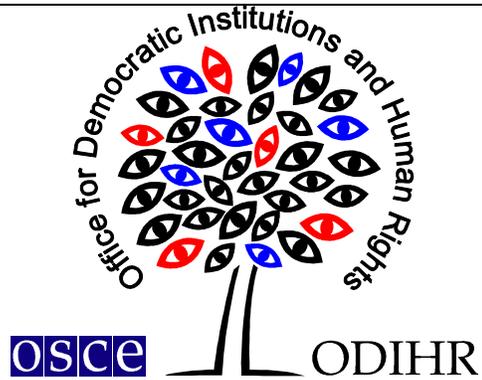


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**OPINION**  
**ON THE DRAFT LAW**  
**ON COUNTERACTING**  
**TRAFFICKING IN HUMAN BEINGS**  
**OF THE REPUBLIC OF UKRAINE**

**based on an unofficial English translation of the draft law  
provided by the OSCE Project Co-ordinator in Ukraine**

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**Annex 1: The Draft Law of Ukraine on Counteracting Trafficking in Human Beings**

## **I. INTRODUCTION**

1. *On 3 August 2011, the Deputy Head of the Department for Combating Cybercrime and Human Trafficking in the Ukrainian Ministry of Internal Affairs (hereinafter “the Deputy Head of Department”) sent a letter to the First Deputy Director of the ODIHR in which he requested the ODIHR to review the draft Law on Counteracting Trafficking in Human Beings (hereinafter “the draft Law”) and provide an opinion regarding its compliance with international standards in the area of combating trafficking in human beings.*
2. *In his letter, the Deputy Head of the above Department reiterated that in 2009, ODIHR had prepared an opinion on a previous version of the draft Law (hereinafter “the 2009 Draft”) at the request of the former Ministry for Family, Youth and Sports, which has since been dissolved. The Deputy Head further noted that at present, the draft Law has passed the first reading in Parliament and consequently underwent a number of changes and amendments.*
3. *This Opinion is provided in response to Deputy Head of Department’s request.*

## **II. SCOPE OF REVIEW**

4. The scope of the Opinion covers only the above-mentioned draft Law, which was submitted for review. Therefore, the Opinion does not constitute a full and comprehensive review of the question of combating human trafficking in light of all available framework legislation governing the issue in the Republic of Ukraine. The ensuing recommendations are based on the commitments of the OSCE in the field of human trafficking, on the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000<sup>1</sup>, and on the Council of Europe Convention on Action against Trafficking in Human Beings<sup>2</sup>. They are also based on ODIHR’s Opinion on the 2009 Draft, issued on 15 December 2009<sup>3</sup>.
5. The Opinion is based on an unofficial translation of the draft Law. Errors from translation may result.
6. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the draft Law or related legislation that the OSCE/ODIHR may make in the future.

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<sup>1</sup> *Op cit.* note 4 *infra*

<sup>2</sup> *Op cit.* note 5 *infra*

<sup>3</sup> OSCE/ODIHR Opinion on the Draft Law on Combating Trafficking in Human Beings of the Republic of Ukraine, opinion no. TRAFF-UKR/143/2009, issued on 15 December 2009.

### **III. EXECUTIVE SUMMARY**

7. In order to ensure the compliance of the Draft with international standards and obligations to which the Republic of Ukraine is signatory and has committed, it is recommended as follows:

#### ***1. Main Recommendations***

- A. to clarify the definition of trafficking in human beings under Article 1 of the draft Law and ensure that it is compliant with international standards set by the UN Palermo Protocol and the Council of Europe Convention; [par 34]
- B. to reflect the special situation of trafficked children in the definition of “trafficking in children” under Article 1; [par 37]
- C. to reintroduce into the draft Law detailed information on the role of certain public bodies in the fight against trafficking in human beings, such as bodies responsible for family affairs, education, labour, internal affairs, prosecution, state borders, and health; [par 40]
- D. to include in the draft Law a provision outlining the details of a strong partnership between the state and non-governmental organizations involved in the fight against trafficking in human beings; [par 42]
- E. to clarify the appointment/dismissal of the Special Executive Authority, as well as the extent of this Authority’s powers in the draft Law; [pars 46 and 48]
- F. to ensure that Article 16 and the draft Law in general will have a greater focus on the protection and security of victims of trafficking, as well as presumed victims, witnesses of acts of trafficking and collaborators with the judiciary; [pars 60-62 and 75]
- G. to specify in Article 26 which measures will be taken to ensure that in cases where children cannot be returned to their country of origin, these children will receive support so that they can lead a proper life, compliant with their best interests; [par 85]
- H. to clarify in detail which type of behaviour will be considered a violation of the draft Law, and which specific consequences each individual behaviour will entail; [par 88]

#### ***2. Other Recommendations***

- I. to re-introduce paragraph numbers to the draft Law, [par 12]
- J. to amend the Preamble of the draft Law to reflect the rights of victims/presumed victims and the prosecution of perpetrators, while specifying that the law applies to all forms of trafficking in human beings [pars 14-15]
- K. to specify which “other regulatory acts” Article 2 is referring to and specifically mention the Civil Code and labour legislation therein; [par 16]

- L. to amend Article 3 as follows:
1. include gender mainstreaming and a child-sensitive approach to the main principles of counteracting trafficking in human beings; [par 17]
  2. ensure that the principle of the confidentiality of information applies not only to identified victims of trafficking, but also to presumed victims, family members, witnesses and collaborators with justice; [par 19]
  3. include the non-discrimination principle as a separate paragraph under Article 3, or as a separate provision applicable to the entire draft Law, and add to it discrimination based on citizenship, national origin or association with a national minority; [par 20]
  4. clarify the meaning of “voluntary acceptance” of assistance under par 5; [par 21]
  5. re-introduce the avoidance of re-victimization as a principle under this provision; [par 23]
- M. to stress in the draft Law that as far as possible, presumed victims of trafficking shall enjoy the same treatment as identified victims of trafficking in human beings; [pars 18-19, 29 and 58]
- N. to amend Article 1 on definitions as follows:
1. enhance the definition of the fight against trafficking in human beings by adding the prevention of trafficking and the protection of victims (also from re-victimization) and merging this definition with the definition of counteracting trafficking in human beings; [par 25]
  2. amend the definition of “identification of victims of trafficking in human beings” to reflect the entire process and outcome and merge it with the definition of “procedure to declare the status of victim”; [26]
  3. specify that in the case of stateless persons, a country of origin may also be a country of permanent or temporary residence [par 28]
  4. expand the definition of “protection of victims of trafficking” to include presumed victims of trafficking and consider introducing a separate definition for presumed victims of trafficking; [par 29]
  5. include in the definition of “procedure to declare the status of victim” ILO/EC operational indicators; [par 30]
  6. specify that the return/retention (stay) of trafficked children should always be based not only on their needs, but on their best interests; [par 31]
  7. re-introduce the definition of exploitation based on international standards, as well as the definitions of forced labour, slavery/practices similar to slavery, and servitude; [par 36]
  8. stipulate that for the purposes of the draft Law, persons without full legal capacity shall be protected in the same way as children; [par 38]
- O. to consider re-introducing a special representative from the Ombuds Office as a body monitoring the implementation of the law; [par 41]

- P. to clarify that the questionnaire under Article 8 should contain indicators and criteria to ascertain the victims' status of a potential victim; [par 47]
- Q. to discuss the benefits of an Inter-Agency Council and whether to re-introduce it to the draft Law; [par 49]
- R. to enhance Article 11 by describing individual prevention measures in greater detail; [par 52]
- S. to amend Article 12 as follows:
  - 1. clarify whether it focuses on objectives of preventing trafficking, or on objectives of counteracting trafficking in human beings in general; [par 53]
  - 2. differentiate between objectives of preventing trafficking and the means to achieve these objectives; [pars 54-55]
- T. to consider introducing an inter-agency database on offences related to trafficking in human beings to the draft Law; [par 58]
- U. to ensure that personal data of victims/presumed victims of trafficking in human beings, witnesses and collaborators with justice is stored and used in conformity with the conditions provided by the Council of Europe's Convention for the Protection of Individuals with Regard to the Automatic Processing of Personal Data, and that information on child victims will only be disclosed on an exceptional basis; [par 63]
- V. to see to it that victims/presumed victims of trafficking, their families, witnesses and collaborators with justice receive proper protection by law enforcement authorities, including physical protection, relocation and identity change; [par 64]
- W. to adopt, throughout the draft Law, an all-encompassing approach with regard to protection, involving not only victims/presumed victims of trafficking, but also victims' families (where necessary), witnesses of acts of trafficking, and collaborators with the judiciary, and investigators/prosecutors; [par 65]
- X. to introduce to Article 16 a 30 days' recovery and reflection period; [par 67]
- Y. to amend Article 17 as follows:
  - 1. extend the time limit for consideration of requests to obtain victims' status to a minimum of one week, or at least allow for a justified extension of the current 3-day consideration period; [par 69]
  - 2. specify that the local state administration shall be obliged to deal with requests immediately and ensure that at all times, the special situation of women and children is taken into consideration; [par 69]
  - 3. expand the deadline under par 4 for granting/refusing victims' status to at least 10-14 days, [par 70]
  - 4. increase the additional 3-day deadline for collecting additional information under par 5; [par 71]
  - 5. outline the procedure to follow when appealing against the refusal of victims' status; [par 72]

- 6. specify under par 6 which crime a person having knowingly submitted false information will be prosecuted for; [par 73]
- Z. to amend Article 18 pars 1 (3) and 2 (2) that the extension of stay in an institution or on the territory of Ukraine is not dependant on their willingness to cooperate with the authorities: [par 78]
- AA. to ensure that the information provided to victims/presumed victims under Articles 18 par 1 (1) and 16 par 2 (1) shall also include information on their individual situation and on the possible consequences of collaborating with law enforcement, the prosecution and the judiciary; [par 79]
- BB. to include in the draft Law a provision specifying that a victim of trafficking shall be exempt from punishment for possible criminal offences which he/she was compelled to commit while trafficked; [par 80]
- CC. to include in Article 18 par 1 (4) the possibility of compensation claims in criminal procedures; [par 81]
- DD. to clarify the term “repatriation course” in Article 21 par 1; [par 82]
- EE. to develop a procedure for managing the funds mentioned under Article 29 in a transparent manner and ensure that they are also used to financially support non-governmental organizations in their efforts to combat trafficking in human beings; [par 90]
- FF. to consider establishing a victims’ fund; [par 91]
- GG. to clarify the nature of the “State Target Programme” and ensure that it contains sources of funding, funds per measure and deadlines for implementation; [par 92] and
- HH. to include a monitoring mechanism in the draft to assess its efficiency and practicability: [par 94]

#### IV. ANALYSIS AND RECOMMENDATIONS

##### 1. International Documents on Combating Trafficking in Human Beings

8. Throughout the last decade, governments, international organizations and non-governmental institutions have come to realize that in order to combat the increasing trend of human trafficking, a common and comprehensive approach is needed, focusing equally on the criminal and humanitarian aspect of the issue. Their commitment to such an approach is reflected in various human rights instruments and documents, notably the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000<sup>4</sup> to the UN Convention against Transnational Organized Crime (hereinafter “the UN Palermo Protocol”), the Council of Europe Convention on Action against Trafficking in Human Beings of 2005<sup>5</sup> (hereinafter “the Council of Europe Convention”), as well as the OSCE Action Plan to Combat Trafficking in Human Beings<sup>6</sup> (hereinafter “the OSCE Action Plan”). The above human rights instruments have all been ratified by the Republic of Ukraine<sup>7</sup>.
9. The three main purposes of the UN Palermo Protocol are the prevention and combat of trafficking in persons, the protection of and assistance to the victims of human trafficking, and the promotion of cooperation among States Parties to meet the above objectives (Article 2). The OSCE Action Plan, while explicitly referring to the UN Palermo Protocol, also commits States to develop and implement National Referral Mechanisms, defined as national cooperative frameworks, through which state actors, in strategic partnership with civil society, fulfill their obligations to protect and promote the human rights of trafficked persons<sup>8</sup>.
10. The Council of Europe Convention<sup>9</sup>, same as the UN Palermo Protocol, is a binding legal instrument. The UN Palermo Protocol, has three main purposes and these are prevention and combat of trafficking in human beings, protection and assistance to victims and inter-state cooperation (Article 1). Next to these purposes, par 2 of Article 1 sets up a Convention monitoring mechanism to ensure effective implementation of the Convention by all States party to the Convention. Chapter VII of the Council of Europe Convention specifies the details of this two-pillar monitoring system, which includes a technical body (Group of Experts on Action against Trafficking in Human Beings (hereinafter “GRETA”) and a political body (Committee of the Parties). It is much welcomed that Ukraine ratified the Council of Europe Convention in 2010, thereby agreeing to submit to this monitoring system.

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<sup>4</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Protocol adopted by GA resolution 55/25 of 15 November 2000: <http://www2.ohchr.org/english/law/protocoltraffic.htm>

<sup>5</sup> Council of Europe Convention on Action against Trafficking in Human Beings, adopted on 16 May 2005: [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp#TopOfPage](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage)

<sup>6</sup> OSCE Permanent Council 462<sup>nd</sup> Plenary Meeting, PC.DEC/557 of 24 July 2003: [http://www.osce.org/press\\_rel/2003/pdf\\_documents/07-3447-pc1.pdf](http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf)

<sup>7</sup> The Republic of Ukraine ratified the UN Protocol on 21 May 2004 and the Council of Europe Convention on 29 November 2010.

<sup>8</sup> See also OSCE Ministerial Council Decision No. 14/06 of 5 December 2006 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach, where OSCE participating States are recommended to establish National Referral Mechanisms

<sup>9</sup> OSCE Ministerial Council Decision 13/05.

## **2. General Comments**

11. At the outset, it is noted that large parts of the current draft Law are different from the 2009 Draft. A number of definitions, provisions dealing with competences of various public institutions and Articles on liability under the law have since been removed from this draft Law. The 2009 Draft had foreseen the creation of special bodies to oversee State anti-trafficking mechanisms, such as the Government Commissioner for Combating Trafficking in Human Beings with territorial offices, an Interagency Council with advisory functions, and a special representative of the Ombudsperson responsible for implementing a state monitoring mechanism. These bodies have all been omitted from the current draft Law (for more on this, see pars 40-49 *infra*).
12. It is further noted that paragraph numbers have been omitted from the current draft Law. As they facilitate citation of the draft Law, it would be advisable to re-introduce paragraph numbers.
13. Overall, the draft Law contains some positive aspects which reflect international anti-trafficking standards. At the same time, many provisions may well benefit from certain improvements. In the following sections of the Opinion, individual aspects of the draft Law will be analysed to assess their contribution to making the draft Law a proper legal basis for the fight against trafficking in human beings, compliant with international standards in this field.
14. The Preamble of the draft Law outlines the scope of its application, which has not changed much compared to the earlier 2009 Draft. While the procedure for granting persons the status of victims of trafficking in human beings is part of the Preamble, the rights of victims and presumed victims of trafficking in human beings are still not mentioned specifically therein, even though they are an explicit part of the draft Law under Articles 16 and 18 of the draft Law. The same is true with the prosecution of perpetrators involved in the crime of trafficking human beings, mentioned in Article 4 as one of the main directions of state policy. It is recommended to amend the Preamble to reflect that this draft Law focuses on all aspects of trafficking in human beings, including the rights of victims/presumed victims and bringing perpetrators to justice.
15. Further, it is reiterated that as stated in Article 2 of the Council of Europe Convention<sup>10</sup> on the scope of this Convention, it may be helpful to expressly state in the Preamble that the draft Law applies to all forms of trafficking in human beings, whether national or international and whether or not connected with organized crime<sup>11</sup>.
16. In the draft Law, Article 2 specifies which laws of Ukraine deal with trafficking in human beings. It is welcomed that this list of legislation now also specifically refers to the Criminal Code. However, the Civil Code and labour legislation should also be mentioned specifically. It may also be advisable to specify which “other regulatory-legal acts” deal with this matter in Ukraine, at least by stating which fields of law they cover.

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<sup>10</sup> See Article 2 of the Council of Europe Convention, *op. cit* note 5.

<sup>11</sup> In this context, see also Article 4 of the 2009 Model Law against Trafficking in Persons developed by the UN Office on Drugs and Crime (UNODC) in response to the request of the UN General Assembly to the UN Secretary-General to promote and assist the efforts of Member States to become party to and implement the UN Convention against Transnational Organized Crime and Protocols thereto, in particular the Palermo Protocol.

17. Main principles of counteracting trafficking in human beings are laid down in Article 3 and include a much welcomed guarantee of human rights and civil rights and freedoms (although the difference between the two is not clear). In addition to this, it would be recommendable to specify in this provision that such a human rights-based approach shall involve gender mainstreaming and a child-sensitive approach, as required by Article 5 par 3 of the Council of Europe Convention<sup>12</sup>.
18. It is noted that under Article 3 par 3, a “respectful and impartial attitude” is only required with regard to victims of trafficking in human beings, not persons presumed to be victims but not yet positively identified as such (presumed victims). This may imply that prior to being declared a victim of human trafficking, presumed victims do not enjoy the same rights and treatment as identified victims.<sup>13</sup> In this context, it should be stressed that the proper identification of victims is an essential part of any law against trafficking in human beings and cannot be completed without proper treatment being afforded to presumed victims of trafficking, as guaranteed in Article 16 of the draft Law, and Article 10 par 2 of the Council of Europe Convention, which establishes that presumed victims have the right to the same assistance as identified victims.
19. The principle of confidentiality of information concerning victims of trafficking under Article 3 par 4 should likewise apply to presumed victims. Such confidentiality should also extend to family members, who may often be similarly affected or endangered as victims of trafficking themselves. The same applies to witnesses of trafficking<sup>14</sup> and collaborators with law enforcement/judicial authorities, who run a similar, if not greater risk should they decide to help victims of trafficking and work together with law enforcement agencies. The principle of granting equal protection to all the above categories, is reflected in Article 28 of the Council of Europe Convention<sup>15</sup>. Thus, the confidentiality of information required under Article 3 should apply not only to victims of trafficking, but also to presumed victims, witnesses and collaborators.
20. This recommendation applies equally to Article 3 par 5, which contains a non-discrimination clause, protecting victims of trafficking from discrimination on the basis of race, skin colour, political, religious and other traits. However, this clause is part of the principle of voluntary acceptance of assistance by victims and could be interpreted as limiting the principle of non-discrimination to this field. It would thus be preferable to include the non-discrimination clause as a separate principle, or as a separate provision, as done in the 2009 Draft. Also, it could be worthwhile to mention other forms of discrimination based on, e.g., citizenship, national origin or based on association with a national minority, as found in Article 14 of the European

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<sup>12</sup> *Op. cit* note 5.

<sup>13</sup> Note that Article 5 par 1 (v) of the UNODC Model Law (*op.cit* note 11) avoids the difference between victim and presumed victim by adopting a wide definition of victim of trafficking: “‘victim of trafficking’ [for the purpose of all provisions on information, assistance and protection] shall mean any natural person who has been subject to trafficking in persons or whom [...] the competent authorities, including the designated non-governmental organization, where applicable [...] reasonably believe is a victim of trafficking, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. For all other articles, a victim of trafficking shall be any person or persons identified in accordance with [the respective provision of the law].”

<sup>14</sup> *Ibid.*, Chapter VII, which specifically speaks of “Victim and witness protection”.

<sup>15</sup> *Op. cit* note 5

Convention on Human Rights<sup>16</sup> (hereinafter “the ECHR”) and Protocol No. 12 to the ECHR.<sup>17</sup>

21. At the same time, it is still not clear what “voluntary acceptance” of assistance refers to, since it would appear that receiving assistance is a right, which anybody can waive if they want to. In the case that it refers to the principle of providing services to victims on a consensual and informed basis found in Article 12 par 7 of the Council of Europe Convention<sup>18</sup>, then this should be clarified in Article 3 par 5, to make this provision more comprehensible.
22. Next to the principle of mutual interaction of executive authorities with public and international organizations (Article 3 par 6), pars 7 and 8 of Article 3 are much welcomed. Par 7 foresees that actions applicable to children, whether victims or witnesses of trafficking in human beings, shall be based on the principles established in the UN Convention on the Rights of the Child and Optional Protocol to the Convention on the Rights of the Child with regard to trafficking in children, child prostitution and child pornography. Par 8 determines that in case a person’s age is unknown and there are grounds to believe that he/she may be a child, then he/she shall be deemed a child and provided with special protection.
23. However, it is noted that one of the principles contained in the 2009 Draft, namely the principle to avoid re-victimization of trafficked persons (then Article 4, par1 (4) of the 2009 Draft), has been removed from the draft Law. Since re-victimization is one of the greatest challenges with regard to trafficking in human beings today, it is recommended to re-introduce this principle to Article 3.

### **3. Definitions under Article 1 of the draft Law**

24. Definitions of terms used in the draft Law are now laid down in Article 1, which contains fewer definitions than Article 2 of the 2009 Draft.
25. Next to covering a “system of measures aimed at uncovering [...] trafficking cases”, the definition of “fight against trafficking in human beings” now includes the identification of victims and traffickers, and the prosecution of traffickers, all of which are welcome additions. While a comprehensive approach to the fight against trafficking in human beings shall include prevention of trafficking, prosecution of traffickers and protection of the victims<sup>19</sup>, this definition under Article 1 of the draft Law appears to focus mainly on investigation and prosecution. In order to have a coherent and all-encompassing definition that is in line with international standards, it is recommended to clarify and amend this definition accordingly, so that the prevention of trafficking and the protection of victims (including from re-victimization) are clearly stated as main aspects of the fight against trafficking. These aspects are currently defined as “counteracting trafficking in human beings”, also under Article 1. It is thus recommended to merge the definitions for fighting and counteracting trafficking in human beings, as they appear to deal with different aspects of the same thing.

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<sup>16</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ratified by the Republic of Ukraine on 11 September 1997.

<sup>17</sup> This Protocol contains a general prohibition of discrimination and was ratified by Ukraine on 27 March 2006.

<sup>18</sup> *Op. cit* note 5.

<sup>19</sup> See Article 1 of the Council of Europe Convention (*op. cit* note 5) and the OSCE Action Plan to Combat Trafficking in Human Beings, I. Objectives and purposes of the Action Plan, par 1.

26. According to Article 1, the identification of victims of trafficking is uncovering any information giving grounds to believe that a certain person is a victim of trafficking in human beings. This would appear to suggest that identification of victims signifies only the investigation of circumstances. In reality, the identification of victims is a process whereby formal mechanisms to screen potential victims of trafficking facilitate the rapid and accurate establishment of factual information. If this factual information constitutes reasonable grounds to believe that a certain person is a victim of trafficking in human beings, then this person has been identified in the above sense. A set of special measures should be in place for child victims of trafficking.
27. At the same time, the difference between “identification of victims” and the “procedure to declare the status of victim of trafficking in human beings” (also defined in Article 1) is not clear – both would appear to be part of the same process, as any identified victim would automatically hold victims’ status. It is recommended to reflect the above factors in the definition of identification of victims, and merge this definition with the definition of “procedure to declare the status of victim of trafficking in human beings” (for more debate on this latter definition, see par 30 *infra*).
28. Under Article 1, the country of origin is defined as “the country of nationality of a foreigner or the country of permanent residence of a stateless person, who is a victim of trafficking in human beings”. However, there may also be situations where a stateless victim merely had temporary residence in another country. In order to cover such situations as well, it is recommended to remove the requirement of *permanent* residence, both in this definition and in the definition of “repatriation of foreigners and stateless persons”, also to be found in Article 1.
29. Article 1 also contains a definition of “protection of victims of trafficking”. It is reiterated that there is little mention of presumed victims of trafficking in Article 1, or generally in the draft Law (see also pars 18-19 *supra*, where this issue was also discussed). It is important that all parts of the draft Law stress that even before victims of trafficking have been positively identified as such, it is essential that presumed victims are provided with proper protection and support throughout the draft Law. This definition should thus be amended to include protection of presumed victims of trafficking as well. It may also be advisable to include a definition of presumed victims of trafficking in the draft Law, for the sake of completeness. In this context, it should be noted that the 2009 Draft included a definition of “supposed victims of trafficking”.<sup>20</sup>
30. The procedure to declare the status of a victim of trafficking in human beings is also listed under Article 1 (see also par 27 *supra*) and covers measures whereby an authorized person compares elements of the act committed against the person with the definition of trafficking in human beings, assesses the likelihood of such an act committed against this person, and concludes whether a person is a victim of trafficking in human beings. It would be advisable to mention herein indicators of trafficking in human beings, based, for example, on the operational indicators

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<sup>20</sup> Under this definition in Article 2 of the 2009 Draft, a supposed victim of human trafficking was “any person about whom there are solid grounds to believe that he/she has been subjected to trafficking in human beings”.

established jointly by the International Labour Organization (ILO) and the European Commission.<sup>21</sup>

31. The return and retention/stay of children under Article 1 should be defined based not only on the child's needs, as stated in Article 1, but in particular based on the best interests of the child.
32. The definition of trafficking in human beings has been changed since the 2009 Draft – it now reads: “the implementation of an illegal agreement, the object of which is a human being, as well as the recruitment, relocation, secreting, transfer or receipt of a human being for the purpose of his/her exploitation by means of deception, blackmail, taking advantage of [a] human being's vulnerable condition or by threat of violence, with [the] abuse of an office or economic or other dependence of the victim on another person.” While certain slightly confusing aspects of this definition may well be due to translation errors, it would appear that a number of the basic elements of trafficking in human beings, as found in Article 3 a) of the UN Palermo Protocol<sup>22</sup>, have been included.
33. According to Article 3 a) of the Palermo Protocol, trafficking of human beings is made up of three elements, namely an action (recruitment, transportation, transfer, harbouring, or receipt of persons), by way of illegal means (threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or payment/benefits to achieve consent of a person in control over another person) for the purpose of exploitation.
34. Of these elements, the definition in Article 1 contains most of the actions laid down in Article 3 a) of the UN Protocol, as well as the purpose of exploitation. The illegal means mentioned therein have, on the other hand, only been reflected partially in Article 1 – while deception, taking advantage of a person's position of vulnerability, and threat (of violence) have been included, other aspects are missing, e.g. other types of threats, the use of force or other forms of coercion, abduction, fraud, abuse of power (though this is covered in part by “abuse of office”), and payment/benefits to achieve consent of a person in control over another person. While the abuse of economic or other dependence of the victim on another person is mentioned as a means to achieve exploitation, this would appear to relate more to the vulnerability of the victim than to the situation of paying /offering benefits to someone in control of the victim. It is recommended to clarify the current definition of trafficking in human beings and to ensure that it is compliant with the definitions set by the UN Palermo Protocol and reiterated by the Council of Europe Convention<sup>23</sup>. This also applies to the amendment to Article 149 of the Criminal Code on trafficking in human beings proposed by Section X of the draft Law.
35. At the same time, it is noted that, along with the definition of “supposed victims of trafficking in human beings”, a number of definitions contained in the 2009 Draft have been removed from the current Article 1, namely the definitions of “child”,

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<sup>21</sup> A survey conducted jointly by the ILO and the European Commission in 2009 identified four sets of indicators for trafficking of adults for labour exploitation, trafficking of adults for sexual exploitation, trafficking of children for labour exploitation, and trafficking of children for sexual exploitation respectively. Indicators included, e.g. types of recruitment (by deception, coercion or abuse of vulnerability), exploitation and coercion/abuse of vulnerability at destination, and differentiated between strong, medium and weak indicators.

<sup>22</sup> *Op. cit* note 5

<sup>23</sup> *Op. cit* note 5

- “exploitation”. “forced labour”, “sexual exploitation”, “slavery or practices similar to slavery”, “servitude”, “recruitment”, “vulnerable state” and “trafficker”, to name some.
36. While it may be that not all of these terms need to be defined, this would not seem to apply to the term “exploitation”, which is part of the definition of trafficking under Article 1. Including the definition of exploitation would be beneficial for all stakeholders later applying the Law, both in terms of identifying trafficking of human beings, and also in terms of fighting this phenomenon. It is thus recommended to re-include “exploitation” in the draft Law, as defined in Article 3 a), where under exploitation shall include “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”,<sup>24</sup>. Along with the definition of exploitation, definitions for forced labour, slavery/practices similar to slavery, and servitude should be re-introduced into the draft Law. Likewise, it may be advisable to clarify in Article 1 of the draft Law that the consent of a victim of trafficking to the intended exploitation shall be irrelevant if any of the means mentioned above (threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or payment/benefits to achieve consent of a person in control over another person) have been used, as stated expressly in Article 3 b) of the UN Palermo Protocol and 4 b) of the Council of Europe Convention.<sup>25</sup>
37. The definition of trafficking in children is the same as the definition of trafficking of human beings, with the difference that it speaks of taking advantage of a child’s vulnerable condition. At the very least, it would be commendable to include here a reference to the special vulnerability of children, to the effect that any kind of action concerning children and aimed at their exploitation shall amount to trafficking, regardless of the means used. Since children are used to doing what grownups want them to do, they can be controlled without the need of deception, or threats, or violence. Article 3 c) of the Palermo Protocol takes this into account when it specifies that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons, even if it does not involve the illegal means mentioned under Article 3 a) (threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or payment/benefits to achieve consent of a person in control over another person). The special situation of trafficked children should be reflected accordingly in Article 1 of the draft Law.<sup>26</sup>
38. Furthermore, it is recommended to specify in Article 1 that for the purposes of this law, persons without full legal capacity shall be protected from human trafficking in the same way as children.

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<sup>24</sup> In this context, see the definition of exploitation under Note 1 to the current Article 149 of the Criminal Code, stating that “Exploitation of human being in this article are considered all forms of the sexual exploitation, in the porn industry, forced labour or forced servicing, servitude or usages similar to servitude, forced conditions, attraction into the kabala, organs’ extraction, to experiment on a person without its consent, adoption with the purpose of gain, forced pregnancy, involving into criminal activity, using in armed conflicts, etc.”

<sup>25</sup> *Op. cit* notes 4 and 5 respectively.

<sup>26</sup> See also Article 8 par 3 of the UNODC Model Law (*op.cit* note 11), which states that in the case of child victims of trafficking, exploitation shall also include the use of children for illicit or criminal activities (including the trafficking/production of drugs or begging), in armed conflict, or work that is likely to harm the health or safety of children.

#### **4. Implementation of the State Policy on Combating Human Trafficking**

39. The main directions of state policy in counteracting trafficking in human beings are listed under Article 4 of the draft Law. This is a new and positive addition to the draft Law, focusing on awareness-raising, the fight against the crime of trafficking in human beings, and assistance to and protection of victims of trafficking.
40. In Article 5, the main agents in counteracting trafficking in human beings are: the special authorized central executive authority for counteraction to trafficking in human beings, the central executive authority for the fight against crime, central executive authorities, local executive authorities, local self-governance authorities, law enforcement authorities, diplomatic institutions of Ukraine abroad, centers of social services for families, children and youth, and institutions for assistance to victims of trafficking. It is noted that certain other agencies mentioned in the 2009 Draft are not included in this list, namely bodies responsible for family affairs, education, labour, internal affairs, prosecution, state borders, and health, to name a few. Since trafficking in human beings involves the competences of many of these bodies, a law against trafficking in human beings, and a national mechanism for this purpose must also mention the roles of these bodies in the fight against trafficking in human beings. It is recommended to re-introduce detailed information on these bodies' role in this field, to make sure that they are aware of their necessary involvement.
41. However, the fight against trafficking in human beings should not involve only executive bodies. It is noted that under the 2009 Draft, a special representative from the Ombuds Office was responsible for monitoring the activities of all executive bodies responsible for implementing state actions against trafficking. Such an independent monitoring system would be very helpful in that it would help analyse the effectiveness of measures against trafficking in human beings and be instrumental in ensuring that they are constantly assessed and improved. It is recommended to consider re-introducing the Ombuds Office as monitoring body to the draft Law.
42. At the same time, non-governmental organizations are essential to the success of any state mechanism against trafficking in human being. Due to the inherently criminal nature of trafficking in human beings, and the danger that victims of trafficking are under, these persons are often afraid to contact state services and ask for help. Particularly in the field of assistance to victims, their rehabilitation and to avoid re-victimization, non-governmental organizations play a vital role. This is reflected in Articles 6 par 3 and 8 par 3 of the UN Palermo Protocol and in Article 5 par 6 and 12 par 5 of the Council of Europe Convention<sup>27</sup>, all of which urge States to collaborate with non-governmental organisations wherever practicable and appropriate. While cooperation with such organizations (and international organisations) constitutes one of the main principles of counteracting trafficking in human beings under Article 3, their role is not outlined in detail in later Articles. In order to strengthen the collaboration between the state and non-governmental organisations in the fight against trafficking in human beings, the draft Law should thus foresee the establishment of a strong state-non-governmental partnership in the fight against trafficking, particularly in the areas of identification of victims and assistance to victims/presumed victims.
43. Section II of the draft Law lists the powers of the Cabinet of Ministers of Ukraine, and other agents responsible for counteracting trafficking in human beings. Those agents

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<sup>27</sup> *Op. cit* notes 4 and 5 respectively

listed specifically in Section II are the Special Authorized Central Executive Authority for Counteracting Trafficking in Human Beings (Article 8), the Central Executive Authority for Fighting Crime (Article 9), and the Local State Administrations (Article 10).

44. As mentioned earlier, a number of state institutions involved in implementing state policy on combating trafficking in human beings under the 2009 Draft have been removed from the draft Law, e.g. the Government Commissioner for Combating Trafficking in Human Beings, with territorial offices, the representative of the Ombudsperson, and the Interagency Council for Combating Trafficking in Human Beings.
45. Instead, the draft Law created the Special Authorized Central Executive Authority for Counteracting Trafficking in Human Beings (hereinafter “the Special Executive Authority”), whose powers are listed in Article 8. These powers include the coordination and monitoring of agents responsible for counteracting trafficking in human beings, the implementation of preventive and awareness-raising measures, the development of criteria for identifying victims of trafficking, decisions on the status of victims, coordination of and control over institutions for assistance to victims and the development of a state program countering trafficking in human beings. The Special Executive Authority shall also develop a national mechanism for interaction of agents, rules of procedure on the declaration of victims’ status, forms of certificates related to victims’ status and procedure for payment of a one-time benefit to victims of trafficking, all of which shall then be reviewed by the Cabinet of Ministers.
46. As the Government Commissioner in the 2009 Draft, the Special Executive Authority thus works with a fair amount of independence, but reports to the Cabinet, which approves mechanisms, rules of procedure and certain document templates prepared by the Special Executive Authority. At the same time, the draft Law does not specify whether this Authority is under any other state body, nor how many members it has and how they are appointed or dismissed. The draft Law also does not mention any type of support body or secretariat that would assist it in its numerous tasks, nor how this body is funded. While the Special Executive Authority shall coordinate other agents responsible for counteracting trafficking in human beings, it is not clear whether this Authority shall have quasi-supervisory functions over the other agents in all matters pertaining to the fight against trafficking in human beings. This was more transparent in the 2009 Draft, where the Government Commissioner’s decisions were compulsory for all agents responsible for combating trafficking in human beings (Article 7 par 2 of the 2009 Draft). It is recommended to specify the appointment/dismissal, and the extent of the Special Executive Authority’s powers in greater detail in the draft Law, so as to have more clarity on the role that this authority is supposed to play.
47. One of the competences of the Special Executive Authority is the development and approval of a questionnaire with pre-set criteria for the procedure to declare the status of a victim of trafficking (Article 8). This is somewhat misleading, as it would appear that the questionnaire defines the procedure for declaring a person a victim. It may be more accurate to state that the developed questionnaire shall contain indicators and criteria based on which a person’s victims status shall be ascertained.

48. Under Article 9, the powers of the Central Executive Authority for Fighting Crime are described, including the identification and investigation of crimes related to trafficking in human beings, analyzing the status of prevention, uncovering and detection of such crimes in a comprehensive manner, and cooperation with law enforcement authorities of foreign countries. Also here, the nature of this Central Executive Authority is unclear – if it is supposed to be part of the Ministry of Interior, then this should be mentioned. It would appear that many of the tasks conducted by this body relate to law enforcement, yet Article 5 mentions both the Central Executive Authority for Fighting Crime and law enforcement authorities as agents in counteracting trafficking in human beings, which would appear to negate a symbiosis of both bodies. On the other hand, a number of the tasks of the Central Executive Authority for Fighting Crime under Article 9 and of the law enforcement authorities under Article 13 appear to be similar if not identical. Greater transparency as to the nature and status of this body is also required here. The draft Law should also specify the role of the Anti-Trafficking Department of the Criminal Police (established in 2005) under this provision.
49. Generally, it is noted that the Inter-Agency Council established under the 2009 Draft would be helpful in ensuring consistency and synergy of the different agencies counteracting trafficking in human beings, as well as of non-governmental organizations, international organizations, and academia. It is recommended to discuss the benefits of such a body and consider re-introducing it to the draft Law, as well as concrete information on its competences.

## **5. Mechanisms to Prevent and Fight Human Trafficking and to Protect its Victims**

50. Section III of the draft Law deals with Mechanisms of Prevention of Trafficking in Human Beings, while Section IV covers Mechanisms of Fighting Trafficking in Human Beings.

### ***5.1 Prevention of Trafficking in Human Beings***

51. It is noted that under Section III on mechanisms of prevention of trafficking, Article 11 lists certain prevention measures, such as situation analysis, awareness-raising, “reduction of public vulnerability”, and suppression of demand through various organizational, research, informational, educational, legal, socio-economic and other activities (Article 11), without going into detail as to what these measures would involve.
52. This is a change from Section IV of the 2009 Draft, which contained the same measures, but also described them in a clear and detailed fashion. It would be helpful to re-introduce these descriptions, especially with regard to initially unclear terminology, e.g. “reducing the vulnerability of the population” or “discouraging the demand that leads to trafficking”, the meaning of which may otherwise not be apparent to users of the Law. Any measures with the aim of preventing trafficking in human

beings should aim to prevent and protect victims, in particular women and children, from re-victimization.<sup>28</sup>

53. Article 12 outlines three main objectives of counteracting trafficking in human beings, namely analysing the conditions, causes and premises of this phenomenon, improving public awareness of causes and the impact of trafficking in human beings, and supporting the regulation of external and domestic labour migration and other. While this may also be due to a translation error, it is noticed that while this provision is under the section on mechanisms to prevent trafficking in human beings, it focuses on the wider aspect of counteracting trafficking, which is the subject of the draft Law itself, but not of this specific section. It is thus recommended to clarify whether Article 12 focuses on objectives of preventing trafficking in human beings, or on objectives of counteracting trafficking in general. In the latter case, Article 12 should be removed from Section III.
54. Assuming that Article 12 refers to the objectives of preventing trafficking, it would appear that surveying conditions, causes and premises of the spreading of the phenomenon of trafficking would appear more of a means to achieve a wider objective, namely that of more information on the roots and causes of trafficking. This should be reflected in Article 12.
55. Further, it would appear that support to the regulation of external and domestic labour migration would also be more of a measure to prevent trafficking in human beings, rather than an objective. Unless the term “objectives” is based on a translation error, it would be advisable to amend this part of Article 12 as well.

## ***5.2. Fighting Trafficking in Human Beings***

56. Section IV of the draft Law deals with mechanisms for fighting trafficking in human beings. Article 13 mentions measures to fight trafficking, including identification of trafficking cases, victims and traffickers by law enforcement authorities and the prosecution of such cases. Article 14 covers much welcomed objectives in the fight against trafficking.
57. While the objectives under Article 14 are largely the same as in the 2009 Draft, it is noted that two provisions from the 2009 Draft (then Articles 41 and 42) dealing with an inter-agency database on offences related to human trafficking and with security of trafficked persons have been removed.
58. Generally, both an inter-agency database and ensuring the security of victims of trafficking (along with the security of victims’ families, presumed victims, witnesses and collaborators with judicial authorities) are important aspects to the fight against trafficking in human beings. An inter-agency database would be a welcome introduction, either in this draft Law, or in secondary legislation, and would help ensure synergy in public institutions’ actions against trafficking. Such a database would of course need to adhere to international standards on personal data protection (see par 63 *infra*).

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<sup>28</sup> See Article 9 par 1 (b) of the UN Palermo Protocol, *op. cit* note 4.

## **6. Assistance to and Protection of Victims of Trafficking in Human Beings**

59. Section V of the draft Law covers assistance to and protection of victims of trafficking in human beings. Since Article 16 provides for assistance and protection for persons who have not yet acquired the status of victims of trafficking, it is recommended to adapt the title of Section V to cover assistance to and protection of victims and *presumed* victims of trafficking as well.
60. Article 15 foresees the establishment of a national mechanism of interaction of agents to render effective assistance to victims of trafficking and protect them. While this provision does not contain much information on the contents of this mechanism, the focus of the mechanism appears to lie more with assistance to victims than with their protection.
61. It must be stressed at this point that often, victims of trafficking in human beings, as well as presumed victims, witnesses and collaborators with justice, place themselves in great danger if they report crimes of trafficking and collaborate with the police and prosecution. For this reason, measures to ensure their security are just as relevant as providing them with social and other assistance, and also require enhanced cooperation by the agents involved. This needs to be reflected throughout the draft Law, as well as in the national mechanism mentioned above.
62. Also Article 16 on the rights of persons requesting to obtain the status of victim of human trafficking should include a greater focus on the security of the victims and other persons mentioned under par 59 *supra*. While this provision states that a person requesting such status may ask for protection, there is no clear commitment for the state authorities to provide such protection and engage in all necessary safety measures to keep the respective individual from coming to harm. Such measures should begin with absolute confidentiality as to the identity of the person in all instances of state involvement, including medical, psychological and legal assistance, temporary placement in a state facility. Confidentiality with regard to victims of trafficking also constitutes a main principle of the draft Law under Article 3 par 4 (see par 19 *supra*).
63. Additionally, personal data regarding the above groups of people should be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>29</sup>. Special measures should be taken to ensure that the identity of child victims of trafficking is only disclosed under very exceptional circumstances<sup>30</sup>.
64. Next to proper treatment and storage of confidential information on victims and presumed victims of trafficking, proper protection by law enforcement authorities is essential, to ensure these persons' safety and decrease the probability of re-trafficking. Depending on an assessment of each individual case, protection measures could

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<sup>29</sup> As stated in Article 11 par. 1 of the European Convention (see footnote 4). The Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) was ratified by the Republic of Ukraine on 30 September 2010. For the text of the Convention, see <http://conventions.coe.int/treaty/EN/Treaties/Html/108.htm>

<sup>30</sup> Article 11 par. 2 of the European Convention states that "Each Party should adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victims of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child."

include physical protection, relocation, or identity change (as indicated in Article 28 par 2 of the Council of Europe Convention<sup>31</sup>).

65. In this context, it is reiterated that with regard to security and protection, Article 28 of the Council of Europe Convention favours an encompassing approach, meaning that States should not only protect victims of trafficking (or presumed victims) from potential retaliation or intimidation, but also persons collaborating with the judiciary, investigators or prosecutors, witnesses of acts of trafficking and where necessary, the families of victims and witnesses of trafficking. Provisions on proper and effective protection of presumed victims of trafficking shall thus always include protection for the above-mentioned categories of persons as well.
66. Otherwise, the contents of Article 16 are much welcomed, as they guarantee proper care and support to presumed victims of trafficking in human beings. It is also appreciated that the way it is formulated, Article 16 does not make any of the above support dependant on collaboration with law enforcement and judicial authorities in criminal proceedings. Especially the temporary stay in Ukraine for foreigners and stateless persons and the ban on holding presumed victims of trafficking in temporary detention facilities and on expelling them while their request for victim status is pending, are very positive aspects of this draft Law.
67. It is noted, however, that Article 16 does not include the recovery and reflection period for presumed victims of trafficking laid down in Article 13 of the Council of Europe Convention.<sup>32</sup> This 30 day period is intended to help presumed victims recover and escape the influence of traffickers, and take an informed decision on the extent of their collaboration with law enforcement authorities. During this period, a person shall not be expelled from a country and shall receive the authorization to stay. While the rights of presumed victims under Article 16 are much appreciated, they only last until a decision on their victims' status has been taken. In many instances, this may lead to situations where a decision denying certain people victims' status is taken before the victims, out of fear or due to existing traumas, have provided all necessary information, some of which may have been relevant for the decision on their status as victims. In order to avoid such situations, the Council of Europe Convention obliges States party to the Convention to grant presumed victims a recovery and reflection period, in which to recover, disappear from the radar of traffickers, and reflect on their situation and what their future plans are. In the interests of protecting these persons and achieving real results in the fight against trafficking, it is thus recommended to introduce a recovery and reflection period of 30 days to the draft Law.
68. Article 17 outlines the procedure for declaration, extension, lifting and loss of status of a victim of trafficking in human beings. According to par 1, local state administrations shall conduct proceedings to this effect and submit to the Special Executive Authority a request for declaration/refusal of this status within a period of three days. For this purpose, the local state administrations shall conduct interviews, collect background information and analyse data (par 2). In cases where the person concerned cannot be interviewed due to illness or mental disorder, the status shall be declared on the basis of "other data" (par 3).

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<sup>31</sup> *Ibid.*, *op. cit* note 5

<sup>32</sup> *Ibid.*

69. Given that background checks, interviews and data collection and analysis often take some time, and that individual cases may be complex, three days in which to conduct all of this appear to be a very short period of time, in particular in cases where several requests arrive at the same time. A too short deadline for examining a case may result in insufficient investigations/analysis on the side of the local state administration, or in a situation where statutory deadlines are not followed. In order to avoid both of these quite negative scenarios, it is recommended to extend the time limit for consideration of requests under Article 17 to at least a week, while stressing that the local state administrations are under the obligation to deal with such requests immediately. At least Article 17 should allow for an extension of the deadline in complex cases, in which case the local state administration shall be obliged to explain and justify the delay. Based on Article 10 par 1 of the Council of Europe Convention<sup>33</sup>, the local state administrations should at all times also take into account the special situation of women and children when identifying victims of trafficking.
70. According to Article 17 par 4, the Special Executive Authority shall decide on granting or refusing victim status to a requesting individual within 5 days from the receipt of the local state administration's request. Given the importance of this decision, it would be advisable to expand this deadline as well to at least 10 to 14 days (the deadline in the 2009 Draft was ten days).
71. Also the additional deadline of three days in which the local state administration is requested to collect additional information in case of insufficiency of materials (Article 17 par 5), appears quite short and should be expanded.
72. Under Article 17 par 7, an applicant may appeal against a refusal of victim status, according to the procedure established "by law". In the interests of clarity and foreseeability of the draft Law, it would be helpful if this provision would at least cite what kind of procedure this would lead to, and ideally also the law regulating this procedure.
73. According to Article 17 par 10, the status of victim may be lifted if it is found out that a person knowingly submitted false information or documents, which "had material weight in decision-making". Such persons shall be subject to prosecution in accordance with the effective/applicable law. It would be helpful to include in this provision which crime under the Criminal Code this person could be prosecuted for, to enhance clarity and foreseeability of the draft Law.
74. Article 18 outlines the rights of declared victims of trafficking in human beings, meaning persons who have officially obtained the status of victims of trafficking. These include the same rights granted to presumed victims of trafficking under Article 16, and additionally social assistance, compensation for damages, a one-time financial benefit, and assistance in job placement. Victims who are foreigners or stateless persons shall also benefit from free interpreters' services and permanent residence in Ukraine. Based on Article 18 par 6, assistance to victims of trafficking shall not depend on such persons' application to law enforcement authorities, participation in criminal proceedings, or on whether such person is in possession of an identification document.

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<sup>33</sup> *Ibid.*

75. As in the case of presumed victims of trafficking under Article 16, the victims' right to security mentioned in Article 18 par 1 should be expanded upon, in particular the need for confidential treatment of all information relating to them or coming from them, and the need for, as the case may be, protection of their lives and wellbeing (see pars 62-64 *supra*). Not only Article 18, but the draft Law in general needs to include a strong commitment to protect victims of trafficking by any means necessary. As discussed under par 65 *supra*, such protection should also extend to witnesses of acts of trafficking and collaborators with judicial authorities, as these persons often play a similarly important role in the fight against trafficking in human beings.
76. Under Article 18 par 1 (3), a victim of trafficking is also entitled to temporary placement of up to three months, if he/she has nowhere else to live. This period of stay may be extended by decision of a local executive authority "in view of participation of such person as a victim or witness in criminal proceedings". Despite the principle of non-conditionality of assistance laid down in par 6 of this same Article, the provision of certain continued forms of assistance thus appears to be very much linked to an individual's willingness to collaborate with prosecution/judicial authorities. Next to this apparent inconsistency within Article 18, such conditionality would also appear to run counter to Article 12 par 6 of the Council of Europe Convention<sup>34</sup>, which stresses that States party to the Convention shall adopt legislation "to ensure that assistance to a victim is not made conditional on his/her willingness to act as a witness".
77. The rationale behind such standards is simple: people who have been trafficked are naturally afraid of their traffickers and of criminal organizations which these traffickers are often part of. They thus have a quite justified fear of collaborating with law enforcement/judicial authorities, since any such participation in criminal proceedings could expose them to re-trafficking, or place in danger their life/wellbeing or the lives/wellbeing of family members. It would not be in line with basic human rights standards to deprive such people of additional assistance merely because their willingness to collaborate with state authorities is compromised by fear for their lives.
78. Thus, decisions on any type of assistance, including decisions on extending a person's stay in an institution for assistance, should be based on humanitarian reasons rather than on a person's willingness to cooperate with law enforcement/judicial authorities. Article 18 par 1 (3) should be amended accordingly, as should Article 18 par 2 (2), which similarly states that foreigners and stateless persons' temporary stay in Ukraine may be extended "in particular in view of their participation as witnesses or victims in criminal proceedings".
79. Additionally, the information provided to victims and presumed victims under Articles 18 par 1 (1) and 16 par 2 (1) respectively should also include information on the situation of the victims/presumed victims and what the realistic consequences of collaboration with the police, prosecution and judiciary would be. Only then will they be in a position to make a free and informed decision on whether or not to collaborate with the above state institutions, as required by Article 13 par 1 of the Council of Europe Convention<sup>35</sup> on the recovery and reflection period that should be granted to presumed victims of trafficking.

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

80. Next to such information, it is advisable to expand the protection of victims of trafficking by including in the draft Law a provision stating that these persons should also be exempt from punishment for possible criminal offences committed while subjected to trafficking. As required by Article 26 of the Council of Europe Convention<sup>36</sup>, this provision should clarify that an exemption shall only apply for criminal acts that the trafficking victim was compelled to commit while being trafficked.
81. Under Article 18 par 1 (4), victims are also entitled to compensation of moral and economic damages according to the procedure established by the Civil Code. For the sake of completeness, it would make sense to include here the possibility of compensation claims in criminal procedures. This would also be more in line with Article 15 par 3 of the Council of Europe Convention, which states that States party to the Convention shall provide for the right of victims for compensation from “the perpetrators”.<sup>37</sup>
82. Articles 20 and 21 deal with the return of Ukrainian victims of trafficking to Ukraine and the repatriation of foreigners to their home states respectively. The support and assistance granted to both types of trafficking victims is laudable, in particular the financial and other support granted to Ukrainian trafficking victims and the contact information provided to foreign victims. There remains one slight unclarity in Article 21 par 1, as it is not clear which “repatriation course” this provision is referring to. Unless this is due to a translation error, it is recommended to clarify this point in Article 21 par 1.
83. Aside from the general combat against trafficking in human beings, it should be noted that, this draft Law has devoted a special section, namely Section VI, to combating trafficking in children. The lawmakers are to be commended for this section, which provides special treatment for trafficked children, always bearing in mind the best interests of the child, as well as the vulnerable situation and special needs of children.
84. Article 25 focuses on assistance to children where there are grounds to believe that they are victims of trafficking, until these children have been fully “rehabilitated”. Under Article 26 par 3, foreign trafficked children identified in Ukraine shall remain in Ukraine if it is not possible to return them to their country of origin, and if “there are conditions for the child’s integration in Ukraine with respect to ensuring his/her right for health protection, education and social security”. Under par 5 of this provision, child victims of trafficking shall not be returned to their home countries if there are signs indicating that such return would not be in the child’s best interest and would threaten his/her security.
85. In addition to stating the circumstances in which children should not be returned to their homeland, it would be helpful if Article 26 would also specify which measures will be taken to ensure that these children will have a proper life in Ukraine with a proper upbringing and family life, education and housing, in line with the best interest requirements mentioned in the UN Convention on the Rights of the Child<sup>38</sup>. Article 26

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> UN Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, ratified by the Republic of Ukraine on 28 August 1991. In this context, see also Article 6 par 4 of the UN Palermo Protocol.

should specifically state that all measures taken should be guided by the best interests of the children concerned.

## **7. Liability in Counteracting Human Trafficking**

86. Section VIII of the draft Law deals with liability in counteracting trafficking in human beings. It consists of one provision, namely Article 28, which states that persons culpable of violation of legislation on counteracting trafficking in human beings shall be held liable according to the law.
87. This provision is quite vague and does not clarify which actions will constitute violations of legislation on counteracting trafficking in human beings, nor is it clear which legislation it is referring to. Further, it also does not specify which type of liability such violations will occasion, whether this will be criminal, administrative, civil or other responsibility.
88. Overall, it could be helpful for persons and entities applying the law to know which type of behaviour would constitute a violation of the law and what the consequences of such violations would be. This would not necessarily require a complete and detailed list in this draft Law, but could be achieved through specific references to other legislation. It is recommended to clarify this point in the draft Law. For example, and depending on the specificities of the Ukrainian legal system, the draft Law could stipulate that the failure of authorities to adhere to the principle of absolute confidentiality or to provide the required services within the proper amount of time, could lead to criminal, respectively administrative/disciplinary liability. Damages could be claimed before civil courts (as already stated in Article 18 par 1 (4)). These are a few examples of how the draft Law could be made more clear and foreseeable with regard to liability.

## **8. Funding and Transitional Provisions**

89. Article 29 on funding of activities in counteracting and fighting trafficking in human beings is much welcomed, as it acknowledges the need to plan for sufficient funds before adopting new legislation. The financial sources listed in this provision are numerous and also include funds of enterprises, institutions and organizations, trade unions and foundations, and contributions from legal and natural persons and “other sources”.
90. Given this wealth of donors, it would be necessary to develop a procedure for managing and reporting on such funds and ensure that this is done in a transparent manner. It should be clear to the public which activities and measures are paid for by which fund, and whether this is public money or received from private donors. While this is not mentioned anywhere in the draft Law, significant amounts of these funds should be used to financially support non-governmental organizations in their efforts to combat and prevent trafficking in human beings.
91. Perhaps the establishment of a victims’ fund, which had already been proposed in the 2009 Draft, would be helpful in collecting and managing non-state funds. The establishment of such a fund is also one of the examples mentioned in Article 15 par 4 of the Council of Europe Convention for how to guarantee that victims obtain proper

compensation.<sup>39</sup> The management of such a fund would of course need to be fully accountable for all money received and all actions undertaken. The fund could also channel assets seized from convicted traffickers.

92. Article 29 par 2 states that the list of measures to counteract trafficking in human beings shall be determined by the “State Target Program of counteraction to trafficking in human beings approved according to the established procedure”. The nature of this program is not clear, especially whether it is identical or separate from the State programme on combating trafficking in human beings, how often it is adopted and how it is developed (e.g. in collaboration with civil society). Such a program should include sources of funding, the funds per measure and deadlines for implementation.
93. As for the final and transitional provisions under Section X, the fact that this draft Law already includes changes to other legislation made necessary by the draft Law is very laudable, as are the six months’ deadlines for the adaptation of existing and adoption of new secondary legislation.
94. At the same time, it would be beneficial for the law to include a monitoring mechanism, which would allow for an assessment of its operation, particularly its efficiency and practicability, following e.g. two years of its implementation. Practice in many OSCE participating States has shown that continual revision and strengthening of laws will ensure that measures introduced by new legislation are working in practice.

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<sup>39</sup> Article 15 par 4 of the Council of Europe Convention (*op cit.* note 5) states that “ [e]ach Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23 [on sanctions and measures].

**As of May 31, 2011**

**LAW OF UKRAINE  
On Counteracting to Trafficking in Human Beings**

This Law establishes organizational and legal principles of counteracting to trafficking in human beings, main lines of the State policy in counteracting to trafficking in human beings, powers of executive authorities, procedure to declare status of victims of trafficking in human beings and procedure to grant assistance to such persons.

**Section I  
GENERAL**

**Article 1. Definitions**

For purposes of this Law, the terms provided below shall have the following meaning:

Fight against trafficking in human beings: a system of measures aimed at uncovering of trafficking cases, identification of victims of trafficking and of traffickers and prosecution of such traffickers.

Identification of a victim of trafficking: uncovering of any information, which gives grounds to believe that certain person is a victim of trafficking in human beings.

Country of origin is the country of nationality of a foreigner or the country of permanent residence of a stateless person, who is a victim of trafficking in human beings.

Institutions for assistance to victims of trafficking in human beings: centers of rehabilitation of victims of trafficking, social and psychological support centers, centers for social and psychological rehabilitation of children and shelters for children.

Prevention of trafficking in human beings is a system of measures aimed at prevention of conditions and grounds causing trafficking in human beings.

Protection of victims of trafficking: a system of measures to reinstate rights of the victims of trafficking in human beings.

Procedure to declare the status of a victim of trafficking in human beings: a set of measures when an authorized person, on the basis of received information and its analysis, compares elements of the act committed against the person with the definition of the trafficking in human beings, assesses the

likelihood of such act commission against the person and concludes that such person is a victim of trafficking in human beings.

Victim of trafficking in human beings: any person, who has been subject to trafficking in human beings and who has been declared a victim in accordance with provisions of this Law.

Return of Ukrainian citizens-victims of trafficking in human beings to Ukraine: a set of measures aimed at arranging for return of Ukrainian citizens, who have become victims of trafficking on the territory of another country, to the territory of Ukraine.

Return or retaining of a child, who is a victim of trafficking in children and is a foreigner or a stateless person: this is a set of measures aimed at ensuring, according to the child's needs, return to the country of origin or retaining on the territory of Ukraine of a child, who is a victim of trafficking in children on the territory of Ukraine and is a foreigner or a stateless person.

Counteracting to trafficking in human beings: a system of measures aimed at elimination of trafficking in human beings by means of preventing this phenomenon, fighting it and of providing assistance and protection to the victims of trafficking.

Rehabilitation of victim of trafficking in human beings: a set of medical, psychological, social, legal and other measures aimed at reinstatement of physical and mental condition and of social functions of a person, who is a victim of trafficking.

Repatriation of foreigners and stateless persons, who are victims of trafficking in human beings: a set of measures aimed at return to the country of nationality or permanent residence of foreigners and stateless persons, who became victims of trafficking in human beings on the territory of Ukraine.

Trafficking in human beings: implementation of an illegal agreement, the object of which is a human being, as well as recruitment, relocation, secreting, transfer or receipt of a human being for purpose of his/her exploitation by means of deception, blackmail, taking advantage of human being's vulnerable condition or by threat of violence, with abuse of an office or economic or other dependence of the victim on another person.

Trafficking in children: implementation of an illegal agreement, the object of which is a child, as well as recruitment, relocation, secreting, transfer or receipt of a child for purpose of his/her exploitation, independently on use of deception, blackmail, taking advantage of the child's vulnerable condition, use of violence or threat of violence, or abuse of an office or economic or other dependence on another person.

## **Article 2. Legislation on Counteracting to Trafficking in Human Beings**

The legislation on counteracting to trafficking in human beings includes Constitution of Ukraine, Criminal Code of Ukraine, this Law and other regulatory-legal acts and international treaties, which are binding for Ukraine by consent of Verkhovna Rada of Ukraine.

## **Article 3. Main Principles of Counteracting to Trafficking in Human Beings**

Activities aimed at counteracting to trafficking in human beings in Ukraine are based on the following principles:

Guaranteeing of human and civil rights and freedoms, in particular, right to respect for dignity, privacy, legal aid, reimbursement of economic and moral damages according to procedures established by law;

Respect and impartial attitude to the victims of trafficking in human beings;

Confidentiality of information concerning victims of trafficking in human beings;

Voluntary acceptance of assistance by victims of trafficking in human beings, their non-discrimination on the basis of their race, color of the skin, political, religious and other traits;

Mutual interaction of executive authorities and their interaction with public and international organizations.

If persons, who became victims or witnesses of trafficking in human beings, are children, all actions applicable to them shall be based on the principles established in UN Convention on the Rights of the Child and Optional Protocol to Convention on the Rights of the Child with regard to trafficking in children, child prostitution and child pornography.

If a person's age is unknown and there are grounds to believe that such person is a child, such person shall be deemed a child and granted special protection until his/her age is determined.

## **Article 4. Main Directions of State Policy in Counteracting to Trafficking in Human Beings**

Main directions of the State policy in counteracting to trafficking in human beings are:

Counteracting to trafficking in human beings by means of improvement of public knowledge, preventive activities, reduction of public's vulnerability and suppression of demand;

Fight against crimes related to trafficking in human beings by means of uncovering cases of trafficking, identification of persons involved in the crime and prosecution of such persons;

Granting assistance and protection to victims of trafficking by means of improvement of the system for reinstatement of their rights, rendering of a set of services, implementation of mechanism for interaction of agents in counteracting to trafficking in human beings.

**Article 5. Agents in counteracting to trafficking in human beings**

The agents in counteracting to trafficking in human beings, which conduct their activities within the scope contemplated by laws of Ukraine, are:

Special authorized central executive authority for counteraction to trafficking in human beings, central executive authority for fight against crime, central executive authorities, local executive authorities, local self-governance authorities, law enforcement authorities, diplomatic institutions of Ukraine abroad, centers of social services for families, children and youth, institutions for assistance to victims of trafficking.

**Section II**

**POWERS OF CABINET OF MINISTERS OF UKRAINE AND OF AGENTS FOR COUNTERACTING TO TRAFFICKING IN HUMAN BEINGS**

**Article 6. Powers of Cabinet of Ministers of Ukraine**

Cabinet of Ministers of Ukraine shall:

Approve National mechanism of interaction of the agents for counteracting to trafficking in human beings;

Approve rules for implementation of procedure of declaration of the status of victims of trafficking and the form of Status Declaration Certificate for victims of trafficking in human beings;

Approve the form of certificate confirming that the specific foreigner or stateless person, who became victim of trafficking in human beings on the territory of Ukraine, requested his/her status to be declared;

Establish procedure of payment of one-time benefit to victims of trafficking in human beings;

Approve model Regulation on Center for Rehabilitation of victims of trafficking in human beings, centers of social and psychological rehabilitation of children and shelters for children.

**Article 7. General Powers of Agents in Counteracting to Trafficking in Human Beings**

Agents in counteracting to trafficking in human beings, within the scope of their powers, shall undertake measures to identify victims of trafficking in human beings with their further referral to Local State Administrations and the latter, provided that person applied to them and gave his/her consent, shall notify Special Authorized Central Executive Authority for counteracting to trafficking in human beings on such person.

Agents in counteracting trafficking in human beings, which have identified a victim of trafficking, shall inform such person on his/her rights and opportunities to receive assistance and protection, in particular, on procedure to declare the status of the victim of trafficking in human beings. When appropriate, they shall provide urgent assistance according to their competence.

When necessary, agents in counteracting trafficking in human beings shall provide for training of their employees, whose service duties include contact with victims of trafficking in human beings and granting of assistance and protection to such victims.

**Article 8. Powers of Special Authorized Central Executive Authority for Counteracting to Trafficking in Human Beings**

In order to counteract trafficking in human beings, the Special Authorized Central Executive Authority for Counteracting Trafficking in Human Beings shall:

Within the scope of its powers, coordinate activities of the agents in counteracting to trafficking in human beings, to include those aimed at implementation of the National mechanism for interaction;

Monitor the agents' activities in counteracting trafficking in human beings and, based on its outcome, prepare the annual report on status of implementation of the State policy in countering trafficking in human beings;

Implement measures, which foster eradication of premises for trafficking in human beings, in particular, with regard to prevention of domestic violence and discrimination on the basis of gender;

Implement measures to improve awareness concerning counteraction to trafficking in human beings among the parents and persons replacing them and among persons, who have permanent contact with the children in domains of education, health care, culture, physical culture and sports, recreation and leisure, in judicial and law enforcement areas;

Develop and approve questionnaire with pre-set criteria for procedure to declare status of a victim of trafficking;

Make decisions with respect to declaration of status of the victim of trafficking;

Coordinate and control activities of institutions for assistance to victims of trafficking in human beings;

Develop State Target Program for countering trafficking in human beings.

Develop and submit for review to the Cabinet of Ministers of Ukraine:

National mechanism for interaction of agents in counteracting to trafficking in human beings;

Rules to implement procedure of declaration of the status of a victim of trafficking;

Form of certificate of declaration of the status of a victim of trafficking in human beings;

Form of certificate confirming that the specific foreigner or stateless person, who became victim of trafficking in human beings on the territory of Ukraine, requested his/her status to be declared;

Procedure of payment of one-time benefit to victims of trafficking in human beings.

#### **Article 9. Powers of Central Executive Authority for Fighting Crime**

In order to counteract to trafficking in human beings, the Central Executive Authority for Fighting Crimes and its structural units shall:

Identify, prevent, suppress and uncover crimes related to trafficking in human beings and undertake for this purpose detective and search operations and preventive measures envisaged by Laws of Ukraine;

Implement measures to search persons, who are hiding from inquiring, investigative and judicial authorities and evading service of criminal penalty for crimes related to trafficking in human beings;

Implement detective and search operations aimed at identification and documenting of unlawful activities of organized inter-regional (transnational) criminal groups specialized in trafficking in human beings;

Exercise a systemic comprehensive analysis of the status of prevention, uncovering and detection of crimes related to trafficking in human beings;

Organize interaction with law enforcement authorities of foreign countries in matters of counteracting to trafficking in human beings and share intelligence concerning unlawful activities of transnational criminal groups of the respective specialization.

#### **Article 10. Powers of Local State Administrations in Counteracting to Trafficking in Human Beings**

In order to counteract to trafficking in human beings, Local State Administrations shall:

Ensure implementation of social work and social services for the victims of trafficking according to Laws of Ukraine “On Social Services” and “On Social Work with Families, Children and Youth”;

Organize awareness campaigns to include participation of mass media;

Support establishment of and assistance to “hot lines”, consulting points of executive authorities and of other agents in counteracting to trafficking in human beings by consent of the latter;

Provide for dissemination of informational materials through employment centers, territorial bodies and units of the Special Authorized Authority for Migration, border crossings at the State border of Ukraine, diplomatic institutions of Ukraine abroad and other institutions;

Cooperate with public associations in matters of counteracting to trafficking in human beings;

Support implementation of procedure of declaration of the status of a victim of trafficking in human beings;

Support implementation and functioning of the National Mechanism for interaction of agents in counteracting to trafficking in human beings on respective territories.

### **Section III**

## **MECHANISMS OF PREVENTION OF TRAFFICKING IN HUMAN BEINGS**

#### **Article 11. Prevention of Trafficking in Human Beings**

Trafficking in human beings is prevented along the following lines: review of the situation, improvement of awareness, reduction of public vulnerability, suppression of demand through implementation of organizational, research, informational, educational, legal, socio-economic and other activities.

#### **Article 12. Objectives in Counteracting to Trafficking in Human Beings**

The objectives in counteracting to trafficking in human beings include the following:

Survey of condition, causes and premises of spreading of human trafficking phenomenon;

Improvement of public awareness concerning causes and impact of trafficking in human beings by means of wide-scale awareness campaigns of counteracting to trafficking in human beings among the public to include children;

Support to regulation of external and domestic labor migration and other.

## **Section IV MECHANISMS OF FIGHTING TRAFFICKING IN HUMAN BEINGS**

### **Article 13. Fight against Trafficking in Human Beings**

Trafficking in human beings is fought by the law enforcement authorities, which, within their statutory powers, implement measures to identify cases of trafficking in human beings, victims of trafficking and traffickers and to prosecute them by means of organizational, detective and search, administrative-legal, procedural, analytical-research, informational and other measures.

### **Article 14. Objectives in Fight against Trafficking in Human Beings**

Objectives in fight against trafficking in human beings include the following:

Identification of causes and premises fostering trafficking in human beings and implementation of measures to eliminate them;

Ensuring security of the persons declared victims of trafficking, of witnesses and other persons participating in criminal proceedings with regard to trafficking in human beings;

Uncovering and investigation of crimes related to trafficking in human beings;

Prosecution, to include criminal prosecution, of persons involved in trafficking in human beings;

Ensuring reinstatement of rights of victims of trafficking;

Informing the public and executive authorities with regard to outcomes of fight against trafficking in human beings.

## **Section V ASSISTANCE TO AND PROTECTION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS**

### **Article 15. National Mechanism of Interaction of Agents in Counteracting Trafficking in Human Beings**

In order to render an effective assistance to the victims of trafficking and to protect them, National Mechanism of Interaction of agents in counteracting to trafficking in human beings (hereinafter referred to as National Interaction Mechanism) shall be established.

Implementation of the National Interaction Mechanism shall include identification of needs of a victim of trafficking and of bodies or institutions capable to satisfy such needs.

In order to provide for an effective assistance to and protection of victims of trafficking, agents in counteracting to trafficking in human beings shall take into consideration age, health condition, sex and special needs of such persons.

Agents in counteracting to trafficking in human beings shall interact with each other in the process of counteracting to trafficking in human beings within the framework of implementation of the National Interaction Mechanism and cooperate with public and international organizations.

Main components of the National Interaction Mechanism are:

Exchange of information, on the basis of confidentiality, concerning cases of trafficking in human beings, premises and causes of such trafficking, methods used by the traffickers, assistance required for victims of trafficking;

Joint development of programs and plans of counteracting to trafficking in human beings;

Joint implementation of measures aimed at counteracting to trafficking in human beings;

Exchange of best practices in counteracting to trafficking in human beings.

#### **Article 16. Right of Person, Who Requested For Declaration of His/her Status of Victim of Trafficking**

A person, who deems herself/himself a victim of trafficking in human beings, has the right to apply to a Local State Administration requesting declaration of his/her status of a victim of trafficking and to law enforcement authorities for protection of his/her rights and freedoms.

Before the decision on declaration of the person's status of a victim of trafficking is made, the person, who has requested declaration of his/her status of a victim of trafficking, has the right for his/her personal security, respect and free receipt of:

Information concerning his/her rights and opportunities in the language that such person understands;

Medical, psychological, legal and other assistance independently of the place of his/her residence;

Provisional placement in facilities for assistance to the victims of trafficking.

A foreigner or a stateless person, who has requested declaration of his/her status of a victim of trafficking on the territory of Ukraine, in addition to the rights envisaged by Part 2 of this Article and before the decision on declaration of such person's status of a victim of trafficking is made, has also the right to:

Interpreter's services at no charge;

Temporary stay in Ukraine according to the procedure established by the effective legislation.

A foreigner or a stateless person, who has requested declaration of his/her status of a victim of trafficking on the territory of Ukraine, shall receive a

certificate to confirm the fact of request for declaration of such status and of initiation of the respective proceedings; such certificate shall constitute grounds for such person's registration with territorial bodies and units of the Special Authorized Authority for Migration Matters.

A person, who requested declaration of his/her status of a victim of trafficking, may not be held in temporary detention facilities, except for the cases envisaged by law, nor may such person be expelled out of Ukraine before declaration of his/her status of a victim of trafficking.

### **Article 17. Procedure of Declaration, Extension, Lifting and Loss of the Status of A Victim of Trafficking In Human Beings**

Local State Administrations, within three days from receipt of information concerning a victim of trafficking, shall conduct proceedings to declare such person's status and submit to the Special Authorized Central Executive Authority for counteracting to trafficking in human beings a request for declaration or refusal of declaration of such person's status of a victim of trafficking together with an opinion prepared on the basis of proceedings to declare status of a victim of trafficking.

In order to conduct proceedings to declare status of a victim of trafficking, Local State Administrations shall interview such person, collect such person's background information and analyze all obtained data. The person shall be interviewed on the basis of the questionnaire containing criteria of procedure to declare the status of a victim of trafficking. A copy of the filled in questionnaire shall be annexed to the request for declaration or refusal of declaration of the status.

In the event when the person cannot be interviewed in view of such person's chronic mental disease, temporary mental disorder, dementia or other ill condition or minor age, the status of such person shall be declared on the basis of other data.

Special Authorized Central Executive Authority for counteracting to trafficking in human beings shall decide on declaration or refusal of declaration of the status of a victim of trafficking within five days from receipt of the request from the Local State Administration on the basis of materials mentioned in Parts One and Two of this Article.

If such materials are not sufficient to make a decision, Special Authorized Central Executive Authority for counteracting to trafficking in human beings shall, without delay, order Local State Administration to collect additional information within three working days.

If declaration of the status of a victim of trafficking has been decided, the person shall be issued respective certificate.

If the declaration of the status has been refused, the applicant may appeal against such decision according to the procedure established by law.

The status of a victim of trafficking is declared for the term of up to one year.

The term of validity of the status of a victim of trafficking may be extended by decision of Special Authorized Central Executive Authority for counteracting to trafficking in human beings on the basis of motivated request by Local State Administration. The decision shall be made within five working days from receipt of the request.

The status of a victim of trafficking of a person can be lifted if it is found out that the decision on declaration or extension of the status was based on knowingly submitted false information or documents, which had material weight in decision-making. Persons, who submitted such information or documents, may be subject to prosecution in accordance with the effective law.

The status of a victim of trafficking is lost in the event of expiration of the status validity term, for which such status was declared or extended according to Part Eight of this Article.

#### **Article 18. Rights of the Victim of Trafficking in Human Beings**

Any person, who has been declared a victim of trafficking in human beings, has the right to his/her own security, respect and free receipt of:

Information concerning such person's rights and opportunities in a language that such person understands;

Medical, psychological, social, legal and other required assistance;

Temporary placement, if the victim wishes so and does not have where to live, in institutions for assistance to the victims of trafficking for the term of up to three months, which, when necessary, may be extended by decision of the local executive authority in view of participation of such person as a victim or a witness in criminal proceedings;

Compensation of economic and moral damages at the cost of persons, who caused such damage, according to the procedure established by Civil Code of Ukraine;

One-time benefit in amount of five minimal salaries;

Assistance in job placement, implementation of the right to education and in professional training.

Foreigners and stateless persons, who have been declared victims of trafficking in human beings on the territory of Ukraine, in addition to the rights contemplated by Part One of this Article, also have the right to:

Interpreter's services at no charge;

Temporary stay in Ukraine for up to three months term, which may be extended when necessary, in particular in view of their participation as victims or witnesses in criminal proceedings;

Permanent residence on the territory of Ukraine according to the procedure established by the effective law.

Certificate on the person's status of a victim of trafficking shall constitute grounds for such person's registration with territorial bodies and units of the Special Authorized Authority for Migration within the jurisdiction of the residence of the victim of trafficking.

If the Special Authorized Central Authority for counteracting to trafficking in human beings has motivated grounds to believe that the life, physical or mental health or freedom and integrity of the victim, who is a foreigner or a stateless person, will be threatened in case of such person's return to the country of his/her origin after expiration of the term of such person's stay, the Special Authorized Central Executive Authority for counteracting to trafficking in human beings shall decide on extension of the status of the victim of trafficking, which shall constitute grounds to receive a permit to stay on the territory of Ukraine until the above circumstances end.

The person, who was allowed to stay in Ukraine according to Part Four of this Article and who has continuously lived on the territory of Ukraine during three years from the day of such person's status of a victim of trafficking was declared, shall have the right to receive immigration permit according to the procedure established by law.

Rendering of assistance to a victim of trafficking shall not depend on:

Whether such person has applied to law enforcement authorities and on his/her participation in criminal proceedings;

Whether such person has identification document.

### **Article 19. Institutions for Assistance to Victims of Trafficking in Human Beings**

In order to ensure implementation of the rights contemplated by this Law, the victims of trafficking in human beings may be referred to one of the network's centers for social services to families, children and youth, centers for rehabilitation of victims of trafficking and centers for social-psychological assistance.

In order to render assistance to the children-victims of trafficking, such children may be placed to the centers for children's social-psychological rehabilitation and to shelters for children for purposes of psychological assistance and rehabilitation according to the procedure established by the effective legislation.

Conditions of stay and services rendered by the existing network of centers of social services for families, children and youth, centers of rehabilitation of victims of trafficking in human beings and centers of social-psychological assistance, as well as centers for social-psychological rehabilitation of children and shelters for children are regulated by model regulations on the aforementioned institutions.

**Article 20. Return of Victims of Trafficking in Human Beings to Ukraine**

When necessary, Ukrainian diplomatic institutions abroad shall issue to citizens of Ukraine respective documents required to return to Ukraine and provide for necessary consulting and legal assistance.

In order to ensure return of the Ukrainian citizens to Ukraine, Public Authorities of Ukraine shall cooperate with respective competent authorities of foreign states and international organizations.

In the event when Ukrainian citizens-victims of trafficking have no money to return to Ukraine, Ukrainian diplomatic institutions abroad, by consent of Ministry of Foreign Affairs of Ukraine, shall make decision to grant them financial support from the State Budget special fund (from proceeds from consulate activities) and also grant support in return of such persons to Ukraine.

**Article 21. Repatriation of Foreigners and Stateless Persons-Victims of Trafficking in Human Beings**

After the rehabilitation course and in accordance with this Law, the foreigner or stateless person may be repatriated by the procedure established by the legislation.

When necessary, migration authorities shall send a request to such person's country of origin to confirm his/her nationality or his/her right for permanent residence on its territory at the point of arrival to Ukraine.

When necessary, migration authorities, with participation of other agents in counteracting trafficking in human beings and non-governmental and international organizations, shall provide to the foreigner or stateless person subject to repatriation contact information on the institutions, which may help them in their repatriation destination country, such as law enforcement authorities, non-governmental organizations, legal and social protection institutions.

**Section VI**

**COUNTERACTION TO TRAFFICKING IN CHILDREN**

**Article 22. Special Principles of Counteraction to Trafficking in Children**

In addition to the basic principles of counteracting to trafficking in human beings provided for by Article 4 of this Law, the counteraction to trafficking in children shall be based on the following special principles:

Respect for rights of the child;

Respect for opinion of the child-victim of trafficking with respect to measures applied to such child with consideration of the child's age, health condition, intellectual and physical development and interests;

Explanation to the child-victim of trafficking of his/her rights and obligations in a form understandable for the child;

Respect for confidentiality of the information on child's identity and of the information, which would allow to declare the child's status of a victim of trafficking in children.

### **Article 23. Prevention of Trafficking in Children**

Agents in counteracting to trafficking in human beings shall implement, within their competence, the required social, legal, psychological-pedagogical and other measures aimed at identification and elimination of causes and premises fostering to the trafficking in children.

Agents in counteracting to trafficking in human beings shall implement, within their competence, measures to identify children-victims of trafficking and conduct preventive work with the children and their parents or persons replacing them.

Agents in counteracting to trafficking in human beings shall develop and implement, within their competence, training and educational programs in educational institutions to counteract trafficking in children.

Agents in counteracting to trafficking in human beings shall implement, within their competence, measures to improve awareness concerning counteraction to trafficking in children of the parents and persons replacing them and of persons having continuous contact with children in domains of education, health protection, culture, physical culture and sports, recreation and leisure, in judicial and law enforcement branches.

### **Article 24. Information concerning Children-Victims of Trafficking**

Any person, who becomes aware of a child, who has become victim of trafficking in children, shall, without delay and in confidentiality, notify on such child law enforcement authorities and Local State Administration within the jurisdiction where such child is found.

In case of any suspicions concerning involvement of the parent or persons replacing them in the trafficking in the child, the persons having continuous contact with children in domains of education, health, culture, physical culture and sports, recreation and leisure, in judicial and law enforcement sectors shall duly notify the law enforcement authorities according to the procedure established by law.

### **Article 25. Rendering Assistance to the Children-Victims of Trafficking**

State shall ensure assistance to the child from the moment when grounds to believe that such child is a victim of trafficking are found and until the full completion of the child's rehabilitation.

Upon receipt of the information on a child-victim of trafficking, Local State Administration, on whose territory the child was found, shall immediately identify such child, assess circumstances and adopt a plan of priority measures to assist the child for the period of time until decision to declare the child a victim of trafficking is made.

In the event if the child-victim of trafficking has the status of an orphan or a child deprived of parental care, Local State Administration shall immediately decide on the child's placement.

Centers for social-psychological rehabilitation and shelters for children, with involvement of educational and health institutions, shall develop and implement individual program of assistance to the child-victim of trafficking.

Agents in counteracting to trafficking in human beings shall ensure, within their competence, implementation of the rights of the children-victims of trafficking.

#### **Article 26. Return or Retaining of the Child-Victim of Trafficking**

If a child-victim of trafficking, who is a foreigner or a stateless person, is found in Ukraine, Special Authorized Central Executive Authority for counteracting to trafficking in human beings, by proposal of Local State Administration, shall pass one the following decisions:

The child shall be return to the country of his/her origin;

The child shall be retained in Ukraine.

Any child-victim of trafficking shall be subject to return to his/her country of origin, provided that his/her parents or persons replacing them or the institution for children's protection of such child's country of origin have agreed to and can undertake the responsibility for the child and grant to him/her appropriate protection and assistance.

Any child-victim of trafficking shall be retained in Ukraine if it is not possible to return such child to the country of his/her origin and provided that there are conditions for the child's integration in Ukraine with respect to ensuring his/her right for health protection, education and social security.

When deciding on return or retaining of the child, the child's opinion shall be taken into account with consideration of such child's age, intellectual development and interests.

Any child-victim of trafficking shall not be subject to return to his/her country if there are signs indicating that such return will not meet the child's best interests and will threaten his/her security.

## **Section VII INTERNATIONAL COOPERATION**

### **Article 27. International Cooperation in Counteracting to Trafficking in Human Beings**

Ukraine is a participant to the international cooperation in counteracting to trafficking in human beings at the national, regional and local levels.

Agents in counteracting to trafficking in human beings have the right to enter into agreements on cooperation, to establish direct links with respective authorities of foreign States and international organizations according to the legislation of Ukraine.

International cooperation of agents in counteracting to trafficking in human beings shall be defined in accordance with the international treaties of Ukraine.

State shall support and stimulate cooperation in counteracting to trafficking in human beings.

International organizations may engage, according to international procedures, in development and implementation of joint programs for counteracting to trafficking in human beings.

## **Section VIII LIABILITY IN COUNTERACTING TO TRAFFICKING IN HUMAN BEINGS**

### **Article 28. Liability for Violation of the Legislation on Counteracting To Trafficking In Human Beings**

Persons culpable of violation of the legislation on counteracting to trafficking in human beings shall be held liable according to the law.

## **Section IX FUNDING AND SOURCES TO COVER THE COST OF MEASURES AIMED AT COUNTERACTING TO AND FIGHTING AGAINST TRAFFICKING IN HUMAN BEINGS**

### **Article 29. Funding of Activities in Counteracting to and Fighting against Trafficking in Human Beings**

Counteracting to and fighting against trafficking in human beings, as well as rendering of assistance to victims of trafficking includes a number of measures, which are funded at the cost of State and local budgets, funds of enterprises, institutions and organizations, trade unions and foundations, voluntary contributions of legal and natural persons and from other sources.

The list of measures to counteract to trafficking in human beings shall be determined by the State Target Program of counteraction to trafficking in human beings approved according to the established procedure.

## **Section X FINAL AND TRANSITIONAL PROVISIONS**

1. This Law shall become effective from 1 January 2012.
2. Amend the following legal-regulatory acts of Ukraine:
  - 1) In Criminal Code of Ukraine (Bulletin of Verkhovna Rada of Ukraine (BVRU), 2001, N 25-26, page 131), title and paragraph one of article 149 shall read as follows:

"Article 149. Trafficking in Human Beings  
Implementation of an illegal agreement, the object of which is a human being, as well as recruitment, relocation, secreting, transfer or receipt of a human being for purpose of his/her exploitation by means of deception, blackmail or taking advantage of human being's vulnerable condition".
  - 2) In Code of Criminal Procedure of Ukraine, Part Two Article 20, after words "in cases concerning sexual crimes" shall be complemented with words "in cases concerning trafficking in human beings".
  - 3) In Law of Ukraine "On Immigration" (Bulletin of Verkhovna Rada of Ukraine (BVRU), 2001, N 41, page 197):
    - a) Part Two Article 4 shall be complemented with Point 8 reading as follows: "persons, who have resided continuously on the territory of Ukraine during three years from the day of their status of a victim of trafficking was declared".
    - б) Part Seven Article 9 shall be complemented after Point 7 with a new Point reading as follows: "for persons indicated in Point 8 Part Two Article 4 of this Law, a copy of the document confirming declaration of the person a victim of trafficking and the document confirming the fact of the person's continuous residence on lawful grounds on the territory of Ukraine during three years from the day of declaration of such person's status of a victim of trafficking". In this connection, Points from Eight to Ten shall be deemed Points from Nine to Eleven.
  - 4) In Law of Ukraine "On Social Services (Bulletin of Verkhovna Rada of Ukraine (BVRU), 2003, N 45, page 358):
    - a) Part Two Article 1, after the word "violence", shall be complemented with the words "circumstances caused by implications of trafficking in human beings".
    - б) Parts 7 and 8 of Article 1, after the words "who became victims of physical or psychological violence" and "who were subject to ill-treatment and

violence” shall be complemented with the words “and trafficking in human beings”.

5) In Law of Ukraine “On Social Work with Families, Children and Youth” (Bulletin of Verkhovna Rada of Ukraine (BVRU, 2001, N 42, page 213), Part 10 Article 7 and Part 1 Article 9, after the words “who were subject to ill-treatment and violence” and “domestic violence and ill-treatment of children” shall be complemented with the words “trafficking in human beings”.

3. Cabinet of Ministers of Ukraine, within six months after this Law has become effective, shall:

- 1) Bring its legal-regulatory acts in compliance with this Law;
- 2) Within its competence, provide for adoption of legal-regulatory acts arising from this Law;
- 3) Provide for revision by Ministries and other executive authorities of their legal-regulatory acts and for bringing them in compliance with this Law.

**Chairman of Verkhovna  
Rada of Ukraine**