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Legal Aspects of Combating Human Trafficking in Moldova

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1. International framework

12 March 2012 Moldova ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 25 October 2007).¹ The Convention entered into force 1 July 2012. The Republic of Moldova made two declarations upon ratification: first, that until the full re-establishment of its territorial integrity, the provisions of the Convention will be applied only to the territory controlled effectively by authorities of the Republic of Moldova; second, in accordance with Article 37, paragraph 2, of the Convention, the Moldovan Ministry of Interior was designated as the national authority for recording and storing national data on convicted sexual offenders.

Moldova ratified the United Nations Convention against Transnational Organized Crime.² Until the full establishment of the territorial integrity of the Republic of Moldova, the provisions of the Convention will be applied only on the territory controlled by the authorities of the Republic of Moldova.

Additionally Moldova ratified the Palermo Protocols, namely:

- The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime³
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime⁴
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime⁵

According to the declaration made by Moldova, until the full establishment of the territorial integrity of the Republic of Moldova, the provisions of the Protocols will be applied only on the territory controlled by the Moldovan authorities. The same declaration was made to the Council of Europe Convention on Action against Trafficking in Human Beings which was ratified in 2006⁶ and entered into force in 2008. Also Moldova acceded to the Convention on the Elimination of All Forms of Discrimination against Women⁷ and Convention on the Rights of the Child.⁸

In 2011 Moldova approved the Agreement regarding collaboration between ministries of internal affairs (police) of the CIS countries in fight against trafficking in human beings. This was signed at Sankt Petersburg, 17 September 2010.⁹

¹ Law no. 263 of 19 December 2011, published in Monitorul Oficial no. 21-24 of 27 January 2012.

² Law no. 15 of 17 February 2005 published in Monitorul Oficial no. 36-38 of 4 March 2005

³ Law no. 16 of 17 February 2005 published in Monitorul Oficial no. 36-38 of 4 March 2005

⁴ Law no. 17 of 17 February 2005 published in Monitorul Oficial no. 36-38 of 4 March 2005

⁵ Law no. 224 of 13 October 2005 published in Monitorul Oficial no. 145-147 of 4 November 2005

⁶ Law no. 67 of 30 March 2006, published in Monitorul Oficial no. 66-69 of 28 April 2006

⁷ Parliament Decision no. 87 of 28 April 1994 published in Monitorul Oficial no. 5 of 30 May 1994

⁸ Parliament Decision no. 408 of 12 December 1990 published in Monitorul Oficial no. 12 of 13 December 1990

⁹ Government Decision no. 327 of 4 May 2011, published in Monitorul Oficial no. 78-81 of 13 May 2011

2. National Legal Framework

Law no. 241 of 20 October 2005 on prevention and combating trafficking in human beings partially transposed Council of Europe Convention on action against trafficking in human beings of 3 May 2005. It also transposed the UN Convention against transnational organized crimes of 15 November 2000 and EU acquis. The Law regulates the aspects relating to the prevention and combating of trafficking in human beings, assistance framework with its protection of victims, collaboration and cooperation at national and international level, and the involvement of civil society. Article 4 sets the principles which govern the process of combating the trafficking in human beings. This also includes free access to justice, security of victims including fair attitudes and social partnership.

The Law defines, in Article 2, trafficking in human beings as recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat of force or the use of force or other forms of coercion, of abduction, fraud, deception, of abuse of power, or of a situations of vulnerability, or means of offering or receiving payments or benefits of any kind in order to obtain the consent of a person who has control over another person for the purpose of exploitation of the latter. The Law distinguishes between trafficking in human beings, trafficking in children and the exploitation of a person. Under Moldavian legislation a child is considered a person under 18 years of age.

The same definition of trafficking in human beings can be identified in the Criminal Code of the Republic of Moldova.

2.1 Institutional framework

For the coordination of activities for preventing and combating trafficking in human beings and cooperation between state bodies and civil society in Moldova the following institutions were created: the National Committee as a consultative body of the Government (Article 8 para. (2) of the Law on prevention and combating trafficking in human beings); and territorial commissions for combating trafficking in human beings (Article 9 of the Law). The national Committee includes representatives of the public authorities, as well as law enforcement bodies and other organizations that perform activities for preventing and combating trafficking in human beings. Through the Government Decision no. 472 of 26 March 2008 the Regulation of the National Committee for fighting against trafficking in human beings was approved.¹⁰

¹⁰ Published in Monitorul Oficial no. 69-71 of 4 April 2008. According to Point 5 of the Regulation the National Committee has the following functions:

- coordinates activities for the prevention and combating trafficking in human beings, as well as cooperation with public authorities, international organizations and NGOs, other agencies and representatives of the civil society;
- submits proposals to the Government on the principles of state policy in the field of preventing and combating trafficking in human beings and recommendations aimed at improving the detection and clearance activity of causes and conditions that contribute to human trafficking and carrying out human trafficking;
- monitors the implementation of the actions set out in the National Plan for Preventing and Combating Trafficking in Human Beings and the provisions of legislation on preventing and combating trafficking in human beings by state organizations and institutions;
- collects and analyzes information about the size, status and trends of human trafficking at national level;
- drafts proposals to improve legislation on preventing and combating trafficking in human beings and protection of victims of trafficking;
- organizes campaigns for the population on issues related to human trafficking and social danger of this phenomenon;
- coordinates the activity of territorial commissions and specialized agencies regarding the implementation of the national plan of actions as well as other actions to prevent and combat human trafficking;
- assesses and monitors periodically the implementation of the National Plan and bring results to the attention of the Government and civil society.

Based on the Government Decision no. 234, 29 February 2008¹¹ was approved as the standard format of the territorial commissions' Regulation. The commissions were created under the executive body of the local public authorities, being subordinated in their activity to the National Committee. The decisions of the National Committee are binding for territorial commission (Point 25) and twice a year (10 January and 10 July) the territorial commission submits activity reports to the Committee. According to Point 10 of the Regulation, the territorial commission is a consultative body. It is responsible for strengthening the efforts of the responsible bodies in combating human trafficking as well as establishing of goals and coordinated measures with a view to preventing and combating human trafficking.

The law on the prevention and on combating trafficking in human beings expressly provides for the functions of each public authority and emphasizes the cooperation and involvement of civil society and the local authorities. The Law refers to trafficking in human beings as a general concept, Article 6 para. (1) emphasizes the prevention and combating activities relating to trafficking in women and children, which needs to be undertaken by authorities and civil society.

Based on Article 7 of the Law on human trafficking¹², the National Plan for the prevention and combating trafficking in human beings for the years (2012-2013) was approved 31 July 2012.¹³ The Plan provides for the implementation of concrete measures and the achievement of social-economic initiatives directed towards the prevention and combating of trafficking in human beings, the protection of victims and collaboration.

With a view to preventing and combating trafficking in human beings the legislation in force expressly sets the responsibility for the state to professionally prepare and train representatives of law enforcement bodies, migration bodies and other relevant authorities.

2.2 Protection

In the legislation of the Republic of Moldova on human trafficking several stages of the protection process can be identified:

- I. The identification of the victims in human trafficking. This is a process which involves representatives of the state bodies and civil society.
- II. The social rehabilitation of trafficking victims. This process is directed towards their reintegration and includes legal and material assistance, psychological, medical and professional rehabilitation, not to mention employment and accommodation.

Through the Government Decision no. 1362 of 29 November 2006, the Regulation-framework for the organization and functioning of the centres for the assistance and protection of victims of trafficking in human beings was approved.¹⁴ According to the Regulation the Ministry of Internal Affairs is the authority in charge of the security of the centres; the Ministry of Labour, Social Protection and Family is, meanwhile, in charge of monitoring the centres' activity. According to Point 1 of the Regulation, the centre for the assistance and protection of victims of trafficking in human beings is a specialized institution that provides support services for the integration/reintegration of victims into their family and community. The beneficiaries of the centre are victims of trafficking and potential victims who are citizens of the Republic of Moldova and stateless persons who had the right to live permanently in the Republic of Moldova at the moment of entrance into the territory of another state, namely women, children, parents/children, men.

¹¹ Published in Monitorul Oficial no. 47-48 of 7 March 2008

¹² The Law sets that the Government approves these kinds of plans every 2 years.

¹³ Approved through the Government Decision no. 559, published in Monitorul Oficial no. 165 of 7 August 2008

¹⁴ Published in Monitorul Oficial no. 186-188 of 8 December 2006

Based on Government Decision no. 847 of 11 July 2008¹⁵ a centre in Chisinau was created, being a public institution subordinated to the Ministry of Labour, Social Protection and Family. The Centre is specialized in offering: civilized accommodation and good personal hygiene conditions, food, legal, social, psychological and emergency care assistance, security and protection, as well as assistance for getting in touch with relatives.

III. The professional integration of victims of human beings trafficking

Victims of trafficking in human beings, older than 16 years old, can benefit from vocational training: they are given priority enrollment.¹⁶ This training is organized free of charge for up to nine months by the National Employment Agency and are undertaken by authorized public or private institutions. The person will attend the training if he or she: is registered at one of the territorial employment agencies; has no job/profession; and cannot be employed. Legislation in force allows a single integration or professional reintegration allowance to victims of trafficking.

IV. Repatriation of trafficking victims

The Regulation on the repatriation procedure for children and adults – victims of trafficking in human beings, illegal trafficking of migrants, as well as of unaccompanied children, approved through the Government Decision no. 948 of 7 August 2008¹⁷ – sets the repatriation procedure. This includes the question of who covers the expenses during the repatriation procedure, the identification of parties and protection in emergency cases. Regulation is applied to citizens and stateless persons who had the right to live permanently on the territory of the Republic of Moldova at the moment of entrance to the territory of another state. Repatriation is conducted on a voluntary basis, based on written agreements, and is initiated only after the competent authorities ensure that the opinion of the person regarding repatriation is taken into consideration (Point 6). Repatriation of children is done with respect to the best interests of the child principle but only if there is a durable solution. According to point 9 of the Regulation a positive decision on repatriation can be taken if a safe reunification with the family can be organized, or if a specialized institution agrees and can provide protection and proper care immediately after the arrival of the child in the Republic of Moldova.

According to Chapter IV of the Regulation, the repatriation of a child consists of several stages, namely:

- identification of the child. If the identity of the child cannot be established the protection authorities from the destination country are informed about the fact that the child cannot be included under a category provided for by the Regulation and thus the Moldovan authorities cannot further assume responsibility for repatriation of this child;
- documentation;
- identification of the family or legal representative;
- obtaining repatriation approval;
- *de facto* repatriation. The Ministry of Labour, Social Protection and Family is the responsible body for organizing repatriation after consent is given by the authority from the country of destination. But Regulation allows the authorities from the destination country to perform repatriation procedure as well (Point 44);
- rehabilitation, monitoring and reporting.

As for the repatriation procedure of adults it consists in

¹⁵ Published in Monitorul Oficial no. 127-130 of 18 July 2008

¹⁶ Law no. 102 of 13 March 2003 on employment and social protection of persons who are looking for a job, published in Monitorul Oficial no. 70-72 of 15 April 2003

¹⁷ Published in Monitorul Oficial no. 152-153 of 12 August 2008

- identification;
- documentation;
- *de facto* repatriation;
- placement under protection;
- rehabilitation, monitoring and reporting.

Within the repatriation procedure and after repatriation the Ministry of Labour, Social Protection and Family jointly with the Ministry of Internal Affairs evaluate the risks and security of the person, who is going to be repatriated, including his/her family. This includes assessment of the likelihood of stigmatization/harassment from the society or family; threat, repression or constraint of the child or his/her family from traffickers or their accomplices; and re-trafficking.

2.3 Documentation

If foreigners are victims of human trafficking they are accommodated in specialized centers for assistance and the protection of victims. Likewise, if they participate in criminal proceedings against the trafficker, regardless of their location in these centers, they will be granted a temporary residence permit, issued free of charge, which can be extended if necessary (Article 24 para. (6) of the Law on trafficking in human beings).

The Law on the regime of foreigners was amended in December 2012 being introduced granting an extension of temporary residence rights for victims of trafficking i (Article 42¹).

The temporary residence right for trafficking victims may be granted and/or extended to a foreigner who is or was a victim of trafficking, including the case when he/she illegally entered the country, if the following conditions are met:

- a) the foreigner shows a clear willingness to cooperate with the competent authorities in the identification and prosecution of criminal offence participants whose victim is;
- b) the foreigner broke all relations with those suspected offenders, whose victim he or she is;
- c) the foreigner's stay in the country is necessary for the purposes of criminal proceedings;
- d) the foreigner does not present a threat to national security and/or public order.

The right may be granted for six months with the possibility of extending for another six months if the aforementioned conditions are fulfilled. The legislation allows the authorities to revoke the residence right in the following situations:

- the victim resumed at her/his own initiative and actively maintains contact with persons suspected of committing this crime;
- the competent authorities consider the victim's cooperation to be fraudulent or their complaint as fraudulent or unfounded;
- the foreigner's stay in the territory undermines national security and / or public order;
- the victim has ceased to cooperate in criminal proceedings;
- a situation takes place, which prevents starting or performing criminal proceedings.¹⁸

¹⁸ Article 275 of the Criminal Procedure Code enumerates the situations, namely:

- there is no fact of the offense;
- the act is not an offense under criminal law;
- the act does not contain the elements of the offense, unless the offense was committed by a legal person;
- the period of limitation or amnesty intervened;
- the death of the perpetrator took place;
- missing complaint of the victim in cases when it is needed;

The temporary residence right and the residence permit are issued free of charge (Article 421 para. (5)) by the Bureau of Migration and Asylum.

Foreigners who are or were victims of trafficking in human beings may be granted tolerated stay on the territory of the Republic of Moldova during the reflection period. The tolerated stay is a permission to remain on the territory, granted by the Bureau of Migration and Asylum to foreigners who do not have the right of residence and who, for objective reasons, cannot leave the territory of the Republic of Moldova (Article 67 para. (1) of the Law on the regime of foreigners). The reflection period according to the Law on prevention and combating trafficking in human beings is 30 days and is granted to the victim for: recovering; avoidance of traffickers' influence; and/or taking a decision over cooperation with law enforcement bodies.

2.4 Liability

The law on the prevention and combating of trafficking in human beings provides that persons who participate in the organization and conduct trafficking in human beings activities are criminally liable under the Criminal Code of the Republic of Moldova. These types of crimes might have a national as well as a transnational character and thus both international and national legal provisions will be applied.

Criminal Code of the Republic of Moldova of 18 April 2002¹⁹ sets the following actions as crimes: trafficking in human beings (Article 165); slavery and conditions similar to slavery (Article 167); forced labour (Article 168); perverse actions (Article 175); approaching children for sexual purposes (Article 175¹); trafficking in children (Article 206); illegally taking out of children from the country (Article 207); attracting minors in criminal activity or their determination to commit immoral acts (Article 208); child pornography (Article 208¹); use of child prostitution (Article 208²); pimping (Article 220); and the organization of illegal migration (Article 362¹).

Foreigners involved in trafficking in human beings are refused entry to the territory of the Republic of Moldova or their visas will be cancelled.

In cases where victims of trafficking in human beings are involved, the provisions of the Law no. 105 of 16 May 2008 on the protection of witnesses and other participants at the penal process are applied.²⁰ The Law regulates the process of ensuring the security of the participants in the penal process. This is particularly so when their life, physical integrity, freedom or property are threatened due to the fact that they hold data which they have agreed to provide to judicial bodies with conclusive proofs regarding the commission of serious, particularly serious or exceptionally serious crimes (Article 1).

The protected person under this Law is the one who concluded a protection agreement and has one of the statuses established in Article 2 para. (1). The protection agreement is the written confidential agreement between the protected person and the authorized body for witnesses protection. It regards the measures which should be applied with a view to protecting the person, and the responsibilities of the parties and circumstances when the protection ceases. Chapter III of the Law regulates the status of the protected person, providing for rights in Article 11 and duties in Article 12. The person has the right to request protection in case there are reasonable grounds for considering that he/she or family members are or could be threatened with death, with violence, with damage or destruction of goods or with other illegal acts. Also the person has the right to request a specific protection measure or to refuse a protection measure due to moral and religious beliefs or ethical norms. The protection of the person is directly related to data protection. According to Article 15 para. (1) identity data protection of the person is ensured by withholding relevant information.

(Contd.) _____

- in respect of a person there is a final judgment in connection with the same charge or where the impossibility of prosecution on the same grounds was set;
- in respect of a person there is a valid decision to not initiate criminal proceedings on the same charges;
- other circumstances which exclude criminal proceedings.

¹⁹ Published in Monitorul Oficial no. 72-74 of 14 April 2009

²⁰ Published in Monitorul Oficial no. 112-114 of 27 June 2008