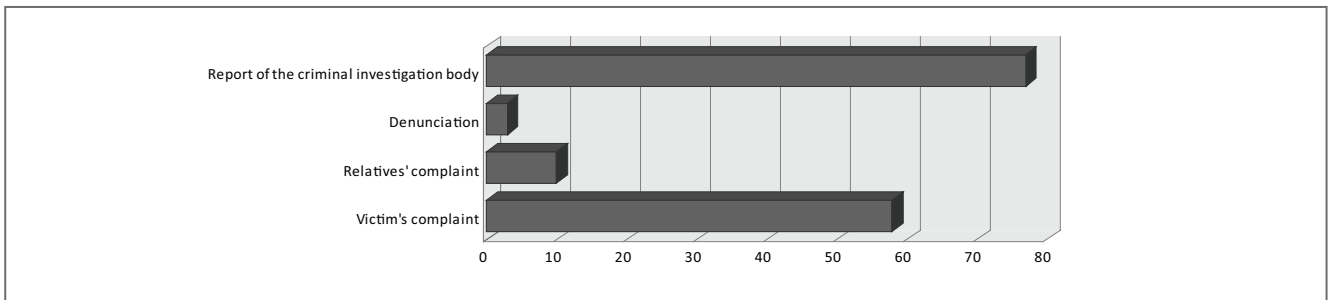
#### 4. REPORTING THE CRIME

According to the data illustrated in Figure 38 below, in the majority of cases (53%) the criminal investigations are initiated based on a report by the criminal investigation body. Nevertheless, there were many cases where criminal investigation was launched at the complaint of the witness-woman in prostitution (39%), claiming to be victims of sexual exploitation, having suffered both material and moral damages. If we add the number of complaints from relatives of witnesses-women in prostitution, which appear in 7 per cent of the cases, we can conclude that almost half of the witness-women in prostitution claim to be victims of sexual exploitation in the initial phases of the criminal investigation. These claims can be explained by the person's wish to avoid administrative liability for engaging in prostitution, provided by article 89 of the Contraventions Code, because according to paragraph (2) of this article, the person involved in prostitution against its will is free from administrative liability. This is mostly the case when pimping is committed on the territory of the Republic of Moldova.

The study has shown that only in 2 per cent of cases, the criminal process was initiated based on a third party's report, usually clients of women in prostitution. Thus, it can be concluded that denunciation by the clients as a form of informing the criminal investigation body about the commission of the crime is more common in cases of trafficking in persons with the purpose of sexual exploitation, than in cases of pimping.



Figure 38: Reporting the crime



In some cases the criminal investigation body, at the phase of initiating criminal proceedings, has wrongfully classified the committed actions under article 165 CC (trafficking in human beings), which may be explained by the tendency to enhance quantitative indicators of their work on this crimes. *Thus, in one case, based on a complaint by an alleged victim, there were reasonable suspicions that the crime of pimping was committed. However, the criminal investigation unit has unjustifiably initiated criminal investigation based on article 165 (1) CC (trafficking in human beings). Also, even though the second victim did not file a complaint and did not make any statements, additional charges were pressed on the accused for this episode as well.*

## 5. PROCEDURAL ACTIONS

### 5.1 Hearing of the witnesses-women in prostitution, the injured party and the civil party

In all the studied cases, before initiating criminal proceedings, the criminal investigation body recorded the “explanations” provided by witnesses-women in prostitution. Out of the total number of witnesses-women in prostitution (181), 97 per cent made explanatory statements. Similarly to criminal cases on trafficking in persons, the relevant authorities after receiving information on the crime, invite witnesses-women in prostitution and ask them to provide explanations, after which they issue administrative reports against them for engaging in prostitution.

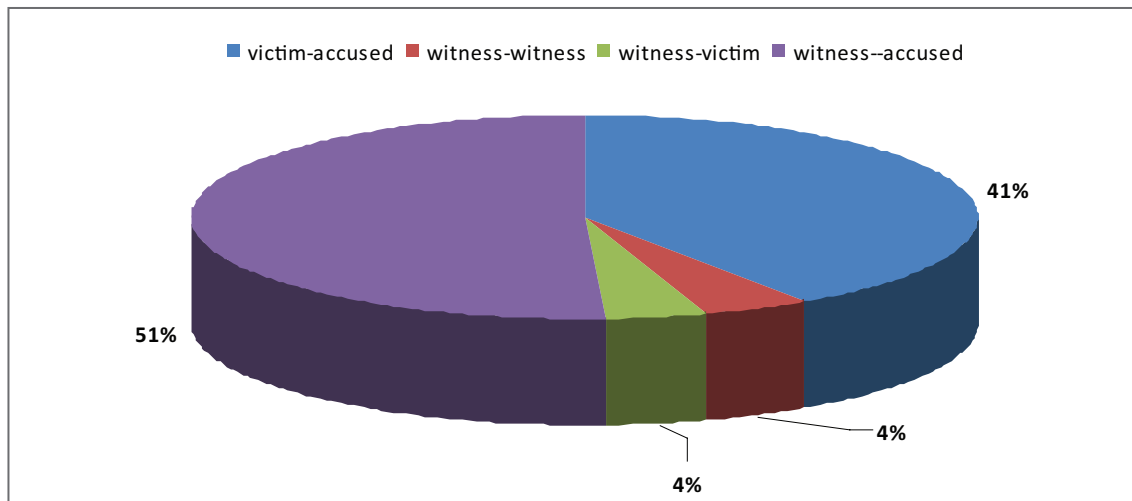
The statements of witnesses-women in prostitution on criminal cases of pimping show that at the stage of criminal investigation, they were very often initially provided the status of injured party and interviewed in this capacity. In 6 per cent of cases they were recognized also as civil parties, claiming compensation for material and moral damages caused by the crime of pimping. Hence, there is a contradictory position of the criminal investigation body regarding to the procedural capacity of the women in prostitution, in the investigation of pimping. Moreover, this practice is sometimes adopted by courts. For example, *in one case the court has reclassified the actions of the defendant from article 165 CC to article 220 CC, but also approved the civil action initiated by the victim of trafficking in persons, by awarding compensation for moral damages in the value of MDL 10,000 (USD 833), even though the woman in prostitution did not qualify as a victim and therefore could not claim compensation.*

In this context, it can be seen that the state applies inconsistent standards with regards to similar cases. On the one hand, the law enforcers concede to victims’ allegations of sexual exploitation against their will, by recognizing their status of injured parties and their right to claim damages, while on the other hand credibility is given to the trafficker who sexually exploited her, recognizing him as an accused-pimp, who acquired benefits from the consented prostitution of the witness.

### 5.2 Confrontation

According to the study, 45 per cent out of all witnesses-women in prostitution participated in confrontations at the stage of criminal investigation, 41 per cent with their pimps and 4 per cent with other witnesses (Figure 39).

Figure 39: Confrontation



According to the criminal procedure legislation, confrontations are conducted only in cases of divergences in the statements of the persons interviewed. In 50 per cent of the cases witnesses-women in prostitution made in their statements allegations of trafficking that go beyond the classification of the crime as pimping. In the majority of cases, the conducted confrontations did not help reduce the disagreements in the statements. The outcome of the procedure, namely the fact that in the end the act had been classified as pimping, indicates that the prosecutor has appreciated the statements of the witness-women in prostitution critically.

### 5.3 Verification of statements at the crime scene

This technique of accumulating evidence was used by the criminal investigation body only in 0.6 per cent of the cases of pimping that were studied.

### 5.4 Presentation of objects for identification

This technique of accumulating evidence was used in 2 per cent of the cases by the criminal investigation body.

### 5.5 Presentation of persons for identification (line-ups)

In the criminal cases that were studied, out of the total number of witnesses-women in prostitution, 24 per cent were presented persons for identification, all being carried out based on photos. Usually line-ups are carried out to identify the pimps. This procedure however is often unjustified, since pimps are mostly caught in the act.

The need to conduct line-ups is more evident where the pimp denies the fact of committing the crime when he/she is not caught in the act but identified later. The high number of line-ups conducted in these cases confirms the presence of elements of trafficking in persons for the purpose of sexual exploitation abroad, even though the actions are legally classified as pimping.

Furthermore, as mentioned in previous chapters photo line-ups have little or no probative value if the legal conditions for conducting them are not present.

### 5.6 Hearing witnesses

In the studied cases, the number of witnesses testifying for the accusation was considerably higher than the number of those testifying for the defence – 97 per cent against 3 per cent. Thus, persons accused of committing the crime of pimping do not insist on bringing defence witnesses, because they usually make use of plea bargaining (85% of cases).

Direct witnesses represent 65 per cent out of the total number of witnesses, out of which 1 per cent are defence witnesses and 64 per cent are accusation witnesses.

Indirect witnesses exist practically in every case, representing 35 per cent of the total number of witnesses (5% - defence witnesses and 30% - accusation witnesses).

## **5.7 Crime scene investigation. Search and Seizure**

### ***Crime scene investigation***

In 16 per cent of cases crime scene investigations were conducted (6% were authorized and 10% not authorized). These actions were conducted in order to discover traces of the crime and relevant material evidence as well as to establish circumstances in which the crime was committed as well as other circumstances relevant for the investigation. The collected data demonstrate the fact that this criminal investigation activity is practically conducted only in cases of pimping committed on the territory of the Republic of Moldova.

### ***Search***

The study has shown that 43 searches were conducted in criminal cases on pimping, out of which 81 per cent were authorized by the investigating judge prior to the search. The lawfulness of other 19 per cent of the searches was confirmed afterwards by the *ex post facto* decision of the investigating judge in the period allowed by law of 24 hours. Only in 30 per cent of these investigations objects were collected that were relevant for the case, which demonstrates insufficient planning and preparation for searches by the criminal investigation body. The majority of searches, which didn't lead to the discovery of any relevant evidence can be appreciated as an unjustifiable limitation of the right to the inviolability of one's home and the right to private life of the person, stipulated in the international treaties signed and ratified by the Republic of Moldova.

## **5.8 Interception, recording of communications and other proactive methods of investigation**

In the 30 per cent of the examined cases interception of conversations was conducted. All interceptions were authorized, both before the initiation of the criminal investigation and *ex post facto*. This action is peculiar to the investigation of the crime of pimping, being recommended in all cases. Moreover, this procedure is part of the proactive approach to investigation, the results of which are used in the organization and conduct of the arrest of the suspect criminal in *flagrante delicto*.

Under-cover agents also play an important role in the discovery of pimping. Thus, in the context of the studied cases four under-cover operations were undertaken to discover the crime. This shows a reluctance of the investigators to use under-cover agents for detecting cases of pimping.

## **5.9 Expert examination**

Six expert investigations were conducted within the cases analysed in the present Study, among which:  
one technical expert examination,  
two forensic examinations,  
two graphologist examinations,  
forensic examination to verify if the detected powder is not a drug.

When there is a need to clarify some facts or circumstances in the case and the knowledge of an expert is needed, the criminal investigation body or the court may order an expert examination.

Although forensic expertise may be very important in such cases in establishing the age of the witness-woman in prostitution when it cannot be determined from the identity papers, such examinations were not conducted.

## **5.10 The quality of procedural acts**

In the course of the study some deviations from the criminal procedure legislation were identified. Avoiding these errors is a very important matter, not a mere formality.

Examples of identified procedural errors are:

- Indictments that were drafted carelessly or in violation of legal norms, such as:
  - o lack of the approval by the superior prosecutor;
  - o lack of evidence analysis;
  - o inclusion of complaint by injured parties, plea agreements and ordinances by the investigation body in the list of evidence attached to the indictment;
  - o inclusion of data and names that have no connection to the case.
- Failure to investigate and identify other persons involved in the criminal activity. *For example in one case the suspect mentions another person involved in the crime and the interview report does not show any further questioning on the issue and no follow-up investigative actions are undertaken.*
- Arrest warrant was issued one day before the prosecutor submitted the respective arrest request.
- Unmotivated extension of the period of criminal investigation.
- Inclusion in the list of material evidence of objects that were found and examined in violation of the law.
- Disregard of the requirements of art 42 CCP regarding the merging of criminal cases (two cases were merged only in the Court of Appeal, even though the criminal investigation had been conducted by the same prosecutor and the defendants in the two cases were brothers who committed one offence, with the same witnesses testifying against them).
- Failure to observe the procedure to be followed in conducting line-ups. *In one case, the witness-woman in prostitution testified that when apprehended by police, the officers showed her a photo of the offender and she recognized him. After this explanation the criminal investigation was launched on the same day. The next day a line-up with the same person was conducted.*
- Inconsistent application of legislation in charging cases of pimping and trafficking in persons. In some cases, before the recruitment took place, victims were openly talking to the offender about their vulnerable situation (*for example, in a case the victim told the offender that she was kicked out of her home by her step parent and did not have any shelter or any means to survive*). While in some cases the subsequent recruitment was investigated as trafficking in human beings, the same facts were qualified in other cases as pimping.
- Unmotivated reclassification in the course of the criminal investigation from article 165 CC to art 220 CC. *For example, in one case no actions were taken to clarify the differences in the statements of the victim and the pimp. The case was simply referred to as pimping.*
- Lack of confirmation by the superior prosecutor of the outcomes of plea bargaining, which lead to its rejection by the court.
- Violation of the legislation on sentencing (adoption of decisions on the cessation of the criminal procedure where amnesty was applied after the court examination took place, sentences that do not state the grounds for establishing the person's guilt where conviction decision is applied but no punishment is established due to amnesty, lack of evidence analysis and other reasons).
- Lack of procedural documents that provide for recognition of a person as a suspect, even though the person was interviewed as a suspect.

## 6. RIGHT OF DEFENCE AND REPRESENTATION

### 6.1 Procedural status of the pimp

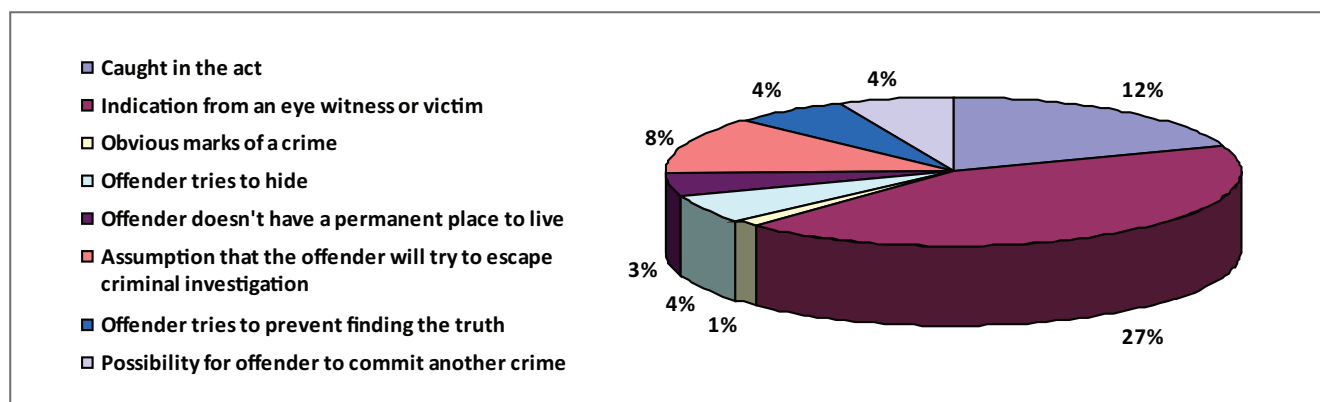
#### ***Suspect:***

One hundred twenty one persons were recognized as suspects in cases of pimping included in the present analysis based on 131 ordinances recognizing the quality of suspect. Thirty nine of them have been detained in police custody – arrest (apprehension) reports have been drafted in compliance with the law.

According to article 63 (1) CCP, a person can be recognized as a suspect based upon one of the following procedural acts, depending on the case: arrest report; order or decision to apply a non-detention preventive measure; order to recognize a person as a suspect. However, the cases included in the study show that criminal investigation body in most of the cases adopt two procedural acts to recognize a person as a suspect, so that detention reports are often followed by an ordinance to recognize a person as a suspect, which is a good practice.

The maximum period of time during which the person had the status of suspect was five days, the minimum - one day. At the same time, 6 per cent of suspects did not end up in courts as defendants, their procedural status being changed. In the context of the studied cases, 57 suspects were arrested, the average period of time of detention of the suspect being 3 days. The percentage of the grounds for detention is shown in Figure 40.

Figure 40: Grounds for retention from CCP



Note: In the majority of cases investigators basically fail to mention the reasons for the person's detention, and where these reasons are present, they are limited to general quotes from the law.

### ***Accused***

In the course of criminal investigations, 125 persons were indicted and thus received the status of accused being approved by 125 orders of accusation, out of which 13 were read to the persons in violation of the time frames for bringing accusations (in compliance with article 282 CCP). The average term in which the person had the status of accused was 54 days.

In the 42 per cent of the cases, 52 applications for detention warrants were made by investigation bodies, out of which 81 per cent were satisfied. In 6 per cent of cases, the prosecutor challenged the refusal of the court to issue the detention warrant. In the analysed cases 54 accused persons were put in pre-trial detention, the average period of detention of the accused being of 53 days.

The long period of detention can be explained by the fact that the majority of accused persons were initially accused of trafficking in persons based on article 165 CC.

## **6.2 Realization of the right to defence**

The study shows the following situation regarding the realization of the right to defence – by suspects, accused and defendants in cases of pimping.

As suspect:

60 per cent benefitted from services of attorneys provided by the state,

40 per cent were assisted by chosen attorneys.

As accused:

50 per cent were assisted by attorneys provided by the state,

50 per cent were assisted by chosen attorneys.

As defendant:

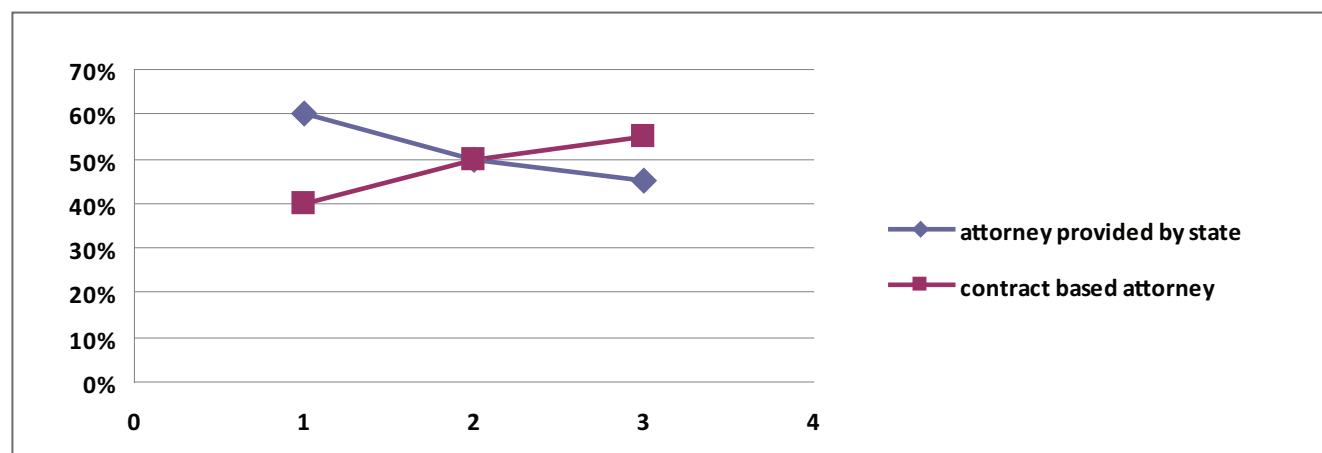
45 per cent were assisted by attorneys provided by the state,

55 per cent were assisted by chosen attorneys.

Thus accused pimps had a lower level of trust for attorneys provided by the state, than in their capacity as suspects. At the same time, this level of trust decreases for defendants with 15 per cent in comparison with suspects.

For a better analysis, the data are reflected in Figure 41 below.

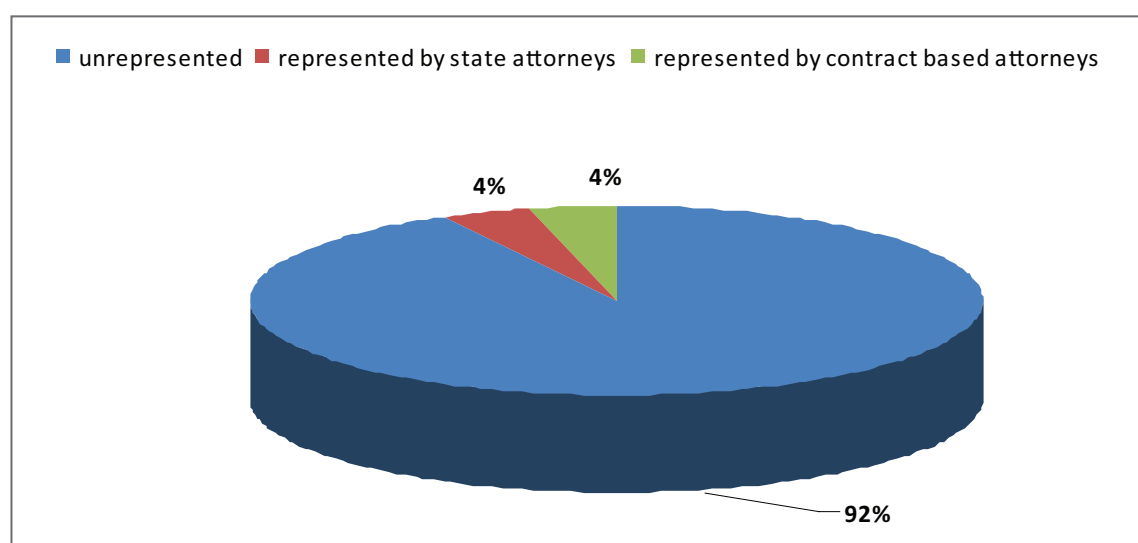
Figure 41: Defence of the accused person



### 6.3 Representation of the witness-woman in prostitution

The study has shown that only 8 per cent of witnesses-women in prostitution made use of their right to be assisted by an attorney, out of whom 4 per cent opted for a contract based defender, and the rest, also 4 per cent, opted for an appointed public defender.

Figure 42: Representation of witnesses-women in prostitution



The low number of witnesses-women in prostitution who opted for services of an attorney is explained by the fact that only those of them who identified themselves as victims of sexual exploitation were applying for attorney's assistance. In other situations, while being interviewed as witnesses, they were not clearly explained the legal right to have an attorney. De facto, there were no documented cases when the criminal investigation body informed the witness about the right to have an attorney.

### 6.4 Compensations provided to the victim

According to the principle of a fair trial, justice has the purpose to not only punish the person guilty of committing the crime, but to also fully repair the damage caused to the victim of the crime.

In the studied criminal cases, one in nine victims applied for compensations of the damage caused, as follows:

Total amount of claimed damage, material and moral -	MDL 885,000 (USD 73,750)
Total amount of claimed moral damage -	MDL 575,000 (USD 47,916)
Minimum claimed amount -	MDL 10,000 (USD 833)
Maximum claimed amount -	MDL 60,000 (USD 5,000)
Average claimed amount -	MDL 20,000 (USD 1,666)

According to the law, there is no victim in the crime of pimping, so that the initiation of the civil actions is due to the fact that in these cases the criminal investigation was initially launched on the basis of art 165 CC (trafficking in human beings). Accordingly, none of the civil actions has been admitted. A violation of the above-mentioned rule was identified in a case of trafficking, reclassified by the court into pimping (see the example in section 5.1 from this Chapter).

## 6.5 Measures to protect the victim

In two cases there has been information on the existence of threats against three victims. In a single case the authorities issued an order for personal protection of two victims. These were the cases that were initially launched based on art 165 CC. In cases of pimping, as a rule, there is no information about the danger for witness-women in prostitution and other witnesses.

## 7. NATIONAL AND INTERNATIONAL COOPERATION

### 7.1 Interdepartmental cooperation in investigating cases of pimping

The study has shown that criminal investigation bodies have requested information from various institutions and organizations in order to identify some circumstances that are relevant to the criminal case, as follows:

Border Guards Service - in 12 per cent of cases,  
 Department of information Technologies (Ministry of Information Technology and Communications) – in 8 per cent of cases,  
 travel agencies – in 1 per cent of cases,  
 other bodies or public officials – in 15 per cent of cases,  
 Other institutions thus contacted include banks, embassies and newspapers.

### 7.2 International legal assistance

The study has shown that international legal assistance was requested by means of rogatory letters only in 5 cases, as shown in the table below:

**Table 3: Requests for international legal assistance.**

Number of requests	Requested state	Answer in up to 2 months	Answer from 2 to 6 months	Answer in over 6 months	No answer
5	Russia – 4 Turkey – 1	3	1		

Rogatory letters have not been successful in all of the cases. Among the measures taken as result of such requests were the following:

- the accused has been arrested based on charges under article 220 CC;
- some of the requested actions were undertaken;
- additional information was requested.

The study showed that in criminal cases on pimping the existing legal framework on international legal



assistance in this field is not properly applied by criminal investigation body, the court, and by their counterparts from other countries. An eloquent example in this sense is the request sent to Turkey, which was not successful, because the accused persons could not be identified. Thus rogatory letters are not properly addressed when for search and extradition of persons who have committed crimes, summoning persons who are abroad to court sessions and for other investigation actions.

Even this limited number of requests for international legal assistance shows that cases of pimping often involve elements of trafficking for sexual exploitation abroad.

## 8. TIME FRAMES FOR CONDUCTING CRIMINAL PROCEEDINGS

### Criminal investigation

The studied cases initiated on article 220 CC show the following data regarding the term of initiating criminal investigation:

- in 28.5 per cent of the cases - criminal investigation started on the same day,
- in 21.5 per cent of the cases - criminal investigation started within three days,
- in 24.1 per cent of the cases - criminal investigation started within up to 15 days,
- in 14.3 per cent of the cases - criminal investigation started within up to one month,
- in 11.6 per cent of the cases - criminal investigation started within over one month.

The average period from the initiation of the criminal investigation to the indictment is six months, and seven months before the case is sent to the court. *In a case the criminal investigation took place in a record time of six days (seven days in another case). In another case, the criminal investigation was launched based on article 220 CC, and lasted a maximum record time of eight years and seven months (10 years and six months if the cassation proceedings are included).*

### Trial

The average trial period in cases of pimping is 98 days. The maximum registered term was 274 and the minimum - three days. The average period of detention of the defendants held in custody on remand during trial court proceedings was 26 days.

Of the analysed pimping cases, 20 per cent of the court decisions were challenged in appeal. On average, the period of examination of appeals was of 115 days. Five persons were held in detention at the stage of appeal proceedings for an average period of 88 days.

## 9. COURT HEARINGS

Out of the total number of tried cases, 97 per cent were heard in public and in 3 per cent of the cases closed hearings were held.

The total number of hearings was 406, which means an average of four court hearings per case.

The analysis of the duration of proceedings in first instance courts shows the following:

**1. The period of time from the moment of sending a case to court and the date of the preliminary hearing** – 16 days on average.

**2. The period of time from the moment of sending a case to court and the date the sentence is read** – 93 days on average.

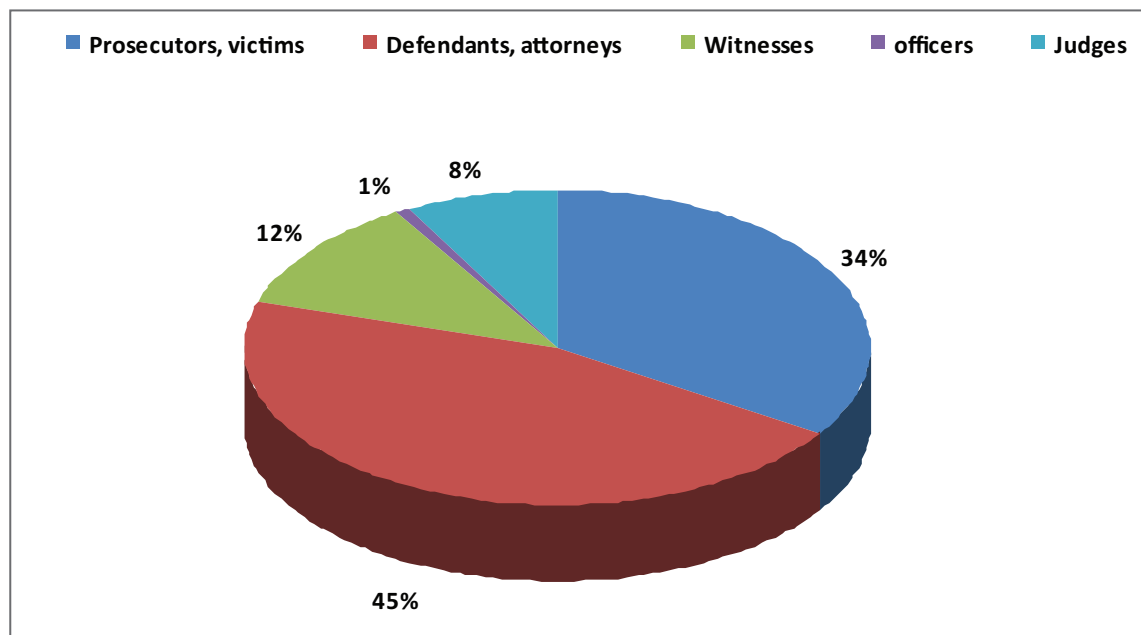
**3. The period of time from the pronouncement of the sentence to the final editing of the decision** – 10 days on average. *Note: in 24 files out of 112 data was missing on the period passed from the pronouncement of the sentence to the date and writing of the sentence.*

## 10. PARTICIPATION AND THE BEHAVIOUR OF THE PARTIES DURING COURT PROCEEDINGS

The study found that 129 hearings were postponed, which represents 31.8 per cent of the total number of hearings. The motives for hearings to be postponed were:

- absence of the judge – 11 hearings,
- absence of the prosecutor or the victims – 44 hearings,
- absence of the accused or its attorney – 58 hearings,
- absence of witnesses – 15 hearings,
- non-execution of ordinances and decisions on mandatory participation issued by the police – 1 hearing (see Figure 43).

Figure 43: Percentage of postponed hearings



In conclusion it can be seen that almost one third of all court hearings did not take place. Frequent delays demoralize participants and affect the quality of justice (witnesses do not come to hearings, the quality of statements decreases with time).

## 11. SENTENCING

### 11.1 Position of the state prosecutor

Representing accusation on behalf of the state, the prosecutor is guided by the law and his own conviction determined by the evidence adduced within the court hearings.

In the cases analysed within the present study, in his pleadings the prosecutor has requested the following classification of the defendants' actions:

- 91 per cent - pimping (article 220 CC). In 3 per cent of these cases, the actions were also classified under article 166 CC (illegal deprivation of freedom) and article 208 CC (involving minors in criminal activity or determining them to commit immoral acts);
- 1 per cent - acquittal because of the absence of elements of the crime;
- 8 per cent - there is no information in the minutes of the hearing regarding the position of the prosecutor.

The fact that the minutes of court hearings in 8 per cent of the cases do not contain information on the position of the prosecutor on the case speaks about certain negligence of the court clerks and judges while drafting it.

Prosecutor's position with regards to punishments was as follows:

- a. imprisonment for 13 persons, for an average of four years for each person;
- b. imprisonment with conditional suspension for 18 persons for an average period of three with a probation period of one year and seven months;
- c. fine for 73 persons, on average MDL 6,786 (USD 565) for each person;
- d. expulsion for two persons;
- e. amnesty for four persons;
- f. exemption from criminal liability based on article 53 CC (expiry of the prescription period) for six persons.

In some cases the prosecutor, while obliged to apply amnesty in the criminal investigation phase, failed to cease the proceedings and thus generated an unjustified delay in the resolution of the criminal case.

## 11.2 Legal classification by courts

The following sentences were adopted as result of the trials:

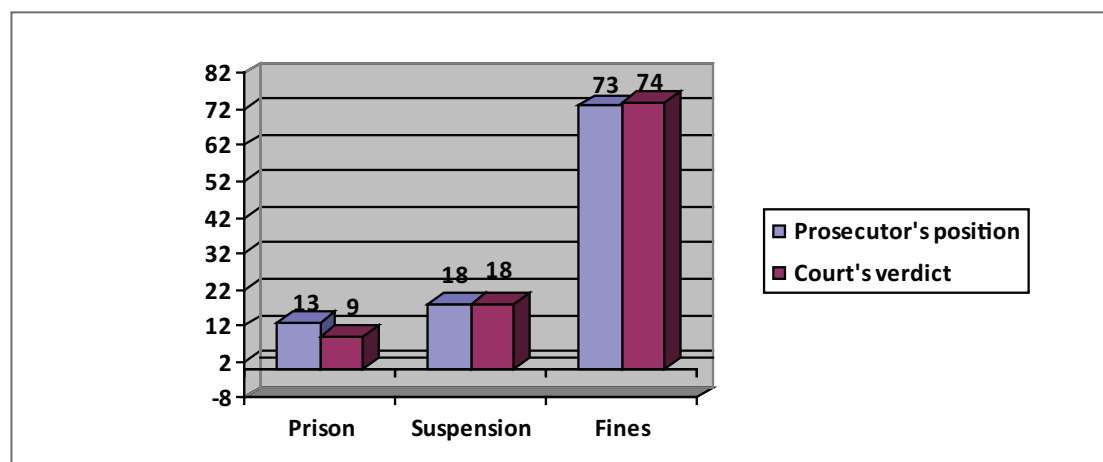
- o **Conviction** (article 220 CC) – 96 sentences, representing 86 per cent of cases.
- o **Stopping further examination** – 12 sentences, representing 11 per cent of cases.
- o **Acquittal** – four sentences, representing 3 per cent of cases.

Statistics of punishments in relation to the sentences of the court are the following:

- a. imprisonment: nine persons for three years and five months on average for each person;
- b. imprisonment with conditional suspension of application: 18 persons for three years on average with an average probation period of one year and four months;
- c. fine: 74 persons, an average of MDL 6,213 (USD 517) for each person.

Courts have often taken a different position than that of the prosecutor regarding the punishments to be applied, realizing thus a policy of democratization of criminal sanctions with a view to minimize punishments according to general principles of a criminal trial, as shown in Figure 44 below:

Figure 44: Position of the prosecutor compared to the position of the court



In other cases, even where it qualified the defendant's actions differently than the prosecutor in his pleadings, the court adopted a decision that contradicts its own position. For example, in one case, the court indicated in its decision that the defendants have committed the crime incriminated by article 165 (2) CC, but contrary to this conclusion, it has convicted the defendants based on art 220 CC. This contradicts the requirement set in art 325 CCP that the court can only adopt a decision in the limits of the accusation brought against the defendant.

Moreover, in 46 other cases the court has applied a lighter punishment than the one established in the Criminal Code for this crime, as follows:

- in seven cases (15 %) – with application of art 79 CC (application of a lighter punishment than it is stipulated by the criminal legislation);
- in 39 cases (85%) – with application of art 80 CC (application of punishment in the case of plea bargaining); application of this special procedure may be useful because it considerably simplifies the process of solving a case and is therefore highly recommended for widespread application.

### **I 1.3 Appeals**

The study has shown that 20 per cent of the sentences pronounced by the first instance courts were challenged with first appeal, the vast majority on grounds of wrong classification, illegality of the sentence and disagreement with the punishment:

- 11 per cent - appeal lodged by defendants and their attorneys, out of which 5 per cent were admitted by the court of appeals;
- 8 per cent - appeal lodged by the prosecutor of which: 3 per cent were admitted by the court of appeals and 2 per cent - partially admitted by the court of appeals;
- 1 per cent - appeal lodged by the injured parties and their attorneys.

In the analysed cases, 28 per cent of the decisions pronounced by the court of appeals were challenged in **second appeal** out of which 50 per cent challenged by defendants and their attorneys and 50 per cent were challenged by prosecutors.

Of the total number of application in second appeal only two applications of defendants and their attorneys were admitted and only one application by the prosecutor was partially admitted.

## IV.4 ILLEGAL CROSSING OF THE STATE BORDER

### I. BACKGROUND

In the process of ensuring security and socio-economic development of the countries located in the Eastern part of the European continent, as well as in the process of their integration into the European Union, EU candidate states, including Moldova, have undertaken a series of commitments to fully respect the European rules and requirements for guaranteeing security while protecting human rights and fundamental freedoms. Within this general process, the Schengen regulations became part of the criteria for joining the European Union, while the Member States point out to candidate countries that the issue of freedom of movement is a matter of security and all of those who want to be a part of a united Europe need to fulfil obligations in this regard.

Having primarily socio-economic and political reasons behind them, irregular migrants are very often forced to irregularly migrate on their own risk or by resorting to specialized persons that provide services to organize irregular migration against a fee. This chapter focuses on the analysis of the criminal cases of illegal crossing of state border, an action that is criminalized through article 362 of the Criminal Code (CC).

Irregular migrants are persons accused of committing the crime of illegal crossing of state border, including, for example citizens of Moldova, who most often cross the river Prut by swimming across (in the west part of Moldova) in order to overcome poverty (especially in the rural areas) by working abroad, as well as citizens of other countries that are crossing the territory of the Republic of Moldova as a country of transit in their way towards Western European states (such as Turkish, Azeri, and other nationals).

A comparative analysis of the crime of trafficking in persons and the one of illegal crossing of state border shows that often the latter is accompanying the former.

Nevertheless, the authors of the Study cannot agree with the opinion that trafficking in persons is an international crime, elementary because of the particular aspects of transnational crimes provided by article 12 (2) CC. Hence, they support the opinion of other authors, which argue that in the case of trafficking in persons/children, the transportation of the victim – when present - can be done both inside the national territory and outside of its borders. Therefore, whenever present, the transportation of a person as an action conducted in the context of trafficking in persons represents the movement of this person across the state border of the Republic of Moldova or within the territory of Moldova.

Point 16 of the Decision of the Supreme Court of Justice's Plenary no. 37 of 2004 states that in the context of trafficking in persons/children, there can be legal or illegal movement of the victim across the border.

Of course, if the victim of trafficking in persons is moved legally across the border of the Republic of Moldova, only article 165 or article 206 of the CC will be applied against the offender. Another situation will occur if the victim crosses the state border illegally. That is why, when the offender organizes the crossing of the state border by a person outside of the border check-points, without a passport or authorization from the relevant authorities – the action being done in the context of trafficking in persons/trafficking of children – in addition to being criminally liable for article 165 or 206 CC, the offender will also be liable for organizing an illegal crossing of state border (article 42 (3) and article 362 of the CC).

In case of organizing the crossing of state border through the official crossing-points without required passport or authorization issued by relevant authorities, the offender will face contraventional liability and not criminal one for organizing a violation of the rules of crossing the state border (article 331-332 Contraventions Code).

We also need to take into consideration the fact that according to section 4 of the Supreme Court of Justice Plenary Decision „Regarding judicial practice in criminal and contraventional cases on the illegal crossing of state border” no. 15 of 25.03.2002, the crossing of the state border without the required passport or authorization issued by relevant authorities amounts to crossing of the border committed with a false passport or any other false document, with a false authorization or with documents that belong to another person. Therefore, it can be concluded that the illicit act of organization of use of false documents, necessary to ensure a crossing of state border, is absorbed by the organization of illegal crossing of state border. In these circumstances, considering the regulations provided in article 119 CC, the application of article 42 (3) and article 362 CC will exclude the necessity to apply article 42 (3) and article 361 of the CC.

According to the criminal legislation, the illegal crossing of the state border, either taken as a crime accompanying the crime of trafficking in persons or a stand-alone offence, is framed within the following definition:

**Article 362 Illegal crossing of the state border**

*(1) Illegal crossing of the state borders of the Republic of Moldova, circumventing customs control or hiding from it*

*shall be punished by a fine of up to 400 conventional units [666 USD] or by community service for 150 to 200 hours or by imprisonment for up to 2 years.*

*(3) The actions set forth in paragraph (1):*

*a) involving violence;*

*b) committed with the use of weapons;*

*shall be punished by imprisonment for 3 to 8 years.*

*(4) The action of this article does not extend to foreign citizens arriving in the Republic of Moldova without the necessary passport or without authorization in order to avail of the right to asylum granted by the Constitution of the Republic of Moldova nor to persons who are victims of trafficking in human beings.*

## 2. PROFILE OF THE ACCUSED PERSON

Number of accused persons: 107

Number of convicted persons: 90

Number of released persons: 17, out of which:

- 11 persons exempted from criminal liability based on article 55 CC (with the application of contraventional sanctions);
- 4 persons exempted from criminal liability based on article 54 CC (minors);
- 2 persons exempted from criminal liability due to expiry of the prescription period.

Persons accused of illegal crossing of the state border share the following profile:

### **Sex:**

**Women: 4 per cent**

**Men: 96 per cent**

### **Average age of accused persons:**

**Women: 31 years of age (max. 41 years of age, min. 21 years of age)**

**Men: 27 years of age (max. 56 years of age, min. 16 years of age)**

Compared to other crimes analysed within the present Study, the number of women involved in committing the crime of illegal crossing of the state border is considerably lower than the number of men involved. This is explained by the fact that in the majority of cases, illegal crossing of the state border took place at the western border of Moldova by crossing engineering installations and the River Prut. Young men in good physical shape, frequently resort to crossing these obstacles, whereas women rather resort to crossing the state border by using false documents or by other means (using a boat to cross the river). Still the numbers show women tend to avoid illegal crossing of the state border and prefer to use legal methods to migrate abroad.

### **Employment:**

**Employed: six persons (6%)**

**Unemployed: 101 persons (94%)**

The big number of unemployed persons that illegally cross the state border is only logical given their desire to find a place to work outside of Moldovan borders.

## **Criminal profile:**

According to the information accumulated within the study, out of the total number of 107 accused persons, some 17 per cent have been previously criminally convicted, among which:

- **6 per cent were convicted for illegal crossing of the state border,**
- **11 per cent were convicted for theft,**

The fact of previous criminal liability of current irregular migrants shows that after failing to get opportunities abroad these persons continue to search for a source of income, including abroad.

At the same time, it was concluded that out of the total number of previously convicted persons 17 per cent spent a period of one year imprisonment in penitentiaries.

The studied cases show that 18 per cent of accused persons are citizens of other countries or stateless persons, for which the Republic of Moldova is merely a transit country.

From a random number of 20 cases it was found that in 11 cases, the purpose of crossing was irregular emigration, whereas in nine cases the accused persons have crossed the state border with other purposes such as accidentally crossing the demarcation line while swimming, unconsciously crossing the state border while under influence of alcohol and so on. *In a case, a Moldovan who resided illegally in Italy, willing to return back to Moldova, has tried to obtain a Travel Document („white passport”) from the Moldovan Consulate in Italy and then the one in Romania. According to his statements, the Consulates have refused to issue the Travel Document because he did not have any documents to confirm his identity. As a result, he attempted to cross the border on the river Prut from Romania to Moldova. He was detained and convicted.*

## **3. REPORTING THE CRIME**

In the majority of cases the criminal investigation has been initiated based on the report of the criminal investigation body (87 cases). In two cases, the criminal investigation was initiated based on information by third parties. Considering the particularities of the crime, it is natural that criminal cases on illegal crossing of the state border were mostly initiated at the report of the border guards which ensures security of state borders. The insignificant number of denunciation of crimes by the local population from the regions adjacent to the border demonstrates lack of cooperation between the border guards, police forces and population.

The majority of cases of this category analysed hereby occurred in the district of Ungheni. In these cases the state border with Romania was crossed. In a random number of 19 cases, it was found that only in six cases the criminal investigation was launched as the result of the activity of the Moldovan border guards. Very often the persons managed to cross the border and were caught and returned by the Romanian authorities.

## **4. PROCEDURAL ACTIONS**

### **4.1. Hearing witnesses**

In the 89 criminal cases conducted, 168 witnesses had been interviewed in the criminal investigation phase, representing an average of two witnesses per case. Out of the total number of interviewed witnesses, 127 were direct witnesses, and the rest 41 were indirect witnesses.

The vast majority of those who testified were border guards who participated in the apprehension of the accused persons. Sometimes, these officers testified about the statements made by the offenders after being arrested.

However, investigators often resort to the unfortunate practice of interviewing several persons that committed a single act, but which are being investigated in separated cases (*there were 2 cases when groups of five persons each have illegally crossed the state border. It was found that in these cases, each offender was interviewed in the capacity of an accused person in one case, and in the capacity of a witness in the other four cases. As a result of this practice, ten different cases were filed and examined at trial*).



## 4.2. Crime scene investigation. Search and seizure

### ***Crime scene investigation***

Investigations at the crime scene were conducted in 9 per cent of the cases in order to discover traces of the crime and relevant material evidence as well as to establish circumstances in which the crime was committed and other circumstances relevant for the investigation. In almost every case, border guards have drafted *maps of crossing the state border* without also drafting the report required in such cases. Given that the border guards do not have the procedural status of a fact-finding body, according to article 273 CCP, they do not have the authority to register findings, which could afterwards serve as material evidence, even though in fact they are conducting this kind of actions according to the Law on State Border of the Republic of Moldova (2011).

### ***Search***

Searches were conducted in two cases. In both cases objects relevant to the case were seized. The searches were conducted based on the authorization of the investigating judge. In fact each time an illegal migrant is caught in the act he is being searched by officers of the border guards unit. The searches were recorded as “body searches” according to the Law on the State Border of the Republic of Moldova (Law no. 108 of 17.05.1994, currently abrogated), and objects discovered were taken by the criminal investigation body from the border guards.

### ***Seizure***

As a separate procedural action seizures were registered in 79 criminal cases. In 52 of these relevant objects and documents were seized. Most of these were taken up by the criminal investigation body from the border guards and afterwards recognized as documents or material evidence.

## 4.3. Expert examinations

In seven cases included in this study expert examinations were conducted, namely:

Psychiatric examination	3
forensic examination of documents	4

During the investigation of such categories of crimes, the expert examinations are only relevant to establish the responsibility of the offender and to verify the authenticity of the identity documents of the accused persons. Forensic examination of documents was conducted in 4 cases where the offenders tried to illegally cross the state border using false documents through official crossing points.

## 5. RIGHT OF DEFENCE

### **5.1. Procedural status of the migrant**

#### ***Suspect***

Criminal investigation was launched against 106 suspects and 69 ordinances had been adopted recognizing the quality of suspect, 44 arrest reports and three orders for application of the preventive measure were issued.

Arrest (apprehension) was conducted in the case of 44 persons, 28 of which were caught in the act. In several cases the person was apprehended by border guards in compliance with the Law on the State Border of the Republic of Moldova. In these cases border guards would draft the arrest report, as provided in the Contravention Code, and send it to the criminal investigation body, who in turn would draft a new arrest report (in accordance with the Criminal Code) so that the person is detained for additional 72 hours. The total period of detention from the moment of the person's apprehension at the crime scene thus exceeds the maximum term provided by article 25 of the Constitution – 72 hours. *Only in one case the prosecutor did react to this situation, by acknowledging that the legally established term expired and ordering that the suspect is set free.*

A total number of 39 suspects were held in detention for an average period of five days.

## Accused

The quality of an accused was recognized by 112 indictment orders against 107 persons. The accusation has to be brought to the accused by the prosecutor in the presence of the lawyer within 48 hours from the moment of issue of the ordinance of pressing the charge, but not later than the day in which the accused has shown up or have been brought by force.

Four expired accusation orders were identified. In these cases the defence attorneys did not react to such violations of procedure. The average term in which the person had the status of accused was 13 days, which shows that shortly after the accusation is brought to the accused, the case is sent to court.

The average period for conducting criminal investigation (from the moment of informing the criminal investigation body to the moment of sending the case to court) for this kind of cases is 40 days, which is a rather long time span for investigating these categories of crimes.

At the same time, the study has not found any case of application of a special procedure of investigation and judging of flagrant crimes, even though in a considerable number of cases, the accused were arrested in *flagrante delicto*. The special procedure provided in article 513-519 CCP contributes to the simplification and promptness of the criminal process.

A number of 30 accused persons were remanded in custody for an average period of 24 days. As a rule, authorities arrest foreign citizens who do not reside on the territory of the Republic of Moldova, even though in such cases foreigners and stateless persons accused of article 362 should be placed in the Centre for the Temporary Placement of Foreigners of the Bureau for Migration and Asylum of the Ministry of Interior.

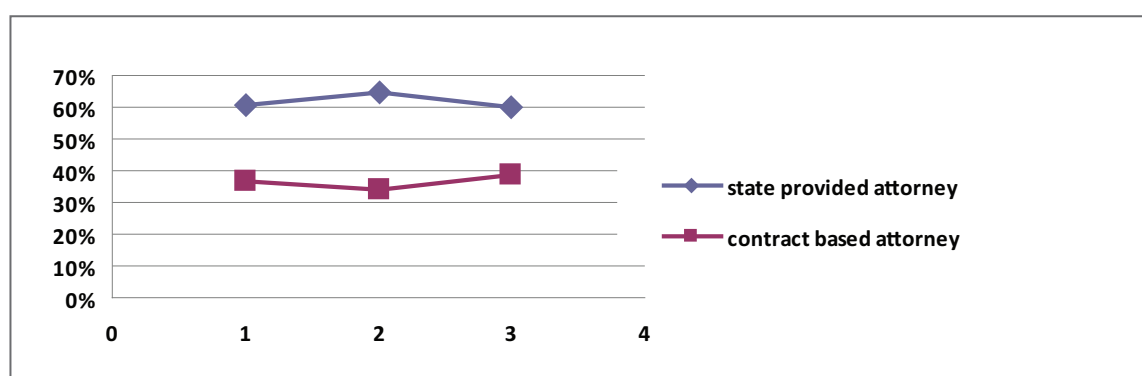
## 5.2. Realization of the right to defence

The data of the study shows that in the initial phase of the criminal investigation, 37 per cent of suspects had a chosen attorney, whereas 61 per cent had a state provided attorney. In 2 per cent of cases no documents that would confirm the participation of an attorney was found in the case files.

After the accusation was brought, 34 per cent of accused persons have chosen a contract based attorney, whereas 65 per cent have used the services of a state provided attorney. In one case there is no indication of the participation of a defender.

During the trial, the proportion of chosen and appointed attorneys is 39 per cent to 60 per cent. In one case there is no information on the participation of a defence attorney.

Figure 45: Defence of the accused person



The large number of appointed attorneys providing legal services on behalf of the state is explained by the fact that this crime is less serious (article 362 (1) CC), the offenders usually recognize their guilt, some of them being foreigners without relatives or acquaintances in Moldova that could help them hire a defence attorney.

## 6. NATIONAL AND INTERNATIONAL COOPERATION

### 6.1. Interdepartmental cooperation

The study has shown that the criminal investigation body has requested information primarily from the border guards' service, customs service and the Ministry of Informational Technology and Communication.

### 6.2. International legal assistance

The necessity to present requests for international legal assistance in cases of illegal crossing of state border appears when the offender is a citizen of another state and there is a need for additional information with regards to his identity.

In the context of the studied cases four requests for international legal assistance were addressed, as indicated in the following table:

Table 4: Requests for international legal assistance

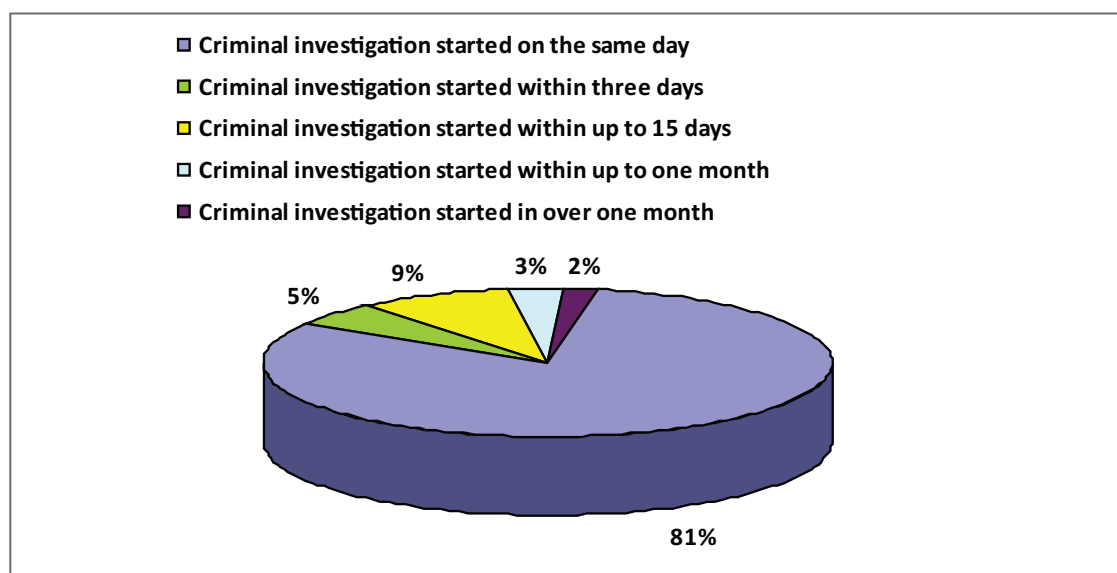
Nr. of Requests	Requested state	Answer in up to 2 months	Answer from 2 to 6 months	Answer in over 6 months	No answer
4	Romania – 2 Russia – 2	3			1

## 7. TIME FRAMES FOR CONDUCTING CRIMINAL PROCEEDINGS

### Criminal Investigation

The time frames from filing the reporting of the crime to the initiation of the criminal investigation, in the context of the studied cases on article 362 CC, were as follows (see Figure 46):

Figure 46: Time frames for initiating criminal investigation



The average period between the initiation of the criminal investigation and the moment of bringing the accusation is of 28 days.

## Trial

The average time frames for examination of cases on article 362 CC in the courts are of:

45 days – first instance court,

43 days – first appeal,

66 days – second appeal.

Thus, from the initiation of criminal proceedings to the moment of issuing of the sentence there is an average period of two and a half months. In cases where decisions were challenged in ordinary and extraordinary appeal procedure, the criminal proceedings lasted an average of six months.

## 8. COURT PROCEEDINGS

The study has shown that on an average there were two court hearings per case.

The analysis of the duration of proceedings in first instance courts shows the following:

**1. The period of time from the moment of sending a case to court and the date of the preliminary hearing** – 12 days on an average per case.

**2. The period of time from the moment of sending a case to court and the date the sentence is read** – 42 days on an average per case.

**3. The period of time from the pronouncement of the sentence to the final editing of the decision** – four days on an average for each case. *Note: No relevant data could be found for 24 cases out of the studied 89 cases.*

## 9. PARTICIPATION AND BEHAVIOUR OF THE PARTIES IN COURT HEARINGS

The results of the study have shown that 41 hearings were postponed in 89 cases, for the following reasons:

- one hearing was postponed due to the absence of the judge;
- one hearing was postponed due to the absence of the prosecutor;
- 33 hearings were postponed due to the absence of the defendant or the defence attorney;
- five hearings were postponed due to the absence of witnesses;
- one hearing was postponed due to the non-enforcement of the ordinance for mandatory participation issued by the police.

Thus, almost one fourth of all court hearings did not take place.

## 10. SENTENCING

### 10.1 Position of the state prosecutor

In all of the studied cases, the prosecutor has requested that the actions of the defendants be legally qualified as illegal crossing of the state border. *In two cases, the prosecutor has requested and the court has disposed the conviction on the basis of article 362 CC of two persons from Sri Lanka for their involvement in the organization of irregular migration. These persons paid 3,500 Euros to reach Europe. The boat they intended to use took several groups of people that accompanied them across the River Prut but did not come back to take them as well and the two were arrested by the border guards on the bank of the river.* This legal solution is contrary to article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention on Transnational Organized Crime, according to which migrants cannot be held criminally liable if they were the object of illegal smuggling of migrants. In the above-mentioned case, the two Sri Lankans who were convicted according to article 362 were in fact victims of smuggling of migrants under the Protocol and, therefore, needed to be exempted from criminal liability.

The position of the prosecutor regarding the requested punishment:

- a. imprisonment: for 22 defendants (out of 107 persons), requesting prison for one year and four months on an average;
- b. imprisonment with conditional suspension of execution: for one defendant, requesting one year of prison with a probation period of one year;
- c. fine: for 52 defendants requesting 237 conventional units on average;
- d. community service: for three defendants, requesting an average 123 hours for each;
- e. confiscation: for one defendant;
- f. expulsion: for 12 persons.

The prosecutor requested that the court stops further examination of cases against three defendants due to the application of article 54 CC, article 55 CC and the expiration of the limitation period;

There was no data on the prosecution's request in 26 cases.

## I0.2 Legal classification by courts

The following sentences were adopted in the cases analysed:

**Conviction:** 93 per cent (99 persons).

**Stopping further examination:** 7 per cent (eight persons) on grounds of exemption from criminal liability and expiration of the limitation period.

## I0.3 Punishments

Statistics of punishments in relation to the sentences of the court are the following:

- a. imprisonment: 22 persons (out of 107 convicted persons) for an average of one year and three months;
- b. imprisonment with conditional suspension of execution: three persons for an average of one year of imprisonment with conditional suspension for a probation period of one year on average;
- c. fines: 57 persons, an average MDL 3,920 (USD 326) per person;
- d. community service: 17 persons with 165 hours on average per person.

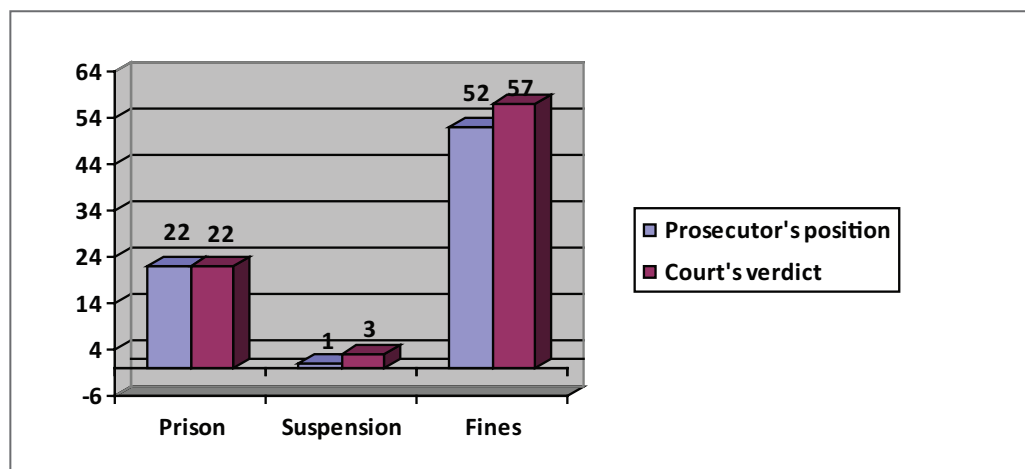
The following complementary punishments were applied by the court:

- confiscation: one person,
- expulsion: 15 persons.

Approximately in 40 per cent of the cases, the punishments were established as a result of plea bargaining.

Courts have rarely taken a different position than that of the prosecutor regarding the punishments to be applied, as shown in Figure 47 below:

Figure 47: Position of the prosecutor compared to the position of the court



## 10.4 Appeals

### ***First appeal***

The study has showed that 11 sentences pronounced by the courts of first instance (12%) were challenged in appeal, most of them on grounds of excessively severe punishments.

**In nine cases sentences were appealed by the defendants and their attorneys. Of these appeals:**

four were repealed by the court of appeal,  
four were admitted by the court of appeal,  
one partially admitted.

**The prosecutor lodged an appeal in three cases, of which:**

one was admitted by the court of appeal,  
two were rejected by the court of appeal.

### ***Second appeal***

The study has shown that six decisions were challenged in second appeal. Two applications were made by the accusation side (both were rejected) and four by the defence side (one admitted and three were rejected).

## IV.5 ORGANIZATION OF IRREGULAR MIGRATION (MIGRANT SMUGGLING)

### I. BACKGROUND

Organization of irregular migration (migrant smuggling), as incriminated by article 362/1 CC, and the crime of trafficking in persons (article 165 CC) have a common element in the objective aspect of the offence – the organization of the departure abroad for citizens of the Republic of Moldova. However, this feature differs in each of the two crimes in terms of its purpose, means, methods and legal object.

The main distinction between the two crimes is in the purpose pursued by the offender and the objective aspect of the crime. In this context, the purpose of the crime of organization of irregular migration is to obtain, directly or indirectly, a financial or material benefit, from the act of entering, residing, illegal transiting or exiting of the territory of the state, by a person that is neither a citizen or a resident of this state, in contrast with the purpose of the crime of trafficking in persons which is exploitation.

Wrong legal classification under article 165 CC was discovered in a number of cases, where the description of the case shows that rather the offence of organizing irregular migration was committed. *In one case, the Prosecutor's Office of C. region, in 2007, has brought the accusation to citizen B.N. under article 165 CC, for alleged recruitment and transportation – by fraud and abuse of the position of vulnerability – of five persons to Italy. Three of these persons were caught crossing the border with the Slovak Republic. One person reached Poland where he died and another one has reached Italy. All of the victims have paid the accused B.N. 3,500 Euros each for transportation to Italy. Besides the accusation for the crime of trafficking in persons, the offender B.N. was sent to court also for the crime of fraud (article 190 CC) and for the crime of illegal practicing of the business activity (article 241 CC). The trial court wrongly accepted the legal classification of the offence proposed by the prosecutor and convicted the offender B.N. under article 165, 190, 241 CC, imposing a punishment with imprisonment for a period of 11 years. In 2009, the Court of Appeal decided to acquit the person for accusations under article 165, 241 CC – on the ground that the deed committed by the offender does not comprise the constitutive elements of the crime, keeping however the conviction under article 190 CC. At the same time, the Court of Appeals abstained from making a legal qualification of the action committed by the defendant regarding the organization of crossing the borders of the Republic of Moldova by a group of citizens to the European states without having a visa.*

In practice, the prosecutors and the courts frequently apply other criminal norms when determining the legal classification of actions related to irregular migration, as follows:

- article 241 CC – illegal practice of business activity,
- article 244 CC – tax evasion by enterprise,
- article 361 CC – fabrication, possession, sale or use of false official documents,
- article 190 CC – fraud,
- article 195 CC – appropriation of high and very high proportions.

*In another case, the Prosecutor's Office from D. region has brought the accusation against citizen R.T. under article 361 (2), article 195 (1,2), article 189 (1) of the CC, for allegedly taking 3,000 to 9,000 Euros from victims to transport them to Italy. Some victims were caught and deported from Hungary, Romania and Italy. A witness has stated that his daughter paid 2,600 Euros to reach Italy, and when she got there, the accused person has asked for additional 3,400 Euros, threatening the victim's parents with kidnapping their grandson. Another witness has stated that his mother paid 3,500 Euros to the citizen R.T. in order to legally go to Italy, but was forced to walk by foot for one month and two weeks, confronting hunger. The trial court has reclassified the actions of the defendant R.T. from article 195 CC to article 241 (2) CC and accepted the position of the prosecutor on the episode of blackmail under article 189 CC and fabrication of false documents under article 361 (2) CC, also establishing a punishment in the form of a fine of 750 conventional units (MDL 15,000 = USD 1,250).*

Here we have two cases that were identified to meet the same objective and subjective elements of the crime. However, the courts are legally qualifying the offenders' actions under different criminal norms.

In some cases, even though the offender was accused of committing the crime of organization of irregular migration, the court has wrongly interpreted article 1 of the Law on Migration (from 2002, abrogated by the



Law on Foreigners in the Republic of Moldova (Law no. 200 from 16.07.2010)). In one case, the defendant S.S. was sentenced by the trial court under article 195 (2), article 362/1 (3), article 241 (2) and article 244 (1) of the Criminal Code to imprisonment for a period of 11 years and six months, for the attempt to transport 16 persons (men and women) to Italy, Portugal and Czech Republic, through the travel agency LLC "S.T". Victims paid different amounts of money to reach the European states. Some of them have illegally crossed the Bulgarian border with Greece during winter time, which led to the death of one of the victims while crossing the mountains. The Court of Appeals has acquitted the S.S. under article 362/1 (3) CC, interpreting the notion of migration as the „territorial movement of persons, accompanied by the change of the living location”. Thus the court contended that the intention of the defendant S.S. was to illegally appropriate other persons’ money, rather than their territorial movement with the change of the living location. The Court of Appeal stated that the defendant undertook the commitment to transfer persons across the borders of the Republic of Moldova, which was unachievable from the start. Even though not all of the victims have reached their destinations in Europe, some of them, according to the statements of witnesses and injured parties, have reached Italy, by means provided by S.S. Even though this case was heard by the Supreme Court of Justice, the superior court did not provide an opinion on the correct legal classification of offender’s actions regarding the organization of irregular migration.

### **Article 362. Organization of illegal (irregular) migration**

(1) The organization in order to obtain directly or indirectly a financial or material gain from an illegal entry, stay, or transit on the state’s territory or from an exit from this territory of a person who is neither a citizen, nor a resident of this state

shall be punished by a fine of 300 to 500 conventional units or by imprisonment for 1 to 3 years with the deprivation of the right to hold certain positions or to practice certain activities for 1 to 3 years, whereas a legal entity shall be punished by a fine of 1000 to 2000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

(2) The same actions committed:

b) against two or more persons;

c) by two or more persons;

shall be punished by a fine of 500 to 800 conventional units or by imprisonment for 3 to 5 years with the deprivation of the right to hold certain positions or to practice certain activities for 1 to 3 years, whereas a legal entity shall be punished by a fine of 2000 to 3000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

(3) The actions set forth in paragraph (1) or (2):

a) committed by an organized criminal group or a criminal organization;

b) causing especially large damage to public interests or to the legally protected rights and interests of individuals and legal entities;

shall be punished by a fine of 800 to 1000 conventional units or by imprisonment for 5 to 7 years with the deprivation of the right to hold certain positions or to practice certain activities for 3 to 5 years, whereas a legal entity shall be punished by a fine of 3000 to 5000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

## **2. PROFILE OF THE ACCUSED PERSON**

Number of persons accused: 23

Number of persons convicted: 18

Number of persons against whom the criminal investigation was stopped: 4, of which:

- 3 persons were exempted of criminal liability based on article 55 CC (with the application of administrative sanctions),
- 1 person was exempted of criminal liability as a result of an amnesty.

Persons accused of organization of irregular migration share the following profile:

### **Sex:**

**Women: 9 per cent**

**Men: 91 per cent**

### **Average age of accused persons:**

**Women: 34 years of age (max. 49 years of age, min. 20 years of age)**

**Men: 36 years of age (max. 56 years of age, min. 22 years of age)**

Compared to the crime of trafficking in persons, the number of women involved in committing the crime of organizing irregular migration is considerably lower than the number of men involved. This can be explained by the fact that in order to organize irregular migration one has to establish contacts with criminal groups in transit and destination countries from Europe and the members of these groups are men in most of the cases.

### **Employment:**

**Employed: 5 persons (22%)**

**Unemployed: 18 persons (78%)**

As a rule, employed persons were working in travel agencies or other companies providing travel services, through which irregular migration was organized.

### **Criminal profile:**

According to the information accumulated from the studied cases, out of the total number of 23 accused persons, four were previously convicted, as follows:

**one person was convicted for organization of irregular migration;**

**two persons were convicted for theft;**

**one person was convicted for causing material damage without appropriation purposes.**

Thus, 17 per cent of accused persons under article 362/1 CC have been previously convicted of criminal offences. At the same time, it was found that none of these persons has previously been imprisoned.

## **3. PROFILE OF THE VICTIM**

### **Total number of victims: 69 persons**

Victims of organization of irregular migration have the following common profile:

**Women: 46 per cent**

**Men: 54 per cent**

### **Average age:**

**Women: 34 years of age (max. 56 years of age, min. 19 years of age)**

**Men: 27 years of age (max. 48 years of age, min. 19 years of age)**

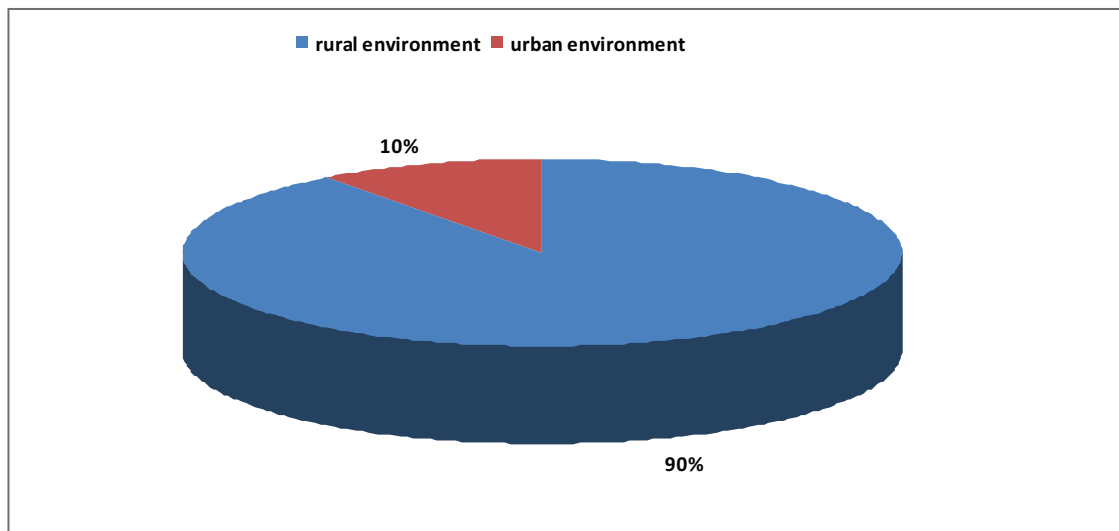
### **Employment:**

**Employed: 5 persons**

**Unemployed: 64 persons**

The majority of victims come from rural areas as indicated in Figure 48.

Figure 48: Environment of origin of victims of the organization of irregular migration



### Education:

**High school: 62 persons**

**No available data: seven persons**

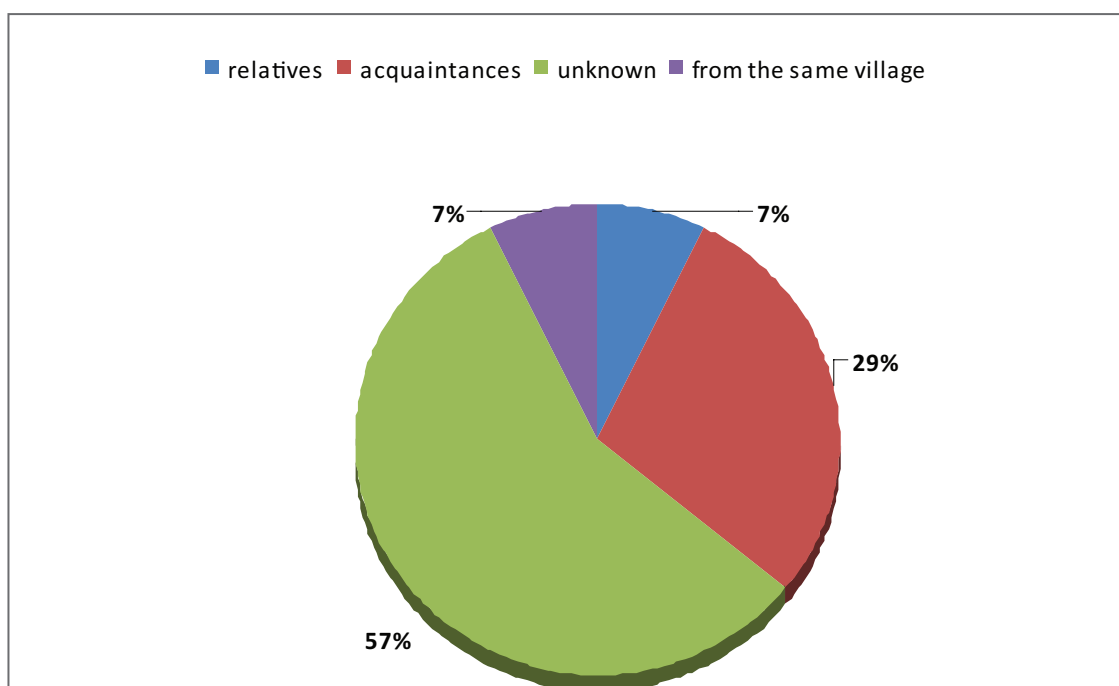
The majority of victims are unemployed, with only high school diploma, with minimum resources, looking for a job – facts that facilitate the process of organizing irregular migration.

### Relationship between the victim and the accused person:

In 43 per cent of cases victims and accused knew each other before the crime of organization of irregular migration was committed (Figure 49), being from the same village, acquaintances or relatives.

In the 57 per cent of cases where the offenders and victims had not known each other before, victims appealed to travel agencies or other organizations they trusted.

Figure 49: Relationship victim-accused person



## 4. REPORTING THE CRIME

Criminal cases were initiated based on 10 reports of the criminal investigation body, based on 42 complaints of the victims and one complaint from the relatives of a victim. In the context of the process of informing the criminal investigation body, there is a tendency for the complaints to be filed by persons who are not satisfied by the result of irregular migration. However, due to the particularity of this crime category, proactive methods should be undertaken in order to properly investigate and prevent it.

## 5. PROCEDURAL ACTIONS

### 5.1 Hearing of the victim, injured party and civil party

#### ***Victim***

In cases of organization of irregular migration, when migrants file complaints with the criminal investigation body, indicating the fact of being caused material or moral damages, they are being assigned the status of victim. In the case when the criminal investigation body uses the proactive method of investigation of organization of irregular migration when the crime is only in the preparation phase, preventing thus the irregular migration, “potential migrants” are recognized as witnesses, if they do not claim damages from offenders.

According to article 5 of the Protocol against the smuggling of migrants by Land, Sea and Air, additional to the United Nations Convention against transnational organized crime, migrants cannot be criminally prosecuted if they were the object of illegal trafficking of migrants.

The study shows that before the initiation of criminal proceedings, 43 per cent of the victims have provided “explanations” for the criminal investigation body. Similarly to other crimes, the relevant authorities, holding information on the crime invite the victims and ask for “explanations”, and only after that “recommends” them to file complaints. This kind of practice is interpreted by the criminal investigation body as a proactive form of investigation, however the classic proactive method rather consists of preventing the organization of irregular migration.

#### ***Injured party***

The study indicates that 99 per cent of the total number of migrants was interviewed in the capacity of injured parties. Even though the current legislation on criminal procedure requires victim’s consent for him or her to be recognized as an injured party, there was no record in the studied cases files of the consent being expressed by the victim in any way. Nevertheless, in the majority of cases, according to the statements provided by injured parties, they have suffered material damages – a fact that determines their recognition as injured parties and, later, as civil parties. In cases of organization of irregular migration, when migrants do not claim any damages, they are only interviewed in the capacity of witnesses.

In some cases, the statements of the injured party need to be verified in order to establish other important circumstances relevant to a certain case of organization of irregular migration and its consequences (for example the death of a migrant). However, the criminal investigation body, the Prosecutor’s Office and courts have limited themselves to the organization side of the crime. In one case, the injured party T.N. stated the following (summary): *„I wanted to go legally to Italy. S.S. told me that he can get me there for a sum of 3,300 Euros. I paid him the money before departure. I reached Bulgaria. The guide showed direction to Greece. We went through the woods and mountains until we almost reached Greece. They have changed our passport with Slovak ones. I was with Maria and Lilia. Maria got sick, she had seizures. We tried to artificially resuscitate her, but in the end Maria died. We have covered her with clothes and continued to walk further together with Lilia. In Athens we called S.S. and he told us to wait for Petra who would take us with the boat. Lilia departed with the Lithuanian passport, but I could not go with the Slovak passport and stayed to exchange it for a Lithuanian one. When I reached Italy I got sick and had to return to Moldova”*. In this case, the competent authorities from the Republic of Moldova did not look into the facts surrounding the death of a migrant in the mountains of Bulgaria and haven’t sent rogatory letters for such an inquiry. As a result, in its decision, the court mentioned that this fact has not been confirmed.

## Civil party

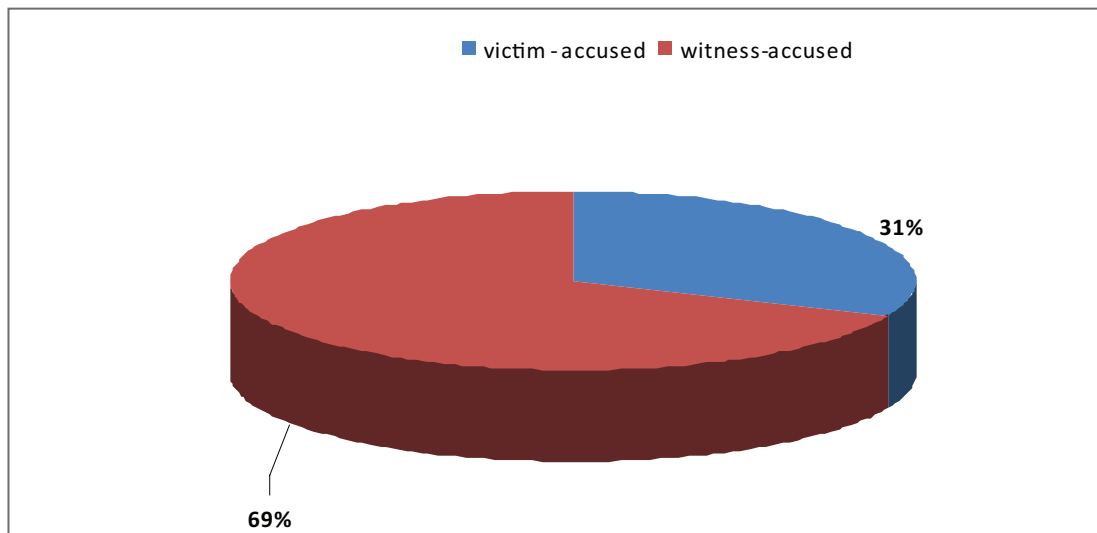
The civil party provides explanations regarding the civil action lodged with the court. Only 10 per cent of the total number of victims was interviewed in this capacity. The rest of the victims were referring to the material damage suffered in the statements made in the capacity of injured parties, whereas others were presenting the “checks” that proved the transfer of the money to the organizers of irregular migration.

## 5.2 Confrontation

According to article 113 of the Code of Criminal Procedure, should divergences exist between statements made by heard persons in the same case, confrontation of these persons should be conducted whenever it is necessary to learn the truth and exclude divergence. Confrontation was conducted in 21 per cent of cases of organization of irregular migration.

The results of the study show that 7 per cent of victims have been confronted with persons accused of committing the crime of organization of irregular migration. Other confrontations were conducted between the accused persons and witnesses – 12 per cent of the total number of witnesses.

Figure 50: Confrontation



## 5.3 Verification of statements at the crime scene

Of the total number of 68 injured parties, 13 per cent had their statements verified by the criminal investigation officers at the crime scene.

Considering the fact that his crime category has a transnational character, involving illegal crossing of borders of several states, this procedure of verification can be conducted in the locations where the initial meeting between the organizers of irregular migration and victims-migrants took place. Taking into consideration the particularity of this crime, it would have been very useful to conduct this action at the borders between states and namely at the exact locations where illegal crossings were conducted. However, considering the fact that international cooperation is a long-lasting process due to organizational, administrative and financial matters, this action is difficult to be done *post-factum*. Only in cases when victims of organized irregular migration are retained by border guards of other states, the above-mentioned circumstances can be confirmed by other material evidence (for example, reports, schemes of crossing the border, administrative acts regarding application of sanctions).

## 5.4 Presentation of persons for identification (line-ups)

The study has shown that in 20 per cent of the cases, victims have been shown accused persons for recognition. In most cases, line-ups are used to support the need for police custody of the accused.

Out of the total number of line-ups (8), 38 per cent have been realized by photo presentation and 62 per cent by presentation of persons.

Line-ups are conducted in cases of organization of irregular migration when the victim became acquainted with the organizer only at the phase of organization of irregular migration, without any previous connection between them.

According to the provisions of article 116 of the CCP, photo line-ups are only admissible where the suspect is hiding from the criminal investigation body or he/she is impossible to locate. Thus the probative value of the material thus gathered may be compromised and the court may declare it inadmissible.

Two line-ups were conducted in a direct mode (without the separating screen), allowing the victim to be identified which represents a violation of article 116 CCP.

## **5.5 Hearing witnesses**

The study established that, in 19 cases 91 witnesses were interviewed during criminal investigation – which comes to an average of five witnesses per criminal case. Out of the total number of interviewed witnesses, 57 were direct witnesses.

The vast majority of interviewed witnesses are victims-migrants and their relatives that confirm the fact of borrowing and sending money for the departure of their relatives across the borders of the Republic of Moldova.

## **5.6 Crime scene investigation. Search and Seizure**

### ***Crime scene investigation***

In three cases crime scene investigations were conducted in order to discover traces of the crime and relevant material evidence, to establish circumstances in which the crime was committed as well as other circumstances relevant for the investigation. Of these, two investigations (which were essentially searches) have not been authorized. In all of these cases objects were seized and were relevant for the case.

### ***Search***

In 17 cases (90%), 29 searches conducted. Out of the total number of searches, objects were seized in 18 cases, all of these being relevant for the case. During the other 11 searches no objects were seized. One search was authorized only after it was conducted. *In one case, 2 searches were conducted based on the same decision of the court, issued for a single search. This amounts to a serious violation of procedure.* After one search was conducted at a certain date in a certain place, a repeated search can only be carried out in the same place only after an authorization is issued by the investigating judge. The increased number of searches speaks about the relevance of this procedure for this category of crimes.

### ***Seizure***

As a separate procedural action, 27 seizures of relevant objects were conducted in 9 criminal cases (out of the total number of 19 studied cases).

## **5.7 Expert examination**

In 14 cases, 25 various expert examinations were authorized and conducted, as follows:

Examination of documents	22
Forensic medical examination	one
Graphoscopic	one
Ballistic test	one

The large number of expert examinations of documents is explained by the fact that they are necessary for investigation of this crime category in order to confirm the authenticity of various travel documents and other documents used in the process of organization of irregular migration.

Forensic expertise of victims of irregular migration is both recommendable and concluding, especially in cases when it is possible to establish corporal damages caused by physical factors (such as environment for instance) in the process of irregular migration.

The study did not find any example of psychological expert examination to confirm moral damages caused to the victim as a result of the migrant smuggling experience. Similarly to the case of victims of trafficking, the expert's conclusions can be useful to justify claims of compensation for moral damages caused by this crime, especially taking into consideration that, compared to other types of expert examination, psychological inquiry can be conducted and still be relevant even if done after a longer period of time.

## 6.THE RIGHT TO DEFENCE AND REPRESENTATION

### 6.1 Procedural status of the organizers of irregular migration

#### *Suspect*

Criminal investigations were initiated against 20 suspects, 35 ordinances having been adopted to recognize the quality of suspect. Nine arrest reports and one ordinance on the application of preventive measures were drafted.

10 persons have been arrested (apprehended) including two who were caught in the act. In total, six suspects were detained for an average period of five days in each case.

#### *Accused*

The capacity of accused was assigned through 34 indictment ordinances regarding 23 persons. The larger number of indictment ordinances in comparison to the number of persons accused is explained by the fact that immediately after the arrest, within a 72-hour time frame, a "preliminary" indictment is submitted at the same time with the submission of the request for the application of the preventive measure of remand custody. Later, at the end of criminal investigation, after all the evidence is collected and all episodes of the crime reconstructed, a single comprehensive indictment is drafted. At the same time, in many cases it was established that, while at the initial phase the indictment focuses on one episode of organization of irregular migration, in the course of criminal investigation other episodes are found, which are also separately initiated, while at the end of criminal investigation all of the episodes are being connected into a single accusation.

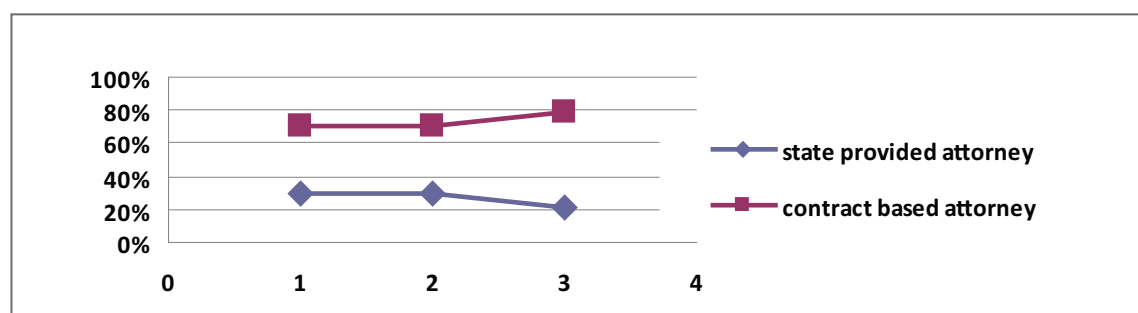
The average period of time of keeping a person in the capacity of an accused person is 73 days. The average period of time for conducting criminal investigation (from the moment of informing the criminal investigation body to the moment of sending a case to court) on this type of cases is 319 days, which represents a long period of time for investigation this crime category.

Six accused persons had been detained on remand, with an average period of detention being 35 days.

### 6.2 Realization of the right to defence

The data of the study shows that in the initial phase of criminal investigation, 70 per cent of attorneys that assisted suspects were employed by the defendant, while 30 per cent of the suspects were provided assistance by appointed attorneys guaranteed by the state. The same statistics have been identified with respect to the accused persons. In trial proceedings, the percentage of chosen and provided attorneys was of 79 per cent and 21 per cent respectively (see Figure 51).

Figure 51: Defence of the accused person





The predominance of contracted attorneys is explained by the fact that this is a serious crime, and the accused persons have sufficient financial resources to pay for the services provided by an attorney chosen by them.

### **6.3 Representation of the victim**

None of the analysed criminal cases included victims assisted by attorneys.

### **6.4 Compensation provided to the victim**

Out of the total number of 68 injured parties, 76 per cent have been recognized as civil parties in criminal proceedings.

Of the total number of injured parties, 54 per cent were recognized as having suffered material/moral damages, while of the total number of civil parties damage was recognized in 71 per cent of cases.

The results of the analysis show the following:

Total amount claimed -	MDL 5,414 825 (USD 451,235)
Minimum amount claimed -	MDL 4,647 (USD 387)
Maximum amount claimed -	MDL 1 566 000 (USD 130,500)
Average amount claimed -	MDL 104,131 (USD 8,677)

The total amount of material and moral compensation claimed in trial court proceedings was of MDL 4 040 400 (USD 336,700). Claims of material damage of 37 civil parties were fully or partially admitted in the total amount of MDL 3 193 864 (USD 266,155), which represents 79 per cent from the total amount claimed. On an average, the amount of 86 320 MDL (7,193 USD) was adjudicated by each civil party.

With reference to moral damages claimed by civil parties, the courts had admitted these in principle in most of the cases, with explanation of the right to initiate an additional civil action in a separate civil process.

After examination of the cases in the appeal procedure, the situation regarding the compensation of material and moral damages has changed substantially to the disadvantage of civil parties. When admitting defendants' appeals, the court rejected a number of 4 civil actions that were previously awarded by the first instance courts. At the same time in the case of other 12 actions admitted by trial courts, the Courts of Appeal admitted the action in principle and explained the victims their right to lodge separate civil actions with the courts. This way, the amount of compensations provided by the court of first instance was reduced with an amount of MDL 2 734 464 (USD 227,872), with the total amount of compensation given to civil party being only of MDL 459,400 (USD 38,283) for 23 civil parties, which on an average constitutes MDL 19,974 (USD 1,664) per person (with MDL 66,346 (USD 5,528) less than the average amount adjudicated in the courts of first instance).

In comparison with criminal cases on trafficking in persons (article 165 CC), in cases of organization of irregular migration, civil parties claimed larger amounts as damages - on average by MDL 59,131 (USD 4,927) more than the average amount claimed by the victims of trafficking in human beings.

After examination in the court of first instance of criminal cases on trafficking in human beings, the material claims were admitted for an average amount of MDL 18,812 (USD 1,567) per person, in contrast with criminal cases on the organization of irregular migration, with an average amount of MDL 86,320 (USD 7,193), meaning with MDL 67,508 (USD 5,625) more than the amounts of claims admitted for victims of trafficking.

After examination in appeal procedure of criminal cases on trafficking in human beings, the material claims were admitted for an average amount of MDL 19,068 = USD 1,589 (rising with an average of MDL 256 = USD 21), whereas the average amount for victims of organized irregular migration representing MDL 19,974 = USD 1,664 (decreasing by MDL 66,346 = USD 5,528).

Thus, as result of final examination of criminal cases of trafficking in persons and of organization of irregular migration, the amounts of material compensation awarded to civil parties by the courts are practically the same, even though in the former case compensation is provided for acts of exploitation while in the latter claims are made to cover only expenses suffered by the injured parties.

While in cases of trafficking victims are mostly claiming compensation of moral damages caused by exploitation, victims of migrant smuggling usually claim material damages. Only in one case of migrant smuggling, the victim claimed compensation of moral damages in the amount of MDL 100,000 (USD 8,333). The claim was admitted in principle, which means that the injured party can lodge a separate civil action as part of civil proceedings.

Although injured parties in criminal cases on organization of irregular migration did not benefit from the assistance of attorneys, they managed to obtain compensations for material damages. This fact proves a higher awareness of their rights in comparison to victims of trafficking. At the same time injured parties in this category of cases are more consistent in their testimonies. Although both categories of victims are in difficult material situation, the position of vulnerability of victims of trafficking in persons is much more severe, since victims of migrant smuggling are usually able to collect money for migration.

## 7. NATIONAL AND INTERNATIONAL COOPERATION

### 7.1 Interdepartmental cooperation

The results of the study show that the criminal investigation bodies have requested information mostly from the Border Guards Service (three), Ministry of Informational Technology and Communications (six), Chamber of Licensing (two), Travel Agencies (one) and other institutions and organizations (14). In the vast majority of cases information was requested on documentation of persons. The data thus obtained was used afterwards as material evidence to confirm certain facts and circumstances that were important for the criminal case.

### 7.2 International legal assistance

Moldovan authorities usually request international legal assistance in cases of organization of irregular migration when victims are citizens of other states.

Three rogatory letters were sent by Moldovan authorities to their counterparts abroad on such cases as detailed in the below table.

Table 5: Requests for international legal assistance

Number of Requests	Requested State	Answered in less than 2 months	No answer
3	Romania -2 Poland -1	2	1

*In a rogatory letter, Moldovan authorities requested their Romanian counterparts to:*

- *establish surveillance of the suspect,*
- *identify the persons he communicates with,*
- *seize the forged papers the suspect intended to use for leaving the country,*
- *identify the accomplices of the suspect and interview them.*

Thus, in this case, the authorities made use of international cooperation to proactively investigate the crime before apprehension of the suspect.

In the above-mentioned case, as a result of the rogatory letter a range of investigation measures were conducted, such as seizure of a SIM card, a travel ticket, a travel insurance policy; line-ups of the suspect and the person who met him in Romania; one statement was collected from the driver of the travel agency. As a result, the evidence acquired in Romania on the basis of international cooperation between the two states has facilitated the job of the state prosecutor in supporting the accusations brought in the court.

### 7.3 Under-cover agents

In order to identify crimes of organization of irregular migration in most of the cases operative investigation methods are required. Unfortunately, one of the most efficient operative investigation methods, such as the use of an undercover agent, was conducted only in one case. Thus, *an undercover agent was infiltrated in a criminal group. He pretended to be a potential migrant - he has contacted the offenders and even went to Romania where he informed local law enforcement agencies and, in cooperation with them, identified all of the co-participants in the criminal activity.* This is an example of good practice, but one that is very rare for this category of crimes.

## 8. TIME FRAMES FOR CONDUCTING CRIMINAL PROCEEDINGS

### Criminal Investigation

The time frames from filing the complaint to the initiation of the criminal investigation, in the context of the studied cases on article 362/1 CC, were as follows:

- in 47 per cent of the cases - criminal investigation started on the same day;
- in 26 per cent of the cases - criminal investigation started within three days;
- in 27 per cent of the cases - criminal investigation started within up to 15 days.

The average period between the initiation of the criminal investigation and the moment of bringing the accusation is of 175 days. The average period for conducting criminal investigation is 319 days.

### Trial

The average time frames for examination of cases on article 362/1 CC in the courts are of:

- 99 days – first instance court,
- 45 days – first appeal,
- 110 days – second appeal.

Thus, from the initiation of criminal proceedings to the pronouncement of the sentence there is an average period of 418 days. In cases where decisions were challenged in ordinary and extraordinary appeal procedures, the criminal proceedings lasted an average of 463-573 days.

## 9. COURT PROCEEDINGS

The results of the study have shown that there took place five court hearings on an average per case.

Examining the period for examination of criminal cases in the courts of first instance, we have the following:

- 1. Period of time between the date of sending the case to court and the date of the preliminary hearing** – 19 days on an average per case.
- 2. Period of time between the date of sending the case to court and the date of pronouncement of the sentence** – 99 days on an average per case.
- 3. Period of time necessary after pronouncement of sentence to write the sentence down** – 10 days on average per case; *Note: in 2 out of 19 studied cases there is no data available on this matter.*

## 10. PARTICIPATION AND BEHAVIOUR OF PARTIES DURING COURT HEARINGS

The results of the study identified that out of the total number of court hearings (98), 30 court hearings were postponed, because of the following reasons:

- absence of the judge – three hearings,
- absence of the prosecutor and victims – 12 hearings,
- absence of the defendant or its attorney – 13 hearings,
- absence of witnesses – two hearings.

In conclusion, 30 per cent of all court hearings did not take place being postponed due to the unmotivated absence of one of the participants.

## II. SENTENCING

### II.1 The position of the state prosecutor

In all of the studied cases the prosecutor requested the legal qualification of defendants' actions as the organization of irregular migration.

The position of the prosecutor regarding the punishment requested was the following:

- a. imprisonment: for three defendants (out of 23 persons), requesting an average eight years and four months per person;
- b. imprisonment with conditional suspension of execution: for three defendants for two years and four months of imprisonment with a probation period of one year;
- c. fine: for 14 defendants, on an average MDL 10,357 (USD 863) per person;
- d. interdictions: for five defendants;
- e. expulsions: two defendants.

### II.2 Legal classification by the courts

The following sentences were adopted by the courts in the studied cases:

**conviction:** 19 persons,

**stopping further examination:** four persons.

Regarding the legal classification of the defendants' actions, the court of first instance has supported in all of the cases the position of the state prosecutor, with the only one exclusion of qualifying aspect for one case.

### II.3 Punishments

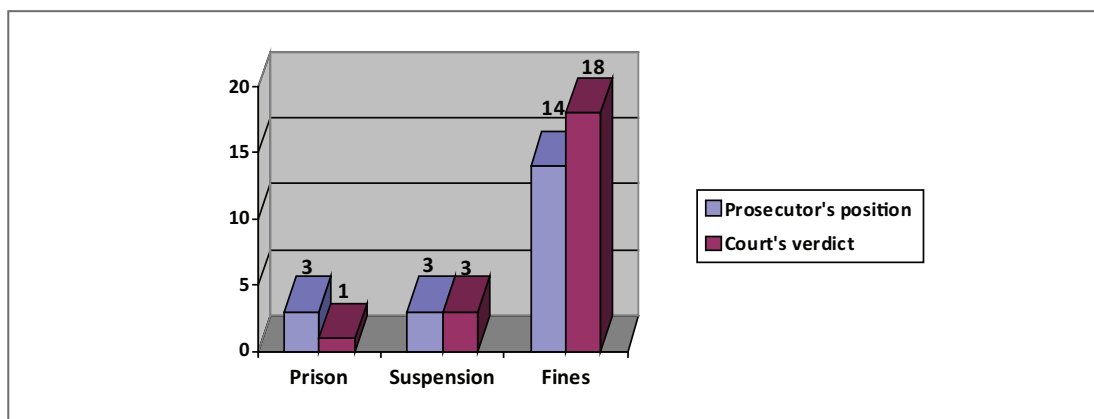
The statistics of the punishments in comparison with the sentences of the court are the following:

- a. Imprisonment: one person (out of 23 accused persons), with 11 years and six months an average per person;
- b. imprisonment with conditional suspension of execution: three persons with an average of three years of imprisonment with conditional suspension for a probation period of two years and four months on an average;
- c. fines: 18 persons, for MDL 8,500 (USD 708) on an average;
- d. interdictions: seven persons;
- e. expulsion: two persons.

Approximately in 26 per cent of cases the punishments were established as a result of the procedure of plea bargain.

Courts have often taken a different position than that of the prosecutor regarding the punishments to be applied, as shown in Figure 52 below:

Figure 52: Position of the prosecutor compared to the position of the court



## 11.4 Appeals

### *First appeal*

According to the study, six sentences were challenged in appeal, which represents 31 per cent of sentences of courts of first instance, thus:

**two sentences were contested by defendants and their attorneys, requesting their acquittal, of which:**

- one was rejected by the appeal court;
- one was partially admitted (reducing criminal punishment and ordering address in civil process of the injured parties in the aspect of compensation of material damages).

**three sentences were attacked by the prosecutor on the grounds that a lighter punishment was applied, among which:**

- one was admitted by the appeal court (increasing the punishment against the convicted person);
- two were rejected by the appeal court.

**one sentence was contested by the injured party** on the grounds that the civil action was not admitted regarding full compensation for the material damage, which was only partially admitted.

### *Second appeal*

The study has shown that three decisions were challenged in second appeal by the defendant and his attorney, in one case by claiming innocence and requesting acquittal, and in two cases requesting the criminal punishment be reduced. The Supreme Court, after the examination of appeals, decided to admit two applications to reduce the criminal punishment established for convicted persons. The other appeal was rejected. There was only one registered case of a sentence being challenged in second appeal by the injured party, which was rejected by the court.

## IV.6 FORCED LABOUR

### I. BACKGROUND

Forced or compulsory labour is one of the modern forms of slavery and servitude, imposed by physical or moral violence to persons against their will.

A reference to this kind of labour can be found in Article 4 of the Universal Declaration of Human Rights: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

The crime described in article 168 CC (forced labour) affects the right of the person to freedom of work. Both the crime of forced labour and the crime of trafficking in persons refer particularly or additionally to the phenomenon of forced labour, which represents the following, in accordance with the Convention of International Labour Organization on Forced Labour:

- a. compelling the victim, by constraint, to perform works that he/she was not obliged to do;
- b. holding a person in servitude to pay a debt;
- c. benefiting from labour or services by fraud;
- d. constraint, violence or threat to use violence.

This definition from the above-mentioned Convention was taken over by the Moldovan legislators and included in article 168 CC. However, it needs to be mentioned that the crime of forced labour and the crime of trafficking in persons have some similar characteristics (forced labour, servitude to return a debt, fraud (deception), violence or threat to use violence). Common features of these crimes generate certain difficulties in the judiciary practice with regards to the legal classification of criminal actions and differentiating one crime from the other. In cases where children are involved in forced labour it is even harder to differentiate the crime punished by article 168 CC from the one prosecuted through article 206 CC.

The crime of forced labour consists in committing one of the four alternative actions: 1) forcing a person to provide labour services without his/her consent – the victim is determined by constraint to do works which he/she would not have done otherwise; 2) enforcing compulsory labour, the victim being coerced to provide work that it was not obliged to, but was put in a position to perform, as if it had been his or her duty; 3) holding a person in servitude to pay a debt – the victim is in total dependence on the offender, because the victim was not able to pay the debt; 4) obtaining labour or services by fraud, constraint, violence or threat to use violence.

The case analysis on forced labour and trafficking in persons with the purpose of labour exploitation indicates that there are contradictory practice of the prosecutors and courts:

*In one case the Prosecutor's Office has brought accusation against C.D. for trafficking in persons according to article 165 CC. CD organized the departure of 9 men to the region of K. in the Russian Federation to work in construction, without a written contract of employment (there were no clarification of the period of time for which the promised salary of USD 1,000 should have been paid). The trial court acquitted C.D. on the count brought under article 165 CC, motivating that C.D. has worked along with the injured parties on the same construction sites. When examining the case in appeal, the court has convicted C.D. for forced labour in the conditions set in article 168 CC, reasoning that the injured parties were forced to work without their consent.*

*In another case, the Prosecutor's Office pressed charges against D.E., of committing crimes contained in article 165, 206 and 195 CC, for allegedly organizing the departure of 11 persons (men and women, including a minor) to do agriculture work in the region C. of the Russian Federation, lending them money for obtaining passports. Employment contracts with the farm were drafted by D.E. At the end of the agricultural season, the injured parties did not receive the promised salary, although the farm has paid D.E. with 150 000 rubles (USD 5,000). The trial court convicted D.E. in accordance with article 165 (2), article 206 (1) and article 190 (4) CC, establishing a punishment of 9 years and 6 months of imprisonment. The appellate court has acquitted the defendant on counts brought based on article 206 and 190 CC, and has ended the proceedings on article 165 CC due to the death of the defendant. The Supreme Court of Justice, after the examining the second appeal submitted by the prosecutor, has annulled all of the courts' decisions and decided to terminate the process due to the death of the defendants, avoiding however to legally qualify the actions committed by the offender.*

*In another case, the Prosecutor's Office brought accusations against B.I. and M.S. in line with article 165 CC (trafficking in persons) because the latter allegedly organized the departure for work in the Russian Federation*



of 10 persons (men and women), but before the end of the criminal investigation, the accusation was changed to article 168 CC. The accused persons have signed the plea bargaining, but the court did not make reference to it, convicting them based on article 168 CC and applied a fine as punishment in the case, while also leaving without examination the actions undertaken by the civil parties regarding compensations, with the explanation that they have this right only in the civil procedure.

In a different case, the Prosecutor's Office pressed charges against five defendants (four men and one woman) according to art 165 CC (trafficking in human beings), who have recruited by fraud eight citizens of the Republic of Moldova and have organized their departure to the Russian Federation in 2001 for agricultural works, on various farms, with a monthly salary of MDL 1,000 (USD 83). When the agricultural season was over, the injured parties have received a smaller amount of money than the one that was promised to them. The court has reclassified the defendant's action according to article 122 (2) of the CC (1961) (appropriation of wealth by fraud). The court has applied fine as punishment in the amount of MDL 900 (USD 75) to each of the defendants.

In all of these four cases the scenario is similar (regarding trafficking outside of Moldovan borders, conditions of living, fraud, threat, and the like), however the legal classification by prosecutors and courts is different in each case.

The difference between the criminal punishments for crimes regulated by article 165 and 168 CC is huge. If in the first case the minimum punishment is seven years of imprisonment, then in the second case there is a possibility of only a fine to be applied. Differentiating the actions of these crimes is very difficult to be made, and herewith leaves the door opened for abuses from persons responsible for legal qualification of the offender's actions.

The classical differentiation of these two crimes is not clearly and convincingly described in the legal doctrine. Moreover, the Decision of the Plenary of the Supreme Court of Justice no. 37 from 22.11.2004 does not make any reference to the differentiation of these crimes.

#### **Article 168. Forced Labour<sup>23</sup>**

*Forcing a person to work against his/her will, keeping a person under servitude for paying off a debt, obtaining labour or services by means of deception, coercion, violence or the threat of violence shall be punished by imprisonment for up to 3 years.*

## **2. PROFILE OF THE ACCUSED PERSON**

Total number of accused persons: 9  
Convicted persons: 9  
1 person was convicted for both the crime of forced labour (Article 168 CC) and for the illegal deprivation of freedom (article 166 CC).

The following common features were identified for persons accused of committing the crime of forced labour:

### **Sex:**

**Women: three women (33%)**

**Men: six men (67%)**

### **Average age of accused persons:**

**Women: 33 years of age (max. 39 years of age, min. 24 years of age)**

**Men: 38 years (max. 50 years of age, min. 28 years of age)**

<sup>23</sup> While it is being recognized that forced labour may be a form of trafficking in persons according to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Study is within the context of the Moldovan Criminal Code whereby articles 165 and 206 define trafficking with the purpose of forced labor and services and article 168 defines forced labour as separate crime when elements of trafficking are absent. Currently there are problem to distinguish the two offences due to an existing deficient formula of article 168 and a new formula of this article is being developed.



### Employment:

**Unemployed: nine persons (100%)**

**Employed: 0 (0%)**

### Criminal profile:

Out of the total number of accused persons, only one person has been previously convicted based on article 168 CC (forced labour).

## 3. PROFILE OF THE VICTIM

According to the accumulated information from materials of the study, the total number of victims is 38. The following common features of victims of forced labour were identified:

### Sex:

**Women: 12 persons (32%)**

**Men: 26 persons (68%)**

The larger number of male victims is caused by the fact that the exploitation usually includes physical work, generally across the borders of the Republic of Moldova (in Russia and Ukraine) in the agricultural sector, which is more preferred by men than women. There was only one case when the victim was forced to work in the Republic of Moldova (as a shepherd).

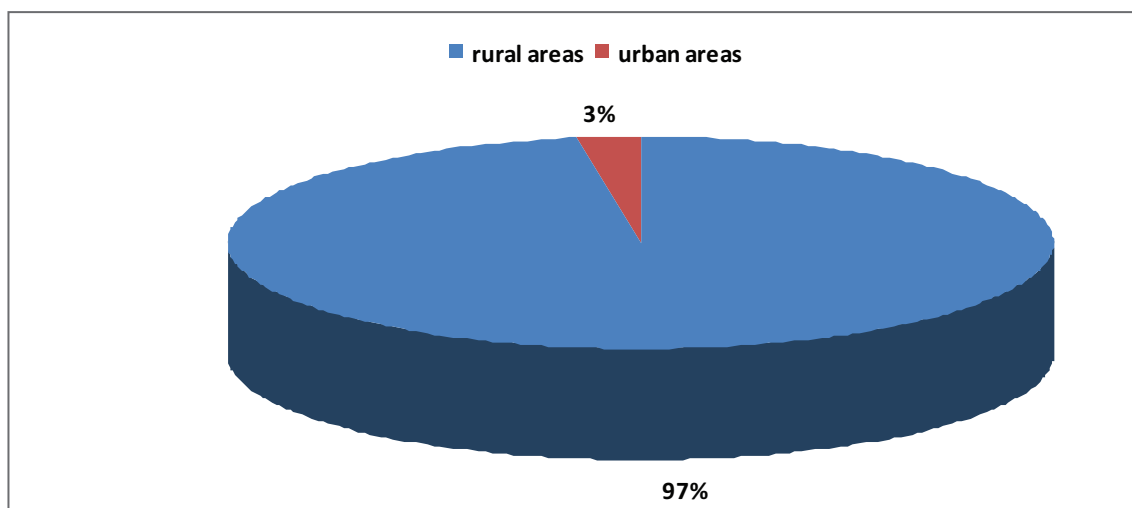
### Average age:

**Women: 25 years of age (max. 37 years of age, min. 17 years of age)**

**Men: 34 years of age (max. 55 years of age, min. 18 years of age)**

The majority of victims of this crime (97%) come from rural areas as indicated in Figure 53. This fact confirms that the vast number of victims is exploited for agriculture and construction – areas that are closely related to the activities done by the population from rural areas.

Figure 53: Environment of origin of victims of forced labour



## Education:

**No education: one person**

**Not finished high school: three persons**

**High school: eight persons**

**No available data: 26 persons**

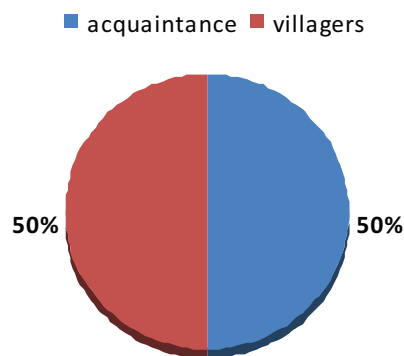
The majority of victims are not employed, some did not even graduate high school, with minimum resources, looking for a place to work, which facilitates the recruitment process by the exploiters who, in all of the cases, make promises of well-paid jobs and legalization of residence in destination countries.

## Relationship between the victim and the accused person

In almost half of the cases (Figure 54) it was discovered that the victim knew the exploiter, they being from the same village.

Regardless of the group of recruiters: friends, neighbours, and other persons, they all of the times are persons that have the trust of the victim.

Figure 54: Relationship victim-accused person



## 4. REPORTING THE CRIME

According to the collected data from the examined files, in the majority of cases – 67 per cent, the case is initiated at the complaint of the victims and their relatives, whereas only 33 per cent of cases were initiated upon the report of the criminal investigation body.

## 5. PROCEDURAL ACTS

### 5.1 Hearing the victim, the injured party and the civil party

#### *The injured party*

The data of the study indicates the fact that 100 per cent of the total number of exploited persons were interviewed as injured parties, being recognized in this capacity after the initiation of the criminal investigation.

### ***The civil party***

Out of 38 injured parties, 32 (84%) have been recognized as civil parties. None of them have been separately interviewed with regards to the civil action in their capacity of a civil party.

## **5.2 Presentation of persons for identification (line-ups)**

The results of the study show that only in one case the accused person was presented to the victim for recognition.

## **5.3 Hearing witnesses**

According to the study, during the criminal investigation phase 18 witnesses were interviewed in six cases, which represent an average of three witnesses in a criminal case. Out of the total number of interviewed witnesses, 61 per cent were direct witnesses.

A comparative analysis of witnesses interviewed shows that the number of witnesses for accusation was considerably higher than that on the defence side. Thus, the accusation witnesses represent 78 per cent of the total number of interviewed witnesses, whereas defence witnesses amounted to only some 22 per cent.

Indirect witnesses existed practically in every case, representing 39 per cent of the total number of witnesses.

## **5.4 Crime scene examination. Search and seizure**

### ***Crime scene examination***

Examination at the crime scene was conducted in a single case, during which a chain and two locks were discovered that had been used to handcuff the victim.

### ***Search***

A search was conducted in a single case and was done without proper authorization.

## **5.5 Seizure**

In two cases objects and documents were seized. In one case investigators' *seizure of seven "receipts" on the victim's debt to the exploiter took place at the house of the accused person; this action was supposed to be recognized as a search only afterwards, because at that moment there was no consent of the person for the search to be conducted.*

# **6. RIGHT TO DEFENCE AND REPRESENTATION**

## **6.1 Procedural status of the exploiter**

### ***Suspect***

Criminal investigation was initiated against seven suspects, nine ordinances being adopted and one arrest report drafted.

## **Detention**

In the studied cases, two suspects were detained for an average period of three days each.

## **Accused**

The status of accused was recognized through 15 indictment ordinances against nine persons. According to article 282 CCP, the accusation has to be brought to the accused by the prosecutor in the presence of the lawyer within 48 hours from the moment of issue of the ordinance of pressing the charge, but not later than the day in which the accused has shown up or have been brought by force.

An indictment ordinance with an expired period was discovered, but the defender did not react to this violation of procedure. The average period in which person was maintained in the capacity of the accused was 12 days, which demonstrates that shortly after the accusations are brought, the case is being sent to the court.

## **Pre-trial detention**

Three accused persons were kept in preventive detention for an average period of 82 days.

Note: All three of them were initially accused of trafficking in persons according to article 165 CC, but then their actions were reclassified to article 168 (forced labour). One of the arrested persons was extradited from the Russian Federation.

*In another case, the investigating judge has rejected the request of a prosecutor for the application of remand detention of a suspect. The decision has not been appealed by the prosecutor. Afterwards, the prosecutor, who hadn't verified in advance the location of the accused person, had issued an order for that person not to leave the city, this order being extended every time without informing the accused of this fact. However, the accused person had already broken this order and left the country. An arrest warrant was issued against the accused person, who was found only eight months later. Nevertheless, even then, the accused person has not been detained following the warrant but signed the plea agreement and was set free.*

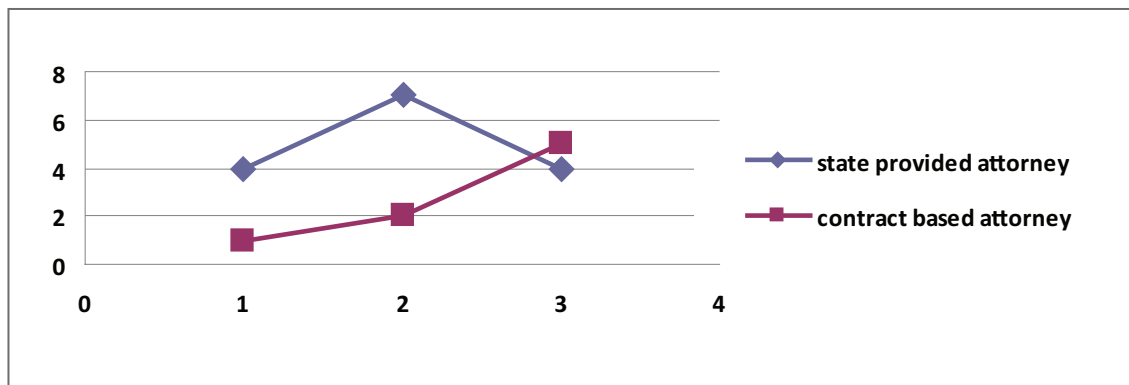
## **6.2 Exercising the right to defence**

Out of the total number of seven suspects, four had a state provided attorney; one suspect hired a contract based attorney, whereas the other two suspects did not have defenders, because they were hiding from the criminal investigation body, the accusation orders being issued in their absence.

After the accusations were brought, out of the total number of nine accused persons, two persons have hired contract based attorneys, and seven benefitted from the services of state appointed counsels.

During criminal proceedings in court, the proportion of chosen and appointed attorneys shifted to five and four respectively. Thus, one can note a certain increase in the number of contracted legal assistance. This occurs because of the fact that separating the crime of forced labour according to article 168 CC from the crime of trafficking in persons according to article 165 and article 206 CC is difficult to be done in practice, and the assistance of an attorney becomes necessary at this phase in order to avoid a harsher punishment. That is also the reason why most of the persons accused of this crime accept to sign plea agreements (four out of nine persons accused of forced labour).

Figure 55: Defence of the accused person



### 6.3 Representation of the victim

Of the total number of victims (38), none has benefitted from the services of an attorney during the criminal proceedings. This can be explained by the fact that in contrast with victims of very serious and exceptionally serious crimes, such as trafficking in persons and trafficking in children, victims of the crime of forced labour have the right to be represented by a contract based attorney, but not by a state provided attorney. Considering the profile of the victims, it can also be alleged that they generally lack the financial resources to afford a private attorney.

### 6.4 Compensations provided to the victim

Thirty two persons have been recognized as civil parties. Only one person of 32 has submitted an application to the court claiming compensations for the material damage suffered as result of the crime, in accordance with art 221 CCP. Other civil parties testified about the material damages suffered, when heard in the capacity of an injured party, without providing any evidence to sustain these claims. Only 22 of them have formulated a fixed amount estimating the material damage they allegedly suffered.

Four cases contained applications for compensation of the material damage, as follows:

Total claimed amount-	MDL 186,700 (USD 15,558)
Minimum claimed amount -	MDL 2,000 (USD 166)
Maximum claimed amount-	MDL 40,000 (USD 3,333)
Average amount claimed-	MDL 8,486 (USD 707).

Analysing materials of the cases it was possible to find that, at the criminal investigation phase the accused persons have willingly compensated the material damages in the amount of MDL 12,000 (USD 1,000) claimed by five injured parties, which means MDL 2,400 (USD 200) for each injured party.

The court of first instance admitted a civil action and left without examination seven others, while not making any decisions regarding the other claims.

As a result, from the total amount initially requested in the end the victims only received 6.4 per cent.

No compensation for moral damages suffered was claimed. At the same time, it needs to be mentioned that because none of the civil parties benefitted from professional legal assistance, none of them made written applications for compensations and did not have the possibility to confirm their claims by evidence.

### 6.5 Measures to protect the victim

No protective measures were applied in this category of cases, because none of the victims claimed any dangers.

## 7. NATIONAL AND INTERNATIONAL COOPERATION

### 7.1 Interdepartmental cooperation for investigation of forced labour

The study has shown that the criminal investigation body has requested information only for one case from the Border Guards Service and from a Bank. But even in this case the data was requested at the criminal investigation phase when the illegal act had already been classified according to article 165 CC.

At the same time, this category of crimes requires the availability of relevant information from several authorities, including the ones mentioned above, but especially from the Labour Inspection, the Chamber for Licensing and State Registry.

### 7.2 International legal assistance

Considering the fact that in 83 per cent of the studied cases the crime had a transnational character, there is a need for a more intensive international cooperation in order to accumulate evidence that confirms the fact of exploitation through forced labour.

However, international legal assistance was requested only in one case of a person extradited from the Russian Federation. In this case, the extradition period exceeded the recommendations established by the European Convention on Mutual Legal Assistance in Criminal Matters.

The insignificant number of requests points at certain problems regarding the level of international cooperation. One of the reasons for these issues might also be the long period of time necessary for receiving answers, but also other incomplete content of such answers.

## 8. TIME FRAMES FOR CONDUCTING CRIMINAL PROCEEDINGS

### Criminal investigation

In the cases included in the study sample, the period of time from the date the complaint had been lodged to the moment criminal investigation under article 168 was initiated, can be indicated as follows:

- in 64 per cent of the cases - criminal investigation started on the same day;
- in 18 per cent of the cases - criminal investigation started within three days;
- in 9 per cent of the cases – criminal investigation started within up to 15 days;
- in 9 per cent of the cases – criminal investigation started within up to one month.

The average period of time from the initiation of criminal investigation to the moment of indictment is nine months, and it takes additional months – usually up to 1 month– to send the case to the court.

In this regards, a deficient practice was identified to unjustifiably extend the period of time for criminal investigation using formal reasons.

### Trial

The time necessary for the court examination of cases under article 168 CC, is on average:

- 41 days – in first instance court,
- 39 days – in appeal.

Thus, the study has shown that an average period of one year passes from the initiation of criminal proceedings until the final sentence is pronounced. In conclusion, the term of examining cases in the court is considered to be reasonable (41 days).

## 9. COURT PROCEEDINGS

On average, there were approximately three court hearings per each case. The analysis of the duration of proceedings in first instance courts shows the following:

1. **The period of time from the date of sending a case to the court and the date of the preliminary hearing** – 14 days on average for each case.
2. **The period of time between the date of sending the case to court and the date the sentence is read** – 50 days on average for each case.
3. **The period of time from the pronouncement of the sentence to the final editing of the decision** – on the same day; Hence, in the analysed cases the judges have followed the time frame for writing the sentence, which is 10 days according to article 343 CCP.

## 10. PARTICIPATION AND BEHAVIOUR OF THE PARTIES IN COURT HEARINGS

The results of the study have shown that three hearings were postponed based on the following reasons:

- two hearings were postponed due to the absence of witnesses,
- one hearing was postponed due to the absence of the injured party.

## 11. SENTENCING

### 11.1 Position of the state prosecutor

Representing accusation on behalf of the state, the prosecutor is guided by the law and his own conviction determined by the evidence adduced within the court hearings.

In the cases analysed within the present study, in his pleadings the prosecutor has requested the following classification of the defendants' actions: 100 per cent forced labour (article 168 CC).

The position of the prosecutor regarding the requested punishment:

- a. imprisonment: for four defendants requesting two years and four months on average;
- b. fine: for five defendants of 400 conventional units on average (MDL 8,000 = USD 666).

The qualification given by the prosecutor to defendants' actions had a significant impact on the sentence and on the final result of the criminal cases.

### 11.2 Legal classification by the courts

The position of the court regarding legal qualification of defendants' actions has coincided in all cases with the position of the state prosecutor. There were no sentences for acquittal or for termination of the criminal case.

The study has shown that the courts have applied punishment with imprisonment for three defendants for an average term of 13 months each, and the actions of two of those persons were qualified under article 90 CC (conditional suspension of execution of the sentence) for an average probation period of one year and six months.

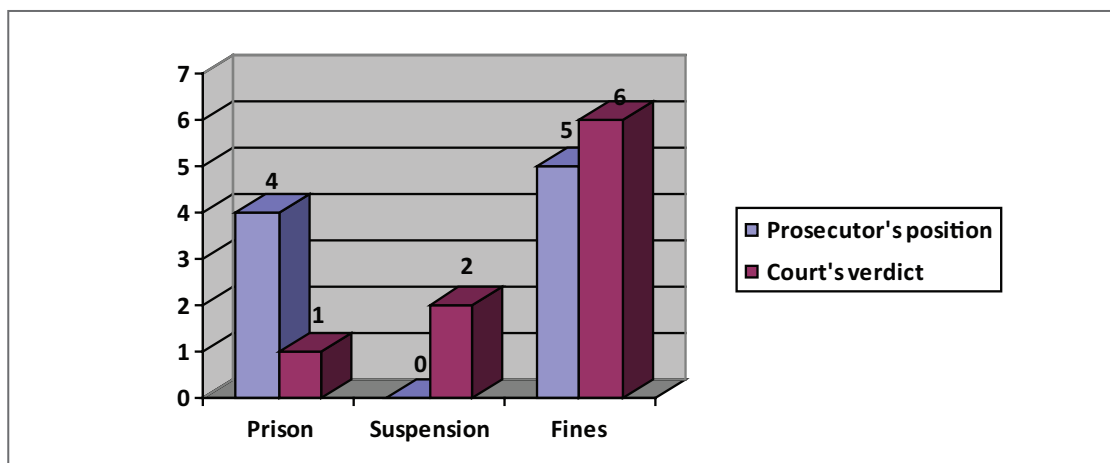
In one case, while establishing the prison term, the court decided to limit this term to the one already served in pre-trial detention.

For six defendants the court has applied fines as criminal punishments, with the average amount of MDL 7,400 (USD 616).

Courts have often taken a different position than that of the prosecutor regarding the punishments to be applied, as shown in Figure 56 below:



Figure 56: Position of the prosecutor compared to the position of the court



The authors of this Study have identified some cases where the criminal proceedings were opened based on trafficking in human beings and trafficking in children crimes of the Criminal Code (article 165 and article 206) and were later on charged into forced labour (out of all cases initiated under article 165 CC - 2.3 % and out of cases initiated under article 206 CC – 9 %). Thus, it is important for law enforcers to be able to distinguish between the trafficking in persons and forced labour crimes as follows:

If it is noticed, for the trafficking in human beings, the purpose of the crime, even if it is a facultative of means rea, it is specified by the legislator as being relevant for classification. If the actions are committed for another purpose as that established, the classification of acts will be made under another crime. Forced labour, provided in article 168 of the Criminal Code, can obtain the aspect of trafficking in human beings for purpose of labour exploitation, under the condition that the main criminal acts from the objective element of the trafficking in human beings crime as highlighted by the legislator: recruiting, transportation, harbouring or others, in combination with one of the methods specific for trafficking in human beings established in article 165 (1) (a-c). Moreover, forced labour does not require a special purpose, which can be different (profit, revenge, jealousy, envy or other) and which does not have importance for the classification, being taken into account only at the individualisation of the punishment, whereas the purpose in trafficking in human beings crime, as a facultative element of means rea, plays decisive role for classification, this being well-formed in the perpetrator's mind even from the moment of recruiting. In case of trafficking in human beings crime, the person is trafficked for the purpose of labour exploitation, which means that the victim is denied her right to choose the work (activity), and thus from the whole beginning being excluded a legal activity of the victim, while in case of forced labour the right to choose the work is affected in some way. In such circumstances the conditions of work and remuneration are facultative elements that complete the general conditions of labour in cases of trafficking in human beings and forced labour.

## IV.7 ILLEGAL TAKING OF CHILDREN OUT OF THE COUNTRY

### I. BACKGROUND

According to the Law on the exit and Entry into the Republic of Moldova (Law no. 269 of 09.11.1994), minors have the right to exit and to enter Republic of Moldova only being accompanied by one of their legal representatives or by a designated companion authorized by the written statement of the legal representative, whose signature is legalized by the notary. In the case when the minor moves abroad for permanent residence in a foreign country the written consent of both of parents is required confirmed by a notary or, in the case of other legal representatives, their consent authorized by the decision of the guardianship authority. The above-mentioned documents, along with other official documents necessary to remove a child from the country are very often being forged.

Fabrication, possession, sale or use of forged official documents is done by go-betweens at the request of child's parents that work abroad; or even by the parents who want to take their children abroad together with them.

Although the legislation provides for legal options to take the child abroad, some parents, prefer to avoid official regulations, mainly because of their lack of awareness of the legal rules.

According to the legal definition, illegal taking of a child out of the country, as well as abandoning a child abroad for other purposes than those indicated in article 206 CC, can be done by using forged documents or by another illegal way.

Given that abandonment abroad is one of the purposes of trafficking in children, being stipulated in article 206 (1) let. g) CC, a distinction should be drawn between the actions punished through article 207 and article 206 CC with this regard. The criminal law establishes the purpose of the crime as a delimitation criterion, which does not seem to be right: in the case of trafficking of children, abandoning the child abroad is a purpose in itself and not an objective reality, a fulfilment of the purpose, that is why in such cases only article 206 CC would apply and no additional classification under article 207 CC will be required even where the purpose of abandonment will be realized.

Nevertheless, the clarification needed in this case is the following: abandoning a child abroad is to be realized as a consequence of legal taking of the child out of the Republic of Moldova (for example on the occasion of an excursion). However, if abandonment of a child abroad is preceded by his/her illegal taking out of the Republic of Moldova, then article 207 CC will apply. At the same time, article 206 CC and not article 207 CC will be applied in cases where the illegal taking of a child out of the Republic of Moldova besides abandoning the child abroad pursues other purposes stipulated at article 206 (1) let. a), f) or h) of the Criminal Code. This hypothesis will not require any additional qualification according to article 207 CC, even where it would result in achieving the purpose of abandoning the child abroad.

#### ***Article 207. Illegal taking of children out of the country***

*Taking a child out of the country based on false documents or any other illegal means and his/her abandonment abroad for purposes other than those specified in article 206 shall be punished by imprisonment for 2 to 6 years.*

### 2. PROFILE OF THE ACCUSED PERSON AND OF THE VICTIM

#### **Accused person**

The three cases (analysed in the context of this Study) were initiated under article 207 CC (illegal taking of children out of the country) against six persons (four men and two women).

The results of the analysis showed that the average age of women accused for this crime is 22, while for men - 29. Of all accused persons only one was employed. Four of the accused were previously convicted under article 207 CC, and in the case of two person the acts were reclassified under article 323 CC (aiding and abetting a crime) and the proceedings against them were stopped by application of article 55 CC (contraventional liability).

### **Victim**

The files analysed show that three boys and one girl were illegally removed from the Republic of Moldova. The average age of child victims is six years. They come from both rural and urban areas. The studied cases indicate the fact that each of the actions of illegal taking of children out of the country is done either at the request of their parents or at their own request.

## **3. REPORTING THE CRIME AND OTHER PROCEDURAL ACTS**

### **a. Informing**

Law enforcement bodies were informed of the fact of committing the crime established by article 207 CC by one of the parents of the child, or the crime has been identified by the criminal investigation body on its own.

### **b. Procedural actions**

In the course of the conducted study it was established that in the process of investigating of this crime category the following procedural actions were conducted: interviewing of persons, confrontations, presentations for recognition, searches, interception and recording of conversations.

The only conducted search resulted in the seizure of relevant objects, and in the result of interception and recording of conversations it was possible to establish the involvement of accomplices and their role in the process of illegal taking of children out of the country.

### **c. Procedural status of the criminal**

#### ***Suspect***

Analysing the files on illegal taking of children out of the country it was established that five persons were recognized as suspects by an ordinance, three of them being arrested in this capacity based upon the arrest report. In every case the person was held in police custody for the maximum period recognized by the law as admissible (72 hours), rather than for a period of time of up to 72 hours. Also, all arrests were made at the direct indication of the perpetrator by the victim.

#### ***Accused***

The status of the accused was brought about through nine indictment ordinances against six accused persons. In all of the cases accusation was brought by the prosecutor within the legally established period of 48 hours from the moment the indictment ordinance was issued, but no later than the day when the accused person presented itself or was forcefully brought (article 282 (1) CCP).

The data provided in the Table below indicate the periods of time of holding persons in police custody and remand detention in the course of the criminal proceedings.

**Table 6: Detention of accused persons during criminal proceedings**

Criminal investigation				Examination in court			
suspect		accused		Court of first instance		Appeal	
Number of suspects	Number of days	Number of suspects	Number of days	Number of suspects	Number of days	Number of suspects	Number of days
3	3	4	18	1	88	1	22

#### **d. Cooperation**

In two cases on illegal taking of children out of the country requests for cooperation and assistance were sent to the Border Guards' Service of the Republic of Moldova.

### **4. TIME FRAMES FOR CONDUCTING CRIMINAL PROCEEDINGS**

The study shows that in two cases the criminal investigation under article 207 CC was launched in the same day when the complaint was filed, whereas in another case the criminal investigation was launched in up to three days.

The average period of time of the criminal investigation from its initiation to the moment of sending the case to the court in the two analysed files (where the accused persons were mothers who tried to emigrate together with their children across the borders of the Republic of Moldova) was 3,5 months. In the third case, having four accused persons and therefore being a more complex case, the total period of the criminal investigation phase was five years and 10 months.

Although, according to article 20 CCP, the criminal investigation and the examination in the court should be done within a reasonable period of time, these are appreciated every time by taking into consideration the peculiarities of each case, which includes: the complexity of the case, behaviour of participants, behaviour of the criminal investigation body and that of the court, the fact if the victim is a minor.

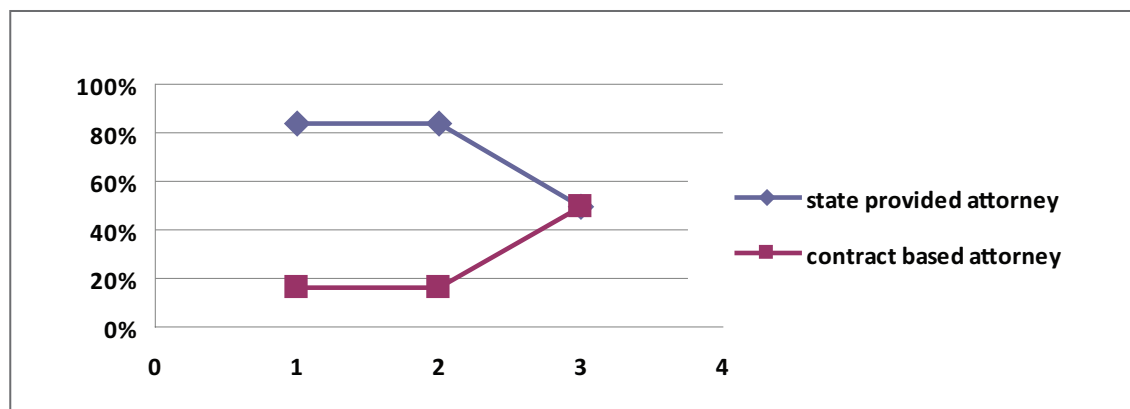
Sometimes the term of the criminal investigation is extended with the motivation of "the need to conduct additional criminal investigation actions", without indication in the materials of any further actions in this regard.

### **5. COURT PROCEEDINGS**

#### **a. Ensuring the right for defence and representation**

According to the data of the study it was established that 84 per cent of persons suspected of committing the crime of illegal taking of children out of the country, have benefitted from services offered by the state provided attorney, while 16 per cent benefitted from services provided by a contracted attorney. The same percentage is valid for accused persons (Figure 57), and only in the phase of the case examination in court, the percentage becomes equal for both opting for a contract based attorney or opting for a state provided attorney (50% : 50%).

Figure 57: Defence of the accused person



In none of the cases was the victim assisted by an attorney, the interests of minors being ensured only by the prosecutor.

Considering the fact that in two of the three studied cases, the accused persons were mothers of the victims (minors) who were leaving abroad together with their children without the father's consent (in one case the person was leaving the Republic of Moldova for Ukraine to visit her parents, in another case the accused was leaving for the Russian Federation to abandon/sell her child), the children being of two to four years of age, and there was no legal assistance of an attorney requested for them. In such cases it is necessary for the prosecutor to pay special attention to analysing the circumstances of the case in order to identify the child's best interest and to undertake necessary measures for its protection.

## b. Compensations provided to the victim

According to the principles of a fair trial, justice has the purpose of not only to punish the person guilty of committing a crime, but to ensure a full compensation of the damage caused to the victim of this crime. In criminal cases on illegal taking of children out of the country there was only one civil action filed, which requested compensations for material and moral damage in the amount of MDL 56,100 (USD 4,675). The material damage was compensated after the sentence became final, by restitution of the money taken from the defendants. In the other two cases, where convicted persons were mothers of the minors, there were no claims for compensation of damages caused to minors-victims.

## c. Examination in the courts of first instance

From the studied files, two cases were examined by the court of first instance. The average periods of times for different phases of case examination are shown in the table below:

Table 7: Length of criminal proceedings

Number of hearings	Average period of time (days) from transferring accusation to the court and until the date of the preliminary hearing:	Average period of time (days) from transferring accusation to the court and until the date of pronouncement of the sentence:	Average period of time (days) from the moment of pronouncement of the sentence to writing the sentence	Average period of time of case examination by the first instance court:
24	11	121	27	148

Thus, the average period of time for examination of a case in the first instance court is approximately five months, for appeal the first appeal the average is three months, and the case examined in second appeal – six months. In total, the phase of court examination of a case of illegal taking of children out of the country is one year.

This way, the behaviour of the participants in the process and the behaviour of the criminal investigation body and of the court, according to study, very often shows tendencies of slowing down the process of case investigation by non-representation to the court rooms without any serious reasons. Thus, 10 court hearings were postponed out of the total number of 24 hearings on these cases: two hearings – due to the absence of the state prosecutor and of the injured party; seven hearings – due to the absence of the defendant and/or its attorney; and one hearing – due to the absence of witnesses.

Representing accusation on behalf of the state, the prosecutor is guided by the law and his own conviction determined by the evidence adduced within the court hearings. In the cases analysed within the present study, in his pleadings the prosecutor has requested the application of imprisonment of defendants for an average period of five years. For other two defendants the prosecutor requested four years of imprisonment with conditional suspension of the execution of the punishment with the establishment of the probation period of five years.

Courts have adopted four conviction sentences on these cases. In three of them illicit actions have been reclassified from article 207 CC to article 323 CC (facilitation of the crime). After the requalification of the defendants' actions, two persons were exempted of criminal liability, being punished under the Contravention Code (application of article 55 CC). One person was sentence with imprisonment for a period of seven years. Other three persons were punished with five years of imprisonment with conditional suspension of the execution of the punishment, with the establishment of the average probation period of one year and two persons were sanctioned with fines of an average amount of MDL 1,100 (USD 91).

#### **d. Appeals**

Out of all the cases examined by the courts of first instance, two cases were further examined in appeal. At the same time, it is indicated that the examination of these case in the appeal procedure was done based on two applications by the state prosecutors and other two applications by defendants and/or their attorneys. The applicants complained of wrong legal classification and lightness of the sanction (prosecutor) and incorrect classification and absence of evidence (defendant/attorney). As a result of examination of appeal applications, the Court of Appeal partially admitted two applications lodged by the defendant/attorney and one by the state prosecutor. After the examination of a case in the appeal court, one defendant challenged the decision of the appeals court in a second appeal on the grounds of wrong classification and procedural violations. The second appeal was admitted partially.

## IV.8 INDICES OF CORRUPTION IN CASES OF TRAFFICKING IN PERSONS AND PIMPING

One of the purposes of the present study was to find whether there are indicators of corruption in the criminal procedure on cases of trafficking in persons and related crimes. It is generally recognized that trafficking in human beings, smuggling of migrants and pimping (but also other crimes considered in this Study) are forms of organized crime which usually involve entire networks of criminals, but also often benefit from the assistance of state officials, representatives of authorities who, by speculating on the supply and demand on this peculiar market, seem to draw huge profits from their services. Thus, trafficking often implies corruption of those responsible for maintaining public order.

In some cases, traffickers resort to such officials to obtain documents that would allow the transportation of victims over the border of Moldova. In other cases, traffickers or victims themselves resort to go-betweens to facilitate the process of obtaining identity papers or crossing the state border.

Of particular concern with this regard are the situations where border police or border guards, identify (potential) victims of trafficking among those crossing the border, only to ask for bribes in exchange of letting them cross the border. Moreover, traffickers, pimps and migrant smugglers often seek and find protection of certain officials, including representatives of law-enforcement bodies, to secure their illegal activity, their so-called “businesses” and the safety of the respective criminal groups. Such officials are liable for collateral crimes such as forging official documents, abuse of official position, passive and active corruption and others.

These types of corruptive behaviour are usually associated with the often present transportation element of the crime, which starts with obtaining travel documents (birth certificate, identification card, passport, visa and the like). Later, traffickers sometimes accompany the victims abroad, taking care of the problems related to crossing the border, by bribing officials and law-enforcers both in the country of origin and the destination country.

Given this background, the case analysis also focused on identifying corruption cases both in committing the crimes themselves as well as in their prosecution and trial.

It was very hard for experts to establish signs of corruption only from the analysis of criminal files. However there were four cases identified, where circumstances indicate that actions of corruption were committed by representatives of law enforcement bodies.

In one case, a **public official was convicted for forgery of official documents in relation to a case of trafficking in children** and convicted to three years of imprisonment with conditional suspension of punishment for one year of probation period. The defendant in the criminal case of trafficking in children had given USD 200 to a civil servant working within the Territorial Population Registry Office, for issuance of false documents for two minors that were to be sent abroad. The civil servant introduced false information in the database. In result, he was convicted under article 332 of the Criminal Code for forgery of public documents. Thus, in this case the law enforcement bodies reacted promptly to the allegations of corruption in cases of trafficking in persons.

In another case, of pimping (though the actions of criminals in the case may have amounted to trafficking, because the accused testified that they were to receive USD 1,500 for each girl sent over to Dubai), a witness testified that **pimps and traffickers who were arrested in the process of transporting victims got away by bribing policemen**. No further actions were undertaken by authorities on these allegations. The witness (who was to be transported) and the accused have been stopped before their flight to Dubai from Moscow and taken to the police station. A policeman told the witness that he would extort money from the trafficker and another policeman recognized he received USD 2,000 from the accused and that he would give USD 400 to each of the transported girls. No further actions were undertaken by authorities on the corruption allegations in this case.

In the third case, suspicions were raised by **a plea bargaining in a trafficking case that led to a milder punishment for traffickers, even though bargaining was not authorized in the case**. In court the prosecutor requested the application of a milder punishment than the one prescribed by law - five years of imprisonment



with suspension of the sentence. The court accepted the request and pronounced the respective conviction sentence. The same prosecutor who pleaded for the milder punishment, appealed the decision, but the appeal was rejected. This case raises serious doubts as to the consistency and integrity of such behaviour and may indicate the presence of corruption.

Finally, in yet another case a **policeman was allegedly bribed to allow the trafficker and the victim to cross the state border in the Chisinau Airport**. During the criminal investigation of the case of trafficking in human beings, it was established that the female trafficker paid an airport policeman USD 300, for him to let her and the victim leave for Turkey. In their statements both the trafficker and the victim mentioned the incident. Despite the fact that within the investigation of the trafficking case the fact of corruption was brought to the attention of authorities, no further actions were taken to inquire on the bribery element.

At the same time, as mentioned already a serious issue that raises concerns is the frequent cases where the criminal actions initially determined to be trafficking in human beings are later reclassified as pimping, forced labour, and other milder crimes (about 30 % of the cases), so that in many resulting cases criminals would only be punished by fine. Such cases indicate that either the law enforcers lack professional capacity or are corruptible.

Despite the small number of such instances of probable corruption discovered, these cases suggest that corruption persists and concrete measures should be adopted and implemented to suppress and prevent corruption of police, prosecutors, border guards and other officials in cases of trafficking in persons, pimping and smuggling of migrants and illegal border crossing. Among such measures could be considered but not be limited to: conducting investigations (by law enforcers) on all allegations or suspicions of corruption in criminal cases of trafficking in persons and related crimes; convicting and sanctioning persons who are found to have committed acts of corruption in such cases should be dully convicted and sanctioned; applying penalties to those who fail to report corruption.

# CONCLUSION

The present Study assesses the level to which the legal provisions in the sphere of punishing and suppressing trafficking in human beings through the criminal justice response in Moldova is being applied. In particular, the authors objectively identified and assessed the main gaps and irregularity in the way criminal law is applied with regards to trafficking in persons, based on analysis of 380 finalized criminal cases on trafficking in persons and related crimes, so as to have an evidence-based set of recommendations to improve the criminal justice response to trafficking in persons and related cases in line with the principles of the rule of law and supremacy of human rights.

## **Charging issues**

The study confirmed that, Moldova being a country of origin for victims of trafficking (where the acts of recruitment, transportation, transfer, harbouring and receiving the victim are prevalent), evidence of purpose of exploitation, which must be proved in each trafficking case, is often difficult to obtain by Moldovan criminal bodies in their jurisdiction. This could have led to law enforcer's unwillingness or, in some cases impossibility to charge a case as trafficking but rather as a related statute carrying a lighter sentence. Thus, the study provides evidence of very frequent reclassification of cases from trafficking to pimping, forced labour, organization of begging and other related crimes (both by prosecutors and courts). This point out to the fact that law enforcers may often fail to distinguish the different criminal statutes at hand, lack consistency in pushing their charges and advocating their respective positions in court or lack sufficient evidence, corrupt behaviour is another possible explanation. This indicates the need of clear guidelines for law enforcers to distinguish trafficking from other crimes (for example through a new interpretative decision of the Moldovan Supreme Court of Justice, Guide/Standard Operations Procedures) as well as appropriate and targeted trainings on this issue.

## **Investigation, trial and victims' rights issues**

The study shows that because of the lack of efficient mechanisms to proactively identify the crimes of trafficking, investigation bodies heavily rely on victims' testimony, which is often uncorroborated and unconfirmed by other evidence. This however means not only a heavy burden on the victim (which raises concerns as to the protection of victims' rights and the state's obligation to protect them) but also a very poor probative basis for the prosecution, which could undermine the fight against traffickers. It is therefore imperative that investigators should verify and reconfirm the victims' statements with other pieces of evidence to secure lawful convictions. One major concern is that criminal investigation body often insists on repeated interviews, in spite of the right of the victim to be exempt from the obligation to make statements, and in the majority of cases it resorts to confrontations with victims (including minors) and accused persons, which is not recommended in trafficking cases to avoid re-traumatisation. Also, in spite of the existing risks, only a few cases of the analysed files contained information on threats to the victim's security. All of the above show that investigators should abstain from unnecessary unproductive ways of producing evidence which are harmful to the victims, while making more efficient use of alternative techniques, such as special technical devices allowing victims to testify from secure locations or concealing their identity when necessary.

At the same time, the study revealed that most of the victims that were deceived into trafficking in human beings were also in a position of vulnerability; however, in most of the cases, proof of vulnerable position is not supported by evidence other than victims' own statement, which often makes conviction less likely. It is therefore recommended that investigators and prosecutors prove the position of vulnerability which the traffickers abused with additional factual evidence - social workers' reports, testimonies from neighbours or relatives, reports of psychological examination, and other).

The case analysis also indicates a series of other irregularities admitted by investigators and prosecutors with regards to a range of procedural requirements, including low-quality or incorrectly compiled indictment reports, lack of well-reasoned analysis of evidence, issuance of blanket search warrants, unjustified extensions of the investigation period, improper use of photo line-ups instead of ordinary line-ups and other. All of these issues need to be addressed, including through proper training, to increase the quality of the investigation and prosecution as well as to ensure the legality of all procedures. Particularly, it is crucial that investigators and prosecutors should in all cases conduct and prepare in written form the analysis of the evidence included in the indictment report

Yet another concern is raised by a tactic observed in several cases, where investigators opened several criminal files on the same facts, which were later joined by the court in a single case. This way some law-enforcers inflate the number of cases instead of concentrating on the quality of criminal investigation.

Finally, an important problem identified in the study is that criminal investigation bodies often fail to consistently pursue the heads of trafficking networks. While it is true that these major criminals are often foreign citizens residing in the country of exploitation, the study showed that where some information about them was present in the files, this data was insufficiently followed up on (such as via relations with law enforcers in other states). This shows the importance of international cooperation in criminal matters in order to effectively pursue the prosecution of traffickers.

With regards to the penalties in trafficking cases, the study shows a rather big discrepancy between the penalties requested by prosecutors and the ones applied by courts. Moreover courts made use of legal provisions allowing them to apply penalties milder than the ones provided for in the law, including plea-bargaining, so that half of the total number of those convicted under article 165 CC received a milder punishment than the one provided for in this article.

On the other hand, the study found that during the trial, the victims are not properly protected from interference by the traffickers or their associates, for example, by resorting to special means of hearing witnesses, although the legal framework provides for the possibility of such protection.

Other concerns are raised by the fact that court hearings are often delayed or postponed, which can demoralize some of the participants and influence the quality of justice delivered. A way to deal with this issue is the application of penalties for those responsible for delays.

Also the case analysis indicates that the quality of justice delivered in trafficking cases is undermined by other procedural irregularities - non-compliance with the rules on the composition of the panel of judges; inconsistent interpretation and application of the law or incomplete or unclear decisions. This situation calls for targeted capacity building activities, such as trainings for judges on the trial of trafficking cases.

### **Compensation**

The Study shows that a very insignificant number of victims of trafficking in persons claimed that they suffered material and moral damage as result of their exploitation and that only one half of these claims were sustained by the court, with the average amount of awarded damages of about MDL 11,000 (USD 916) in trafficking in human beings cases and about MDL 45,000 (USD 3,750) in cases of trafficking in children.

Both investigation bodies and courts are hesitant to use forensic psychological expert examination in order to establish evidence of damages suffered by victims of trafficking, in particular where the victims were minors. Yet the conclusions of such experts could be extremely useful for justifying the claim of moral damages caused by the crime.

At the same time the study showed the direct proportional relationship between the legal assistance provided to victims and their claims for compensation as well as the outcome of these claims. However investigators and prosecutors often fail to inform the victims about their right to receive such assistance.

It is important, in this context, that Moldova accedes to and applies the international standards with regards to the compensation of victims of violent crimes. Authorities should resort more actively to experts in order to assess the level of damages suffered by the victims as well as consistently seize the unlawful assets of traffickers to satisfy victim's claims. The establishment of a special mechanism to provide compensation from state funds is another solution. In all cases investigators and prosecutors should be instructed to inform the victim about his/her right to benefit from legal assistance.

### **International cooperation**

The study has shown that authorities seldom request international legal assistance. The small number of such requests (only 16 per cent of the trafficking cases) may be due to the fact that responses to such requests tend to be excessively delayed and/or incomplete. In most of the cases, international cooperation is limited to gathering operative information through international specialized bodies, evidence that is often disqualified as inadmissible at the request of the defence, unless it is confirmed with other evidence. Nevertheless Moldovan authorities could significantly improve their criminal justice response to trafficking by resorting more actively to international legal cooperation in trafficking and related cases, including through joint investigation teams.

### **Prevention**

The study has provided valuable data that on the profile of traffickers and victims which could be crucial for preventive measures. Victims and persons at-risk of being trafficked (potential victims fitting the victims profile) could be identified based on this profile and assisted within the National Referral System (NRS) for the protection and assistance of victims and potential victims of trafficking in human beings, so as to reduce their position of vulnerability and the risk of being (re)trafficked. At the same time, such information will be crucial for designing targeted information campaigns on the risks of trafficking. The profile of the victim also suggests that securing employment for youth is also an important preventive measure. Among other potential solutions to this issue, it can be suggested that the pre-university educational system should be adjusted to provide for more opportunities for employment after graduation.

### **Indices of corruption**

The case analysis also tried to identify indices of corruption in the course of the crime as well as in the prosecution or trial of trafficking cases. While it was very hard for experts to establish signs of corruption only from the analysis of criminal files, in four cases such signs were identified. Although it was not possible to prove such a claim from the files analysed, corrupt behaviour could also explain some of the cases where trafficking cases were recharged as pimping or other related crimes, where criminals would end up being punished only by fine. Such cases may be explained by the fact that the law enforcers lacked professional capacity, but corruption cannot be fully excluded. To address corruption and perceived corruption authorities should in all cases conduct investigations on all allegations or suspicions of corruption in criminal cases of trafficking in persons and related crimes. Officials who are found to have committed acts of corruption in such cases should be duly convicted and sanctioned. Penalties should also be applied for failing to report corruption.

### **Final remarks**

The results of the present study have already been used as a basis for further counter-trafficking work – development of guidelines and training materials for investigators and prosecutors, but also proposals for legislative amendments focused on rendering effective criminal justice response to trafficking and related crimes. The authors sincerely hope that these results will continue to be useful in many other ways to those engaged in fighting trafficking in Moldova and elsewhere.





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IOM International Organization for Migration  
OIM Organizația Internațională pentru Migrație