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### ***Some aspects of Ukrainian legislative reform relating to combating against human trafficking***

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## 1. General context

The issue of combat against human trafficking is very pressing for Ukraine, just like for most post-Soviet countries. As it is indicated in the Migration Profile of Ukraine compiled in 2011 by Ukrainian migration experts based on research and on statistical data provided by Ukrainian national authorities and international specialists in the field of migration, Ukraine is primarily a state of origin for human trafficking victims<sup>1</sup>. Ukraine is also a country of transit for foreigners who became human trafficking or smuggling victims on their way to other countries, primarily Turkey or United Arab Emirates, from Moldova, Russia, Kyrgyzstan and Uzbekistan.

The 2010 US State Department Human Trafficking Report<sup>2</sup> indicates that Ukrainians who become victims of human trafficking are mostly shipped to Russia, Poland, Turkey, Italy, Austria, Spain, Germany, Czech Republic, Portugal, UAE, Israel and Greece.

According to official statistics of the International Organization for Migration (IOM) office in Ukraine, 823 Ukrainians became human trafficking victims in 2011 and 945 Ukrainian nationals in 2012. IOM also rendered assistance in the territory of Ukraine to 14 foreign nationals (citizens of Moldova, Russia, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan) who became victims of human trafficking in 2011 (there is no statistics for 2012)<sup>3</sup>.

In our opinion, these figures may not fully reflect the real number of Ukrainian citizens who became human trafficking victims, as far as they register only those cases when victims contacted IOM and received assistance from IOM.

Competent Ukrainian authorities, such as the Ministry of Interior, collect and make public official statistics on the open criminal cases related to human trafficking (without providing statistics on the number of citizens who became targets of this offense). Thus, according to the official data of Ukrainian Ministry of Interior, 172 criminal cases related to human trafficking were initiated in 2011, while 151 cases were initiated over 9 months of 2012<sup>4</sup>.

In our point of view, there are two main aspects in the combat against human trafficking in Ukraine – socio-economic and legal. Therefore, low living standards (especially in the villages and small district centers), lack of necessary qualification and employment opportunities, lack of decent public social assistance for unemployed and disadvantaged persons are the main factors that force Ukrainians to look for employment opportunities abroad. At the same time insufficient awareness of these population categories about legal procedures for employment abroad, as well as lack of financial resources for legal search of employment in other countries make them potential victims of human traffickers.

## 2. Legal framework

From the legal standpoint, we see the following measures as key for overcoming the problem of human trafficking in Ukraine: tightening of legislative sanctions against persons involved in human trafficking offenses and persons assisting them, informing citizens about their rights in the context of labor migration and normative procedures of legal employment abroad.

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<sup>1</sup> Migration profile of Ukraine is available at <http://rv.dmsu.gov.ua/images/files/%20%202012%2014.02.2013.pdf>

<sup>2</sup> Human Trafficking Report of the US State Department is available at <http://www.state.gov/j/tip/rls/tiprpt/2011/>

<sup>3</sup> Official statistics of the IOM office in Ukraine is available at <http://en.stoptrafficking.org/view.statistics/>

<sup>4</sup> Official statistics of the Ukrainian Ministry of Interior <http://mvs.gov.ua/mvs/control/main/uk/publish/article/750044>

As a result of our analysis of Ukrainian legislation, we have established that Ukraine put in place legislative instruments to combat human trafficking. Thus, Ukrainian State Migration Policy Concept, Ukrainian Law “On counteraction to human trafficking” of 20.09.2011 No. 3739-VI, as well as Regulation of the Ukrainian Cabinet of Ministers of 18 January 2012 No. 29 “On national coordinator in the field of combat against human trafficking”, Regulation of the Ukrainian Cabinet of Ministers of 15 February 2009 No. 90-r “On Concept of the State Target-Oriented Social Program of Combat against Human Trafficking until 2015”, and Ukrainian Criminal Code (Law of 05.04.2011 No. 2341-III) represent a rather comprehensive set of legal instruments in the indicated field. In addition to that, starting from 2010 Ukraine is a party to the Council of Europe Convention on Action against Trafficking in Human Beings.

According to the Migration Policy Concept adopted by the presidential decree of 30 May 2011 No. 622/2011<sup>5</sup>, combat against human trafficking is a strategic direction of Ukrainian migration policy. The novelty in Ukrainian legislation is that the Law “On counteraction to human trafficking”<sup>6</sup> clearly defines the notion of ‘human trafficking’ (execution of an illegal agreement, the object of which is a human being, as well as recruitment, transportation, harbouring, transfer or receipt of a human being, carried out for the purpose of exploitation, including sexual one, using deceit, fraud, blackmail, unprotected state of a person or using threat of violence, using job position or material or other dependence of a person, which is a crime under the Criminal Code of Ukraine), the notion of ‘human trafficking prevention’ (complex of measures aimed at detecting and eliminating the reasons and conditions that can lead to human trafficking) and ‘suppression of human trafficking’ (complex of measures aimed at overcoming human trafficking by way of prevention and suppression, as well as rendering assistance and protection to the victims of human trafficking).

One should also note that section V of the Law regulates **assistance and protection offered to the victims of human trafficking (articles 13-19 of the Law)**. For instance, article 14 of the Law establishes the rights of a person who applied for the status of the human trafficking victim: the person who contacted the local administration with the corresponding application and the law enforcement agencies asking for protection of rights and freedoms has a right to free of charge information on his or her rights and opportunities provided in the language this person knows; medical, psychological, legal and other assistance regardless of the place of residence; temporary placement in facilities for human trafficking victims (part 2 of article 14 of the Law).

Foreigner or stateless person who applied for the status of the human trafficking victim in the territory of Ukraine, until the decision about his or her status is made, in addition to rights envisaged by part 2 of this article also has a right to free of charge interpreter services and temporary stay in Ukraine according to procedure set forth in the legislation (part 3 of article 14 of the Law).

Under part 4 of article 15 of the Law a foreigner or stateless person who applied for the status of the human trafficking victim in the territory of Ukraine is given a certificate confirming the fact of application for this status and launch of the corresponding procedure that serves as grounds for registration in the territorial divisions of the authorized central executive agency responsible for migration issues. It is forbidden to place the person who applied for the human trafficking victim in temporary detention facilities, except for cases stipulated by law, and expulsion of this person from Ukraine until the status of the human trafficking victim is granted (part 5 article 14 of the Law).

Procedure of granting the status of the human trafficking victim cannot take longer than one month from the day of interview with a person at the local public administration (part 3 article 15 of the Law).

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<sup>5</sup> Decree of the Ukrainian President of 30 May 2011 No. 622/2011 is available at <http://zakon4.rada.gov.ua/laws/show/622/2011>

<sup>6</sup> The Law of Ukraine “On counteraction to human trafficking” of 20.09.2011 No. 3739-VI <http://zakon4.rada.gov.ua/laws/show/3739-17>

If decision is made to grant the status of the human trafficking victim, the person in question is issued a certificate. If the status is denied, applicant has a right to appeal this decision within the judicial procedure (part 4 article 15 of the Law). Status of the human trafficking victim is granted for the period of up to two years. It can be extended on the basis of substantiated application of the local public administration for no longer than one year (part 5 article 15 of the Law).

In order to strip the human trafficking victim of the corresponding status, one has to find out that decision on setting or extending the period of this status has been made on the basis of false facts or invalid documents that played a significant role in the decision-making process (part 6 article 15 of the Law). The status of the human trafficking victim is lost, when the period for which the status was granted or extended, in accordance with part 5 article 15 of the Law, expires (part 7 article 15 of the Law).

**The rights of the human trafficking victim** are established by article 16 of the Law. In accordance with part 2 of article 16 of the Law foreigner or stateless person, who was granted the status of the human trafficking victim in the territory of Ukraine, has the right to free of charge interpreter services; temporary stay in Ukraine for the period of up to three months that can be extended if necessary, for instance, if they are involved in the criminal proceedings as complainants or witnesses; permanent residence in the territory of Ukraine according to procedure established by legislation (part 2 of article 16 of the Law).

Certificate of the human trafficking victim serves as grounds for registration in the territorial divisions of the authorized central executive agency responsible for migration issues (part 3 of article 16 of the Law).

If agents in charge of suppression of trafficking in persons have reasonable grounds to believe that the life, physical or mental health or freedom and inviolability of the foreign national or stateless person who is a human trafficking victim will face a threat in case of return to the country of origin, this person's status of the human trafficking victim can be extended, which serves as grounds for obtaining permission to stay in the territory of Ukraine until such circumstances cease to exist (part 4 article 16 of the Law). The person, who was granted the right of stay in Ukraine in accordance with part 4 of article 16 of the Law and who continuously resided in the territory of Ukraine in the course of three years from the day when the status of the human trafficking victim had been granted, has a right to obtain permission for immigration within the procedure established by legislation (part 5 of article 16 of the Law).

Article 19 of the Law regulates issues associated with **repatriation** of foreign nationals and stateless persons who are victims of human trafficking. For instance, after the rehabilitation course in accordance with the Law a foreign national or stateless person can be repatriated within the procedure established by legislation (part 1 of article 19 of the Law).

Section VI of the Law regulates suppression of trafficking in persons (articles 20-24 of the Law). If in Ukraine a victim of child trafficking is identified and is a foreign national or stateless person, one of the following decisions is made: return of the child to the country of origin; leaving the child in Ukraine (part 1 of article 24 of the Law). Part 2 of the same article states that the victim of child trafficking is to be returned to the country of origin provided that parents, legal guardians or child protection agencies of the country of child's origin give consent and have an opportunity to take up responsibility for the child and offer him or her proper assistance and protection. The victim of child trafficking is left in Ukraine, if his or her return to the country of origin is impossible and if there are conditions for the child's integration in Ukraine in terms of healthcare, education, social protection. When decision is made on whether to return or leave the child, one must rely on the child's opinion, taking into account the child's age, physical and intellectual development and interests (part 3 of article 24 of the Law). The child victim of human trafficking is not returned to the country of origin, if there are reasons to believe that this return poses a threat to his or her safety and is not in the child's best interests (part 4 of article 24 of the Law).

Analyzing Ukrainian legislation in the field of combat against human trafficking, one cannot ignore the strengthening of punishment of persons involved in human trafficking. Thus, in 2011 amendments were introduced into the Criminal Code<sup>7</sup> and other Ukrainian legal acts, in order to strengthen legal liability of persons involved in human trafficking and offenses against human will, honor and dignity. According to these amendments, persons convicted for crimes, associated with trafficking in human beings or other illegal agreement with regards to a human being, are not subject to amnesty (article 4 of the Law “On Amnesty”<sup>8</sup>); crimes against human will, honor and dignity, including illegal use of child labor, are punished by arrest for the period from 6 months to 3 years (article 150 of the Ukrainian Criminal Code); crimes associated with trafficking in human beings or execution of another illegal agreement, the object of which is a human being, as well as recruitment, transportation, harbouring, transfer or receipt of a person for the purpose of exploitation, using deceit, blackmail or vulnerable state of a person<sup>9</sup>, are punished by arrest for the period from 3 to 8 years with or without confiscation of property, and if the above indicated actions are committed with regards to an underage person – for the period from 5 to 12 years with or without confiscation of property (article 149 of the Criminal Code) etc.

### 3. Institutional framework

Instruments of combat against human trafficking are strengthened. Ukrainian Government determined that Ukrainian Ministry of Social Policy and Labor would coordinate the governmental policy in the field of combat against human trafficking<sup>10</sup>.

A lot of attention is paid in the Concept of State Target-Oriented Social Program of Combat against Human Trafficking until 2015<sup>11</sup> to the need for socio-economic reform in Ukraine with a purpose of enhancing the quality of life for Ukrainian citizens as a key measure to prevent human trafficking.

One should note that the Ministry of Social Policy and Labor cooperates with other Ukrainian agencies (State Migration Service, Ministry of Interior, Ministry of Foreign Affairs, State Border Service etc.), as well as with international governmental and non-governmental organizations (International Organization for Migration, International Women's Rights Center “La Strada Ukraine” etc.).

Based on everything mentioned above, one can make a conclusion that Ukraine has a sufficient legal and institutional basis for efficient state policy in the field of combat against human trafficking. At the same time efficient implementation of working measures in the field of combat against human trafficking, in our point of view, is closely linked to socio-economic reforms and enhancement of the living standards in Ukraine.

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<sup>7</sup> Ukrainian Criminal Code (Law of Ukraine No. 2341 of 05.04.01) is available at <http://zakon4.rada.gov.ua/laws/show/2341-14?nreg=2341-14&find=1&text=149&x=0&y=0>

<sup>8</sup> Law of Ukraine No. 3465-VI of 2.06.11 “On amnesty” is available at <http://zakon4.rada.gov.ua/laws/show/3465-17>

<sup>9</sup> According to part 2 of article 149 of the Ukrainian Criminal Code, vulnerable state of a person is understood as physical or mental state of a person or external circumstances of a person that take away or limit his or her ability to realize his or her actions (inaction) or control them, make independent decisions, resist violent or other actions, complex of grave personal, family or other circumstances.

<sup>10</sup> Decree of the Ukrainian Cabinet of Ministers of 18 January 2012 No. 29 “On national coordinator in the field of combat against human trafficking” is available at <http://zakon4.rada.gov.ua/laws/show/29-2012-%D0%BF>

<sup>11</sup> Decree of the Ukrainian Cabinet of Ministers of 15 February 2009 No. 90-r “On the Concept of State Target-Oriented Social Program of Combat against Human Trafficking until 2015” is available at <http://zakon2.rada.gov.ua/laws/show/90-2012-%D1%80#n8>