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### ***Legal aspects of combat against human trafficking in the Republic of Belarus***

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## **1. Participation of Belarus in international treaties that serve as a basis for combat against trafficking in human beings**

Belarus joined a number of international treaties aimed at combat against slavery and human trafficking. During the Soviet period Belarus signed the 1926 Convention “On slavery”<sup>1</sup>, 1948 Universal Declaration of Human Rights<sup>2</sup> and 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery<sup>3</sup>, International Covenant on Civil and Political Rights<sup>4</sup> adopted by the UN General Assembly on 16 December 1966<sup>5</sup>.

Relying on the principles set forth in these international legal documents, the Constitution of Belarus states that a person, his or her rights, freedoms and guarantees of their implementation are recognized as the highest value for society and state (article 1 of the Constitution), and under article 25 of the Constitution the state guarantees freedom, inviolability and dignity of a person<sup>6</sup>.

Let us specifically mention that Belarus also joined a number of international acts protecting children from all forms of sexual exploitation (that is considered a contemporary form of slavery and is equated with forced labor) and sexual seduction: 1989 Convention on the Rights of the Child<sup>7</sup>, 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict<sup>8</sup>, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography<sup>9</sup>, 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour<sup>10</sup>.

In the field of combat against trafficking in women Belarus joined the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>11</sup>, 1979 UN Convention on the Elimination of All Forms of Discrimination against Women<sup>12</sup>. Let us note that all the main provisions of these international treaties found adequate reflection in the current criminal legislation of Belarus. Thus, there are such criminal offenses as human trafficking for the purpose of

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<sup>1</sup> Ratified by the Regulation of the Belorussian Cabinet of Ministers of 27.08.1956 No. 509 “On Accession of the Belorussian SSR to the Convention on Slavery”.

<sup>2</sup> Declaration in article 4 announced complete ban on slavery: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”.

<sup>3</sup> Ratified by the Decree of the Supreme Council Presidium of the Republic of Belarus of 30.04.1957 “On Ratification of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery”.

<sup>4</sup> Article 8 of the Covenant declared the ban on slavery, slave trade, and servitude.

<sup>5</sup> Ratified by the Decree of the Supreme Council Presidium of the Republic of Belarus of 05.10.1973 “On ratification of the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights”.

<sup>6</sup> Constitution of the Republic of Belarus of 1994 (with amendments adopted at republican referendums on 24.11.1996 and 17.10.2004).

<sup>7</sup> Ratified by the Regulation of the Supreme Council of the Republic of Belarus of 28.07.1990 No. 217-XII “On ratification of the Convention on the Rights of the Child”.

<sup>8</sup> The Law of the Republic of Belarus of 12.12.2005 No. 67-Z “On Accession of the Republic of Belarus to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict”.

<sup>9</sup> The Law of the Republic of Belarus of 03.12.2001 No. 65-Z “ON Accession of the Republic of Belarus to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”.

<sup>10</sup> Ratified by the Law of the Republic of Belarus of 11.07.2000 No. 407-Z “On Ratification of the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182)”.

<sup>11</sup> Ratified by the Regulation of the Cabinet of Ministers of the Belorussian SSR of 15.06.1956 No. 323 “ON Accession to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others”.

<sup>12</sup> Ratified by the Decree of the Supreme Council Presidium of the Republic of Belarus of 22.12.1980 No. 728-H “On Ratification of the Convention on the Elimination of All Forms of Discrimination against Women”.

prostitution, procurement (including with a purpose of prostitution), inducement of another person to prostitution (including with this person's consent), exploitation of prostitution by third persons (including with consent of exploited persons), organization and operation of brothels (for use with a purpose of prostitution).

In 2003 Belarus joined the UN Convention against Transnational Organized Crime of 2000<sup>13</sup> and two additional protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air. The main provisions of the Convention found their reflection in the Criminal Code of Belarus. At the same time the issue of criminal liability for legal persons has not yet been resolved. Possibility of such liability is envisaged in paragraph 2 of article 10 of the 2000 UN Palermo Convention. Under Belarusian Criminal Code only a physical person can be a subject. Only physical persons holding corresponding positions are responsible for criminal deeds associated with activities of a legal person. At the same time majority of crimes associated with human trafficking are most often committed using legal persons – tourist agencies, matrimonial agencies, employment agencies, modeling agencies etc. Perpetrators use them obtain foreign passports and visas, search for persons to be sold and for potential buyers.

## **2. Legal foundations of combat against human trafficking at the regional level of CIS**

Agreement on Cooperation of CIS Member States in Combat against Trafficking in Human Beings, Human Organs and Tissues<sup>14</sup> was adopted in 2005. In addition to that, the Inter-Parliamentary Assembly of CIS Member States adopted a model law “On Counteraction to Human Trafficking” in 2008<sup>15</sup>.

The indicated international normative acts are meant to ensure reliable protection from infringements of life and health, rights and freedoms, honor and dignity, as well as create efficient mechanisms for combat against human trafficking and associated deeds. They offer a corresponding terminology based on generally recognized principles of international law in this field.

Agreement on Cooperation of the Ministries of Interior (Police) of the CIS Member States in combat against human trafficking was concluded in 2010, in order to create efficient mechanisms for interaction in combat against human trafficking, its prevention and suppression<sup>16</sup>.

## **3. National legislation of Belarus**

### **3.1 Legal policy of Belarus in the field of combat against human trafficking and associated crimes**

Measures to combat human trafficking in Belarus are developed and carried out in accordance with the state program of counteraction to human trafficking, illegal migration and associated illegal actions for 2011-2013<sup>17</sup>. According to the State Program, counteraction to human trafficking and associated

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<sup>13</sup> Ratified by the Law of the Republic of Belarus of 03.05.2003 No. 195-Z “On Ratification of the United Nations Convention against Transnational Organized Crime” (version of 20.06.2008).

<sup>14</sup> Concluded in Moscow on 25.11.2005. Agreement was approved by the Regulation of the Belarusian Cabinet of Ministers of 09.08.2006 No. 1022.

<sup>15</sup> Regulation of the Inter-Parliamentary Assembly of the CIS Member States of 03.04.2008 No. 30-11 “ON the Model Law “On Counteraction to Human Trafficking”.

<sup>16</sup> Concluded in St. Petersburg on 17.09.2010. Agreement was approved by the Regulation by the Belarusian Council of Ministers of 18.02.2011 No. 210.

<sup>17</sup> Decree of the Belarusian President on 2 October 2010 No. 518 “On the State Program of Counteraction to Human Trafficking, Illegal Migration and Associated Illegal Actions for 2011-2013”.

illegal actions (hereinafter – human trafficking) is recognized as one of priority activities of governmental agencies ensuring national security, public interests, rights, freedoms and legal interests of citizens. It envisages measures to counteract human trafficking at the national level that were developed taking into account the experience of national public agencies (organizations), as well as advanced international practices in this field.

Specific measures to combat human trafficking and set up a system of measures to protect and rehabilitate human trafficking victims in Belarus are regulated by Law No. 350-Z<sup>18</sup> 2012<sup>19</sup>. This Law offers the following main terms and definitions: human trafficking victim, organization involved in human trafficking, crimes associated with human trafficking, counteraction to human trafficking, trafficking in human beings, exploitation<sup>20</sup>. The Law No. 350-Z defines subjects counteracting human trafficking<sup>21</sup>, as well as their scope of authority in the field of combat against human trafficking<sup>22</sup>; and regulates activities of non-governmental, international and foreign organizations in this field<sup>23</sup>.

The Law No. 350-Z determines measures to prevent human trafficking. These measures include licensing of certain types of activity<sup>24</sup>; special requirements with regards to activities of modeling<sup>25</sup> and tourist agencies<sup>26</sup>; regulation of human trafficking prevention measures in the field of information<sup>27</sup> and education<sup>28</sup>.

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<sup>18</sup> The Law of the Republic of Belarus of 07.01.2012 No.350-Z “On Counteraction to Human Trafficking” // National registry of legal acts of the Republic of Belarus, 24.01.2012, No. 10, 2/1902.

<sup>19</sup> Before that law this field was regulated by the Decree of the Belarusian President of 09.03.2005 No. 3 “On Some Measures to Counteract Human Trafficking” and the Decree of the Belarusian President of 08.08.2005 No. 352 “On Prevention of Human Trafficking Consequences”.

<sup>20</sup> Article 1 of the Law No. 350-Z 2012.

<sup>21</sup> Ministry of Interior bodies, state security agencies, border service, prosecutor’s office, Investigating Committee of the Republic of Belarus (article 8 of the Law No. 350-Z 2012).

<sup>22</sup> Articles 6 – 9 of the Law No. 350-Z.

<sup>23</sup> Articles 10 – 11 of the Law No. 350-Z.

<sup>24</sup> Licensing of the following activities: 1) associated with employment of Belarusian citizens outside Belarus; 2) associated with collection and dissemination, including in the Internet, of information on physical persons for the purpose of matchmaking (activities of marriage agencies) – article 14 of the Law No. 350-Z 2012.

<sup>25</sup> Thus, there is a strict procedure of competitive selection of candidates for participation in advertising projects or subsequent employment (castings) – part 1, 2 article 15 of the Law No. 350-Z.

<sup>26</sup> Tourist agencies are obliged to submit to the bodies of internal affairs the information about Belarusian citizens who went on a tour as part of an organized group and did not return to the country after its end, within 5 working days after the group’s return – part 3 article 15 of the Law No. 350-Z 2012.

<sup>27</sup> A crucial measure for prevention of trafficking in children is envisaged in par. 2 of article 16 of the Law No. 350-Z for educational institutions and shared Internet access facilities – ban on providing minors with Internet access to information that is aimed at assisting illegal migration, human trafficking and associated crimes; besides, it is forbidden to publish announcements on employment and study of citizens outside Belarus without coordination with the Ministry of Interior and the Ministry of Education (part 5 article 16 of the Law No. 350-Z);

Belarusian Ministry of Interior is obliged to publish in the media and the Internet information on legal persons and individual entrepreneurs who have licenses to carry out employment activities. The Ministry of Interior is also supposed to publish the list of organizations recognized by the Belarusian Supreme Court as involved in human trafficking (part 3 of article 16 of the Law No. 350-Z).

<sup>28</sup> Thus, it is forbidden for persons, who earlier committed crimes against sexual integrity or sexual freedom, to occupy positions associated with pedagogic activities and instruction with regards to children, as well as to occupy other positions, professions associated with permanent work with children (par. 1.1 part 1 of article 17 of the Law No. 350-Z);

Belarusian citizens, who study in institutions of the Belarusian education system, can be delegated to other countries to study and (or) participate in the course of the academic year in sports, cultural and other mass events **only based on the written permission** of heads of organizations where these citizens study (part 2 of article 17 of the Law No. 350-Z);

Legal persons and individual entrepreneurs are obliged to submit to citizenship and migration agencies the information on citizens studying in institutions of the Belarusian education system and delegated to other countries to study and (or)

The Law No. 350-Z establishes the system of measures for protection and rehabilitation of human trafficking victims<sup>29</sup>. It includes:

1. ensuring safety of such victims and their family members within the criminal proceedings;
2. social protection and rehabilitation of victims;
3. assistance rendered by diplomatic missions and consular offices<sup>30</sup>.

It is important to mention that human trafficking victims cannot be deported. Thus, if a foreign national or stateless person is a human trafficking victim or witness in criminal proceedings related to human trafficking or crimes associated with human trafficking or assists law enforcement agencies<sup>31</sup>, expulsion or deportation of such persons is suspended until the judgment is passed (verdict is delivered) for this criminal case<sup>32</sup>.

Legal norms envisaged in article 4 of the Law No. 350-Z “Protection and Rehabilitation of Human Trafficking Victims” are aimed at ensuring security of Belarusian citizens going abroad, as well as at rehabilitation of violence victims.

The Law No. 350-Z stipulates the status of centers for protection and assistance to human trafficking victims. These centers are institutions created by international or foreign organizations<sup>33</sup>, as well as non-governmental organizations to offer temporary stay facilities for human trafficking victims, rendering them legal, psychological and other assistance, ensuring their safety and protection. Law-enforcement agencies guard these centers, in order to ensure safety of human trafficking victims<sup>34</sup>. Another normative act aimed at support of human trafficking victims is the Regulation of the Belarusian Ministry of Healthcare of 28.04.2012 No. 41<sup>35</sup> that offers a list of medical services rendered free of charge to the indicated categories of persons.

Belarusian system of protection and re-socialization of human trafficking victims has a flaw: there is no special fund for assistance to human trafficking victims. At present they get compensation as crime victims within the criminal proceedings<sup>36</sup>. Such fund could be formed on the basis of proceeds from confiscated property of human traffickers.

International and national practice of criminal investigation into activities of human traffickers demonstrates that from the moment when the crime was revealed and until the sentencing there is a need for a special mechanism for interaction of law-enforcement agencies with human trafficking victims

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participate in the course of academic year in sports, cultural and other mass events (par. 3.2 part 3 article 17 of the Law No. 350-Z).

<sup>29</sup> Chapter 4 “Protection and rehabilitation of human trafficking victims”.

<sup>30</sup> Article 18 “Measures to protect and rehabilitate human trafficking victims”.

<sup>31</sup> At the same time measures to protect and rehabilitate human trafficking victims are not applied, and the measures that are applied are to be cancelled (terminated), if the human trafficking victim interferes with preliminary investigation or court proceedings dealing with human trafficking or associated crime – part 2 of article 18 of the Law No. 350-Z.

<sup>32</sup> Par. 1 of article 22 of the Law No. 350-Z.

<sup>33</sup> Within projects of international technical assistance.

<sup>34</sup> Article 21 of the Law No. 350-Z.

<sup>35</sup> “On establishing the list of necessary medical services rendered by public healthcare organizations, including in the hospital setting, to human trafficking victims regardless of their place of permanent residence”.

<sup>36</sup> The Code of the Republic of Belarus of 16.07.1999 No. 295-Z (version of 13.07.2012), Criminal Procedural Code of the Republic of Belarus, chapter 48 “Proceeding on compensation of harm inflicted on a physical or legal person by illegal actions of the body in charge of the criminal proceedings” // National registry of legal acts of the Republic of Belarus. – 25.08.2000. – No. 77-78, 2/71.

ensuring the special status of these complainants in the criminal proceedings. At the same time Belarusian criminal legislation allows applying general measures to ensure safety of witnesses in this context<sup>37</sup>.

The institute of National Rapporteur on Human Trafficking was established, in order to improve the mechanism of international cooperation in the field of combat against human trafficking. These functions are carried out by the Belarusian Minister of Interior. The National Rapporteur interacts with other states and international organizations in Belarus, submits an annual report to the Belarusian Council of Ministers on human trafficking, evaluates efficiency of undertaken measures and offers recommendations on improvement of legislation<sup>38</sup>.

### **3.2 Liability of physical and legal persons involved in human trafficking and (or) associated offenses**

Both physical persons and organizations can be subjects of liability for human trafficking and associated offenses. Citizens can be held liable under the following articles of the Belarusian Code on Administrative Offenses: article 9.23 “Violation of procedure and terms of employment outside the Republic of Belarus by citizens of the Republic of Belarus, foreign nationals and stateless persons permanently residing in the Republic of Belarus”, article 23.65 “Illegal castings”, article 12.15 “Violation of legislation on advertising”, part 3 of article 22.16 “Violation of requirements to the use of the national segment of the Internet”, part 5 of article 12.7 “Illegal entrepreneurial activity”.

In Belarus there is property and licensing responsibility of organizations<sup>39</sup> involved in human trafficking. Thus, activities of organizations associated with human trafficking<sup>40</sup> are banned, such organizations are to be liquidated and their property is confiscated. Funds received from selling the confiscated property are used to compensate for the damage caused to human trafficking victims, as well as to finance programs of counteraction to human trafficking, support non-governmental and other organizations established for work with human trafficking victims. Operation of organizations involved in human trafficking is suspended following the decision of the Belarusian Prosecutor General and is subsequently terminated following the ruling of the Belarusian Supreme Court based on request of the Prosecutor General<sup>41</sup>. Organization recognized as involved in human trafficking is included in the corresponding list to be published in the mass media<sup>42</sup>.

Operation of foreign and international organizations involved in human trafficking can be terminated following the ruling of the Belarusian Supreme Court. This ruling results in the ban on opening of offices of such organizations in Belarus, while foreign nationals and stateless persons involved in human trafficking or associated offenses are denied registration or extension of stay and their period of temporary stay in the country can be reduced, they can also be denied permits for temporary and permanent residence in Belarus or such permits can be annulled<sup>43</sup>.

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<sup>37</sup> Chapter 8 of the Criminal Procedural Code of the Republic of Belarus “Measures to ensure safety of participants of the criminal proceedings and other persons”.

<sup>38</sup> Article 26 of the Law No. 350-Z.

<sup>39</sup> Including foreign and international ones.

<sup>40</sup> In case of their registration in the territory of Belarus.

<sup>41</sup> Article 29 of the Law No. 350-Z.

<sup>42</sup> Procedure of preparation and publication of the list of organizations involved in human trafficking is established by the Regulation of the Belarusian Cabinet of Ministers of 08.05.2012 No. 427 “On Procedure of Preparation and Publication of the List of Organizations Involved in Human Trafficking” // National registry of legal acts of the Republic of Belarus. – 16.05.2012. – No. 55, 5/35672.

<sup>43</sup> Article 30 of the Law No. 350.

### 3.3 Criminal norms aimed at combat against human trafficking and crimes associated with human trafficking

Belarusian legislators for a long time did not think it was necessary to introduce criminal liability for slavery and servitude. Only in 2008 article 181-1 “use of slave labor” fully corresponding to the norms of international law was introduced into the Criminal Code of Belarus. It envisages liability for the use of slave labor or other forms of human exploitation. At the same time one should note that having introduced criminal liability for the use of slave labor legislators did not interpret the notions ‘slavery’, ‘slave labor’, ‘other form of exploitation’. We presume that terminology borrowed from international legal acts ought to be explained in the national law. Besides, due to flaws in the legal structure of the norm envisaged in article 181-1 of the Criminal Code no single person was convicted from the moment this article was enacted.

Other provisions of international norms aimed at combatting slavery and human trafficking were also introduced into the Belarusian criminal legislation. Thus, the following Criminal Code articles are devoted to combat against crimes associated with slavery: article 181 “Human trafficking”<sup>44</sup>, article 182 “Abduction of a person”, article 183 “Illegal imprisonment”, article 291 “Hostage taking”.

Belarusian legislation guarantees unavoidability of criminal liability for human trafficking, stipulating it in par. 2 of article 27 of the Law No. 350-Z. It states that unwillingness or inability of the human trafficking victim to change his or her antisocial behavior caused by human trafficking or associated crime does not exclude liability of persons who committed human trafficking or associated crimes and cannot be regarded as a mitigating circumstance.

The main provisions of international legal acts protecting children from sexual exploitation found reflection in the Belarusian Criminal Code that envisages criminal liability for rape of an a fortiori underage person or minor (part 2, 3 of article 166 of the Criminal Code); violent actions of sexual nature committed with regards to an a fortiori underage person or minor (part 2, 3 of article 167 of the Criminal Code); sexual intercourse and other actions of sexual nature with a person who has not yet reached the age of 16 (article 168 of the Criminal Code); lewd acts (article 169 of the Criminal Code); engagement of an underage person in antisocial behavior (article 173 of the Criminal Code), engagement of an underage person in prostitution or forcing to continue prostitution (part 2 of article 171-1 of the Criminal Code); production and dissemination of pornographic materials or items of pornographic nature with an image of an underage person (article 343-1 of the Criminal Code), human trafficking involving an a fortiori underage person (par. 1 part 2 of article 181 of the Criminal Code), as well as use of slave labor of an a fortiori underage person (par. 1 part 2 of article 181-1 of the Criminal Code); there is also liability for illegal actions associated with adoption of children (article 177-1).

Legal instruments for counteraction to exploitation of prostitution by third persons are envisaged in the Criminal Code articles 171 “Use of prostitution or creation of conditions for prostitution”<sup>45</sup> and 171-1 “Engagement in prostitution or forcing to continue prostitution”<sup>46</sup>.

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<sup>44</sup> Under article 181 of the Belarusian Criminal Code, objective side of the human trafficking offense is formed by the following alternative actions: 1) purchase or sale of a person or making of other transactions with regards to this person; 2) recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation. It is important that legislators recognize any transactions with regards to a person as criminal offenses regardless of the presence or absence of exploitation objective.

<sup>45</sup> Person offering sexual services for remuneration does it voluntarily (unlike in case of human trafficking (article 181 of the Criminal Code) and use of slave labor (article 181-1 of the Criminal Code).

<sup>46</sup> Responsibility for engagement in prostitution or forcing to continue prostitution, while there is no goal to further use this person for sexual exploitation (when sexual services for remuneration were offered voluntarily).

## **Conclusion**

To sum up, one should note that over the recent decade Belarus has paid special attention to the problem of human trafficking. Belarus joined key international legal acts in this field and set up an efficient system for combat against human trafficking, prevention of this category of crimes, protection of human trafficking and exploitation victims.

Following international standards, Belarusian legislators introduced liability for human trafficking and associated crimes into the Criminal Code. However at present there is still a need to improve legal norms concerning identification of crime elements in case of such crimes as “use of slave labor” and some others.