

Illustration: Sergiu Axenti



REGIONAL LEGAL BEST PRACTICES

Handbook

IN ASSISTANCE
TO VICTIMS
OF TRAFFICKING
IN HUMAN BEINGS

(Handbook addressed to law enforcement and
social actors involved in counter-trafficking)



**Center for Prevention
of Trafficking in Women**



**Ministry of Foreign Affairs
of Denmark**

REGIONAL LEGAL BEST PRACTICES IN ASSISTANCE TO VICTIMS OF TRAFFICKING IN HUMAN BEINGS

(Handbook addressed to law enforcement and social actors
involved in counter-trafficking)

Chisinau, 2007

This handbook was written by:

Daniela Gutu, *Lawyer, Association of Women in Legal Careers*

and reviewed by:

Jana Costachi, Lawyer, Association of Women in Legal Careers; **Ion Vizdoga**, Lawyer, Center for Prevention of Trafficking in Women; **Veronica Lupu**, Lawyer, Center for Prevention of Trafficking in Women; **Tatiana Catana**, Lawyer, Center for Prevention of Trafficking in Women; **Lilia Borzin**, social assistant, Center for Prevention of Trafficking in Women; **Elena Balan**, project assistant, Center for Prevention of Trafficking in Women.

For their contribution to the elaboration of this manual, we thank to:

Vitaly Laevski, Judge, Supreme Court of Justice, Minsk, Belarus
Spiru Bărbuceanu, Operative Police Officer, General Directorate for Combating Organized Crime, Bucharest, Romania
Vasyl Oguretsky, Judge, Donetsk Appeal Court, Ukraine
Olexander Petrik, Head of Section, Counter-Trafficking Department of MIA in Odessa oblast, Ukraine
Hennadiy Skvortsov, Senior Prosecutor, Luhansk Oblast Prosecutor's Office, Ukraine
Vladimir Gilca, Moldavian Police Liaison Officer to the MIA of the Republic of Moldova at SECI Regional Center, Bucharest, Romania
Ion Vizdoga, Director and lawyer, Center for Prevention of Trafficking in Women, Chisinau, Moldova
Lilia Borzin, Social assistant, Center for Prevention of Trafficking in Women, Moldova

as well as to the participants at the regional workshop on best legal practices in assisting victims of trafficking in human beings:

Alexei Pechkurov (Ministry of Justice, Belarus), Dmitry Tsayiun (Ministry of Internal Affairs, Belarus), Maxim Voronin (General Prosecutor's Office, Belarus), Andrei V. Zaitsev (International Organization for Migration, Belarus), Kalina Lozanova (Bulgarian Gender Research Foundation, Bulgaria), Nina Shabliy (Association of Advocates of Chernivtsi oblast, Ukraine), Hanna Zaitseva (Odessa Prosecutor's Office, Ukraine), Petre Matei (*Save the Children*, Romania), Ionel Corbu (National Agency against Trafficking in Persons), Steluța Lili Oprea (Prosecutor's Office by High Court of Justice, Romania), Cleopatra Ioana Șipoteanu (Tribunal of Justice, Romania), Gabriela Antigona Spirea (Prosecutor's Office by High Court of Justice, Romania), Alina Brașoveanu (OSCE/ODIHR, Poland), Elena Dolgikh (Institute for Urban Economics, Russia), Antonia de Meo (OSCE, Moldova), Dina Rotraciuc (High Court of Justice, Moldova), Vladimir Ciobanu (Center for Combating Trafficking in Persons, MIA, Moldova), Viorel Ciobanu (General Prosecutor's Office, Moldova), Eugen Rusu (General Prosecutor's Office, Moldova), Anatol Țurcanu (Appeal Court, Moldova), Radu Foltea (International Organization for Migration, Moldova), Ion Oboroceanu (Center for Prevention of Trafficking in Women, Moldova), Ala Chebac (Center for Prevention of Trafficking in Women, Moldova), Diana Gutium (Center for Prevention of Trafficking in Women, Moldova).

Published by:

Association of Women in Legal Careers from Moldova, project „Center for Prevention of Trafficking in Women”, with the financial support from the Danish Ministry of Foreign Affairs

Cover and design:

Ion Axenti

SUMMARY

FOREWORD.....	5
INTRODUCTION	6
CHAPTER I	
TRAFFICKING IN HUMAN BEINGS - GENERAL ASPECTS.....	7
Section I.1	The Definition of Trafficking in Human Beings
Section I.2	The Trafficking Process
	§ 1. Recruitment
	§ 2. Transportation
	§ 3. Exploitation
Section I.3	The Control over the Victims
	§ 1. The seizure of ID documents
	§ 2. Confinement
	§ 3. Violence, blackmail and threatening with violence
	§ 4. The slavery system caused by debt bondage
Section I.4	The difference between trafficking in human beings and other illegal activities
	§ 1. The difference between trafficking and prostitution
	§ 2. The difference between trafficking in human beings and smuggling in persons
CHAPTER II	
TRAFFICKING IN HUMAN BEINGS – THEORETICAL CONSIDERATIONS.....	14
Section II.1	The object of crime
	§ 1. The generic object
	§ 2. The special object
	§ 3. The material object
Section II.2	The subjects of crime
	§ 1. The active subject
	§ 2. The passive subject
Section II.3	The composition of crime
	§ 1. Objective aspect
	§ 2. Criminal intent
Section II.4	The punishment

CHAPTER III
BEST PRACTICES IN COMBATING TRAFFICKING IN HUMAN BEINGS..... 19

Section III.1	The national anti-trafficking responses § 1. Belarus § 2. Moldova § 3. Romania § 4. Ukraine § 5. Bulgaria
Section III.2.	The rights of victims of trafficking in human beings §1. Victim’s rights upon repatriation stage § 2. Victim’s rights upon the crisis situation stage § 3. Victim’s rights upon the trial stage § 4. Victim’s right upon the social reintegration stage
Section III.3.	International cooperation in combating trafficking in human beings § 1. Legal and institutional context for cooperation § 2. Letter rogatory
Section III.4.	Intelligence gathering and exchange
Section III.5.	The identification of victims of trafficking in human beings §1. Case assessment through preliminary indicators §2. The victim’s interviewing using a series of questions that emphasize the recruitment, transportation and exploitation stages §3. The evaluation of all relevant and corroborative material
Section III. 6.	Hearing of the victim of trafficking in human beings
Section III. 7.	Handling of trafficking cases § 1. The criminal investigation § 2. The trial
Section III. 8.	The role of social assistants and of lawyers within the criminal process § 1. Social assistant’s role §2. Lawyer’s role
Section III. 9.	The witness/victim protection §1. Victim/witness protection in the Republic of Moldova
Section III.10.	Victim’s compensation
Section III. 11.	Trafficking in Human Beings: An In-Depth Analysis of the Prosecution of Trafficking in Moldova

CENTER FOR PREVENTION OF TRAFFICKING IN WOMEN
SIX YEARS DEDICATED TO COMBATING TRAFFICKING IN HUMAN BEINGS..... 50

BIBLIOGRAPHY 64



FOREWORD

The response against trafficking in human beings requires common efforts of all the states affected by this serious phenomenon. Considering its trans-border nature, the countering methods carried out in an isolate manner will fail. Actions like cooperation, intelligence exchange and sharing of best practices between the agencies involved in the fighting of trafficking in persons, as well as the social actors actively involved in this field from different countries, often are recognized as a will to prevent, to discover, to prosecute the traffickers and to provide the best services to the victims, ensuring an effective reintegration into the community.

Recognizing the merit of such actions, as well as the similar experiences of the countries from the regions concerning the phenomenon of trafficking in persons and its consequences, the Center for Prevention of Trafficking in Women, with the support of the Danish Ministry of Foreign Affairs, conducted in November 2006 the Regional Workshop on best legal practices in assistance to victims of trafficking in persons. The objective of this event was to enhance the regional cooperation within the framework of the strategies to combat trafficking, through uniform approaches from service providers.

This workshop served as a basis for exchange and sharing of ideas, experiences and practices between the representatives of different institutions from several regional countries, involved in fighting the phenomenon: Bulgaria, Romania, Ukraine, Belarus and Moldova.

During the workshop, legal professionals were split into groups – police officers, prosecutors, judges, victim’s representatives – who brought to discussion practical and theoretical aspects concerning the criminal proceedings in prosecuting human trafficking, as well as subjects related to the identification of victim, victim’s hearing, multidisciplinary team work, confidentiality principle and victim’s protection, victims’ compensation and seizure of traffickers’ assets, the role of the lawyer and of the social assistant during the criminal proceedings against the trafficker and the direct approach towards trafficked victims.

The present handbook is based upon the best practices of the participant countries, as well as the recommendations from several guidelines, elaborated by international organizations, such as UNODC, International Organization for Migration, ICMPD and International Labor Organization.

The handbook is structured in three chapters, which are presenting the reader general and theoretical aspects regarding the crime of trafficking, as well as a series of best practices, which could be ‘borrowed’ and applied by other countries in this region.

At the same time, the Center for Prevention of Trafficking in Women wishes to extend its thanks to all participants who contributed to the successful organization of the workshop, and, implicitly, to the elaboration of the present handbook.

INTRODUCTION

Trafficking in human beings is one of the most discussed issues last years on political agendas and in international mass-media. There are no countries not affected by this phenomenon. In 2006 UNODC published the report '*Trafficking in Human Beings - Global Characters*', where 127 states were identified as countries of origin for trafficking, 98 as countries of transit, and 137 countries of destination. However, the scope of this phenomenon remains unknown. Different sources indicate different data. It is estimated that annually more than four million persons are trafficked. Among them, in most cases they are women and children. Nevertheless the number of men and boys who become victims of trafficking for forced labor and other exploitative practices is continuously increasing.¹ The last reports of the International Labor Organization on forced labor indicate 2.5 million trafficked people, third of them for economical purpose.

The trafficking in human beings is one of the crimes which are rapidly getting large proportions, being an example of the globalisation, reflecting economic, cultural and social changes. The transit routes and the trends of this phenomenon are permanently changing.

Besides trafficking with drugs and arms, the trafficking in human beings is one of the three criminal activities which bring enormous profits, further constituting as main resource for other criminal activities. According to the European Union Report on Organized Crime, the trafficking is a business globally running into 8,5 - 12 million Euros per annum.² Recently, a report of the International Labor Organization estimated the global profits generated by the labor exploitation of trafficked women, children and men, indicating the amount of 32 billion USD per annum.³

Unlike other criminal activities, the trafficking in persons is based on violent and exploitative practices. Victims caught in trafficking networks are obliged to work for their owners, being deprived of fundamental human rights.

All these demonstrate the necessity of a comprehensive approach towards trafficking in human beings, by involving all relevant actors (state agencies, nongovernmental organizations, international organizations, etc), and by the allocation of additional financial resources.

Because of the complex nature of this phenomenon, law enforcement should face specific difficulties. One of them is the identification of victims. Another issue they are facing refers to the difficulty in making the distinction between the cases of trafficking in human beings and other cases of irregular migration, smuggling in migrants or prostitution. The refusal of trafficking victims in cooperating during the proceedings of identification and prosecution of traffickers represents a serious problem for law enforcement agencies. Unlike other crimes, where the victim is cooperating and has an active role in the criminal process, in human trafficking crimes the victim is reluctant, being aware of the risks she or her family are exposed to.

The international legislation clearly defines the role of law enforcement, pointing that these agencies should protect the victim, ensuring her right to defense, security and confidentiality. In order to apply such provisions, the cooperation, as well as the coordination of activities between law enforcement agencies is required.

¹ Law Enforcement. Manual for Combating Trafficking in Human Beings, ICMPD, UNDDP-Romania, 2005, pg. 13

² ibidem

³ ibidem

TRAFFICKING IN HUMAN BEINGS - GENERAL ASPECTS

SECTION I.1.

The Definition of Trafficking in Human Beings

The phenomenon of human trafficking is not a new one. During the debates on this issue in the XIXth century, it was known as 'the white slavery'.

In 1904, in Paris, twelve⁴ countries agreed upon the first Convention against white slavery. This Convention⁵ stated as objective the combating of abusive trade with girls and women for immoral purposes abroad. Later on, the Convention included the concept of trafficking in human beings within the national borders, and consequently – of trafficking in boys. In 1933, another Convention was drafted, named 'International Convention for the Suppression of Traffic in Women of Full Age'. In 1949, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others replaced all previous conventions. In the post-war period, the subject of trafficking in human beings disappeared from the international agenda and re-appeared in late '90-ies, when the issue of migration in Eastern Europe and Balkans and, implicitly, of trafficking in human beings, were raised during the International Conference of Human Rights from Vienna in 1993.

In 2000 through the Palermo Protocol, the international community agreed upon the definition of trafficking in persons.

Trafficking in persons means the 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Although the Palermo Protocol and the definition of trafficking in human beings represent an important evolution in reaching a concord regarding what trafficking in human beings is, there are still a series of ambiguities. The first of them refers to what should be understood by exploitation; and the second asks the question: what the state of vulnerability is.⁶

SECTION I.2

The Trafficking Process

The trafficking in human beings is not a spontaneous and sporadic activity, but a very well organized one. Although the trafficking process is different from case to case - depending on the organization level of the criminal activity, on legal framework permissiveness, on local premises which were favorable to the crime - this process always includes three stages. Thus the individuals involved in running of trafficking acts have a well determined role.

The three stages of trafficking are:

1. **Recruitment** of potential victims
2. **Transportation** of victims to the exploitation place
3. **Reception** of victims and their **exploitation** through diverse methods and for diverse purposes.

⁴ France, Germany, Great Britain, Italy, Russia, Sweden, Norway, Denmark, Netherlands, Spain, Portugal, Switzerland

⁵ International Convention for the Suppression of White Slavery

⁶ Gyuri Tyldum, Marianne Tveit, Annette Brunovskis (2005), Taking Stock: A review of the existing research on trafficking for sexual exploitation, Norway, Allkopi AS, pag. 13

Each stage is accompanied by a series of acts which determine victim's dependence upon the trafficker, and support the trafficking process.

§ 1. Recruitment

The recruitment is the first stage of the trafficking process, indispensable for realization of the two others. Often this stage can be countered through outreach and well prepared prevention informational campaigns, accessible to the public at large, as well as social and economic politics, which aim at ensuring opportunities for at risk groups.

The recruitment forms can be classified into three categories, depending on the way of deception used:

- a) recruitment by full deception;
- b) recruitment by partial deception;
- c) forced recruitment.

The first recruitment type refers to the cases when the person is offered a false promise to enter a job, or a false promise of marriage. The recruited person is convinced that she will work in a certain field, but in fact she is placed in a different work field.

The second type of recruitment usually comprises the situations when the person is deceived regarding the working conditions she will work, even if she agrees on the specific of the job she will enter.

The forced recruitment refers to the situations of kidnapping, and when the victim cannot express her will.

The victims can be recruited either by unknown individuals or people who are friends, or victim's family members, by posting announcements in media, or even through legal intermediates, such as tourism agencies, private abroad employment agencies, marriage agencies, or study abroad agencies.

Assessed trafficking cases show that the recruitment process can be done both in

victims' country of origin, and in the country of destination. In most cases recruitment in the countries of origin is used, further transporting the victim in other country to be exploited. There are cases when the victim is both recruited and exploited in the country of origin, being only transported to other localities. In some specific cases, the migrants came on their own in the countries of destination become victims of trafficking because of their vulnerable situation produced by their irregular status. These individuals are either exploited in the country of destination, or they are transported to other countries.

Regardless of the recruitment method, the victims never know the real risks of their acts, the working conditions, the salaries, neither that their identity will be falsified by the traffickers, and the limited liberty of circulation. They don't know the abuses they will be subject to, neither the consequences of such harmful experiences.

An analysis of the case-files on trafficking crimes archived in the Republic of Moldova in 2004 – 2005, revealed that, for every third victim, violence or threats of violence were used; every second person was recruited through abuse of a vulnerable position; and almost every victim was deceived in order to obtain their trust for traveling abroad. In 77% of all cases, the victims stated that at the moment of recruitment they did not believe or assume that they will be exploited. Most of the other 33% of the victims believed or assumed that they could be exploited in the destination country. However, in none of the cases were they aware of the abusive work conditions in which they later would have to prostitute themselves and about the limited freedom. Considering this and in these cases, the traffickers employed means specified in the national legislation and international standards.

Case study – the recruitment of the victim of human trafficking

The young lady **D.**, aged of 23, with no education, caretaker of a young child, was looking for a job. The offer came from a former school-mate, who just returned from a job abroad. Care-worn and concerned about the situation of **D.**, she came with the proposal to give a hand of help. *„She asked me if I would accept to work in Serbia as waitress, on a labor contract. D. had no idea that she could be deceived, because the person who came with the offer was a reliable one.*

After a while, she obtained the labor contract and the plane ticket. She left with a cousin of her, who was promised the same thing.

At the Pristine airport they were met by the bar owner. The young women were transported to a house, where other seven women from Moldova were. The house was situated on the outskirts of the town. *„There was the bar at the ground floor, where, as the owner said, we should work; and at the second floor we should go to serve the clients. I refused to do so, I did not come to prostitute, but he brutally beat me, threatening that if I would not pay off the debts, he would further sell me, and I would never escape from this... I tried to run away, but it was impossible, we were very well supervised. The girls convinced me to give up. There were many clients, especially in the evenings. We were going upstairs by turns. The other girls got accustomed to what they were asked to do.’*

§ 2. Transportation

The transportation is the second phase in the trafficking process and is made on different routes, depending on the supply-demand factors. The victims will be directed to the countries where there is a demand for their services, and where these services would be highly paid. Thus, the routes would be oriented from less developed countries towards more developed states. But this is not a rule. Specific routes can be created as a result of the troops dislocations in different regions, as it happened in the Balkans.

Specific data on trafficking in the Balkans

There is a series of premises which determined the Balkans to become in late nineties - early 2000, the region of destination for the trafficking in human beings for the purpose of sexual exploitation.

One of the prerequisites was the situation determined by the war consequences. The slump, institutional and legal vacuum encouraged the growth of the incidence of organised crime, as well as of the prostitution.

Before 1999, Kosovo was under the direct control of Serbia. All brothels should obtain licences from Serbian authorities, the circulation was restricted, and the social tabu condemned the prostitution.

The second often mentioned important prerequisite was the presence of pacifying troops, although they were not the only consumers of sexual services, they have had a significant role in supply-demand relation.

The corruption is another factor in the development of the trafficking. Studies made on the region in that period show that the police, as well as frontier guard troops were acting aside with the traffickers.

The corruption is another factor which influenced the development of trafficking.

The studies made in the regional in that period show that the police, as well as the border guard troops were acting on the traffickers' side.

The permissive or even inexistent borders facilitated the irregular migration, which had as consequence the trafficking in persons.

The geographical position of the Balkans, the situation between the countries of origin and the European Union, represented another decisive factor in the growth of trafficking. The working charts indicate the traffickers' practice: victims' purchase, sale and re-sale. Thus the victims trafficked in Balkans were transported to Italy, re-sold and again exploited.

(„Victims Trafficking in the Balkans: A study of trafficking in women and children for sexual exploitation to, through and from the Balkan Region, 2001, IOM)

The victim can be transported either in the country where she/he was recruited, or outside of that country. Victims can be harboured and even exploited in the country of origin, before being moved outside of the country's borders. Victims can be transported through a series of transit countries – and exploited there – before getting to the final destination. Victims are subject to psychological and physical abuse, and are sold more times during the transportation.

As transportation means, victims can be moved in private or public vehicles. Thus the victims can enter the states of exploitation either legally or illegally. Often the traffickers provide the victims with false ID papers or visas. But there are also cases when the victims enter the destination countries with regular ID papers. Victims can travel together with other victims or can be part of groups of irregular migrants. The traffickers keep the victims' ID papers, excepting the moments when they are checked by the customs officers.

§ 3. Exploitation

The exploitation is the core element of the trafficking. The traffickers recruit and transport the victims in order to obtain profits. The exploitation of the victim can start either in the transit country, or shortly after her arrival in the country of destination. One of the most well known forms of exploitation is the exploitation for sexual purposes. However, recent data indicate that there are also cases of forced labor exploitation in different branches of the economy: commercial sex (escort and company services, brothels, apartments, etc.), agriculture and food industry, building industry, hotels, restaurants, housekeeping services, fabrics, etc. Studies indicate that, beside the sexual industry, other fields where exploitation is often used are building and agriculture. A study of the International Labor Organisation on the returned migrants, made in four South-East European countries, points out the following: from 300 exploited victims, 23% were trafficked in sex industry, 21% - in the building industry, and 13% - in agriculture. The other 43% of victims were exploited in such fields as food industry, restaurants and catering, handcrafting, housekeeping, etc. The Palermo Protocol does not define the notions of "exploitation of prostitution of others" and "sexual exploitation", while stipulating that the trafficking is made for exploitation purposes. But, combating of trafficking starts with the correct understanding of the term "exploitation". There are five modalities which presume trafficking mentioned in the speciality literature: (1) victims were deceived about how their live will be; (2) victims cannot control the number of clients to be served; (3) victim is not allowed to negotiate regarding the sexual practices; (4) victim's earning is confiscated; (5) by confiscating the victim's ID papers, her freedom of movement is limited. Other four key points in victims' manipulating process by the traffickers are enounced below: (1) when the woman is forced to prostitute against her will; (2) when the woman is not allowed to abandon the prostitution; (3) when

the woman is not allowed to settle working conditions; (4) when the woman does not receive any money after prostituting herself. All these mentioned above represent exploitation, and constitute trafficking in human beings, if the coercion means described were used. The definition of "exploitation" from the above pointed perspectives results in the broadening of classification area of trafficking cases, which can include both lenient and severe forms of trafficking.

SECTION I.3.

The Control over the Victims

The traffickers make use of a series of coercive measures to ensure their control over the victims. This control starts from the idea of profit. The trafficker can keep his investment and he profits from victim's exploitation as long as she is dependent on him. The control mechanisms are diverse and are used either concomitantly or separately.

§ 1. The seizure of ID documents

Often the traffickers use to forfeit victims' passports or travelling papers. With no ID documents, the victims cannot identify themselves, and their status is presumed as illegal. This situation limits the possibility of the person to seek help. In the same time, there are many victims coming from countries where police is regarded as a repressive institution and not assistance related one, which constitutes another advantage for the trafficker: the victims are not willing to contact the police.

§ 2. Confinement

Often victims are kept in such places and conditions which would not permit them to communicate or to maintain any other social contact. They cannot receive or send letters or phone calls. Confinement is another method whereby the trafficker strengthens his control and prevents victim's escape.

§ 3. Violence, blackmail and threatening with violence

The traffickers make use of violence as the most effective mechanism of keeping the control over the victims. Often victims are beaten, raped, deprived of freedom, of food; they are doped, or even killed in front of other victims. Such abusive methods can be used in order to punish the victims for insubordination or for threatening.

Another control mechanism in the cases of sexual exploitation is the threatening with disclosing to the victims' families that they are prostitutes. Often the traffickers make pictures during victim's exploitation and threaten them with sending the pictures to their families or to the relative, in cases of insubordination.

Another control mechanism is threatening the victim with violence against her family. To keep away from danger the closest ones lives, the victims become obedient and they are not trying to escape.

§ 4. The slavery system caused by debt bondage

The traffickers are aware that the victims cannot make their travel arrangements because of their financial problems. The traffickers would obviously be ready to lend money to the victims, in order the victims should further work to give these money back. Thus, a relation between the victim and the trafficker starts on the basis of debt. The traffickers make sure that through this debt the victim will be determined to engage in the planned activity. It is obvious that the amount of money asked from the victims exceed the real expenses of the trafficker. Thus the victims become dependant on the trafficker until the payment of these excessive and unreasonable debts.

There are cases when the victims are forced to work against their will in order to cover trafficker's expenses related to her purchase.

SECTION I.4.

The difference between trafficking in human beings and other illegal activities

The accurate legal classification of trafficking acts and prosecution of the trafficker depend on the understanding of difference between the act of trafficking in human beings and prostitution, on the one hand, and organizing of illegal migration, on the other hand. Often the legal act is incorrectly classified in the criminal investigation phase because of the similarities between these acts which can lead to the perpetrators avoidance from the criminal liability or to a punishment decrease.

§ 1. The difference between trafficking and prostitution

The prostitution is the act of offering systematically sexual services for the purpose of obtaining material benefits or gains of any kind. The difference between the trafficking and prostitution is a major one. Firstly, the person who is prostituting herself/himself is doing this voluntary; she has the control over the sexual practices and the number of clients. She appropriates the profits from these services.

In many countries the prostitution is legal. In such countries, the situation on sexual market is monitored, as well as the persons providing these services. At the same time, these persons can defend their legal rights by associating.

The confusion between trafficking and prostitution comes out when it is known that the victim knew that she would provide such services. However, if the acts and the means which characterize trafficking are present, then the person who initially agreed to provide sexual services will be considered as victim of trafficking.

An example illustrating this situation is the following: the recruiter promises the victim that she will work in a brothel where she will provide

sexual services; that she will earn good revenue, and that she can quit whenever she wants. However, upon her arrival in the destination country, the victim is forced to prostitute herself in other conditions than initially promised. Hence, the victim is deceived and subsequently exploited because she cannot control the number of clients, the sexual practices and she does not get the promised money. In the same time, she cannot quit because she is continuously under control, intimidated or even abused by the trafficker. This case clearly shows a trafficking situation.

The elements making the distinction between these two acts are the freedom of making decisions and the control over the persons. The victim doesn't have this freedom and is always under the trafficker's oversight.

§ 2. The difference between trafficking in human beings and the organisation of illegal migration (smuggling in persons)

Besides the Palermo Protocol which defines the trafficking in human beings, especially in women and children, in 2000 the United Nations signed the Protocol against the smuggling of migrants by land, sea and air. The Article 3 of this Protocol gives the following definition for the smuggling of migrants:

'Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'

'Illegal entry shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.'

In order to make the difference between smuggling in migrants and trafficking in human beings it is necessary to analyze the

circumstances these acts were committed under. Although they are different, these two acts have the same purpose – to obtain a gain. The object of the smuggling in migrants is the service and the assistance the perpetrator offers to the migrants in exchange to an amount of money or other benefit. This service consists of organizing the illegal crossing of migrants in the destination country. The relation between the migrant and the smuggler ends up in the moment when the migrant is brought to the country of destination. The smuggling in migrants is not characterized by the same purpose and means as the trafficking in human beings.

In the case of trafficking in persons the victims are the objects of purchase – sell, in the situation of smuggling in migrants the services of

facilitating and organizing the illegal entrance in a foreign country are sought and purchased.

In the case of trafficking in persons the victim is subject to control, she is forced, her ID documents are seized, her freedom of movement is limited, and eventually she is exploited. Although smuggling does not imply the exploitation of migrants, the danger and the circumstances in which the migrant is transported characterize this crime.

Even if the trafficking in human beings and the smuggling in migrants are two distinct crimes, they are not excluding each other. A migrant who arrived in a country of destination by mean of smuggling can any time become a victim of trafficking.

The definition scheme for the two crimes

Defining elements	Trafficking in human beings	Smuggling in migrants
1. Activities	Recruitment, transportation, transfer, receipt of persons	Transportation and transfer of persons outside the borders of a country
2. Means	Threatening, use of force or other form of coercion, kidnapping, fraud, deception, abuse of power or of victim's vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over the victim	In most of cases of smuggling in migrants, the migrant initiates the contact with the perpetrator, in order to achieve his objective – to go abroad.
3. Purpose	Obtaining of a profit of other benefits	Obtaining of a profit of other benefits

TRAFFICKING IN HUMAN BEINGS – THEORETICAL CONSIDERATIONS

Trafficking in human beings represents a grave violation of human rights. Analyzing the crime from a theoretical perspective, we will define the crime object, the crime subject, the composition of the crime as well as the punishment.

The trafficking in human beings was defined for the first time by the Palermo Protocol. The signatory states had/have the possibility to incorporate its provisions within the national legislations harmonizing them to the realities of each country.

The theoretical aspects we are further going to comment on will refer to the definition given in the Protocol. In the same time, we will bring the definitions of trafficking stipulated in other countries.

SECTION II.1.

The object of crime

§ 1. *The generic object* represents the group of social relations which are based on such values as individual's life, freedom, honour and dignity, physical health and integrity.

§ 2. *The special object* is composed of the ensemble of social relations which depend on the respect of such values as freedom of expression, freedom of movement, sexual inviolability, bodily integrity, life and dignity.

§ 3. *The material object* of the crime of trafficking constitutes the body of the victim which was subject to violent or coercion acts, and had consequences on the physical health and integrity of the trafficked person.

SECTION II.2.

The subjects of crime

§ 1. *The active subject* of the crime is the physical person, with the age set by the law, able

and free to act and to decide in the moment of the fulfillment of the crime. In the case of human trafficking, the active subject is the trafficker. From the definition it is clear that the trafficker is not only the individual who exploited the victim, but also the one who recruited and/or transported her.

Who are the traffickers?

From the data collected in the materials of the study on 74 persons, we can detach the trafficker's profile. Thus:

- If the trafficker is a woman, then her average age is 29 years, whereas if the trafficker is a man, then his average age is 32 years. The eldest trafficker was 64 years old, and the youngest – 18 years
- In 89% of the cases the person prosecuted was a Moldovan national, in 6% of the cases – a national of Turkey (and always a man), in 3% of the cases – national of the Russian Federation, in 1% of the cases – a national of Ukraine, and in 1% of cases – a national of Israel
- Only in 5% of the cases the defendant had a criminal record, usually being prior convicted for pimping

§ 2. *The passive subject* of the crime is the individual against whom the trafficking crime was committed, who can be under the age of 18 years old, or who reached the age of 18 years, regardless whether the person is a woman or man. Henceforth, the victim is the passive subject in the trafficking in human beings.

Who are the victims?

The analysis of the files identified the following common characteristics of victims of trafficking in human beings. From the total number of 84 victims:

- 14% are men and 86% are women;
- Average age of women-victims is 21 years old, and of men-victims is 27 years old;
- In 13% of cases the victim and the trafficker were in close relations prior to the moment of the commission of the crime. Consequently, 6% of victims were trafficked by their own relatives, 5% - by former schoolmates, and 2% - by their friends or loved ones. The rest of the 87% of victims either knew superficially their traffickers, or have only met them at the commission of the crime.

In most of the cases, as a matter of fact, there were cases of trafficking in human beings with multiple passive subjects. This is the situation when the trafficking act was committed over more individuals.

Question: The issue raised in the legal practice refers to the legal classification. If the crime is committed against a multiple passive subject by the same person, based on the same criminal resolution, in the same time and place, will it be considered only one crime or as many crimes as many persons were subject to the trafficking act?

SECTION II.3.

The composition of crime

§ 1. Objective aspect

The trafficking in human beings is a complex process, which is developing in time, pursuing more stages. The material component of the crime is achieved through the following actions: recruitment, transportation, transfer, harbouring or receipt of a person. (see Chapter 1.2.) These acts have as purpose the exploitation and, eventually, obtaining of a material benefit.

The fulfillment of any of these acts suffices for trafficking in persons to be deemed a crime. In the case when the same individual commits two or more acts, there will not be the case of a concurrence of crime, but a single crime.

For an act of trafficking in persons to be considered a crime, it is necessary that the above mentioned acts are committed using the following means: threatening with violence, violence, kidnapping, fraud, deception, abuse of authority or of the position of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of a person having control over the victim, or other means of coercion.

§ 2. Criminal intent

The trafficking in persons is a crime committed only with intent. The act envisages the purpose of exploitation of a person and obtaining of benefit. This purpose must be present while the crime is committed, but must not necessarily be accomplished. The trafficker is aware of the illegality of his acts, he previews the consequences the act can generate and he wants these consequences to be produced.

If there is established the intent of the trafficker to bring about the victim's suicide, he will be prosecuted for committing the crime of trafficking in human beings in concurrence with the crime of murder or inducement to commit suicide.

SECTION II.4.

The punishment

The punishment laid down by the legislation for the trafficking felony is especially severe. This type of penalty responds to two needs: the need to defend some values, such as the person's life, freedom, dignity, physical integrity, as well as the need to combat this phenomenon.

Usually, for the trafficking crime the national legislations envisage the core punishment, which is the deprivation of liberty and the alternative one consisting in banning some rights and/or the seizure of assets.

BELARUS

Criminal Code, article 181

Trafficking in persons⁷

1. The sell – purchase of a person or all other transaction regarding a person, committed with the purpose of exploitation, and namely recruitment, transportation, handing over, hiding, or reception of a person (trafficking in human beings) shall be punished with imprisonment for a term of 5 to 7 years, accompanied by the seizure of assets.
 2. The same acts committed:
 - a. against a person under the age of 18;
 - b. against one or more persons;
 - c. for the purpose of sexual exploitation;
 - d. for the purpose of removal of organs or body tissues for transplant;
 - e. by a group of persons on the base on an established plan;
 - f. by an official person using his authority;
 - g. by a person who previously committed the crime regulated by the art. 171 or 171-1 of the present Code;
 - h. for the purpose of transporting the person outside the borders of the state; shall be punished by imprisonment for a term of 10 to 12 years, and the seizure of assets.
 3. The acts enumerated in paragraphs (1) and (2) of the present code which had as consequences the death or severe prejudices of the victim's physical integrity, or other severe consequences, or committed by an organized group, shall be punished with deprivation of liberty for a term of 12 to 15 years and the seizure of assets.
- services, in slavery or similar conditions, or for the purpose of using the person in armed conflicts or criminal activities, or for removing human organs or bodily tissues for transplant, when committed:
- a. with the use or threat of use of physical or psychological violence, which does not endanger the person's life and health, including kidnapping, seizure of documents and servitude, for the purpose of paying off an unreasonable debt;
 - b. by deception;
 - c. by abuse of vulnerability or abuse of power, by 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 a term of 7 to 15 years.
2. The same actions, when committed:
 - a. repeatedly;
 - b. against two or more persons;
 - c. against a pregnant woman;
 - d. by two or more persons;
 - e. with the use of force endangering a person's life or psychological health;
 - f. with the use of torture, inhuman or degrading treatment aimed at ensuring the person's subordination, or with the use of rape, physical dependence, the use of a weapon, or by threatening with a disclosure of confidential information to the victim's family or to other persons, as well as through other means, shall be punished by imprisonment for a term of 10 to 20 years.
 3. The actions set forth in paragraph (1) or (2), when:
 - a. committed by an organized criminal group or by a criminal organization;
 - b. resulting in severe injuries to the victim's bodily integrity, or in a mental illness, or in victim's death, shall be punished by imprisonment for a term of 15 to 25 years or by life imprisonment.
 4. The victim of trafficking shall be exempted from the criminal liability for the actions committed by him/her in relation to this procedural status, if he/she accepts to collaborate with the criminal investigations body on that particular case.

MOLDOVA

Criminal Code, article 165

Trafficking in human beings

1. The recruitment, transportation, transfer, harboring or receipt of a person for the purpose of commercial or non-commercial sexual exploitation, forced labor or

⁷ The translation of legislation provisions is unofficial and should be considered as such

ROMANIA

Law no. 678 of 2001 on preventing and combating trafficking in persons

Art. 13 – (1) The recruitment, transportation, transfer, harbouring or receipt of a person aged of 15 to 18 years, for the purpose of exploitation of this person, constitutes the crime of trafficking in juveniles and is punished by imprisonment for a term of 3 to 12 years and with the banning of certain rights.

(2) When the act provided in paragraph (1) was committed against a person under the age of 15, the punishment is imprisonment of 5 to 15 years and the banning of certain rights.

(3) When the acts provided in paragraphs (1) and (2) are committed with threat, violence, or other forms of coercing, with kidnapping, fraud or deceiving, abuse of authority or with taking advantage of the impossibility of that person to protect herself or to express her will, or with offering, giving, accepting or receiving of payments or benefits to achieve the consent of a person having control over another person, the punishment is imprisonment of 5 to 15 years and banning of certain rights, in the case of paragraph (1), and imprisonment of 7 to 18 years and banning of certain rights, in the case of paragraph (2).

(4) In case when the acts provided in paragraphs (1), (2) and (3) are committed in the conditions provided by art. 12, paragraph (2), the punishment is imprisonment from 5 to 15 years with banning of certain rights, in case of paragraph (2), imprisonment from 5 to 18 years and banning of certain rights, in case of paragraph (3), thesis 1, and imprisonment of 7 to 20 years and banning of certain rights, in case of paragraph (3), thesis 2.

(5) When the acts provided in this article had as consequence victim's death or suicide, the punishment is imprisonment of 15 to 25 years and banning of certain rights or life imprisonment.

Art. 14 – When the acts provided in the art. 12 and 13 are committed by a person who is a

member of an organized group or who produces or obtained, for herself or for other, significant material benefits, the special maximum punishment increases up to 3 years.

Art. 15 – (1) The attempt to commit the crimes envisioned by the art. 12 – 14 shall be punished.

(2) The organization of crimes fulfillment which are provided in the present article constitutes a crime and shall be punished as an organized crime.

UKRAINE

Criminal Code, article 149

Trafficking in human beings and other illegal affairs of transferring a human being

1. Sale, transfer in exchange of a payment, or all other illegal transactions concerning persons, which implies legal or illegal circulation, with or without her consent, outside the borders of Ukraine, for the further purchase or transfer to any other person with the purpose of sexual exploitation, use in porno-business, involving in criminal activities, espionage, adoption for commercial purposes, use in armed conflicts, labor exploitation, shall be punished with imprisonment of 3 to 8 years.

2. The same acts committed against a juvenile or against more persons, or repeatedly, or committed by a group of persons in conspiring way, or by abuse of service, or by a person upon whom the victim is financially or otherwise dependent, shall be punished with imprisonment of 5 to 13 years with or without the seizure of the property.

3. Any action of this kind, as provided in paragraphs (1) and (2) of the present code, committed by an organized group, or that implies illegal transportation of children outside the borders or leaving them outside Ukraine, or for the purpose of removing of organs or body tissues for transplant or forced donation, or when these actions cause severe consequences, shall be punished with imprisonment of 8 to 15 years or seizure of property.

BULGARIA

Criminal Code, Section IV, **Kidnapping and unlawful confinement**

Article 156

(1) Any person who kidnaps a female person, with the purpose of subjecting to the depravity, shall be punished with imprisonment for a term of ten years and a fine in the amount of one thousand leva.

(2) The punishment with imprisonment for a term of three to twelve years shall be applied in the case when:

1. kidnapped person is under the age of 18;
2. kidnapped person is subjected to the depravity;

3. kidnapping was carried out with the purpose of subjecting the person to depravity outside the borders of the country.

Article 188

(1) The person who obliges a juvenile or a person who is under the age to commit a crime or to involve in the practice of prostitution shall be punished with imprisonment for a term of up to five years, accompanied by public censorship.

(2) In the case when, as a result of the negative consequences mentioned above, the victim's physical, psychic and moral development were influenced, a punishment of imprisonment for a term of one to six years shall be applied, accompanied by public censorship, the described action being not a severe crime.

BEST PRACTICES IN COMBATING TRAFFICKING IN HUMAN BEINGS

SECTION III.1.

The national anti-trafficking responses

§ 1. Belarus

The human trafficking prevention and combating measures at the state level refer to the improvement of the national criminal legislation and of the informational database, to strengthen the capacities of law enforcement, to the institutional development of the system which provide social assistance to the victims of trafficking in human beings, to informational and awareness raising campaigns, as well as to the improvement of international cooperation in combating trafficking in human beings. Other measures in combating trafficking in human beings include increase of employment opportunities in the work field for women, increase of social protection of families and institutionalized children.

The national legislative framework is continuously improving according to the international standards. In 2001, a series of articles were introduced in the Criminal Procedural Code, criminalizing trafficking in persons and introducing criminal liability for human trafficking related crimes, kidnapping and recruitment of persons for the purpose of exploitation, especially sexual exploitation. An important step in adjusting the national efforts in combating trafficking to the international ones was the ratification of the Palermo Protocol and of the UN Convention against the Trans-border crime.

In June 2000, within the Ministry of Interior was instituted a structure with attributions in the field of combating trafficking in persons for the purpose of sexual exploitation and other forms of exploitation. In 2004, within the European Union's project '*The fight against trafficking in persons in the Republic of Belarus*', in the city of

Minsk a specialized Center for the rehabilitation of victims of trafficking in human beings was opened. Taking into account that trafficking in persons is a very complex phenomenon, its combating is carried out on the basis of a Plan based upon a multidisciplinary approach. In 2001, the Council of Ministers of the Republic of Belarus approved the State Plan of complex measures in combating trafficking in persons and prostitution for the years 2002 – 2007.

The Republic of Belarus also enacted a series of normative and legislative acts in order to adjust the national legislation to the international standards, and to increase the results of the fight against trafficking in human beings. Below we present a list of the most important acts:

- Decree no.15 '*Regarding the introduction of the modifications to some decrees of the President of the Republic of Belarus, which have as purpose to combat trafficking in human beings*', of 22 November 2005.
- Decree no.3 '*Regarding some measures to combat trafficking in persons*' of 9 March 2005.
- Law of the Republic of Belarus no.15-3 '*On the introduction in some Codes of the Republic of Belarus of some amendments regarding the increase of responsibility for the trafficking in human beings and other illegal connected illegal acts*', of 4 May 2005.
- Decree no.352 '*Regarding prevention of the consequences of the trafficking in human beings*', of 8 August 2005.

§ 2. Moldova

Until 2001, trafficking in human beings was not reflected in a legislative act. Through the law 450-XV on the completion of the Criminal Code and Criminal Procedural Code was introduced the article 113¹ '*Trafficking in human beings*'. Although not in line with the international standards, the article comprised some aspects regarding the trafficking in human beings.

Being aware of the gravity and consequences of this issue, as well as of the need to take measures for combating trafficking in human beings, the Government of the Republic of Moldova decided in 2001 the establishment of a *National Committee for the prevention and combating or trafficking in human beings*. The Committee's task was to draft and to implement an action plan in this field.

In 2002, a new Criminal Code was adopted, which comprised a new definition of trafficking in human beings (art. 165), better elaborated, and in 2003 it was again modified, being fully adjusted to the international standards. In the same time, the trafficking in children was introduced as a distinct crime (art. 206). Again, in 2003 a new action plan elaborated, for a period of 2 years.

In 2005, the Republic of Moldova ratified the two Protocols of the UN Convention against trans-border crime, adopted the law on prevention and combating trafficking in human beings, fully adjusting them to the international norms and standards. The Action Plan, foreseeing prevention and traffickers' prosecution activities, and reintegration measures for the victims of trafficking, was extended for a period of more two years, involving state actors and nongovernmental organizations in the implementation of the planned actions.

From the institutional point of view, within the police commissariats responsible officers on trafficking cases were appointed and specialized prosecutors within the prosecutor's offices were assigned. Within the Ministry of Internal Affairs a specialized agency was created in combating trafficking in human beings, called the Center for Combating Trafficking in Persons, responsible for investigating the trafficking cases.

§ 3. Romania

Through the adoption of the law no. 678/2001, the legislator intended to regulate the prevention and combating of trafficking in human beings, which constitutes a violation of human rights and an injure of person's dignity

and integrity, as well as the social protection and assistance in the case of such trafficking.

On the other hand, the need of adjusting the national criminal legislation to the international one determined the elaboration of some legal regulations which would correspond to the requirements Romania is part, for example the European Council Convention on fighting trafficking in human beings, the UN Convention against trans-border organized crime and its additional Protocol on prevention, elimination and punishment of the trafficking in persons, especially women and children, acts which are international instruments, standards, principles, procedures and modalities of cooperation in matters of trafficking in persons, which Romania ratified.

The ratification of certain international instruments by the governments in the last years represents an indicator showing the increase of awareness in the sense that trafficking in human beings represents a severe threat and it is required that the reactions are reinforced and coordinated.

The Romanian legislative framework abiding the approach towards the assistance to victims of trafficking contains normative acts which regulate:

- Protection and promotion of children rights, Law 272/2004
- Establishment, organizing and functioning of the Romanian Office for Adoptions, Law 274/2004
- Establishment of the National Authority for the protection of children and adoption, Law 275, 2004

Besides these legal instruments, the complex of criminal laws which create the prerequisites of a national institutional coherent response with good results was adopted and improved starting with 2001. Thus, the Law 302/2004 on legal cooperation in criminal matters was adopted, which permits both the transfer of judiciary procedures in cases of trafficking in persons, and the possibility to submit a rogatory letter or a presentation of witnesses or experts in front of a foreign court.

The Law 211/2004 on some measures ensuring the protection of crime victims, entered into force on 1 January 2005. This law regulates the obligation of state institutions representatives with attributions in preventing and combating trafficking in persons to inform the victims concerning their rights, as well as to provide psychological counseling, free legal assistance and financial compensation from the part of victim's state to certain categories of crimes.

In addition to the measures regarding the direct actions of victims' protection, the Ministry of Justice through the National Judiciary Institute and the Ministry of Administration and Interior have the general obligation to ensure the specialization of the personnel, who enter in direct contact with crime victims during the exercise of professional duties, and who should be capable to identify victim's needs, especially juvenile victims.

In order to improve the assistance and protection measures of trafficking victims, the National Agency against Trafficking in Persons was instituted through the Government Decision 1584/2005, modified and completed through the Government Decision 1083/2006, being under the subordination of the Ministry of Administration and Interior. The National Agency is a specialized structure of the central public administration, a legal entity, being directed by a president appointed by the minister of administration and interior, and under his direct subordination.

§ 4. Ukraine

In 1998, the Ukraine recognized that the trafficking in human beings is one of the most severe crimes against the person, introducing for the first time in its Criminal Code art. 124-1, prosecuting these anti-social actions. The article further underwent a series of modifications in order to comply with the international standards. The prosecution of trafficking in human beings and the establishment of a serious punishment for the commission of this crime constituted an important step in

combating this phenomenon. Moreover, the Ukraine was the first former soviet state that included in its national legislation all aspects of human trafficking.

In 2001, the Ukrainian legislator adopted a new criminal code, which entered into force in the same year, modifying the article on trafficking in human beings. The new article 149 on trafficking in persons appeared in a new set up namely, '*trafficking in persons and other illegal transactions concerning the transfer of a person*', being moved from the section on crimes against the life and health of a person to the section on crimes against the honour and dignity of the person. The penalty was increased from '*3 to 8 years of imprisonment*' (art. 124-1 version), to '*5 to 12 years of imprisonment and the possible seizure of the assets*', or when the existing aggravating circumstances, also defined in the new article, the applied punishment shall be of '*8 to 15 years of imprisonment and the seizure of the assets*'.

In order to ensure a comprehensive anti-trafficking response and to coordinate the activities of different state actors, the Chamber of Ministers adopted a new action plan to prevent trafficking in women and children. The Plan was foreseen for the period 1999 – 2000 and included such actions as the improvement of the existent legislative, the signature of international conventions, the increase of law enforcement and other state agencies activities, trafficking prevention actions and victims' rehabilitation measures.

In 2002, the Chamber of Ministers adopted a new Action Plan for the period 2002 – 2005. For this time, under the name of '*Comprehensive anti-trafficking program for 2002 – 2005 years*', the Plan was better elaborated and contained three compartments, each of them including specific objectives. The first compartment referred to the prevention of trafficking in human beings; the second one to the prosecution of the traffickers; and the third compartment contained victims' rehabilitation and reintegration measures. For

the coordination of the Plan implementation, an inter-ministerial agency was created, named the Coordination Council for the prevention of trafficking in human beings. According to the decision of the Chamber of Ministers, the Coordination Council should monitor the implementation of the action plan and to coordinate the actions of the institutions responsible for this matter. The Council was chaired by the minister of family, child and youth. Another plan was drafted for the period 2006 – 2010 for the prevention and combating of trafficking in human beings. Though, experts emphasize that the best measure for preventing this phenomenon is to solve the social and economic problems, and it cannot be eliminated only through law enforcement actions and through the judiciary practice.

In 2006 amendments to the article on trafficking in human beings were made, adjusting it to the standards provided in the Palermo Protocol, and the prostitution was brought out of prosecution.

§ 5. Bulgaria

The **Law on combating illegal trafficking in human beings** foresee in **Article 2:**

For accomplishing the activities and the purposes listed above the following units shall be set up:

- a. A national and local commissions for combating the illegal trafficking in human beings;
- b. Shelters for temporary housing of victims of trafficking;
- c. Centers for support and assistance for victims of illegal trafficking.

Chapter II, Commissions for Fight against Illegal Trafficking in Human Beings, Article 4:

1. A National Commission for Fighting Illegal Trafficking in Human Beings having the status of a governmental and public consulting commission shall be established at the Council of Ministers.

2. The National Commission shall be chaired by a Deputy-Prime Minister identified by the Council of Ministers. Members of the National

Commission shall include a deputy-minister for foreign affairs, a deputy-minister of labor and social welfare, a deputy-minister of the interior, a deputy-minister of justice, a deputy-minister of health, a deputy-minister of education and science, a deputy-chair of the State Agency for Child Protection, a deputy-chair of the Commission for Counteracting the Anti-Social Behavior of Juveniles and Minors, appointed by the respective Ministers and Chairs.

Chapter III, Shelters for Temporary Housing and Centers for Support and Assistance to Victims of Illegal Trafficking

(1) The Shelters for Temporary Housing for Victims of Illegal Trafficking shall be set up

- i. By the municipalities in implementation of a decision of the Council of Ministers
- ii. By individuals and legal entities after a license for providing social services has been granted in accordance with the rules and conditions provided in the Regulations under Art. 11.

(2) The Shelters shall accommodate persons who have claimed to have been subject to illegal trafficking in human beings. They shall be provided shelter by their personal request and for up to 10 days in accordance with the rules and conditions provided in the Regulations under Art. 11.

Chapter V, Protection and Support to the Victims of the Illegal Trafficking in Human Beings, Article 15:

The individuals – victims of trafficking in human beings shall be granted the full support by the government agencies, commissions, Centers and shelters in accordance with their competences under this Law.

Article 19

The victims of illegal trafficking in human beings shall be treated with confidentiality, their identity being protected by this law.

Article 20

The bodies under Art. 2 shall inform immediately the State Agency for Child Protection should they

obtain information about a child-victim of human trafficking; the Agency shall take the relevant measures for securing protection and support in accordance with the Child Protection Act.

Article 23

The children-victims of illegal trafficking in human beings shall be granted education in the state and municipal schools in the country in compliance with the Law of the Public Education.

Article 26

(1) The bodies of the pre-trial procedures immediately upon identification of the individuals who have become victims of human trafficking shall inform them about the possibility to be granted special protection in case within a month the victim declares his/hers willingness to co-operate in the investigation.

Article 31

The persons subjected to trafficking in human beings who are, in the quality of witnesses, actively involved in the criminal procedure, shall be granted special protection, under the Article 97 of the Criminal Procedural Code.

SECTION III.2.

The rights of victims of trafficking in human beings

The rights of victims of trafficking in human beings are foreseen both by international conventions and national legislations of the states which adhered to them. Only by exercising these rights, the victims will receive the assistance and protection they have right to. The comprehensive inclusion in the national legislations of all the rights of trafficking victims, ensuring their exercise, as well as providing a series of facilities ensuring their reintegration into the society – represent the best practices which the states could follow.

The rights of the trafficking victim can be divided into four categories, depending on the stage of victim's post-trafficking rehabilitation:

1. Rights upon repatriation stage;
2. Rights upon crisis situation stage;
3. Rights upon trial stage;
4. Rights upon social reintegration stage;

Before presenting victim's rights, it has to be noted that the provision of protection and assistance services should not be conditioned by victim's cooperation with the criminal investigation agencies.

§1. Victim's rights upon repatriation stage

- a. The victim of trafficking in human beings has the right to be repatriated without unjustified delay, ensuring her security.
- b. The victim has the right to be issued free of cost all documents needed for repatriation.
- c. The victim has the right to be informed by consular offices of diplomatic missions concerning her rights.
- d. The victim has the right to receive protection and assistance of a special diplomat appointed during the repatriation procedure whilst her stay in the sending and transit countries.

§ 2. Victim's rights upon the crisis situation stage

As soon as the victim is repatriated, she has the right to receive a complex of social services, which would help the initial rehabilitation process.

- a. The victims have the right to be sheltered in the assistance and protection centers for victims of trafficking in human beings, if they personally request this. Being sheltered in these Centers, the victims have the right to receive food, conditions for personal hygiene, guard and protection, assistance in contacting relatives.

Placement of victims in the assistance Centers – best practice of Moldova

In the case of Moldova, victim's sheltering is carried out in assistance Center, provided by the Government and administered by the International Organization for Migration. Here the victim receives medical and psychological services. The specialized personnel help the victim to outrun the post-traumatic stress and guide her during the rehabilitation process. The victims are sheltered for a maximum period of 30 days. The duration can be extended at the request of a doctor, during the medical attendance, but not exceeding 6 months. At the same time, the period can be extended at the request of the court or of the criminal investigation bodies, during the trial. The period of staying in the shelter can be extended even after the completion of the trial, if the victim's life or the health is in jeopardy. The sheltering will last as much as needed, and will be ensured at the request of the prosecutor. The pregnant victims have the right to be sheltered for a period up to a year.

2. The victims of trafficking in human beings have the right to receive free of charge medical assistance in medical institutions (hospitals, clinics), as well as psychological assistance in overrunning the post-traumatic stress disorder and reinsertion into the community.

3. The victims of trafficking in human beings have the right to receive information concerning their rights from the competent public authorities, the institutions and organizations, including non-governmental and international involved in preventing and combating trafficking in human beings as well as in the provision of assistance to trafficking victims.

§ 3. Victim's rights upon the trial stage

a. The victim of trafficking in human beings has the right to free legal assistance in the framework of the commenced criminal

proceedings towards the traffickers. She has the right to be accompanied by a trustful person or by her attorney at law when filing the grievances, during the interviewing in the framework of the criminal investigation and during all court sessions.

- b. The victim has the right to file a complaint to the criminal investigation agency against the trafficker and to be informed regarding its outcome. After filing the complaint, the victim has the right to receive a certificate regarding this procedure. When the complaint is a verbal one, then the victim has the right to ask the copy of the records. When it is decided that the criminal investigation will not be commenced, the victim can appeal this decision, within the timeframe foreseen by the criminal legislation of the respective state.
- c. The victim has the right to be informed by the criminal investigation institution about her rights and obligations, as well as to receive copies of all decisions taken regarding her free of charge.
- d. In case of jeopardy, the victim has the right to physical protection during the criminal proceedings, which is to be provided by the police.
- e. During the trial victims of trafficking in human beings have the right to ask the compensation of moral and material damages occurred during the trafficking and exploitation process.
- f. All persons involved in preventing and combating trafficking in human beings, in victims' protection and assistance, are obliged to keep the confidentiality concerning victim's private life and identity.
- g. If during the criminal proceedings trafficking victim's life and health are at risk, she can ask to be changed the name, surname, date and place of birth.
- h. The victim of trafficking in human beings will not be subjected to criminal, administrative or civil liability for her illegal actions (use of false ID documents, illegal border crossing, and practice of prostitution) she committed with reference to her status of trafficking victim.

§ 4. Victim's right upon the social reintegration stage

The social rehabilitation of victims of trafficking in human beings is carried out in order to ensure their return to a normal life, involving provision of legal and humanitarian aid, psychological, medical or professional rehabilitation, employment and provision of living space.

Once the victims succeed in overcoming the crisis situation, they obtain specialized medical and psychological assistance; their reintegration is further possible based on the legal and social assistance services, as well as training and employment services. In this way, the victims have the right:

- a. to receive free of charge information services, professional counselling, professional orientation and training, as well as counselling in starting a business.
- b. to participate in professional training courses, funded by unemployment funds.

SECTION III.3.

International cooperation in combating trafficking in human beings

§.1 Legal and institutional context for cooperation

The international cooperation is essential in combating any trans-border criminal actions. The bilateral agreements, the regional ones, and the international conventions signed by the states, reflect that the issue of human trafficking can be approached through a perspective of international cooperation between law enforcement.

A series of UN Conventions, as well as other regional instruments, set forth the international legislative framework in combating trafficking in human beings, and lay down the standards on cooperation between the states regulating victim's protection. The most relevant of these are:

1. UN Convention against Trans-national Organized Crime;

2. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the UN Convention against Trans-national Organized Crime;
3. United Nations signed the Protocol against the smuggling of migrants by land, sea and air, additional to the UN Convention against Trans-national Organized Crime
4. Convention on the Rights of the Child (1989);
5. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000);
6. Convention on the Elimination of All Forms of Discrimination against Women (1979).

The following documents are also relevant:

1. Special measures to protect victims of trafficking acting as witnesses, adopted by the Stability Pact for South Eastern Europe;
2. Recommended Principles on Human Rights and trafficking in human beings of the UN Economic and Social Council;
3. UNICEF Guidelines to protect rights of children victims of trafficking in human beings in South-Eastern Europe.

Due to the trans-border element of trafficking in human beings, the international cooperation is crucial. The international cooperation mechanisms, efficiently and operatively applied, could lead towards discovering of organized crimes, of criminal networks, prosecution of perpetrators, as well as protection of victims. In order to consolidate the international cooperation, the states drafted and ratified a series of instruments. These regulate the mutual legal assistance, aiming at countering trans-border criminal related actions. Below the most accessed instruments are pointed out:

1. European Convention on Extradition (1957);
2. Additional Protocol to the European Convention on Extradition (1975);
3. European Convention on Legal Assistance in Criminal matters (1959);

4. Additional Protocol to the European Convention on Legal Assistance in Criminal matters (1978);
5. The Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters (2001);
6. CIS Member states Convention on Legal Assistance and Legal Relations in civil, family and criminal matters (1993).

Furthermore, besides the above-mentioned legal instruments, a large number of bilateral agreements on mutual legal assistance have been signed between the South-Eastern Europe countries.

For example, the Republic of Moldova has such agreements concluded with Romania, Russian Federation, Turkey, Lithuania and Latvia.

Five areas of cooperation are emphasized in bilateral agreements:

1. Request on evidence, set up prior to the rogatory letter submission;
2. Request on performance of certain operative investigation activities, such as supervision, interception, etc.;
3. Request on rogatory letter enforcement;
4. Arrest and transfer procedures;
5. Extradition process.

The globalization effects, political changes on global arena, as well as overall regulation of such rights as free movement of persons, have created definite development opportunities, stimulating on the other hand, the activity of organized criminal groups.

The perpetrators recognize neither the borders, nor the legal provisions, being extremely flexible in coordinating the crimes and negotiating with criminal groups of different ethnics.

The financial availability facilitates successful achievement of organized crime objectives. The money is invested in concrete criminal activities, in advanced technical equipment, and in paying specialists from different fields that possess specific knowledge and experience. Alternatively, the criminal groups are using

to the money to avoid criminal liability. The perpetrators can hire professional attorneys at law, accountants for their representation for shadowing their illegal activities, eventually getting corrupt the law enforcement related public officials with enormous amounts of money.

A series of factors are taken into consideration by the perpetrators whilst planning the criminal actions: the minimum risk of discovering, the lack of criminalization related legal provisions for the commissioned criminal wrongdoing, the lack or weak cooperation with law enforcement in the respective field, etc.

A delayed reaction on behalf of law enforcement entities is often ascertained towards the challenges of organized crime. Among the root causes exemplifying such attitude the following issues can be subscribed to:

- Formal or uncertain willingness to cooperate with the law enforcement;
- Lack of or inadequate legal and normative framework for cooperation in certain areas;
- Uniformity of international legislation, lack of efficient mechanisms for its application;
- Weak and inefficient cooperation of authorities at the local level;
- Exaggerated bureaucracy.

The need to cooperate is determined by the evolution of the criminal phenomenon and by its capacity to adapt to different changes which intervene at social, economic, political and legislative levels. The organized crimes bringing enormous profits are always on the top and overpass the actions undertaken by the law enforcement.

In the context of cooperation and combating of organized crime, there are three specialized international agencies worth to be mentioned: Europol, Interpol and SECI Center.

Best cooperation practices – SECI Center

The SECI Center is a regional organization which has as object sharing of intelligence concerning trans-border organized crime between the police and customs authorities from 12 member countries from South-Eastern European countries and other 16 countries with observatory status. The SECI Center is based upon two compartments: intelligence exchange and task-force. The intelligence exchange is carried out through 24 liaison officers (one representative from police and customs authorities from each member country and liaison officers, as well as internal affairs attachés of the observer states.) One of the SECI task-force is the one on trafficking in persons and irregular migration. The main objective of this task-force is coordination at international level of police agencies actions focused on combating trafficking in human beings and illegal migration. The working methods are based upon intelligence exchange concerning evidence collection at the initial investigation stage. The field legislation comparing method in the partner countries provides the opportunity to act correctly. Depending on the circumstances, working sessions are organized where undertaken measures are discussed.

Cooperation actions are carried out in victims' protection, when they testify against the traffickers in the country of destination. In order to avoid victims' intimidation and influence, they are ensured with 24/24 guard from the police agencies handling the investigation. In the same time, the victim is granted ex officio with an attorney at law specialized on trafficking cases that shall represent her rights during the criminal process. An example of witness protection would be victim's hearing through video conference equipment. Thus, a victim from the Republic of Moldova could be heard in such manner by the judge from Macedonia. As a precursory stage in the application of this protection manner was verifying the legislative framework which should permit

such forms of testimonies. The victim is involved in a special witness protection program upon need.

(Presented by Mr. Vladimir Gilca, Moldovan Police Liaison Officer at the SECI Center in Bucharest)

Best cooperation practices – Ukraine

Taking into consideration the trans-border character of the trafficking in human beings, the Ministry of Internal Affairs of Ukraine intensified its cooperation with Interpol, Europol and SECI Center, with international and nongovernmental organizations from abroad.

Further to this cooperation, the Ministry exchange valuable intelligence with law enforcement from abroad concerning physical persons and criminal groups who were transporting outside the countries borders Ukrainian the citizens, with a particular aim in view: sexual exploitation or forced labor.

Best results in identifying international trafficking routes were possible thanks to the cooperation between Europol and SECI. The Ministry of Interior of Ukraine participated in operative measures in the investigation of trafficking crimes. Negotiations were commenced concerning the draft agreement between Ukraine and Europol on strategic cooperation, in order to intensify the cooperation with Europol.

§ 2. Letter rogatory

The letter rogatory is a form of international cooperation in criminal matters, whereby a judiciary authority from a state empower a judiciary authority from another state to carry out on behalf of the first state judiciary activities for a criminal process.

The letter rogatory is enforced on the basis of the legislation of the soliciting state, and may comprise:

1. Searches, seizure of objects or written registration;
2. Handing of objects or files. The objects or files are handed over through certified copies or photocopies;
3. Handing over of evidence producing related actions;
4. Hearing of the accused person, of witnesses, of injured parties or other parties, of experts;

The letter rogatory can be rejected by a state when it doesn't comply with the national legal provisions, or when this state does not dispose the necessary means for undertaking the requested actions.

At the same time, a series of activities can be carried out through a letter rogatory:

1. Seizure of goods obtained as a result of the crime;
2. Provisory measures on keeping the evidence intact;
3. Identification of persons and objects;
4. Examination of the crime scene;
5. Expertizes, forensic medical examinations;
6. Delivery of necessary intelligence on specific cases;
7. Interceptions and audio-video records;
8. Examination of archived documents and specialized files;

Letter rogatory request template – Republic of Moldova

Letters rogatory requests are submitted to the foreign competent authorities through the department for international cooperation within the General Prosecutor's Office.

The text of the request will comprise the description of the committed action and the actions requested to be conducted. Procedural acts necessary for the requested action shall be attached to the letter rogatory.

Letters rogatory request shall be signed by the prosecutor in charge with the criminal investigation and stamped by the soliciting prosecutor's office.

Template of letter rogatory (LR)

_____/_____/2007

No. _____

To the competent authorities (of the state where the RL is dispatched)

REQUEST

for provision of legal assistance on a criminal case

The investigative agency from the location _____ of the Republic of Moldova is carrying out the investigation on the criminal file No. _____, commenced on _____ under the art. _____ of the Criminal Code of the Republic of Moldova for the commission of the actions _____. The copy of the article is attached.

During the preliminary investigation, it was ascertained that on _____, the citizen _____, born on _____, in _____, residing in _____ (a description of committed actions is attached)

With the purpose of undertaking a complete and objective investigation, as well as for establishing and investigating several circumstances on this case, it is necessary to carry out some investigative actions on the territory of _____.

According to the mentioned, and based on the Convention _____, we are kindly requesting to provide legal assistance on this case by undertaking the following actions:

1 _____;

2 _____;

3 _____;

4 _____;

5. Depending on the circumstances, to carry out other actions.

Taking into account the urgency of the case, we would appreciate if you could respond to the present request as soon as possible and dispatch the materials to the address _____. In case of difficulties in responding to the request, or refusal to provide the solicited assistance, we are kindly asking you to contact us at the aforementioned address.

We take this opportunity to express our highest considerations and we thank you for cooperation.

Criminal investigation officer

/Signature/

/Name, surname/

/Under seal/

Prosecutor

/Signature/

/Name, surname/

SECTION III.4.

Intelligence gathering and exchange

Intelligence/data gathering and exchange between the relevant authorities is vital in discovering and prosecuting the activity of criminal networks.

The gathering process starts from the investigation phase in the following fields: advertising, transportation, communication, financial transactions, etc. The data gathering process must comprise both strategic and operational levels.

The intelligence gathering is an activity so important as complex and difficult to carry out. Usually, specialized departments within the law enforcement institutions, involved in countering human trafficking, are in charge with such functions.

The issue related to the importance of intelligence/data in combating trafficking in human beings is emphasized in the literature, which brings concrete responses to this question:

1. The gathered intelligence provides a clearer picture of the scale and gravity of the crime at the local, national, regional and international level;
2. The data enables the policy makers to allocate the necessary resources to counter the phenomenon;
3. At the same time, the data will help raising public awareness, but also at promoting the responses in diverse fields, such as legislative amendments, international cooperation, etc.
4. The intelligence can contribute to the identification of victims and their repatriation;
5. The data can also prevent the commitment of crimes, having a prophylactic role;
6. The intelligence will serve as a basis for proactive, reactive and disruptive investigations against the traffickers.

The level and the realms of the data are:

1. The strategic level – the data gathered at the operational level shall be analyzed and

used for proving the existence of human trafficking phenomenon in a certain state or region and for defining the peculiarities of this phenomenon. This data is complex and can be classified in more categories:

- a. Socio-economic information – economic data such as unemployment level, absence of job opportunities, low wages, or all other data which could prove the supply of victims;
 - b. Cultural information – cultural data which could detect the origin of the trafficking network or of the victims of trafficking in human beings. For example, as a control and coercion method against the victims are used religious practices, such as ‘voodoo’, existent only in Western African worships;
 - c. Historical and linguistic data – often historical factors, but also the same language spoken in a country of origin and a country of destination can contribute to the development of human trafficking;
 - d. Data on routes and profiles – these data indicators are in close relationship with the other types of data enumerated above, For example, historical and linguistic indicators determine not only the routes, but can also provide data regarding the victims’ and traffickers’ profiles;
2. The operational level – at the operational level there are several data collection domains, which are presented below:
 - i. Recruitment methods;
 - ii. Advertising methods;
 - iii. Forgery of or procurement of false ID documents;
 - iv. Visa issuance;
 - v. Routes and means of transportation;
 - vi. Harboring and sheltering;
 - vii. Communication means;
 - viii. Financial aspects data;
 - ix. Information which can be obtained at the consular offices;
 - x. Information which can be obtained at the travel agencies;

An important aspect the law enforcement agencies should consider relates to the fact the intelligence becomes swiftly irrelevant. This is

why it is crucially important that the intelligence would be transmitted in rapid terms to the institution that will use it.

Best practices in gathering intelligence by a nongovernmental structure and cooperation with law enforcement in the Republic of Moldova

The legal aid help line managed by the Center for Prevention of Trafficking in Women (CPTW) which provides legal counseling concerning different aspects of trafficking in human beings and migration is used as a tool in gathering intelligence. There are cases when people directly reach the Center in order to transmit data on human trafficking.

The Center consequently transmits the intelligence to the law enforcement agencies for verification and usage in the investigation procedures. During 2003 – 2006, the CPTW lawyers transmitted 263 intelligence letters to the law enforcement agencies from the Republic of Moldova and abroad. The data referred to missing persons, disappeared in doubtful circumstances pointing out to the crime of trafficking in persons. On the basis of these data, 94 criminal files were commenced.

Most of the intelligence solicited from the law enforcement to identify the place of stay/exploitation of victims, the identification and prosecution of the traffickers, release of the victims by the law enforcement agencies from the sending country, notification of the law enforcement from Moldova about the actions of deception, unlawful appropriation of money for the purpose of organizing illegal migration. Most of the notifications sent by the CPTW lawyers solicited the intervention of the law enforcement in identification of traffickers.

Referring to the intelligence notifying the law enforcement on the identification of a trafficker (52 %) and the intelligence notifying about a trafficking network/ring

(48 %), were established that there are no significant differences between the number of these two types of notifications.

When the nongovernmental or international organizations actively involved in countering trafficking have intelligence on this issue they face two challenges.

The **first** challenge emphasizes that the data exchange must be carried out unilaterally from the non-governmental/international organization directly to the law enforcement agency, or in a bilateral manner.

The intelligence exchange must be a bilateral process, carried out on the basis of partnerships entered between both parties, with the purpose of preventing and combating trafficking in persons. The thematic data is the intelligence provided by the law enforcement agencies to the non-governmental and international organizations. This type of data can assist the respective organizations in carrying out the investigations, analysis and outreach activities. Taking into account the safety of the investigation measures, this data cannot be transmitted to the NGOs, because it can lead to the identification of concrete criminal actions or of the persons who committed such actions, or of the victims.

The **second** challenge refers to the confidentiality and the safety of the victim. More specifically it regards the information that the organization providing assistance to the victim can transmit to the police.

The victims can provide valuable data concerning the trafficker's identity, the recruitment methods, the transportation, the exploitation, the particularities of the trafficking network, as well as data concerning other victims exploited by the same trafficking ring. Upon the sending of such information to the law enforcement bodies, the confidentiality and victim's safety principles should be considered. Still there are cases when by the method of deduction the trafficker can identify the source

of the information, even if the confidentiality principle was kept.

It is advised that before passing over the intelligence to the law enforcement agencies, the organization must ask victim's consent. When the victim does not consent, the data sending process should be stopped. When the victim agrees that intelligence to be sent, but there are risks towards victim's life or bodily integrity, the organization must explain this to the victim, or even refuse to transmit this data to the investigation bodies.

The intelligence exchange between investigation agencies and NGOs or IOs must be carried out under Agreements on Data Exchange. These Agreements should foresee the following:

- To ensure the confidentiality of the source's identity and the data's content;
- To transmit only the authorized material, in order to avoid any risks related to victim's safety;
- To ensure the confidentiality of the organization that transmitted the data;

Even if the negotiation and signature of such agreements may raise multiple difficulties, nongovernmental organizations should insist on having such provisions stipulated, for ensuring victim's protection, as well as the safety of team members.

SECTION III. 5.

The identification of victims of trafficking in human beings

The incipient and correct identification of the victims of human trafficking is essential for their protection.

Although the legal framework in many countries provides norms on the prosecution of trafficking in human beings, concrete provisions concerning the identification are just a few. Several countries tried to envisage this in their national action plans or national strategies for combating this crime, yet there are no formal procedures for the identification provided.

The identification is carried out in different manners, depending on the particularities of the concerned case and of the agency that carried out the identification, should it be the investigation bodies or the non-governmental organization.

The identification of victims by the law enforcement agencies can be carried out through proactive measures. Trafficking in human beings is a crime which at a certain point becomes visible. In order to reach the purpose of obtaining profits, the traffickers resort to 'marketing' methods: the promotion of the 'commodity', the exposure of victims on the streets, or advertising through the Internet. In any case the traffickers need to know that the clients can easily trace the victims for receiving sexual services. In the case of forced labor exploitation it is impossible to hide the workers involved in agriculture or in amenities. In case of trafficking for the purpose of domestic servitude, it is more difficult to discover the crime and to identify the victim. In such cases, the outreach and awareness raising campaign can lead towards the identification of the victims.

This weakness of trafficking crime – visibility – should be specifically explored by the law enforcement agencies through proactive measures.

Different measures can be used by the law enforcement bodies for identifying the victim:

- through other victims identified during the raids carried out for the identification of trafficking crimes or other illegal actions;
- as a result of a reactive measure initiated following the complaint of the victim's relatives;
- through another victim readdressed by another body that identified the respective victim;
- through nongovernmental organizations that are providing assistance services for the victims of human trafficking.

At the same time, it is important to mention the labor inspection involvement in combating

trafficking in human beings, especially in the victims' identification process, exploited for economic purposes.

Another institution that can participate in the identification of the victim or, specifically, presumed victims, is the Customs, i.e. customs officers and customs police. Although it is known the relevance of their involvement in combating trafficking in human beings, the short contact they have with the victims cannot allow them to assess the situation. Another impediment in the identification process is that the victims do not know that they will be exploited in the moment when the exploitation starts. Rarely the victims can be identified at the moment of leaving the countries of origin. Another trend is the legal entrance of the victim of trafficking in human beings in the country of destination – which constitutes an obstacle in identifying potential victims of trafficking and to prevent the crime.

The cooperation between the relevant actors that have direct contact with the victims play an important role. These are the police agencies; border guards' troops, medical or social assistants, labor inspectors, as well as other organizations actively involved in such fields as gender, anti-trafficking, protection of migrants rights, etc.

The identification process is carried out in three stages:

- 1. *Assessment of the case through preliminary indicators;***
- 2. *Victim's interviewing using a series of questions that emphasize the recruitment, transportation and exploitation stages;***
- 3. *Evaluation of all other relevant and related material;***

It is a must that the person who is carrying out the identification process is capable to distinguish the victims of trafficking in human beings from those of smuggling in migrants (the organization of irregular migration). Although both activities are characterized by a series of similarities, they are two distinct crimes.

§1. Case assessment through preliminary indicators

Each identification process starts with the evaluation of the circumstances of the trafficking case. The indicators enumerated below are general indicators. The specific conditions from a specific country can determine the elaboration of specific indicators. The indicators must be cumulated when using them; the isolated usage can lead towards inefficient outcomes.

The following indicators shall be used:

1. Demographic indicators (age, sex, education, nationality, occupation);
2. Lack of passport or travel documents;
3. Mean of transportation of the victim;
4. Mean of victim's recruitment;
5. Last location of the victim;
6. Language spoken by the person;
7. The context of person's identification;
8. Signs of psychological or physical abuse;
9. Assessment carried out by the agency that is referring the victim;

Each of the indicators can be expounded in different manners, and not only making use of them in a cumulative manner, which would permit the assessment of the case and a correct decision making.

§2. The victim's interviewing using a series of questions that emphasize the recruitment, transportation and exploitation stages

The interview shall be carried out on the basis of specific techniques, which will ensure victim's security and will prevent re-victimization.

The interview will be carried out in private premises, where it cannot be heard by another person, or where it cannot be interrupted. The persons attending the interview shall be: the interviewer, the translator, if it is necessary, and a qualified person who could provide the victim with legal and psychological support.

The interviewer shall avoid the attitude of an investigator, and shall ensure a relaxed and friendly atmosphere. The interviewer shall introduce himself and shall explain the purpose of the interview. Victim's comfort must be ensured, and the obtained information shall contribute at the assessment of victim's needs, and at the determination of the assistance form that shall be consequently granted. Before starting the interview, the interviewer will ensure that the victim does want to participate and to answer the questions concerning her intimate relations; in the same time, the questions concerning her sexual relations should be avoided.

The questions presented below, were elaborated by the US Department of Health and Human Services, and represent an important instrument in determining whether the person was or not trafficked.

a. Fraud/financial coercion questions

1. How did you get your job?
2. How did you get into this country?
3. Who brought you into this country?
4. Did you come to this country for a specific job that you were promised?
5. Who promised you this job?
6. Were you forced to do different work?
7. Who forced you into doing different work than what was promised?
8. Was there some sort of work contract signed?
9. Who organized your travel?
10. How was payment for your travel handled?
11. Are you getting paid to do your job?
12. Do you actually receive payment or is your money being held for you?
13. Do you owe your employer money?
14. Are there records or receipts of what is owed to your employer or recruiter?
15. Are there records or receipts of what was earned or paid to you?

16. How were financial transactions handled?
17. Are you in possession of your own legal identity documents? If not, why not?
18. Were you provided false documents or identification?
19. Are you being made to do things that you do not want to do?

b. Physical abuse questions

1. Were you ever threatened with harm if you tried to leave?
2. Did you ever witness any threats against other people if they tried to leave?
3. Has your family been threatened?
4. Do you know about any other person's family ever being threatened?
5. Were you ever physically abused, or did you ever witness abuse against another person?
6. What type of physical abuse did you witness?
7. Were there any objects or weapons used in the physical abuse?
8. Where are these objects or weapons located?
9. Was knowledge of this abuse ever communicated to a person outside of this situation (e.g. police reports, domestic violence reports, hospital records, social service records)?
10. Was anyone else ever abused or threatened with harm in your presence?
11. How were medical problems handled, and who attended to them?

c. Freedom of movement questions

1. Is your freedom of movement restricted?
2. Do you live and work in the same place?
3. What were the conditions under which you were left unattended?
4. Were there instances of physical restriction through locks, chains etc.?
5. Where are the locks used and who has the keys to them?
6. How was the movement in public places handled (e.g. car, van, bus, subway)?

7. Who supervised your movement in public places?
8. How was the purchase of private goods and services handled (e.g. medicines, prescriptions)?
9. What forms of media or telecommunication did you have access to (e.g. television, radio, newspapers, magazines, telephone, Internet)?

d. Psychological coercion questions

1. Who are you afraid of?
2. Why are you afraid of them?
3. What would you like to see happen to the people who hurt you (e.g. jail, deportation)?
4. How do you feel about the police? Why?
5. Do you live and work in the same place?
6. Where do you live/eat/sleep?
7. Where do the alleged perpetrators live/eat/sleep?
8. Are the living conditions between the two excessively disparate?

§3. The evaluation of all relevant and corroborative material

All relevant material can be used during the identification process. The documents and other materials can be obtained even from the victims. These refer to:

1. Conclusions from the police or authorities for aliens;
2. Travel documents or tickets;
3. Conclusions of the medical assistance body concerning the treatment provided;
4. Copies of the contract or of the advertising announcement;
5. Victim's diary or letters.

The obtained answers should be compared with the existent materials and should contribute to the final decision making, which will determine whether the person is a victim of trafficking, a migrant, a subject of the smuggling in migrants, an economic migrant with irregular status, or even an infiltrator.

Best identification practices – Romania

Within the framework of a professional meeting of the Romanian police officers in combating trafficking in persons, an 'Anti-trafficking Decalogue of the Romanian Police Officer' was elaborated. A series of successful practices were established as rules.

1. Do not harm

Treat all (presumed) trafficked persons and situations, as the presumed harm is an extreme one, until there are proves indicating the contrary. Do not carry out any interview which could worsen the situation of the person on a long or short term.

2. Know the subject and assess the risk

Know the risks associated to the trafficking and learn the case of every person before carrying out the interview.

3. Prepare the information for referral. Do not make any promises which you are not able to keep.

Be ready to provide information regarding the medical, legal, sheltering and social support services, as well as security, in a language that the person understands, and help with the referral, if this is needed.

4. Select and adequately prepare the interpreters and the officers.

Evaluate the risks and the advantages related to asking the support of the interpreters, of the officers, and of any other person; use adequate methods for carrying out the interview.

5. Ensure the anonymity and the confidentiality

Protect the interviewed person's identity and the confidentiality during the whole interviewing process – from the moment when she/he is contacted until the details related to the case are made public.

6. Obtain the consent after explaining the consequences

Ensure that every interviewed person clearly understands the content and the purpose of the interview, the purpose of usage of the information, her/his rights to not answer the questions, her/his right to stop the interview in any moment, and her/his right to impose restrictions regarding the way the obtained information shall be used.

7. Listen and respect the evaluation of every person regarding her/his situation, and the risks related to her/his safety.

Accept that every person has distinct worries, and the way she/he perceives the worries can be distinct from the way another person could evaluate.

8. Do not traumatize the victim.

Do not ask questions aiming at obtaining an answer full of emotions. Be ready to provide a response to the suffering of a person and to emphasize her/his strengths.

9. Be ready to intervene in an emergency

Be ready to respond when a trafficked person says about an imminent danger.

10. Use properly the collected information

Use the information in such manner, as they would be in the benefit of the person, ensuring a progress of the development of politics and helpful interventions for the trafficked persons.

SECTION III. 6.

Hearing of the victim of trafficking in human beings

The hearing of the victim is the key aspect of the investigation process within the framework of the criminal investigation. Through the victim hearing, the criminal investigation bodies can obtain valuable data, needed for the documentation of the trafficking case.

Still, for obtaining the expected outcomes, the victim hearing should be carried out on the basis on well-established rules. The first meeting

between the victim and the investigator is extremely important, because this will determine either the hearing success or fail.

During the first meeting, the investigator will establish the relation with the victim and will make sure that she/he can trust him. The investigator will explain what the hearing means, how long it will take and how it will be carried out. The investigator will inform the victim regarding the importance of the details and of the questions that will be posed. The victim will be informed that the details are important for enhancing her credibility and that everything what she tells is true.

These explanations are important for the following reasons:

1. If the victim will understand the purpose of the hearing and her role in this, she will be open in providing the answers.
2. This reduces victim's stress and fear, because she will know what happens and what she should expect during the hearings.
3. Providing information and explanations proves a professional approach of the criminal investigation bodies, and proves the will to establish a partnership with the victim.
4. The investigator could better understand victim's feelings, and could develop specific techniques in approaching her during the hearings.

The victim should be also informed about a series of communication aspects, such as the following:

1. that whenever she needs, she can ask for explanations regarding any questions or ambiguity during the hearing;
2. that there is no problem if she cannot remember certain facts or events from the trafficking experience;
3. that several questions may produce unpleasant remembering;
4. that she can ask for pauses and that she has all the time for answering the questions;
5. that she should try to give as many as possible details and not hiding anything;

6. that she should not discuss with other persons during the hearing pauses aspects related to the hearing.

The investigator should make sure that the victim understood everything and that she is willing to participate at the hearing.

The principle for carrying out the interviews within the hearings is the flexibility. A non-verbal signal can be established when the victim needs a break. Some questions can provoke stress or anxiety; in such cases the investigator should either skip to other aspects of the interview, or to postpone the interview for another day. A successful practice is when the psychologist or the social worker is present during the interview. They can suggest the investigator to stop, especially when the questions refer to the sexual exploitation, or when a break is needed.

The investigator's attitude is very important during the hearings. As mentioned above, this is one of the factors which lead to the success or to the fail of the hearing.

Some suggestions for the investigators:

1. The investigator should manifest respect and a professional ethic behavior;
2. The investigator should not approach the victim with a professional and rigid attitude, trying to create a trustful and cooperative atmosphere;
3. The investigator should listen attentively to the victim's answers, and showing this through the non-verbal language. The eye contact should be permanently kept, avoiding staring to the victim in order to make her feel uncomfortable;
4. The investigator should use verbal encouragement, such as 'please continue', 'yes', 'ok';
5. The investigator should manifest patience, providing the victim all the time she needs to formulate her answer, and when she needs breaks;
6. The investigator should avoid interrupting the victim. This could block the victim, making her loose the idea.

Four stages were identified during the hearing:

I stage – building the relationship between the investigator and the victim, which we pointed above.

II stage – narration of the story of trafficking. Usually, the events provided under this stage, provide the most veridical evidence. It is possible that this stage take more sessions. The investigator should be attentive, and should record all important evidence.

III stage – the questions have the purpose to clarify specific aspects concerning the trafficking. The answers depend on the ability the questions were asked.

Some rules for asking questions:

- the questions must be clear and concise. Two question never should be asked in the same sentence;
- the questions must not comprise professional terms, in order to avoid confusions;
- it is not allowed to use gestures, inadequate manner of speaking, or victim bantering;
- victims should be encouraged, but encouragements never should be transformed into manipulations in order to force the victim to say what she did not want to talk about.

There are different types of questions, and they should be asked in the order specified below:

Firstly **open-ended** questions should be asked. These questions reduce the risk of interpretation, because they ease the obtaining of precise data and details. The investigator is advised to use the following questions: 'Can you tell me more about.....?', 'You mentioned in your story that..... happened, can you remember anything else about it?'. These questions allow the victim to focus upon a particular incident. They are neutral and are not suggestive in any way.

The second type of questions is the **specific** ones. They aim at clarifying particular ambiguities. One of the tactics used by the

defense attorneys is creating confusions in the minds of the victims regarding the unfolding in space and time of specific events, and doubting their credibility. The specific questions – ‘what?’, ‘where?’, ‘when?’ will help the victim to clarify some confusions related to the trafficking experience. The questions – ‘why?’ should be avoided, because they can accuse or blame. For example: ‘why did not you escape when you had the opportunity?’ Although the question can provide important details concerning the trafficker’s control under the victim, it has an accusative accent and can make the victim feel uncomfortable or even blamed. Thus, the ‘why’ questions should be reformulated in this way: ‘what prevented you from escaping?’

The third type of questions is the **closed** questions. The victim is invited to select an answer from a range of fixed possible responses. The closed questions should only be used when all other types of question have failed.

The fourth type of questions are the **leading questions**, the response in this situation is implicit: ‘He confiscated your papers, didn’t he?’ The leading questions are contested, because they suggest the answers.

IV stage – the closure of the meeting.

The victim will be informed about the next steps to be undertaken. The investigator will resume the story of the victim, and will encourage her to verify together whether it was properly recorded. The investigator will thank the victim for cooperation and will keep her informed on the progress of the criminal investigation.

SECTION III. 7.

Handling of trafficking cases

The two phases of the judiciary procedure of handling trafficking cases are criminal investigation and trial. Each phase involves participants with distinct attributions, rights and obligations, provided by the national procedural legislation of each state.

§ 1. The criminal investigation

The criminal investigation stage is usually undertaken by the criminal investigation institution and the prosecutor who are carrying out all activities on behalf of the state.

The criminal investigation institution will start the criminal investigation if the notification provides certain information concerning the commitment of the crime or the preparation for committing the crime.

The purpose of criminal investigation is to collect the necessary evidence in order to prove the crime, to discover the perpetrators and, finally, to send the file to the court, when it is the case.

The collected evidence should reflect the geographical, structural and commercial components of the crime. The geographical and structural components refer to the recruitment, which is undertaken in the state of origin, the transportation which is carried out in the destination country and the exploitation in the destination country. The commercial component involves advertising actions both in the recruitment and in the exploitation process: renting, financial deals, communication, and transportation. Thus, these actions the trafficker undertook in order to obtain profits represent the weakness the criminal investigation body should explore during the evidence collecting and investigation process.

There are three options for the investigation:

1. Pro-active investigation;
2. Re-active investigation;
3. Disruptive investigation.

On the other hand, there are different techniques used during the criminal investigation procedures, leading to positive results when used. These are the financial investigations and those undertaken by the teams of representatives from law enforcement from the country of origin and the country of destination. Of crucial importance during the

criminal investigation process is the intelligence, the witnesses' testimonies, but also the cooperation with the law enforcement. All these should be undertaken taking strict consideration of the trafficked victim's rights.

A. The re-active investigation

The re-active investigation starts at the moment when the victim filed in the application/ complaint. In the re-active investigation the actions of the criminal investigation body are focused on rescuing and protecting the person. When the risks for the victim's life and bodily integrity persist, or there is the danger that the evidence is destroyed, then the arrest measure is required. In case of arresting the perpetrator, the following principles should be applied:

1. When there is sufficient evidence against a suspected person, regardless of the degree of his involvement in committing the crime, he should be arrested.
2. The arrest of the suspect should be swiftly applied, if his action can place endanger the life of the victim or of the undercover investigators. Therefore it is very important to elaborate an action plan before the arrest, where all operative details and risks of this procedure should be explicitly foreseen.
3. The arrest procedure should be accurately prepared and coordinated, thus through a single operative measure more suspected perpetrators are arrested, and more victims should be released.

When the organization of a raid at the place of exploitation of the victims is required, it should be also properly planned and coordinated. Usually the re-active investigations are considered to be the least efficient because the victim who initially filed the complaint can withdraw it, she can withdraw her testimonies and give up in cooperating with the criminal investigation body.

● Rules to be considered in re-active investigations:

1. The criminal investigation has the duty to undertake actions and to respond to the

victim's or to the third party notification concerning a case of trafficking.

2. The trafficked person should be treated as victim of a grave crime and not criminalized by the law enforcement process.
3. The victim should be allowed a period of reflection even in the cases where the victim immediately expresses her/his willingness to cooperate.
4. The investigation officer has the duty to be honest with the victim and to inform her about the risks and consequences of her cooperation with the criminal investigation agency. The risks concern both the victims and their families.
5. The investigation officer will conduct a continuous risk assessment process in respect to victim's safety.
6. The victim should be informed about her rights and about the assistance oriented and available services.

B. Pro-active investigation

The pro-active investigation is an ex officio investigation. In this case, the criminal investigation agency undertakes all related actions without victim's participation. This investigation was ascertained as the most effective option in investigating both trafficking in persons for sexual exploitation, but also for other purposes. The pro-active investigation provides the means whereby the law enforcement entities can take steps towards prosecution of traffickers without the complaint submission and victim's evidence.

Unfortunately, this option cannot be used by all jurisdictions, whilst in some countries the victim's complaint is the only fact upon which the criminal investigation is being started. This investigation option is expensive and requires both financial and well instructed human resources. Taking into account the scale of trafficking, the negative effects on the individual and the society, generally, all these efforts are justified.

The most effective manner in which a successful prosecution can be achieved is through

coordinated, pro-active investigation in each of the three stages of the trafficking: origin (recruitment), transit (transportation), and exploitation (destination).

Experience indicates that joint international pro-active operations can be the most effective. The reasons for their success are the following: the trafficking is a trans-border crime which is committed in more than one jurisdiction, and the prosecution should point on international cooperation – joint operations ease the collection of evidence. At the same time, in order to undertake joint pro-active investigation, the countries should sign international cooperation agreements concerning the mutual legal assistance in criminal matters, data collection and exchange, extradition agreements.

● **Rules to be considered in joint pro-active investigations :**

1. The criminal investigation institution should identify partners in countries of destination and transit.
2. The criminal investigation institution should have the institutional and financial capacity to conduct such investigation.
3. The criminal investigation agencies should define the strategy in conducting joint operative measures, by means of establishing communication and coordination methods.
4. All measures should be coordinated with the prosecutor in charge for the specific case, who has the commitment to supervise the performance of the criminal investigation.

Procedures regulating joint operations vary from country to country. In some states, the decision to conduct such measures is taken by the police officer in charge of the case and the investigation team. In other countries, the decision is taken by the prosecutor who is supervising the investigation, and finally in the third option an official letter is required to commence such operations.

● **Techniques used in pro-active investigations**

The gathering and usage of evidence within the criminal process can be carried out using more techniques, provided by the procedural legislation of the respective country.

The most used techniques refer to surveillance of communications, interception, tracking and listening devices, as well as through undercover investigators. These techniques contribute at gathering of valuable evidence, and even can lead to tracing out of new trafficking cases. The evidence obtained through these techniques usually refers to the operational features used by the traffickers, means of control and exploitation of victims, evidence concerning money transfer and laundering.

The application of above mentioned techniques can be conducted taking into consideration the provisions of the European Convention on Human Rights. The usage of the techniques must be in compliance with the legislation and procedures that apply in the concerned country. The application of these techniques must be based on concrete needs. The applied techniques must be proportional to the gravity of the crime and should be strictly monitored.

When the gathered evidence is sufficient for arresting, it must be well planned, considering the following:

1. The simultaneous arrest of as many suspects as possible;
2. To rescue as many victims as possible;
3. To enforce the arrest in such manner so as the perpetrators aren't hidden nor the evidence which can be collected during the arrest is destroyed;

The arrest scenarios must be carefully coordinated by the investigation officer and authorized by the prosecutor in charge with the trafficking case oversight. It is advised to draw up a plan which would include the following core elements:

- The operation's objective and purpose; outcomes expected by the team;
- Background concerning the case, description of the targeted premises where the operation will be conducted;
- Operative information triggering the operation, distribution of tasks, date and time of conducting the operation, means of transportation for the team, coordination scenario during the operation, treatment of suspects and victims;
- The equipment administration, transportation of apprehended individuals, assistance procedures to be provided to the victims;
- Communication system will include the one that is used.

During the arrest operation, the team should be divided into two divisions, the first group being responsible for arresting the suspects, and the second – for the victims. The victims should be transported from the place of arrest as soon as possible in order to prevent their contact with the suspects, and their possible intimidation. The victim should be allowed to collect their personal belongings or documents, firstly because it is a fundamental right and secondly because this could provide more evidence against the traffickers (i.e. diary, worksheets, payment record etc.). In emergency situations, the victims should be immediately provided the assistance they need, especially medical.

The operation should be video recorded in order to ensure that the officers had an appropriate behavior, as evidence of the conditions of exploitation and to show exactly the conversations during the arrest.

On the other hand, during the arrest, the officers should seize all relevant evidential items. Below there is a checklist presented in order to clearly see features that could serve as evidence and should be seized. The checklist is not exhaustive.

1. all documents concerning the recruitment process;
2. cash, credit cards, checks books, any other documentation relating to financial transactions;

3. any document relating to payments made to the traffickers by the victims;
4. any document relating to the transportation process, travel papers, documentations relating to passports, visas;
5. any documents relating to the work contract;
6. any documentation relating to renting of the spaces where the victims were exploited;
7. any means of communication, informational technologies, such as computers, faxes, telephones, personal agendas;
8. any other valuable items that illustrate expenditure in excess, such as expensive cars, jewelry, etc.

The seized objects should be examined in detail, and those with an important evidentiary value should be taken into consideration accordingly.

After the arrest, the suspects should be interviewed, and the victims should be evaluated and referred to the specific services upon their needs, and when they express their willingness to cooperate they should be interviewed as well..

C. Disruptive investigation

When the reactive and proactive investigation is not possible, the criminal investigation agency will take the disruptive option. This type of investigation will terminate the trafficking actions further leading to the discovery of trafficker's of identity.

This investigation option should be used when the level of risk the victims are exposed to demands immediate response. At the same time, this type of investigation should be used when the supervision and the undercover investigation cannot be carried out because of geographical obstacles, or if the legislative and procedural provisions or the existent resources do not allow carrying out pro-active or re-active investigations. The disruptive investigation will not solve the problem, it will continue, but in other locations. Yet, during the disruptive investigations important evidence can be

collected and eventually used in the proactive investigations.

§ 2. The Trial

The trial represents the second stage of the criminal process, located between the criminal investigation and the enforcement and serving of sentence. During the trial, the evidence will be admitted and the judicial debates will take place in order to establish the truth regarding the committed crime, prosecution of perpetrators through the application of the punishment foreseen by the criminal law, either latter's acquittal under the conditions provided by the law.

Investigation under all forms of evidence presented by the parties, or produced upon their request, including defendant's interviewing, of injured parties, of witnesses, investigation of real evidence, and of forensic reports, of records and other documents, as well as examination of other evidence foreseen by the present code, consist in the investigation of these evidentiary means directly in the court room, with the participation of the parties, so that both the court panel and the parties could ask questions and receive answers during the examination of the evidence, giving the appropriately appreciating each investigated evidence. Therefore, the court is obliged to create the necessary conditions to the party of prosecution and to the side of defense for complete investigation of case circumstances.

The sentence issued by the court can be appealed through ordinary remedies (appeal) or through extraordinary remedies.

Taking into consideration the particularities of trafficking cases, the criminal legislations of certain states declared that the court sessions are not public, which is an exception to the court sessions.

In other jurisdictions, the judge decides the publicity of the trial sessions, at the request of the victim or of the prosecutor. When the court sessions adjudicate cases of trafficking in minors, they are always conducted in closed manner.

(Un)publicity of trial sessions – CPTW experience

Analyzing the cases assisted by the lawyers from the Center for Prevention of Trafficking in Women (CPTW), relating to the trial sessions publicity on cases of trafficking in human beings for the purpose of sexual exploitation, it was ascertained that only in 72% of cases the files were examined in closed sessions, all others – in public sessions, although requests for closed sessions were submitted by the CPTW lawyers in all cases, in order to avoid the exposure to the public of facts pertaining to the victims' intimacy, moreover – details of sexual character.

When the sessions are closed, both parties can attend them, their representatives, attorneys, as well as other persons whose presence the court considers as necessary. These could be the interpreters, psychologists, social assistants.

During the trial session specific procedural rules must be instituted, relating to the protection of victim's intimacy, identity, by ensuring the confidentiality during the whole criminal process, including the trial. Therefore, the testimony can be transmitted through video-devices, where the image and the voice can be deformed, in order to ensure that the victim could not be identified by the traffickers, eventually influenced and threatened. (see section **Victims' protection**).

The average term of the trial, including appeal and review, is one year. The most long trials are those where the traffickers are foreign citizens, for the reason of the difficulty in ensuring the interpretation for the perpetrator.

Best practices in courts of Romania

Regarding the jurisdiction of trying trafficking cases, they are adjudicated in the first instance by tribunals. This rule was established taking into consideration the gravity and degree of complexity of

this crime. It requires a better professional training, specialization and experienced magistrates, as well as insurance that the criminal justice will be done correctly

Cases of trafficking in minors are handled in the first instance within the tribunals by the board of judges specialized in minors and family issues.

At the same time, considering the high degree of social hazard, the crimes of trafficking in human beings are examined, as a rule, with the accused in preventive trial arrest, because their presence during the court sessions is mandatory.

The court sessions relating to cases of trafficking in minors and child pornography are not public. Besides the parties, attorneys, representatives of the judiciary bodies, other persons can participate at the court session such as witnesses, experts, undercover investigators, psychologists, reintegration counselors.

In practice, it is ascertained that the court sessions often require the support of social workers, psychologists from the Service of Victim Protection and Offenders Social Reintegration in order to evaluate the accused and to diminish the psychological impact on the victims.

SECTION III. 8.

The role of social assistants and of lawyers within the criminal process

During the criminal investigation procedure, when the victim was identified and is willing to cooperate with the law enforcement, as well as in future prosecution process and trial wherein she will be involved as injured party, the legal guardianship representative and the social assistant play an important role.

Both the legal representative and the social assistant will act as a team, guiding the victim during all criminal proceedings, granting the necessary assistance or referring her to various

services (psychological and medical services vocational training, employment in the labor market, etc.), which shall contribute to their reintegration into the community. The assistant shall monitor the victim for a definite period, depending on the case, and shall decide whether the victim was or not successfully reintegrated.

§ 1. Social assistant's role

The activity of social assistant – the first professional who contacts the victim of trafficking – involves interpersonal communication carried out face to face. Counseling is offered with the aim to assist a person in overcoming a crisis situation through her own decision. The role of the social assistant is to inform and mobilize the client in a difficult situation, in order for him to choose by himself the solution to his problem. The quality of counseling is determined by two important factors:

- establishing a trustworthy relation between the adviser (social assistant) and the client (the victim of trafficking)
- offering correct and complete information, to help the client make the best decision.

A. Initial contact and building a connection

As soon as the victim of trafficking is returning home, she/he becomes subject to discrimination and labeling by the community and close persons, being insulated and exposed to social exclusion. This state of affairs aggravates the displays of the posttraumatic stress disorder caused by the trafficking experience. At this point, the social assistant focuses on the successful carrying out of the first meetings, on establishing a contact and building a relationship based on trust. Later on, the social assistant will integrate the lawyer into the counseling process, initially for explaining the rights, including the victim's right to demand prosecution of traffickers and to obtain compensation for moral and material damage.

B. Practical aspects as regards the activity of the social assistant within the interdisciplinary team (social assistant - lawyer)

● Social assistant – client relationship

As regards the relationship social mediator – victim of trafficking, it is important to clarify right upon beginning the work with the client, that the relationship to be established between them is strictly professional. The social assistant manifests interest as regards client's problems, while observing the required distance, in order to keep the boundaries of the established relationship.

● The relation of social assistant with difficult clients

Many victims of trafficking hardly accept a relation with professionals from the legal field. Social mediation could facilitate this process, but often it is also damaged by the victim's reluctant attitude. The person displays fear, distrust and a tendency toward isolation. These clients have a temper that is characterized by an inclination for solitude and refusal to communicate. In order to facilitate the process of self-knowledge and to develop interaction with these clients, the social assistant must have much patience, calmness, but also firmness. The permanent connection of the social assistant with these victims leads to increasing their trust. Besides direct contacts, phone conversations are recommended in order to ensure the emotional security of the suspicious client.

● Response to defensive communication

Often the victims are reluctant to any type of assistance, refusing to communicate and setting barriers in the relationship with the social assistant or the lawyer. The social assistant must have such assistance abilities that would contribute to the reduction of the degree of client's resistance. Defensive communication may take the following forms:

- Denial – *I don't have a problem;*
- Accusing a close person – *It is because of my mother that I came to be trafficked;*
- Labeling – *X cannot tell much about me, because he is retarded;*
- Avoidance – *I haven't come yesterday, because something intervened. It seems that I am not coming tomorrow as well;*
- Distracting attention – *my child has difficulties at school and I want to talk about this;*
- Impression of helpless – *If you do not help us, we're lost.*

● The activity of social assistant during trial

One of the displays of post-traumatic shock is related to re-living the event that caused the trauma. The sensations and feelings felt at the moment of the incident, which have been suppressed and pushed to the sub consciousness, may surface at a most unexpected moment, set going by images (TV shows, the press, discussions), sounds, smells etc. The social assistant monitors the evolution of the victim's state, intervening at the moment when symptoms appear that painful emotions could ensue. His role is, therefore, to accompany the victim and to ensure her emotional security, offering support during court trials. The criminal trial tries the victim at maximum, exposing her to the risk of revictimization. The victim is expected to make declarations, to participate in direct confrontations with the trafficker etc. Most victims, who have the traumatic experience of being exploited, try to avoid anything that reminds them of this – people or things, which would bring out repressed memories and feelings. Such attitude may lead to isolation, introversion and insecurity.

§2. Lawyer's role

The role of victim's legal representation can be analyzed from a dual angle. On the one hand, taking into consideration the relationship between the legal representative and the criminal investigation agency, from the other

hand – the relationship between the lawyer and the victim who is legally represented is very important. In relation to both parties, the lawyer has distinct rights and duties.

● **Lawyer's role in relation with the criminal investigation agency**

- The lawyer will participate in all criminal procedure actions;
- The lawyer will present documentation or any other evidence to be attached to the criminal file to be examined during the trial sessions;
- The lawyer shall make objections concerning the actions of the criminal investigation;
- The lawyer will take note on the materials presented in the court by the criminal investigation;
- The lawyer will be informed by the criminal investigation body or by the court concerning his/the represented person's rights and interests;
- The lawyer will file complaints against the actions and the decisions of the criminal investigation and will appeal through ordinary remedies the court decision;
- The lawyer will make objections against the illegal actions of other trial participants;
- The lawyer will ask the criminal investigation to apply towards the victim protection measures, when victim's life, health, or goods are in jeopardy;

● **The role of the lawyer in relation with the victim whose interests are represented**

- The lawyer will inform the victim about her rights. She will be explained the actions to be undertaken, as well as her role within the trial,
- Will accompany the victim at each hearing and will counsel concerning her testimonies;
- Will represent the victim in the court and will defend her rights,
- The lawyer, together with the social assistant, will continuously evaluate

victim's needs, as well as the risks during the criminal process, ensuring the necessary protection;

SECTION III. 9.

The witness/victim protection

During the criminal process, the witness can provide important information, which can lead to the prosecution of the traffickers. Therefore, witness protection is a necessary measure for ensuring this evidence and carrying out the justice.

The witnesses can just be observers of the crime, or its victims. The witnesses can also be those who were members of an organized criminal group, or who committed the crime, but are willing to cooperate with the law enforcement. The experience of the countries that developed diverse protection schemes shows that, when the approach is extended, the granted protection can be more effective, and the cooperation with the law enforcement more strong.

The protection schemes should be extended on the following **categories of persons:**

1. all persons who are cooperating or assisting the law enforcement agencies whilst the investigation is conducted, until it is established that they will not be invited in the court to testify;
2. all persons who provide relevant data, that will not be used as evidence by the court from security issues for the respective or other persons;
3. all persons who provide relevant data for the investigation, regardless its usage or not as evidence.

The close ones to the witnesses, who could be family members, or representatives from different NGOs, can be often subjected to danger. One of the recommendations is to expand the protection programs towards this category of individuals.

The assistance of a witness in such a program is registered in a memorandum of cooperation or agreement, which defines the obligations

of the witness and of the agency providing the protection. These agreements are more like behavioral rules, than terms and conditions that the parties are obliged to respect. The timeframe of the protection program and measures depends on the gravity of the case and of the criminal procedures progress. In several Western European countries, the protection can be applied at each stage of criminal proceedings starting with the criminal investigation, furthering with the trial and even upon the delivery of sentence. Since the person is considered out of any risk, she will exit the program.

The victim/witness protection is carried out through a series of measure, regulated by the national legal framework of concerned states. They aim at protecting victim's, her family's or her representative's dignity, intimacy, bodily integrity, and life. Victim protection usually requires individual solutions applied for each particular case. The purpose of the protection programs is to avoid the victimization, and to allow the victim to live a normal life, without depending on state protection.

The protection measures are different and could be extended from the establishment of physical protection measures towards testifying in secure conditions for the witness. In the same time, the prosecution for witness intimidation or threatening can represent another modality of witness protection.

Such measures as **audio recorded evidence** or **a closed trial session aims** at protecting victim's identity, dignity and intimacy. The video testimony or teleconferences allow the victim to testify outdoor the court premises. Their testimonies are transmitted to the trial court through a video connection, where the judge, the attorney, the accused, and the prosecutor see these testimonies, having the possibility to ask a series of questions. The premises where the victim is can be separated from the court premises, or even in other locations. This method protects the victim from direct confrontation with the trafficker, prevents her intimidation,

and creates a secure environment for testifying. Yet the respective method does not ensure the anonymity, because the trafficker can recognise the victim, because she can be seen. When the anonymity is assured, the video testimonies are subjected to technical interventions, in order to change the image, the voice or both.

Other measures, such as witness **secret sheltering** or **anonymity**, aim at ensuring the witness physical protection. When the trafficker recognizes victim's identity, such measures as anonymous or video testimonies are irrelevant. But there are situations when the victim has all reasons to fear, when the accused knows her name and address. The protection measures applied during the trial sessions require technical equipment, and well trained staff, as well as adequate financial resources.

When the victim's/witness's life are in danger, the victim's **guard** can be instituted. \ore grave cases require the application of such measures as **identity changing** or **changing of workplace or school**.

Victim's protection measures can be applied both in criminal investigation stage and in trial stage. The witnesses can often become very vulnerable facing the intimidations, threatening, and corruption. In such cases, protection measures can be instituted in order not to compromise the prosecution of traffickers.

Victim's security and safety during the trial – CPTW experience

Of the total number of 407 victims of trafficking in human beings, who are represented by CPTW lawyers, both at the criminal prosecution stage and in court, state protection measures were applied to 5 victims, based on representatives' request. Together with the International Organization for Migration, CPTW offered dwelling space, the placement of which was known only to the persons responsible for the victims' protection. During the entire period of stay, the victims were protected

by police officers. In 6 criminal trials, 9 victims of trafficking in human beings made declarations before criminal prosecution judges, applying for their exclusion from participation in the court trial. This is due to the influence exercised by the traffickers on the victims, immediately after filing complaints with the law enforcement agencies.

One of the procedural actions, to which CPTW lawyers oppose at the stage of criminal enforcement, is the confrontation between the victims and traffickers. In most of the cases, the traffickers do not recognize their guilt in committing trafficking crimes. Under such circumstances, there are no grounds for confrontation. Moreover, the victim is facing a real danger and, in most of the cases, following the confrontation, they give up further collaboration with the law enforcement agencies, in fear for themselves or for their relatives.

Another important aspect, connected with the security of the victim and her availability to cooperate with law enforcement agencies, is linked to the victim's exposure to the trafficker during criminal prosecution, in the procedural action of open presentation for identification. Thus, in criminal cases, where CPTW lawyers participated within the project, the number of the meetings organized by the criminal prosecution body between the victims and the traffickers was counted. Upon performing this analysis, account was taken of the presentation of the traffickers for identification by the victims, carried out in person, of the interception of direct communication between the victims and the traffickers and of the confrontations between them. Hence, we concluded that every second victim is confronted with the trafficker at the initiative of law enforcement agencies. Moreover, of the victims, whom the criminal prosecution body subjects to direct encounters with the traffickers, 30% meet with them 2 times, 15% – 3 times.

§1. Victim/witness protection in the Republic of Moldova

The legal norms regulating the witness protection measures are foreseen by several important documents: Criminal Procedural Code, Law of the Republic of Moldova on state protection of the injured party, witnesses and other persons who provide support during the criminal process, as well as the Law on investigation operative activity.

The persons coming within the incidence of the protection measure are:

- Persons who provided information to the law enforcement concerning the committed actions, and who participated at the tracing, preventing, investigation, and discovering of such actions;
- Witnesses;
- Victims and their legal representatives in criminal cases;
- Suspected persons;
- The suspected and the accused persons, the defendants, their legal representatives, as well as the convicted persons;
- The close relatives of all the above mentioned persons;
- Other persons who can influence the above mentioned persons (only in exceptional cases);

The protection measures that can be applied for the above mentioned persons are of two types: ordinary and extraordinary.

The ordinary measures comprise:

- Physical protection;
- Protection of the domicile and goods;
- Special measures for individual defense;
- Special measures of communication and information for detecting the danger;
- Temporary placement in a safe location;
- Keeping of personal data through introducing a false name to the protected person in the trial documents, granting the possibility to identify the perpetrator, avoiding direct contact with him, victim/witness interviewing in a

confidential environment, and testifying in a written form, through video or audio connection;

The extraordinary measures include:

- Changing of workplace or school;
- Changing of domicile;
- Changing of identity papers;
- Changing of appearance;
- Examination of the case in closed trial session.

In the same time, the witness or the victim can testify in front of the investigating judge through a video or audio connection, whilst the image and the voice are changed. This measure assures the equality principle during the criminal process, and provides the accused and his attorney with the possibility to ask questions to the witness under protection.

The law on investigations provides that the protected person can ask the authorities to intercept the telephone calls, or other devices of communications, when victim's, or witness's life, health, or bodily integrity are in danger.

According to the national legislation, the victim and witness protection task is under the responsibilities of the Ministry of Internal Affairs, through the Section for the Witness Protection.

The witness protection procedure is commenced based on an order issued by the prosecutor, through which the law enforcement bodies are asked to provide protection to the person who is cooperating in the criminal process and is going to testify. When the file is already in the trial stage, the judge should order the commencement of the protection measure. In all cases, the person under protection, signs a contract in this respect.

Best practices on victim protection – Romania

Considering the importance of victim's testimonies, the criminal procedure norms guarantee her principal rights, provided by the national legislation. This refers to

effective measures of victim protection during the criminal process. Through these measures are enumerated: the anonymity during and after the criminal process, as long as the life and bodily integrity are in danger.

The identity and the place where the victim is located are registered in distinct minutes. These minutes are kept secret and are kept in a sealed envelope, in a special place of maximum security, at the prosecutor office that handled or supervised the criminal investigation, or in the court, and the accused do not have access to it. Victim's real identity should be revealed only to the prosecutor and the panel of judges, in conditions of maximum confidentiality. Victim's real name will be included in the file, through the prosecutor's ordinance or through the decision of the court, when the situation is out of danger.

At the same time, the interview of the victim/witness during the criminal investigation and during the court session should guarantee her security and confidentiality. A possible measure is the use of video and audio equipment, victim's image and voice being changed.

Other special protection measures include:

Physical protection during the trial;

Victim's temporary sheltering in protection and assistance centers;

Information concerning the legal and administrative procedures, and the right for legal assistance.

SECTION III.10.

Victim's compensation

The victims of trafficking in human beings have the compensation right from the part of the trafficker for all moral damages caused by the exploitation and experience of trafficking. The right to compensation should be provided in the national legislations. Meanwhile the

respective provisions should foresee measures for respecting this right. In this context, there are three types of measures, which could be foreseen by the national legislations:

1. Provisions that would allow the victims to ask the traffickers to compensate moral prejudices;
2. Provisions that would establish special funds or compensation schemes for victim's moral prejudices;

The legal framework that is laying down the mechanisms of victims claims to receive compensations is an important step in guaranteeing victim's access to compensation for the moral damages caused by exploitation. Still just the legal text in this respect is not sufficient. The access to compensations is closely related to the other two issues, such as: victim's information regarding this possibility and seizure of traffickers' assets obtained from the crime.

The victims of trafficking usually do not know their rights, and do not know what procedures should be followed in order to file compensation claims. Therefore, the role of the law enforcement is to inform the victims regarding their access to compensation, guaranteed by the national legislation. Another issue refers to the traffickers' assets, which should be seized and used in order to cover victims' claims for compensation. The traffickers often transfer their money abroad, or register the assets on other person's name, making sometimes impossible the discovering and seizure of these assets. In this respect, the countries should strengthen the cooperation on this matter.

In several countries, the court establishes the compensation which will further be granted to the victim, either within a distinct civil lawsuit, or within the civil side of the trial. Another possibility foreseen by the countries is the establishment of funds, further to be used for paying the victims' compensations. The sources for creating such funds could be:

finances, perpetrators' confiscated property, taxes, donations from certain private institutions or individuals, or even from the state.

Victims' compensation – the results of the research "Trafficking in Persons: An In Depth Analysis of Closed Criminal Case Files in Moldova for 2004 – September 2005", p. 53

54% of victims did not pretend material and/or moral compensations from the traffickers. Each fourth victim who files compensation claims in the criminal investigation stage quite during the trial procedures. According to the first instances data, 13% of victims had orders for compensations of moral and/or material prejudices. In average, each victim receives 1000 USD. In case of 2% of these victims, the appeal court annulled the receipt of these amounts, thus, eventually, only in 11% of cases, the recovering of prejudices were admitted.

SECTION III. 11.

Trafficking in Human Beings: An In-Depth Analysis of the Prosecution of Trafficking in Moldova

Trafficking in Human Beings:

An In-Depth Analysis of the Prosecution of Trafficking in Moldova

Ion Vizdoga,
Center for Prevention of Trafficking in Women
Chisinau

Methodology of the research

- **Closed criminal case files in 2004-sept.2005 have been analyzed**
 - according to the art.165, 206, 207, 220 CC RoM
- **Sample researched comprised 106 files, of which:**
 - 45 files on trafficking
 - 61 file on pimping without any trafficking elements
 - 84 victims of THB
 - 71 defendants in trafficking related files

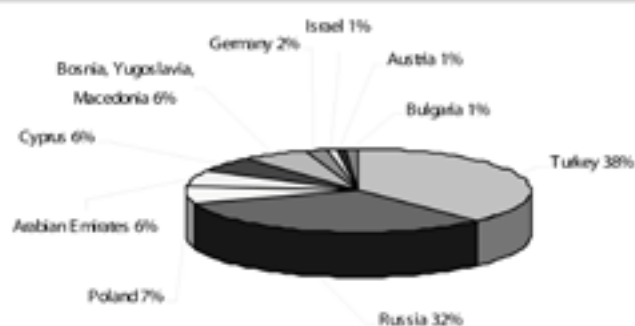
Victim's profile

- **86% are women**
- **14% are men**
- **Average age of victims:**
 - women – 21 years
 - men – 27 years
- **77% of victims did not believe or assume at the moment of recruitment they would be exploited**
- **33% knew they would be working as prostitutes in the destination country**

Trafficker's profile

- **64% are women**
- **26% are men**
- **Average age:**
 - women – 31 years
 - men – 33 years
- **Citizenship:**
 - 89% are citizens of Moldova
 - 6% are citizens of Turkey
 - 3% are citizens of the Russian Federation

Countries of destination



- Turkey (direct flight Chisinau-Istanbul)
- Poland (by bus / minivan through Ukraine)
- Cyprus (by plane through Turkey)
- Germany (by bus through Poland and Czech Republic)
- Austria (by bus through Ukraine, Czech Republic)
- Russia (by train, through Ukraine)
- Arabian Emirates (by plane through Ukraine or Turkey)
- Bosnia, Yugoslavia, Macedonia (by bus through Romania)
- Israel (by plane through Moscow)
- Bulgaria (by bus through Romania)

Victims' exploitation

Form of exploitation:	victim	court
□ Sexual exploitation	→ 74%	→ 61%
□ Slavery	→ 21%	→ 2%
□ Forced labor/services	→ 5%	→ 29%

44% of victims stated that threats and violence against them were used

26% of victims had their documents taken from them by traffickers

Other victims

- **22% of victims informed about other victims in trafficking situation**
- **Each victim saved other six victims testifying against the traffickers**
- **The law enforcement agencies are not taking real measures in saving the victims**

Commencement of criminal proceedings

- **The institution of criminal proceedings are based on:**
 - victim's complaint – 83%
 - investigation officer's report – 9%
 - relatives' complaint / denunciation – 8%
- **20% of proceedings are instituted by the specialized division of the MoI (CCTP)**
- **The examination of the complaints last 15 days**
- **The term of criminal investigation – 4 months**

The qualification of the crimes

- **At the moment of proceedings institution:**
 - 90% - suspected of human trafficking
 - 5% - suspected of pimping
 - 5% - suspected under other articles

- **At the moment of sending the file to the court:**
 - 79% - accused for human trafficking
 - 17% - accused for pimping
 - 4% - accused under other articles

Pre-trial detention

- **70% of suspected / accused, half of them released during the criminal investigation**

- **45% of defendants during the trial**

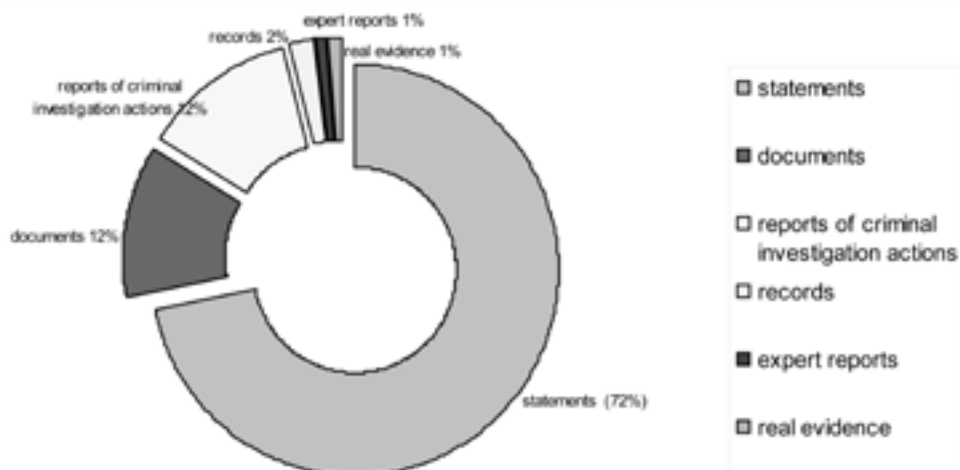
- **26% of defendants during the first instance trial**

- **20% of defendants remain detained after appeal**

Victim's security

- **Every 14th victim notice the criminal investigation body about the dangers and risks they are subjected to**
- **Only for one of 84 victims the criminal investigation body took protection measures**
- **Every second victim (48%) meet her trafficker at the initiative of the law enforcement officers :**
 - 30% - 2 times
 - 15% - 3 times
 - 3% - 4 times

Evidence



International cooperation

- **15% - rogatory letters**
 - ½ in the Russian Federation
 - ½ in Romania, Turkey, Israel and Cyprus
 - **11% - addressed to Interpol**
 - **4% - addressed to SECI Center**
- ! Only in 30% of cases, evidence were collected through international cooperation**

Right to representation

- **For the traffickers:**
 - 23% of defendants – ex-officio representatives
 - 77% of defendants – own lawyers
 - 20% of defendants multiple private lawyers
- **For the victims:**
 - 24% of victims – lawyer provided by CPTW
 - 2% of victims – private lawyer
 - 74% of victims – had no representation

Court trial publicity

- **78% of sessions – public**
- **22% of sessions – secrete**
 - in 30% of closed sessions, the court mentioned in its decision that the process was public

The length of the trial

- **25 days** before the preliminary session
- **16 days** before the first court session
TOTAL: 41 days
- **7-8 court sessions**
- **Average court trial length – 7 months 10 days**
TOTAL: trial + criminal investigation
= 1 year 2 months

Continuances

- **The examination of the THB file in the court is delayed about 5 times**
- **The continuances are due to the:**
 - 34% - trafficking victim
 - 26% - defendant or representative
 - 24% - witnesses
 - 11% - prosecutor
 - 3% - police officers
 - 2% - court panel

Prosecutor's in court motions to re-characterize charges

- **3% – aggravated charges**
- **45% – lesser charges, through:**
 - 36% - re-charge into pimping
 - 9% - re-charge to other less serious crimes
 - 23% - downgraded charges, the defendants released and amnestied
 - 19% - fine
 - 3% - imposition of jail sentence up to 4 years

Convictions and sentences

- **All sentences – convictions, of them:**
 - 32% (29%) – convictions on THB
 - 57% (63%) – convictions on pimping
 - 11% (8%) – convictions on other articles
- **Applied punishments:**
 - 21% (20%) – real deprivation of liberty
 - 25% (24%) – conditional deprivation of liberty
 - 29% (24%) – fines
 - **25% (32%) – amnesty**
 - **special confiscation not imposed**

Damages awarded to the victim

- **24% - give up in pretending coverage during the criminal investigation stage**
- **54% - do not pretend in the court**
- **46% - pretend material coverage in the court**
- **Primary instance granted compensation to:**
 - 13% of victims
 - on average 12.618 MDlei
- **In superior instances were compensated:**
 - 11% of victims
 - on average 10.000 MDlei each

1. Statistical reporting

- **The incorrect statistical reporting on combating trafficking in persons by the law enforcement agencies**
 - 82% of all examined files – convictions on pimping (2/3 not related to THB)
 - 13% of all files – convictions on THB
 - 5% of all files – on other crimes

2. victim's cooperation

- **The victim – the most 'used' source for evidence**
- **It was ascertained that the victim:**
 - is not represented ex-officio
 - is exposed to the trafficker during the trial
 - is not protected (only in 1 case of 84)
 - is not compensated (only in 11%)
 - is exposed to the trafficker in the post-trial period (80%)

3. Evidence collecting

- **72% of evidence are testimonies (subjective, instabile proves)**
! 65-80% of traffickers are free during the trial
- **28% - other evidence (objective, stabile)**
- **The illicit incomes are not proved, thus:**
 - special seizure is not applied
 - victim's compensation not ensured
 - no real punishment to the traffickers

4. Insufficient international cooperation

- **All analyzed THB files were on international trafficking**
- **In 1 of 3 files evidence is collected through international cooperation**
- **International cooperation insufficiently used – punishment only of recruiting traffickers**

5. Shadow traffickers

- **A noticed trend – the camouflage of the real status of several traffickers**
 - *Unnoticeable* traffickers – no actions to apprehend them are taken
 - Traffickers *immune* to prosecution– no actions to investigate and prosecute them are taken

6. Indifference towards the victims

- **Each cooperative victim declare about other six victims in the country of exploitation**
- **These victims are detained in the exploitation countries, continuously being subjected to criminal abuse (limitation of personal liberties, rapes, blackmail, etc.)**
- **No recorded cases where law enforcement take action to release the victims**

Recommendations (1)

1. Ensuring the victim's right to legal assistance from the first contact with the criminal investigation body
2. Minimum direct life confrontations between victims and traffickers
3. Minimum hearings of victims during the criminal investigation
4. Hearings in safe conditions, no increasing the stress determined by the painful experiences

Recommendations (2)

5. Appoint victims' coordinators / involve NGOs (trustful persons as according to the art.58(4), p.3 CPC RoM)
6. Criminal investigation body shall collect evidence proving victim's damages, prosecutors shall insist on obtaining compensation, courts shall examine the civil actions during the trial
7. Special hearing methods shall be instituted
8. Reduced terms for court examination of THB cases
9. More frequent international cooperation
10. Special seizure and sequester shall be applied
11. Law enforcement Statistical evidence system shall be improved in order to reflect the real success in combating THB



Center for Prevention of Trafficking in Women *Association of Women in Legal Careers*

SIX YEARS DEDICATED TO COMBATING TRAFFICKING IN HUMAN BEINGS

Whilst the phenomenon of trafficking in human beings was debated especially within international forums, during 2000 – 2001, young students from Moldova were carrying work of human trafficking – as a serious violation of human rights. The Association of Women in Legal Careers (AWLC) initiated the project *Prevention of Trafficking in Human Beings*, starting with an awareness raising campaign targeting at young Moldovan women. Totally aware of the enlarging scope of human trafficking, AWLC launched at the beginning of 2001 the project *Center for Prevention of Trafficking in Women*. The fight against trafficking took a better structured shape within the framework of this project.

However, the analysis of the trafficking phenomenon at the onset of 2002 demonstrated an increase in occurrences at country level, while the development of an efficient strategy for incriminating trafficking in persons was a priority for Moldova. In November 2002, the Association of Women of Legal Career was asked to develop a legal assistance component for the victims of trafficking in persons, especially for those underage. Starting with 2003, the Centre for Prevention of Trafficking in Women was building its action strategy based on the limited ability of the victims to obtain support during bringing traffickers to account and during participation in the criminal trial. The discouraging and discriminatory attitude of the representatives of law enforcement, as well as the marginalization of the victims after redemption from trafficking, demotivated the victims from cooperating to punish the traffickers. The role of the project was to develop an aspect, which had not existed until then – ensuring access to justice of the victims of trafficking in persons, having regard of the psycho-social needs of the exploited person.

CPTW has built an assistance formula, around the general project objective of ensuring access to justice for the victims of trafficking in persons, centered on legal assistance and specialized social assistance, combined with prevention actions for the youth and training of the representatives of law enforcement and of local public administration.

Extended network of CPTW Regional Offices

Trafficking in human beings has a specific character, depending on the zone. In order to cover the particular needs of each region of Moldova, the Centre for Prevention of Trafficking in Women extended its incidence to the national level, by opening CPTW branches in the vicinity of the state border, in order to monitor the situation on the spot and to develop local reference mechanisms in assisting the victims of trafficking.

In 2002 CPTW opened a branch in the city of Ungheni – border region with maximum risk of trafficking in human beings. From 2003 CPTW extended its activity, by developing the victims' legal assistance component. In the same year, the Centre opened another two branches in Balti – in the north of the country and Cahul – in the southern region. In 2005 the Causeni branch was opened in the eastern region, in the immediate vicinity of Transnistria.

The specifics of the activity of each CPTW Regional Office is owing, first of all, to the geographical placement, as well as to local cooperation, the receptivity of state structures and law enforcement agencies. The aim of the creation of the CPTW network was to offer the best services to the victims of human trafficking, close to their place of living, in order to have a better knowledge of their needs and the possibility to promptly react in risky and critical situations.



**CPTW REGIONAL OFFICE
BALTI**

Since 2003

**CPTW REGIONAL OFFICE
UNGHENI**

Since 2002

**CPTW REGIONAL OFFICE
CHISINAU**

Since 2001

**CPTW REGIONAL OFFICE
CAUSENI**

Since 2005

**CPTW REGIONAL OFFICE
CAHUL**

Since 2003

Project objectives

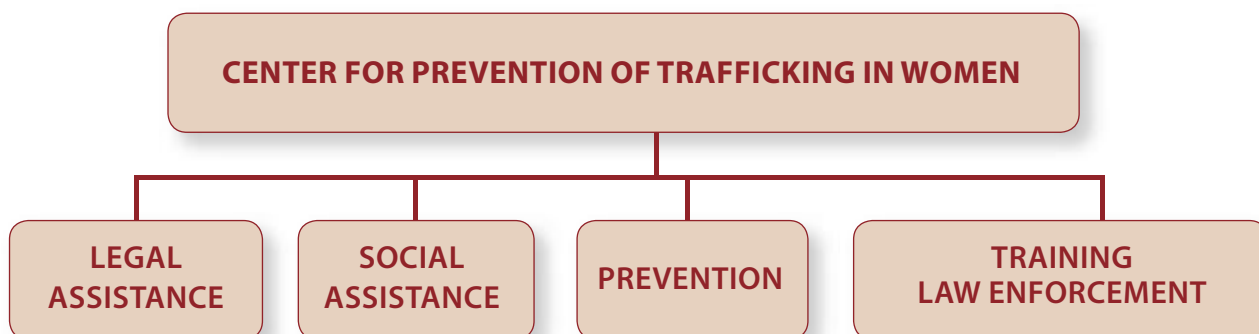
Starting with July 2006 and until December 2008, the project of the Centre for Prevention of trafficking in Women is implemented with the financial support of the Danish Ministry of External Affairs, within the framework of the Regional Program against Human Trafficking. The Danish Program is being developed through international organizations and nongovernmental structures from Belarus, Bulgaria, Moldova, Romania and Ukraine. The main program objective is to support national authorities, international organizations and NGOs in combating trafficking, through measures of prevention, incrimination and protection/assistance. The Program has four immediate objectives:

- Strengthened national counter-trafficking strategies and referral mechanisms;

- Strengthened capacity of national authorities and NGOs to respond to developing needs in the prevention and protection areas;
- Increased awareness amongst vulnerable groups and access to relevant migration information; and
- Strengthened international and regional cooperation on approaches to counter trafficking.

- 1) Free of charge **legal assistance** to victims and potential victims of trafficking:
 - a) free of charge, legal counseling on-the-phone and directly at CPTW offices in Chisinau and at the branches;
 - b) communicating field information to law enforcement agencies in the country and abroad, in order to identify trafficking cases and repatriate victims;
 - c) opening search files, based on data extracted from field information and repatriation of identified victims;

Project activities



- d) offering support in documenting the victims, by issuing identity and civil status documents etc.;
- e) victims' representation in criminal, civil and administrative cases.

2) Specialized social assistance – social mediation

- a) evaluating the needs of the victims and maintaining files for each separate case of
- b) evaluating the victim's ability to participate in the judicial trial;
- c) mediating the relationship victim – lawyer and law enforcement agencies;
- d) accompanying the victim in court;
- e) specialized counseling and empowering;
- f) assistance to the victims in the repatriation process;
- g) interventions to facilitate access to rehabilitation services (social, medical, temporary shelter, humanitarian aid);

- h) specific counseling (including: support upon reintegration, avoiding revictimization; referring cases for professional training to the Employment Agency, offering monthly scholarships to persons attending courses offered by the Employment Agency);

3) Prevention of Trafficking in Human Beings

- a) Public awareness raising
- b) Educational campaigns
- c) Publications

Seminars held at national level for children and youth by the CPTW volunteer network, covering most educational institutions, especially in the rural regions.

BIBLIOGRAPHY

1. UNODC (2006), Toolkit to Combat Trafficking in Persons. Global Programme against Trafficking in Human Beings, Viena
2. EU/IOM (2003), A Guide for Members of Law Enforcement, Judiciary and NGOs/IOS on Best Practices in Combating Trafficking in Persons, Trainer Manual
3. MOM (2005), Plany identifikatsiy i zakhity jertv trgovly lyudmy v Evrope, Sposobz i luchsye prakticheskie narabotky, Brussels
4. ICMPD, UNDP, Romania, Law enforcement manual for Combating trafficking in Human Beings, Romania
5. ECPAT (2006), Combating the trafficking in children for sexual purposes, A Training Guide, Amsterdam, Bangkok
6. Gyuri Tyldum, Marianne Tveit, Annette Brunovskis (2005), Taking Stock: A review of the existing research on trafficking for sexual exploitation, Norway, Allkopi AS
7. IOM (2001), Victims of trafficking in the Balkans: A Study of Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region, Slovak Republic
8. USAID, UNICEF, OSCE, British Council (2005), Trafficking in Ukraine: An assessment of current situation, Kyiv
9. Cristina Cojocaru, Holly L. Wiseman (2006), Trafficking in Persons – An In-Depth Analysis of Closed Criminal Case Files in Moldova For 2004 – September 2005, Chişinău
10. ABACEELI (2005), The Human Trafficking Assessment Tool Report, Chişinău
11. Gheorghită Mateuț, Nicolea Ștefăroi, Violeta E. Petrescu, Raluca A. Prună, Radu Tărniceanu, Sofia Luca, Georgeta L. Gafta, Aurel Dublea, Daniela Iovu, Elena Onu, Cătălin Luca (2005), Trafficking in human beings. Offender. Victim. Crime, Iași
12. Center for Combating Trafficking in Women (2006), Legal provisions on combating trafficking in human beings, Chişinău
13. Center for Combating Trafficking in Women (2006), The rights of the victim of trafficking in human beings
14. Criminal Procedural Code of the Republic of Moldova
15. Igor Dolea, Dumitru Roman, Tatiana Vizdoga, Iurie Sedlețchi, Valeria Șterbeț, Vasile Rotaru, Raisa Botezatu, Adrian Cerbu, Sergiu Ursu, Ecaterina Erjou (2005), Criminal Procedural Code. Comments, Chisinau



**Center for Prevention
of Trafficking in Women**

**CPTW Head-office is located
in Chisinau**

68 Bucuresti Str., Off. 304-310
Tel.: +373 (22) 546569, 275462
Fax: +373 (22) 546544
E-mail: cptf@antittraffic.md
www.antittraffic.md



This publication was written and printed as a follow-up of the Regional Workshop **BEST PRACTICES IN LEGAL ASSISTANCE TO VICTIMS OF TRAFFICKING IN HUMAN BEINGS**, event carried out on 27 – 28 November 2006, by the Association of Women in Legal Careers / Center for Prevention of Trafficking in Women, within the framework of the Programme against Human Trafficking in Eastern and South Eastern Europe, funded by the Royal Danish Ministry of Foreign Affairs.

