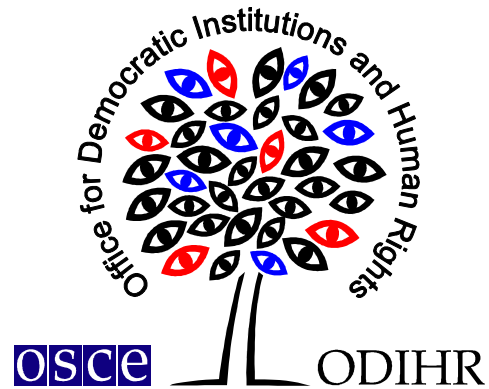


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**REVIEW OF THE  
LEGISLATION COMBATING  
TRAFFICKING IN HUMAN BEINGS  
OF THE REPUBLIC OF MOLDOVA**

**Based on unofficial English translations of the relevant Laws**

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## **I. INTRODUCTION**

1. *On 14 March 2011, the Ministry of Interior of Moldova approved the Implementation Plan of the EU-Moldova Action Plan in the field of visa liberalization for the period of 2011-2012. One measure of this plan states that by December 2011, the Moldovan Government should obtain international expertise on the existing legal framework in the field of combating trafficking in human beings, and present relevant recommendations for improvement.*
2. *On 24 May 2011, the OSCE Mission to Moldova received a letter from the Director of the Centre to Combat Trafficking in Persons (hereinafter “the CCTIP”) of the Ministry of Interior of the Republic of Moldova. In this letter, the Director informed the OSCE Mission about his Ministry’s approval of the above Implementation Plan. He requested the Mission’s assistance in finding foreign experts to offer comments on the existing legal framework in the Republic of Moldova in the field of combating trafficking in human beings and provide requisite recommendations for amending/enhancing national anti-trafficking legislation.*
3. *On 2 August 2011, following discussions with the Ministry of Interior and the translation of all requisite materials, the OSCE Mission to Moldova forwarded the request of the Director of the CCTIP to the OSCE/ODIHR and asked for a review of the entire anti-trafficking legislation in Moldova and its compliance with latest European and international legal documents binding and non-binding on Moldova. The Moldovan legislation forwarded to the OSCE/ODIHR in English involved the following laws:*
  - *Law on Preventing and Combating Trafficking in Human Beings*
  - *Excerpts from the Criminal Code*
  - *Excerpts from the Criminal Procedure Code*
  - *Law on Witness Protection and Protection of Other Participants in Criminal Proceedings*
  - *Law on the Transplant of Human Organs, Tissues and Cells.*

*Other documents provided to ODIHR were as follows<sup>1</sup>:*

  - *Government Decision on the approval of the Framework Regulation on the Organization and Operation of Assistance and Protection Centres for Victims of Trafficking in Human Beings*
  - *Decision of the Plenum of the Supreme Court of Justice on the Application of Legislation Concerning Trafficking in Human Beings and Trafficking in Children*

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<sup>1</sup> Additional documents provided to ODIHR at a later stage included the complete Criminal Code and Criminal Procedure Code, the Contraventions Code, the Law on Passports, the Law on Foreigners, and excerpts from the Civil Code.

- *Government Decision on Approving the Framework Regulation of the Territorial Commissions to Combat Trafficking in Human Beings*
  - *Government Decision on the Approval of the Nominal Composition of the National Committee on Combating Trafficking in Human Beings, Regulation of the National Committee and National Plan for Prevention and Combating Trafficking in Human Beings for 2008-2009*
  - *Government Decision on Approval of the Regulation on Procedure for the Repatriation of Child and Adult Victims of Human Trafficking, Trafficking of Illegal Migrants, and Unaccompanied Children*
  - *Decision of the Parliament on the Approval of the Strategy of the National Referral System to Protect and Assist Victims and Potential Victims of Trafficking in Human Beings and of the Action Plan for the Implementation of the Strategy on the National Referral System to Protect and Assist Victims and Potential Victims of Trafficking in Human Beings During 2009-2011*
  - *Government Decision Approving the Specific Additional National Plan for Prevention and Combating Trafficking in Human Beings for the Years 2010-2011*
  - *The National Plan for Prevention and Combating of Trafficking in Human Beings for the Years 2010-2011*
4. *This Review is provided in response to the above request.*

## **II. SCOPE OF REVIEW**

5. The scope of the Review attempts to cover all available framework legislation and implementing documents combating trafficking in human beings in Moldova, based on the laws and materials received (see par 3 *supra*) and to review this legislation and documents' compliance with international standards. Its focus lies in the field of anti-trafficking, thus it does not concern other aspects of the legislation reviewed.
6. The Review raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international standards and best practices on anti-discrimination, as found in the international agreements and commitments ratified and entered into by the Republic of Moldova. Additionally, the Review refers not only to international standards that are legally binding on the Republic of Moldova, but also to those which the State is aspiring to.<sup>2</sup>

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<sup>2</sup> Although Moldova is not a member of the EU, it aspires to meet the standards set by the EU in the field of anti-discrimination. The EU/Moldova Action Plan refers to the need to implement legislation on anti-discrimination and national minorities in line with EU standards. It also requires that Moldova continues efforts to ensure equality of men and women in society and economic life. See EU/Moldova Action Plan, to be found under: <[http://ec.europa.eu/world/enp/pdf/action\\_plans/moldova\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf)>.

7. This Review is based on unofficial translations of relevant legislation and materials provided by the OSCE Mission to Moldova. Errors from translation may result.
8. Notwithstanding the comprehensive nature of this review, the OSCE/ODIHR would like to make mention that it 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.

### **III. EXECUTIVE SUMMARY**

9. The OSCE/ODIHR considers that overall, the anti-trafficking legislation in Moldova is compliant with the requirements of international instruments and commitments entered into by the Government of Moldova. Certain areas of laws and documents reviewed could, however, benefit from improvement. With regard to these aspects, it is thus recommended as follows:

#### **Key Recommendations**

- A. to include representatives of non-governmental and international organizations in the composition of the National Committee, as required by Article 8 of the Anti-Trafficking Law; [par 24]
- B. to continually increase funds for prevention and awareness-raising measures in the state budget, so that eventually, funds from non-state actors will be merely supplemental and not the main funds for certain projects; [par 40]
- C. to insert more gender mainstreaming aspects specifically targeting women into the provisions of the Anti-Trafficking Law on prevention of trafficking in human beings, to raise more awareness on the special vulnerability of women, and aim for greater gender balance in the National Committee and territorial commissions; [pars 61-62]
- D. to adapt the wording of Articles 165 and 206 of the Criminal Code so that they are more consistent with international standards and Article 2 of the Anti-Trafficking Law; [pars 83-92]
- E. to clarify that the 30 days' reflection period under Articles 15 and 24 of the Anti-Trafficking Law shall apply also to presumed victims, and that presumed victims shall receive adequate protection and assistance measures; [par 152]
- F. to include special provisions for child victims and witnesses in the Criminal Procedure Code; [par 215]

#### **Other Recommendations**

##### ***Prevention***

- G. to amend the Framework Regulation on Territorial Commissions to Combat Trafficking in Human Beings as follows:

- 1) Indicate which bodies shall, at the very least, be represented in such commissions; [par 27]
  - 2) Ensure that the composition of territorial commissions and reports issued by such commissions are made public; [pars 27 and 30]
  - 3) Change Section 12 so that territorial commissions discuss and pass annual plans of activity by majority vote; [par 29]
  - 4) Allow for the exclusion of the public from sessions of territorial commissions in certain exceptional cases; [par 30]
- H. to specify in Article 10 par 1 (10) who shall be the recipient of the list of relevant NGOs submitted by the Ministry of Justice; [par 32]
- I. to distinguish clearly between the centralized national data records centre for information and the CCTIP's centralized database, both mentioned in the 2010-2011 National Plan; [pars 43-44]
- J. to ensure that, upon signing the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Abuse (hereinafter "Lanzarote Convention"), the following action is taken:
- 1) Additional awareness-raising activities are organized on the sexual exploitation and sexual abuse of children; [par 65]
  - 2) Relevant legislation is amended to include a number of awareness-raising, protection and assistance measures listed in the Convention; [par 65]
- K. to introduce liability for carriers failing to verify whether passengers possess valid travel documents in relevant Moldovan legislation; [par 71]
- L. to clarify the type of liability under Article 9 of the Law on Passports; [par 72]
- M. to state in the Anti-Trafficking Law that additional information shall be distributed to encourage legal migration into Moldova; [par 74]

### ***Prosecution***

- N. to amend Article 206 of the Criminal Code as follows:
- 1) Clarify that giving or receiving payment benefits to obtain the consent of a person in control of a child is a means of trafficking, not a trafficking action in itself; [par 93]
  - 2) Expand par 1 a) to include all forms of sexual exploitation of children; [par 96]
  - 3) Change or clarify par 1 g) on trafficking for the purpose of abandoning children abroad; [par 97]
  - 4) Include exploitation for use of under-aged girls as surrogate mothers or for reproductive purposes in par 1; [par 98]

- O. to ensure that the wording of Article 208<sup>1</sup> of the Criminal Code on child pornography is made more compliant with the Council of Europe Convention on Cybercrime; [par 102]
- P. to consider and discuss criminalizing the use of services of trafficking victims where clients are aware that they are benefiting from trafficking in human beings; [par 104]
- Q. to introduce a more specific reference to the Criminal Code to Article 28 of the Law on the Transplant of Human Organs, Tissues and Cells; [par 105]
- R. upon ratifying the Lanzarote Convention, to include in the Criminal Code additional criminal provisions for engaging in sexual activities with children, child prostitution, the participation of children in pornographic performances, the corruption of children, and soliciting children for sexual purposes; [par 108]
- S. to amend Articles 165 par 4 and 209 par 4 of the Criminal Code to the effect that victims shall be exempted from criminal liability if they were compelled or coerced into committing crimes as victims of trafficking; [par 111]
- T. to include in Moldovan legislation corporate liability for cases where a lack of supervision and control renders possible the commission of trafficking offences for the benefit of a legal person by a natural person acting under its authority; [par 116]
- U. to clarify in the Criminal Procedure Code whether in cases involving trafficking in human beings, the sequestration of assets of the perpetrator will lead to the permanent deprivation of such assets; [par 119]
- V. to indicate in Article 31 par 1 of the Anti-Trafficking Law which procedure will be applied when withdrawing the license of or liquidating an establishment used for trafficking in human beings; [par 120]
- W. to specify in Articles 165 par 2 and 206 par 3 that officials and high-ranking officials committing acts of trafficking shall receive aggravated sentences if doing so in the exercise of their duties; [par 125]
- X. to ensure that under Article 206 of the Criminal Code, fines for trafficking in children for legal entities are higher than those imposed for trafficking in adults, to underline the particularly heinous nature of this crime; [par 135]
- Y. to amend Article 208<sup>1</sup> of the Criminal Code on child pornography, so that in cases where such pornography is done by a regular criminal industry, the ban of certain activities for enterprises, or their liquidation, will be possible sanctions; [par 136]

***Protection***

- Z. to distinguish between Articles 20 and 24 of the Anti-Trafficking Law; [pars 139 and 169]
- AA. to specify which confidentiality rules Article 21 of the Anti-Trafficking Law is referring to, and indicate that personal data should only be stored for the specific purpose of combating trafficking in human beings; [par 141]
- BB. to include in the Law on Freedom of Expression and the Code of Conduct for Journalists a provision protecting the identities of victims of trafficking and their families, as well as liability for breach of confidentiality; [par 143]
- CC. to ensure that Article 21 par 6 of the Anti-Trafficking Law contains clear references to the criminal and administrative offences that it is referring to; [par 146]
- DD. to see to it that presumed victims of trafficking in human beings may not be expelled while the identification process is ongoing; [par 153]
- EE. to make sure that persons remaining on the territory of Moldova as tolerated foreigners will receive work permits and longer term residence permits, at least once a certain time has elapsed; [par 157]
- FF. to include in the Anti-Trafficking Law a provision stating that granting residence permits to victims of trafficking shall be without prejudice to their right to seek and enjoy asylum; [par 158]
- GG. to amend the Framework Regulation on the Organization and Operation of Assistance and Protection Centres for Victims of Trafficking in Human Beings as follows:
  - 1) Expand the scope of this Regulation so that it also covers other centres outside Chisinau, including those that are not run by the government; [par 177]
  - 2) Include in the Regulation a provision foreseeing the automatic referral of a person to another centre in case the capacity of the centre is reached; [par 179]
- HH. to change relevant legislation to ensure that foreign victims of trafficking have interpretation services at their disposal; [par 186]
- II. to expand relevant legislation so that members of groups, foundations, associations, or non-governmental organizations assisting or supporting victims will also be protected while criminal procedures are ongoing; [par 200]
- JJ. to widen the scope of Article 26 par e) of the Anti-Trafficking Law so that in exceptional cases, in order to trace families or if in the best interests of children, the identity of a child may be disclosed; [par 205]

- KK. to consider introducing to the Code of Conduct of Journalists more restrictive provisions on the disclosure of identity for child victims; [par 206]
- LL. to provide for the prolongation of stay for children in centres in cases where this is temporarily in their best interests; [par 210]
- MM. to extend the scope of Article 28 par 5 of the Anti-Trafficking Law, to the effect that repatriation of a child shall not take place if this is not in the best interests of the child; [par 214]
- NN. to ensure that references to compensation under the Anti-Trafficking Law are made more explicit; [par 220] and
- OO. to consider establishing a victims' fund (if this does not exist already for victims of violent crimes) to ensure that victims will receive proper compensation also in cases where perpetrators cannot be found or are otherwise unable to pay damages. [par 221]

#### **IV. INTERNATIONAL ANTI-TRAFFICKING STANDARDS**

10. Throughout the last decade, international organizations, non-governmental institutions and governments 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>3</sup> to the UN Convention against Transnational Organized Crime (hereinafter “the UN Palermo Protocol”) and the Council of Europe Convention on Action against Trafficking in Human Beings of 2005<sup>4</sup> (hereinafter “the Council of Europe Convention”). Other instruments focusing on related areas are the Council of Europe’s Convention on Cybercrime<sup>5</sup>, and Convention on the Protection of Children against Sexual Exploitation and Abuse<sup>6</sup>. While the three former instruments have been ratified by the Republic of Moldova<sup>7</sup>, the Convention on the Protection of Children against Sexual Exploitation and Abuse has so far been signed by Moldova, but not ratified<sup>8</sup>. As an OSCE participating State, the Republic of Moldova has also committed

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<sup>3</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>4</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>5</sup> Council of Europe Convention on Cybercrime, adopted on 23 November 2001: <http://conventions.coe.int/Treaty/en/Treaties/html/185.htm>.

<sup>6</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse, adopted on 25 October 2007: <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm>.

<sup>7</sup> The Republic of Moldova ratified the UN Protocol on 16 September 2005, the Council of Europe Convention on Action against Trafficking in Human Beings on 19 May 2006, and the Council of Europe’s Convention on Cybercrime on 12 May 2009.

<sup>8</sup> The Republic of Moldova signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse on 25 October 2007.

to follow the main principles of the OSCE Action Plan to Combat Trafficking in Human Beings<sup>9</sup> (hereinafter “the OSCE Action Plan”).

11. 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). These three purposes are reflected in Article 1 of the Council of Europe Convention, along with the effective investigation and prosecution of perpetrators of trafficking in human beings.
12. Next to these purposes, par 2 of Article 1 of the Convention 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).
13. 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, fulfil their obligations to protect and promote the human rights of trafficked persons<sup>10</sup>.
14. The European Union has also taken a number of measures to combat trafficking in human beings, including the establishment of an advisory Group of Experts on Trafficking in Human Beings<sup>11</sup>, and the adopting of several programmes to ensure collaboration in the prevention and combat of all forms of violence, and the protection of groups at risk (Daphne Programme<sup>12</sup>), in particular women and children. In 2005, the EU Commission and Council developed an EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings<sup>13</sup>. In 2006, the EU as a whole also adhered to the Palermo Protocol.

## **V. LEGISLATION RELATING TO THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS IN MOLDOVA**

15. Based on the above international standards in the field of combating trafficking in human beings, four main aspects to the fight against trafficking in human beings can be distinguished, namely prevention, protection, prosecution and partnership.

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<sup>9</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>10</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>11</sup> See EC Decision [2007/675/EC](http://ec.europa.eu/justice/policies/trafficking/docs/2007/675/EC_2007_675.pdf) of 17 October 2007

<sup>12</sup> The Daphne Programme was adopted in 2000 (Decision No [293/2000/EC](http://ec.europa.eu/justice/policies/trafficking/docs/2000/293/EC_2000_293.pdf) of the European Parliament and of the Council); since then, Daphne II was adopted in 2004 (Decision No [803/2004/EC](http://ec.europa.eu/justice/policies/trafficking/docs/2004/803/EC_2004_803.pdf) of the European Parliament and of the Council) and Daphne III was adopted in 2007 (Decision No [779/2007/EC](http://ec.europa.eu/justice/policies/trafficking/docs/2007/779/EC_2007_779.pdf) of the European Parliament and of the Council)

<sup>13</sup> See Official Journal C 311 of 9.12.2005].

16. The following review will deal with three of the four aspects individually in separate sections, namely prevention, protection and prosecution, by outlining the international principles, presenting relevant domestic legislation and documents and assessing the compliance of these laws and documents with international standards. The aspect of partnership will be reviewed in all three sections.

#### **A. Legislation Relating to Prevention**

17. The prevention of trafficking in human beings is mentioned as a core principle in Article 2 par a) of the Palermo Protocol and Article 1 par a) of the Council of Europe Convention. Articles 9-13 of the Palermo Protocol deal with specific aspects of prevention and cooperation, namely the establishment of pertinent policies, programmes and measures, information exchange, border measures, and actions to ensure the security, authenticity and verification of travel and identity documents. Chapter II (Articles 5 through 9) of the Council of Europe Convention outlines similar aspects of prevention, and also includes measures to discourage demand for trafficking (Article 6).

#### **1. Interagency Cooperation and Involvement of Civil Society**

18. According to Article 5 par 1 of the Council of Europe Convention, States are required to strengthen or establish a national coordination mechanism consisting of various bodies, in order to improve cooperation across different agencies in the fight against trafficking in human beings. Further, par 6 of the same Article stresses the importance of involving non-governmental organizations and other civil society organizations committed to anti-trafficking efforts in the development and implementation of prevention measures, where appropriate. This principle is also laid down in Article 9 par 3 of the Palermo Protocol.
19. In Moldova, the Law on Preventing and Combating Trafficking in Human Beings<sup>14</sup> (hereinafter “Anti-Trafficking Law”) contains numerous provisions which outline the different tasks of various state and non-state actors in the prevention of trafficking in human beings. Collaboration between government actors and international organizations, non-governmental organizations, other institutions and representatives of civil society is a key aspect of the two-year National Plan for Preventing and Combating Trafficking in Human Beings (hereinafter “National Plan”) as described in Article 7 of the Anti-Trafficking Law. The cooperation of international and non-governmental organizations with public administration and competent bodies is specifically reiterated in Article 12 par 1.
20. The most recent National Plan for Prevention and Combating of Trafficking in Human Beings was passed for the years 2010-2011. This National Plan, which is not legally binding and merely a declaration of an intention, contains a detailed overview of strategic objectives, specific goals, activities and sub-

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<sup>14</sup> Law on Preventing and Combating Trafficking in Human Beings, No. 241-XVI of 20 October 2005, Official Monitor of the Republic of Moldova no. 164-167/812 of 9 December 2005.

activities, structures responsible for implementation, partners, the term set for accomplishment of the objectives, funds and expected results. In the legislative field, it includes the development of legal provisions ensuring access of trafficking victims to compensation from traffickers and/or the state, and amendments to the normative framework in the field of tourism. Other aspects of the National Plan in terms of creating an assistance framework involve the consolidation of capacities in various sectors to enhance the fight against trafficking, increased informational management and research, better analysis, monitoring and evaluation. With regard to prevention, the National Plan focuses on increased awareness-raising and education, also with the help of non-governmental and international organizations. It is thus an important step towards ensuring proper coordination in the fight against trafficking as required by international standards.

21. In December 2010, a Specific Additional National Plan for Prevention and Combating Trafficking in Human Beings for 2010-2011 was adopted by the Government. Aside from sections on investigation, protection and assistance, its section 4 also focuses on awareness-raising activities, specifically aimed at children and the most vulnerable parts of the population<sup>15</sup>.
22. Article 8 of the Anti-Trafficking Law involves the establishment of a National Committee for Combating Trafficking in Human Beings (hereinafter the “National Committee”), which is a consultative body responsible for coordinating activities to prevent and combat trafficking (par 1). It is composed of representatives of public administration authorities, including law enforcement bodies, and organizations carrying out activities to prevent and combat trafficking (par 5). Non-governmental and international organizations working in this field shall be included in the composition of the National Committee, may attend its meetings and have the right to a consultative vote (par 6). It is much welcomed that decisions of the National Committee are binding on public authorities and institutions, provided that they are signed by the Prime Minister<sup>16</sup>.
23. In the Government’s Decision No. 472 on Approval of the Nominal Composition of the National Committee, Regulation of the National Committee and National Plan for the Prevention and Combating of Trafficking in Human Beings for 2008-2009, the nominal composition of the National Committee is listed in Annex 1 to the decision. It is noted that while Article 8 of the Anti-Trafficking Law states that also organizations carrying out activities to prevent and combat trafficking shall be part of this Committee (including non-governmental and international organizations), the actual members of the Committee listed under Annex 1 are all from the executive, mainly either from line ministries or from the law enforcement sector.
24. Since the National Committee is also tasked to monitor implementation of the National Plan and of relevant legislation, it is advised to include, also *de facto*,

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<sup>15</sup> According to Article 2 par 10 of the Anti-Trafficking Law, “state of vulnerability” is a special state in which people find themselves to be more inclined to be abused or exploited, especially due to a precarious situation from the standpoint of social survival, age, pregnancy, illness, infirmity, physical or mental deficiency, or illegal entry or stay in the country.

<sup>16</sup> See Section 17 of the Government’s Decision No. 472 on Approval of the Nominal Composition of the National Committee, Regulation of the National Committee and National Plan for the Prevention and Combating of Trafficking in Human Beings for 2008-2009.

non-governmental and international organizations in the composition of the National Committee, as also required by Article 8 of the Anti-Trafficking Law. This would ensure a common governmental/non-governmental approach (social partnership) in the prevention and combat of trafficking in human beings as laid down, e.g., in Article 4 par h of the Anti-Trafficking Law<sup>17</sup>. In terms of preventing trafficking, the National Committee advises the Government on fundamental elements of state policy on combating and preventing trafficking, in particular detecting and eliminating causes and conditions facilitating the appearance of trafficking. Its tasks also include regulating the implementation of the National Action Plan and the implementation of relevant legislation, collecting and analysing information on scope, conditions and trends of trafficking in Moldova, and submitting proposals for legislative amendments related to the prevention, combat and protection from trafficking. Moreover, the Committee is responsible for public awareness-raising campaigns, coordinating activities of local commissions and specialized institutions, and periodically assessing and monitoring the process of realization of the National Action Plan and informing the Government and civil society about it. Given the extensive scope of activities of this Committee, it is even more essential that it is composed of not only governmental or public representatives, but also of representatives of relevant non-governmental organizations.

25. At a local level, territorial commissions shall coordinate all activities to combat and prevent trafficking in human beings (Article 9 of the Anti-Trafficking Law), meaning in districts, municipalities and in the autonomous territorial unit of Gagauzia (as well as in sectors of the municipality of Chisinau). These commissions are created within the executive bodies of the respective representative authorities. Their tasks are similar to those of the National Committee on a state level, but not as extensive, focusing instead on the organization and coordination of different local actors in the fight against trafficking, implementation of the National Plan at a local level, the periodic assessment and monitoring of on-site activities to prevent and combat trafficking and the submission of proposals to improve the effectiveness of these activities, also assisting in the drafting of research programmes and data collection, and implementing training programmes for vulnerable persons and civil servants.
26. Based on the Framework Regulation on Territorial Commissions to Combat Trafficking in Human Beings (hereinafter “the Framework Regulation”), as approved by Government Decision No. 234 of 2008, these commissions are usually composed of representatives of de-concentrated bodies of ministries, other central administrative authorities active in the field of preventing and combating trafficking in human beings, non-governmental organizations active in the field of prevention and combat of trafficking and support to its victims, and other organizations, as required (Section 9). Under Section 6 of the Framework Regulation, the “nominal composition” of a territorial composition shall be approved by order of the Chairman of the local public

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<sup>17</sup> In this context, see the EU plan on best practices, standards, and procedures for combating and preventing trafficking in human beings (2005/C 311/01), which under section 5 (ii) encourages Member States to strengthen and institutionalize relations with NGOs.

administration. At the initiative of commission members, the number of members may be modified as required.

27. As opposed to Decision No. 472 on the National Committee, the Framework Regulation does not specify which ministries or authorities shall be part of the territorial commissions. While it makes sense to leave this largely up to the local authorities themselves, it would be helpful to include in the Framework Regulation some indications of which type of bodies should, at the very least, be represented in this commission, e.g. law enforcement bodies, education bodies, employment bodies, health and social care institutions, and child support agencies. The composition of the territorial commissions should also be transparent and made public.
28. According to Section 12 of the Framework Regulation, territorial commissions carry out their activities based on an annual plan of activities, which shall be approved by the Chairman of each commission. The Chairman of a Territorial Commission shall be the Deputy Chairman of the local public authority on social matters (Section 7 of the Framework Regulation).
29. In the interests of a more inclusive approach, it would be preferable if territorial commissions would discuss the annual plan for the coming year in the last session of the previous year, and would then pass such plan by majority vote, to ensure ownership and proper implementation by all members of the territorial commission.
30. According to Section 21 of the same Regulation, meetings of the territorial commissions are public. While in principle, for the purposes of transparency, such publicity is welcomed, it is recommended to allow for the exclusion of the public in certain cases, for instance where such meetings are scheduled to touch upon matters concerning the personal data of victims, or matters of national security. At the same time, reports of territorial commissions should of course always be published.
31. The 2010-2011 National Plan also includes capacity-building measures to enhance the work of territorial commissions, including reporting, the development of bi-yearly plans, informational campaigns and events, and training for persons from vulnerable groups and competent public officials. This is very welcomed and should be continued in the next National Plan, as needed.
32. Next to the National Committee and territorial commissions, other public authorities have special functions in terms of preventing and combating trafficking in human beings. Under Article 10 par 1 (10) of the Anti-Trafficking Law, the Ministry of Justice shall prepare legislation, *inter alia*, in the field of preventing and combating trafficking in human beings, and assist in coordination attempts by submitting a list of relevant non-governmental organizations every six months. It is advised to specify in this provision who the recipient of this information shall be- ideally, this list shall be submitted to the National Committee and circulated among all relevant stakeholders engaged in combating trafficking in human beings.

33. It is commendable that according to Article 10 par 3, all public administrative authorities mentioned under this provision<sup>18</sup> shall periodically inform the National Committee about action taken to prevent and combat trafficking in human beings, and propose measures to ensure their efficacy.
34. Article 11 focuses on the functions of law enforcement bodies in the field of preventing and combating trafficking in human beings. According to par 1 of this provision, the Ministry of Interior and central and territorial subdivisions will prevent and combat trafficking through prevention, detection and deterrence of crimes. Operative investigative activities shall also assist in these endeavors, as shall regional centres for preventing and combating of trafficking, the creation of which shall be facilitated by the Ministry of Interior (Article 11 par 2). Within the General Prosecutor's office, Article 11 par 4 foresees the creation of a specialized subdivision for preventing and combating trafficking.
35. This concerted approach is much welcomed, as is the specialized inter-agency cooperation with regard to children under Chapter IV of the Anti-Trafficking Law. Under Article 25 par 3, public administration, social agencies for healthcare and education, non-governmental organizations, other institutions, also representatives of civil society are obliged to contact law enforcement authorities when it is known or suspected that a child has been exposed to the risk of being exploited or trafficked.
36. With regard to the cooperation and coordination required by both the Palermo Protocol and the Council of Europe Convention, it is noted that the Anti-Trafficking Law thus includes very clear responsibilities of various public and non-governmental actors. Overall, there appears to be an acute awareness of the need to collaborate effectively to prevent and combat trafficking in human beings, also with civil society and international organizations. This awareness is also reflected in the National Plan for 2010-2011. However, as noted above certain aspects of the National Committee and territorial commissions could be improved.

## **2. Policies and Programmes to Prevent Trafficking**

37. Under Article 9 of the Palermo Protocol, measures such as research, information and mass media campaigns, and social and economic initiatives shall be undertaken by States Parties to prevent and combat trafficking in persons (par 3). Measures to alleviate the factors that make persons, particularly women and children, vulnerable to trafficking shall be taken or strengthened – Article 9 par 4 specifically lists poverty, underdevelopment and lack of equal opportunity as examples. Legislation or other measures, e.g. educational, social or cultural ones, shall be adopted or strengthened to discourage the demand that fosters exploitation of persons, especially women and children, which leads to trafficking (Article 9 par 5).

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<sup>18</sup> This includes the Ministry of Interior, Ministry of Foreign Affairs and European Integration, the Intelligence and Security Service, the National Migration Bureau, the Frontier Guard Service, the Ministry of Health and Social Protection, the Ministry of Education, Youth and Sports, the Ministry of Information Development, the Ministry of Economy and Commerce, the Ministry of Justice and public administration authorities on a central and local level in general.

38. Paragraph 2 of Article 5 of the Council of Europe Convention also lists specific policies and programmes to prevent trafficking in human beings, namely research and data collection, awareness raising and educational campaigns for the public, social and economic initiatives, and training programs aimed both at potential victims as well as professionals dealing with the victims.
39. The 2010-2011 National Plan envisages a number of activities in support of research (including data collection) and awareness-raising/educational campaigns for both potential victims and public/non-governmental entities dealing with the prevention and combat of trafficking, also social and economic activities and legislative measures. These will be discussed in greater detail in the ensuing sub-sections.
40. At the outset, however, it should be noted that a large number of prevention-related activities provided for in the National Plan are conducted in partnership with non-governmental and international organizations, and are also funded or co-funded by these organizations and foreign government funds. In this context, it is important to stress that while it is positive that the competent Moldovan authorities receive such extensive support for prevention and awareness-raising measures, this type of funding is usually connected to a specific event or project and will expire once the project has been completed. Given the fact that prevention and awareness-raising measures will never cease to be relevant in order to prevent and fight trafficking in human beings, the competent authorities in Moldova are urged to continually increase the allocation of funds to such activities, so as to ensure that such measures continue on a regular basis and are not dependant on sporadic funding from non-state actors. While funding from non-state actors or other states' government funds is always helpful, such funding should be supplemental and should not constitute the main basis for certain activities or measures.

### ***2.1 Research and Data Collection***

41. According to Explanatory Note No. 103 to the Council of Europe Convention, research should be seen as a long-term preventive strategy to help develop effective preventive methods. While data is often collected to generate intelligence, the systematic collection of data on different aspects of human trafficking is an integral part of the research process as well.
42. In Moldova, the Ministry of Interior is tasked to develop, administer and maintain an updated database on the phenomenon of trafficking under Article 11 par 3 of the Anti-Trafficking Law, and shall carry out studies aimed at detecting and eliminating causes and conditions encouraging trafficking jointly with the General Prosecutor (par 4). Statistical information and reports on prevention, combat and protection against trafficking will be published each semester.
43. The 2010-2011 National Plan foresees the creation of a centralized national data records centre for information related to trafficking in human beings, which shall be an effective data-exchange mechanism with common indicators. Based on the National Plan, the Ministry of Interior, the Prosecutor General's Office, the Ministry of Justice, and the Ministry of Labour, Social

Protection and Family shall collaborate with international and non-governmental organizations to this end. This aspect of the National Plan is welcomed and encouraged – it is essential that data collection is done in a centralized and concerted manner<sup>19</sup> that is in line with data protection standards set out in the Council of Europe’s Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data<sup>20</sup>.

44. Also, the National Plan aims to consolidate competent prevention authorities and their roles, for example the Centre to Combat Trafficking in Persons (hereinafter the “CCTIP”) within the Ministry of Interior. The CCTIP shall be assisted in its efforts to collect statistical data and analytical information concerning trafficking in human beings, and should also develop a centralized database within its office, which all institutions involved in preventing and combating trafficking in persons/offering assistance to victims should have access to. In this context, it is noted that the distinction between the data records centre and the CCTIP database is not clear. Should these be two separate prevention mechanisms, then it would be advisable to clarify the roles and aims of both to avoid confusion.
45. Moreover, the National Plan stresses the need for periodic, systematic and continuous monitoring and evaluation of characteristics, dimensions and evolution of trafficking in human beings, as well as regular information-sharing with civil society. This is much welcomed and should be continued in future National Plans.

### ***2.2 Awareness-Raising, Education Campaigns, and Training Programs for Vulnerable Groups and Professionals***

46. According to Explanatory Note No. 103 of the Council of Europe Convention, awareness-raising activities and educational campaigns are especially important in countries of origin, where they are aimed at potential victims. As Moldova is still considered to be mainly a country of origin, such campaigns remain very important.<sup>21</sup> In addition to raising awareness among potential victims, such campaigns can also be directed at the general public, and can be aimed at potential users (customers), in order to educate them about human trafficking. The Council of Europe Convention also stresses the need for continuous training of professionals who are engaged in anti-trafficking efforts, either working directly with victims or otherwise<sup>22</sup>.
47. Preventive educational measures shall be taken by the Ministry of Education, Youth and Sports to develop educational and training programmes for teachers, parents and children and at-risk groups to eliminate causes and

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<sup>19</sup> In this context, see the the 2011 Trafficking in Persons Report issued by the Department of State of the United States, which recommends that Moldova should continue its efforts to improve data collection on trafficking cases through all stages of the penal process.

<sup>20</sup> Convention for the Protection of Individuals with Regard to the Automatic Processing of Personal Data, adopted on 28 January 1981.

<sup>21</sup> See the 2011 Trafficking in Persons Report issued by the Department of State of the United States, which states that “Moldova is a source and, to a lesser extent, a transit and destination country for women and girls subjected to sex trafficking, and for men, women, and children subjected to conditions of forced labor”.

<sup>22</sup> See Explanatory Note No. 103 to the Council of Europe Convention.

conditions that encourage trafficking in human beings (especially women and children) (Article 10 par 1 (5) of the Anti-Trafficking Law). The National Plan also speaks of special modules and training of teachers on trafficking. With regard to children at risk, special measures laid down in the National Plan include tutoring in case of poor results in school, ensuring access to the educational system through material support, additional nourishment, and transport, and special counseling for children from risk groups. These measures are welcome in their attempts to prevent trafficking in children.

48. On a more general note, par 2 of Article 10 of the Anti-Trafficking Law foresees awareness-raising activities by public authorities, local public administration and territorial commissions, also the development and distribution of publicity materials on risks for potential victims of trafficking, in active collaboration with the mass media. Information on action taken shall be submitted to the National Committee periodically, complete with proposals on how to improve efficacy of these activities. Information campaigns shall also be organized by international and non-governmental organizations on trafficking in human beings, in cooperation with public administration authorities and competent bodies (Article 12 par 1). This is also an important first step to ensure that potential victims are aware of the issue of trafficking and its repercussions.
49. It is positive that under Article 14 of the Anti-Trafficking Law, employees of law enforcement, migration and other authorities should undergo training, with special focus on methods for preventing trafficking, collaboration and cooperation (par 3).
50. In terms of awareness-raising/educational campaigns, the National Plan foresees a number of trainings for relevant governmental and non-governmental entities, to be implemented by competent ministries and the Prosecutor General's Office, with the help of various non-governmental and international organizations. In order to raise awareness within the population, the National Plan also envisions awareness-raising activities, publishing information bulletins of the National Committee and other information materials, organizing sessions to inform children, youth, parents and school personnel on the subject of trafficking. These awareness-raising activities are important and laudable, in particular the National Plan's special programmes for groups at risk aimed at reducing these persons' special vulnerability and awareness campaigns and conferences for young persons and children.
51. With regard to law enforcement and judiciary, it should be noted that in 2004, the Plenary of the Supreme Court of Moldova issued a decision on the application of legislation on trafficking in human beings and trafficking in children (hereinafter "the Supreme Court's 2004 Decision"), which was published in the Bulletin of the Supreme Court. This decision provides appropriate and helpful detailed guidelines on how to interpret the relevant provisions of the Criminal Code related to trafficking in human beings<sup>23</sup>.

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<sup>23</sup> See also the Training Manual for Judges and Prosecutors on Combating Trafficking in Human Beings published by the UN Office for Drugs and Crime and the OSCE Mission to Moldova in 2009.

52. In summary, it would appear that the Moldovan authorities have so far taken extensive measures to ensure that all parts of the population, including state institutions and courts, are informed about the issue of trafficking in human beings. These measures are welcomed, and it is hoped that they will continue in the future.

### ***2.3 Social and Economic Initiatives***

53. According to Explanatory Note No. 103 to the Council of Europe Convention, social and economic initiatives should be seen as long-term measures aimed at addressing underlying social and economic causes of trafficking, such as poverty in countries of origin. Such measures could include improved training and more employment opportunities for persons liable to become prime targets for traffickers.
54. Given that Moldova is seen mainly as a country of origin, it is thus essential to introduce and invest in long-term measures to improve the socio-economic underlying causes for this. In this context, it is relatively well established that lack of opportunity, inequality, discrimination, poverty and corruption are among the main factors associated with recruitment and trafficking from or within countries of origin.
55. In the Anti-Trafficking Law, Article 10 par 1 (4) addresses this issue. In terms of preventive activities in the field of labour, the Ministry of Health and Social Protection shall thereby implement information activities on the labour market, vocational training programmes, incentives for employment, labour mediation services, professional information and counseling, vocational orientation and training, consultation and assistance in starting a business activity.
56. Additionally, the Ministry of Economy and Commerce shall, together with other interested ministries and departments, develop and implement socio-economic programmes aimed at the removal of causes and conditions encouraging illegal migration/trafficking in human beings (par 1 (9)). This concerted approach to preventing trafficking in human beings is welcomed and is reflected in the 2010-2011 National Plan, where these programmes involve, e.g., yearly action plans to promote policies on the labour market, an information system on the labour market, and orientation, training and employment of graduates, youth, unemployed persons, potential victims, and victims of trafficking from non-integrated groups. Based on the National Plan, access of victims and potential victims to the training programmes in the field of entrepreneurship and granting micro-credits for business start-up shall also be improved. The Ministry for Labour, Social Protection and Family is likewise held to offer methodological support to social reintegration and maternal centres, and provide counseling and informational support on secure migration, the risks association with illegal migration and the dangers of trafficking/exploitation. Additionally, the Ministry for Economy and Commerce and the Ministry of Youth and Sports should develop a monitoring programme to sustain youth in business development. Additional measures listed in the National Plan to raise awareness include increasing the capacities of existing pilot centers within territorial employment agencies.

57. These measures are welcome tools to achieve a reduction of potential victims of trafficking. It should be ensured that they continue in the future as well.

### **3. Human Rights Based Approach/Gender Mainstreaming/Child-Sensitive Approach**

58. Paragraph 3 of Article 5 of the Council of Europe Convention states that parties should promote a human rights approach<sup>24</sup>, use gender mainstreaming, and adopt a child-sensitive approach in the development and implementation of prevention-related policies. Further, par 5 of the same provision also requires that states undertake specific measures geared towards reducing the vulnerability of children to trafficking, by creating a protective environment for them<sup>25</sup>.
59. Along the same lines, Article 4 of the Anti-Trafficking Law specifies basic principles of combating trafficking in human beings, which also include the observance of human rights and fundamental freedoms. Article 5 stipulates that the Anti-Trafficking Law shall be implemented without discrimination on any criteria, including sex.
60. In the National Plan for 2010-2011, one of the measures to reduce vulnerability to trafficking and discrimination of, *inter alia*, women is the organization of informational and promotional campaigns in the field of gender equality, and combating domestic violence.
61. At the same time, it is noted that equality between women and men involves not only ensuring non-discrimination, but also positive measures to achieve such equality<sup>26</sup>. While focusing on “vulnerable groups”, both the Anti-Trafficking Law and the National Plan do not specifically call for human rights and gender mainstreaming in the provisions and sections on prevention of trafficking in human beings, nor do they include positive measures specifically targeting women. It is recommended to outline this aspect with greater precision to take into account the fact that women are still more likely to be exposed to ill-treatment, violence and also trafficking in human beings. It is thus paramount that the responsible authorities raise awareness on equality and support the empowerment of women, also with the aim of reducing women’s vulnerability in general. Educational measures and special actions to

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<sup>24</sup> See in this context the “human rights and victims-centred approach advocated by the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01).

<sup>25</sup> The concept of a protective environment, as established by the United Nations Children’s Fund (hereinafter “UNICEF”), includes protecting children’s rights from “adverse attitudes”, traditions, customs, behaviour and practices, government commitment to protecting and realizing children’s rights, open discussions on and engagement with child protection issues, developing and enforcing protective legislation, and putting in place a system for monitoring and reporting abuse cases. Generally, children’s life skills, knowledge and participation should be enhanced, as should the capacity of persons dealing with children, families and communities.

<sup>26</sup> See the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01), which in its Section 3 (iv) states that gender-specific prevention strategies should be promoted to combat trafficking in woman and girls. This should include the implementation of gender equality principles and the elimination of the demand for all forms of exploitation, including sexual exploitation and domestic labour exploitation.

foster more equality in, e.g., the employment sector could help reduce the risk of women being trafficked or re-trafficked.

62. Additionally, and given that in particularly trafficking for prostitution still targets more women than men, it is recommended that an appropriate gender balance be aimed for in the National Committee and the territorial commissions. The relevant government decisions should be amended accordingly.
63. As for children's rights, it is once more reiterated that the Anti-Trafficking Law has a special Chapter IV, *inter alia* on preventing and combating trafficking in children. In this regard, Article 25 of this Law stresses that preventing and combating trafficking in children constitutes "a political, social, and economic concern of primary importance of the Republic of Moldova". Also, all authorities bodies and organizations dealing with the prevention and combat against trafficking in human beings shall focus on the best interests of the child. The knowledge or suspicion that a child has been exposed to the risk of being exploited or trafficked is sufficient to oblige public administration authorities, social agencies for healthcare and education, as well as non-government organizations, other institutions and representatives of civil society to contact law enforcement bodies<sup>27</sup>. This focus on children's vulnerability to trafficking and abuse is much welcomed.
64. Such focus on children's rights is likewise reflected in the National Plan for 2010-2011, which specifically includes the development of capacities in territorial employment agencies and of the professional skills of psychologists, social assistants, medical employees from NGOs and state institutions to assist victims and aggressors in case of family violence, abuse and neglect. Moreover, the National Plan aims to raise awareness within the business community in the field of tourism concerning trafficking in human beings, particularly children, as well as sexual exploitation of children. Additionally, it foresees awareness-raising campaigns for youth and children, and regional youth conferences and special events on child labour and trafficking; the National Plan also ensures access for children to various educational services.
65. In this context, it should be noted that Moldova has signed, but not yet ratified the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (hereinafter "the Lanzarote Convention"), which requires additional awareness-raising activities on sexual exploitation and sexual abuse of children for persons having regular contacts with children and the general public (Articles 5 and 8). Upon ratifying the Lanzarote Convention, more specific awareness-raising activities for the public, these persons, and for children, will become necessary. Other aspects of the Lanzarote Convention which will need to be implemented into national legislation include the participation of children in state policies and programmes in this field (Article 9), establishing independent national and local institutions to promote and protect the rights of the child (Article 10), specific data collection, help-lines (Article 13), and special additional assistance and protection measures (Articles 14 and 31).

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<sup>27</sup> See also Article 26 par a) of the Anti-Trafficking Law which states that the UN Convention on the rights of the child and the Law on the Rights of the Child of Moldova shall be strictly observed

#### **4. Migration Policies, Border Control and Opportunities for Legal Immigration**

66. In the Palermo Protocol, Article 10 obliges law enforcement, immigration and other state authorities to collaborate, to determine whether persons crossing state borders are traffickers or victims of trafficking, the documents they used, and the means and methods of criminal groups engaging in trafficking in human beings. The same provision also encourages States to train such personnel engaged in prevention of trafficking.
67. Article 11 of the Palermo Protocol and Article 7 of the Council of Europe Convention focus on border measures, which States shall strengthen to prevent and detect trafficking in human beings, in particular by adopting legislative and other measures to prevent the use of transport operated by commercial carriers for trafficking purposes. Such carriers should be obliged to ascertain that travelers are in possession of travel documents required for entering a certain State and should be liable in case they fail to do so<sup>28</sup>. States should consider denying persons “implicated in the commission of offences established in accordance with [the Palermo Protocol]” entry into their countries, or revoking their visas. Border control agencies should establish and maintain direct channels of communication. At the same time, States should ensure that travel documents cannot be easily misused, falsified or altered, replicated or issued, and should ensure the integrity and security of travel documents (Article 12 of the Palermo Protocol and Article 8 of the Council of Europe Convention).
68. Additionally, Article 5 par 4 of the Council of Europe Convention requires that States shall take appropriate measures, as necessary, to enable legal migration into countries, in particular through dissemination of accurate information on the conditions enabling legal entry and stay into a country.
69. In support of trans-border collaboration, the Ministry of Foreign Affairs shall organize and participate in negotiations to conclude international treaties with other states and international organizations (Article 10 par 1 (7) of the Anti-Trafficking Law).
70. Under Article 10 par 1 (2), concrete measures to prevent the influx of victims of trafficking include the development of lists of states posing an increased risk of trafficking in human beings (prepared by the Ministry of Interior, of Foreign Affairs and European Integration (hereinafter “the Ministry of Foreign Affairs”), the Intelligence and Security Service, and the National Migration Bureau). The same authorities mentioned above, also the Frontier Guard Service, shall take necessary action to forbid certain persons from entering Moldova where there is accurate information that they are trafficking human beings. The Frontier Guard Service shall also engage in additional preventive measures by preventing, detecting and deterring attempted illegal border crossings by traffickers and victims. Article 30 par 4 of the Anti-Trafficking Law specifies that foreign or stateless persons involved in trafficking shall be

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<sup>28</sup> See Explanatory Note No. 114 to the Council of Europe Convention, which stresses that commercial carriers cannot be held responsible for checking the authenticity of such documents, but only for checking whether travellers are in possession of such documents.

refused entrance to Moldova or have their entry visas revoked. These measures adequately reflect Article 11 of the Palermo Protocol and Article 7 of the Council of Europe Convention.

71. Also in reflection of the above international provisions, Article 13 of the Anti-Trafficking Law outlines prevention measures by collaborating with international transport companies – agencies and structures are held to verify whether passengers possess the documents necessary to enter a country of destination. The Anti-Trafficking Law does not specify liability of carriers in such instances, nor does the Criminal Code or the Contraventions Code contain relevant provisions in this context. It is recommended to introduce liability for carriers should they fail to verify whether passengers possess valid documents allowing them to enter or leave the country.
72. While the Anti-Trafficking Law does not contain any provisions on the misuse, falsification, alteration, replication or issuance of travel documents, these actions do incur liability under Article 9 of the Law on Passports, presumably leading to either administrative or criminal liability (though this is not specified in Article 9). This reference to other legislation could be made clearer in Article 9.
73. At the same time, the Moldovan authorities have introduced new biometric passports and travel documents, which are more difficult to falsify or copy as they require information on a person's blood group, digital fingerprint and digital photograph<sup>29</sup>. This step is much welcomed and should help prevent the creation and use of falsified documents.
74. It is noted, however, that the Anti-Trafficking Law does not provide for additional information being provided to encourage legal migration into Moldova, as required by Article 5 par 4 of the Council of Europe Convention. It may be beneficial to include it in the Anti-Trafficking Law, to reduce the influx of trafficked persons from outside.

#### **B. Legislation Related to Prosecution**

75. In the Palermo Protocol, Article 5 obliges States to adopt legislative and other measures as may be necessary to establish as criminal offences intentional acts of trafficking as defined under Article 3 of the Protocol. According to Article 5 par 2, attempting to commit such acts shall also be a criminal offence, as shall aiding and abetting, or “organizing or directing” other persons to commit such acts. Furthermore, Article 4 states clearly that the Palermo Protocol shall apply to the investigation and prosecution of trafficking offences where they are transnational in nature and involve an organized criminal group.
76. Under the Council of Europe Convention, effective investigation and prosecution are included in Article 1 par 1 (c) on the purposes of the Convention. Chapter IV of the Council of Europe Convention deals specifically with substantive criminal law. While Article 18 reiterates the

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<sup>29</sup> See Article 2 par 7 (r) of the Law on the Identity Documents of the National Passport System, Law No. 273-XIII of 9 November 1994.

criminalization of intentional acts of trafficking in human beings stated above in Article 5 of the Palermo Protocol, Articles 19 and 20 go even further in outlining specific cases, namely the use of services of victims and acts relating to travel and identity documents. Articles 21 and 22 cover aiding/abetting and corporate liability, while Articles 23-25 deal with sanctions, aggravation of sanctions and previous convictions. Article 26 reiterates that victims of trafficking shall not be punished for engaging in unlawful activities if they have been compelled to do so.

### **1. Liability for Trafficking in Persons**

77. Under Article 3 par a) of the Palermo Protocol and Article 4 par a) of the Council of Europe Convention, trafficking in persons/human beings is “the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. Exploitation shall include, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
78. Article 3 par b) and Article 4 par b) respectively state that the consent of a victim to acts of trafficking shall be irrelevant where the means mentioned in Article 3 par a)/Article 4 par a) were employed, and pars c) of both Article 3 of the Palermo Protocol and Article 4 of the Council of Europe Convention note that in case of the recruitment, transfer, harbouring or receipt of a child for the purpose of exploitation, this shall be considered trafficking even if the action does not involve any of the means set forth in par a).
79. In the Moldovan Anti-Trafficking Law (Article 2 par 1), trafficking in human beings and trafficking in children are defined in the same way as in both the Palermo Protocol and the Council of Europe Convention. The definition of exploitation (Article 2 par 3) even goes beyond the minimum requirements found in the Palermo Protocol and the Council of Europe Convention: Next to exploitation in the form of forced labour, slavery, prostitution, and harvesting of organs, Article 2 par 3 also covers using women as surrogate mothers or for reproductive purposes, the illegal adoption of children, the use of a person in armed conflicts/illegal military formations, also in criminal activities, compelling others to beg, selling human beings to other persons, and compelling persons to engage in activities that violate fundamental human rights and freedoms.<sup>30</sup>

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<sup>30</sup> Article 2 par 3 reads as follows: “exploitation of a person – abuse of a person in order to obtain profit, namely:

a) compelling [another person] to perform work or services, but use of force, threats or other forms of coercion, in violation of the legal provisions connected to labour conditions, remuneration, health or security;

b) slavery, use of certain practices similar to slavery, or resorting to other ways of deprivation of liberty;

c) compelling [others] to engage in prostitution, to participate in pornographic performances, with a view to the production, distribution and any introduction into circulation of such performances, the

80. In the Criminal Code of Moldova, trafficking in human beings is laid down in Article 165. The definition found therein slightly differs from the one found in the Anti-Trafficking Law and only lists some of the examples of exploitation listed in Article 2 par 3 of the Anti-Trafficking Law: “Trafficking in human beings [is] the recruitment, transportation, transfer, harbouring or receipt of a person, with or without [his or] her consent, for the purpose of commercial and non-commercial sexual exploitation, for forced labour or services, for begging, for slavery and slavery-like conditions, for use in armed conflicts or in criminal activities, for the removal of organs or tissues or transplantation”.
81. Article 165 of the Criminal Code then goes on to list different means of trafficking, the first of which is “the use or threat of physical or mental violence no[t] dangerous for a person’s life and health, including through abduction, confiscation of documents and servitude for the repayment of a debt the amount of which was not set within a reasonable limit”. It should be noted that trafficking using violence that is dangerous for a person’s life, physical or mental health is already an enhanced version of trafficking under Article 165 par 2 leading to aggravated sanctions (see pars 124 and 133 *infra*).
82. Thus, while the list of actions (recruitment, transportation, transfer, harbouring or receipt of person) is the same as in the Anti-Trafficking Law, the means of trafficking are not quite the same and, depending on their nature and severity, may lead to aggravated sanctions under Article 165 pars 2 and 3 (see pars 124, 126 and 133 *infra*).
83. In this context, it is noted that trafficking by threatening a person with violence fulfills the base action under Article 165 par 1, and that there is no aggravated sanction for threat of aggravated violence. As the coercive aspect of trafficking in human beings is a core element of this criminal act, the level of violence that the victim is being threatened with would not appear to be irrelevant in this context. It is recommended to consider differentiating between the severity of the threat, to take into consideration the level of pressure on and vulnerability of the victim. In this way, the threat of violence that could be dangerous to a person’s life or health (either the victim him/herself or another person) could well lead to an aggravation of sentence under Article 165 par 2.
84. Other coercive measures laid down in Article 165 par 1 are abduction, confiscation of documents, and servitude for the repayment of a debt whose limits are not reasonably defined. It is not clear why the limits of a debt are relevant for the determination of a crime under Article 165 – surely servitude

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acquisition, sale or possession of pornographic material, or practicing other forms of sexual exploitation;

d) compelling [others to engage in the] harvesting of organs or tissues for transplantation or collection of other component parts of the human body;

e) using a woman as a surrogate mother or for reproductive purposes;

f) abuse of [a] child’s rights with a view to illegal adoption;

g) use [of other persons] in armed conflicts or in illegal military formations;

h) use [of other persons] in criminal activities;

i) compelling [others] to engage in begging;

j) [the] sale [of a person] to another person;

k) compelling [others] to engage in other activities that violation fundamental human rights and freedoms.

[...]

for the repayment of a debt would always be considered illegal, regardless of the limits of the debt. This should be clarified.

85. Further, other forms of coercion may be used which are currently not set out specifically in Article 165 par 1. The list of coercive measures should thus be expanded to generally cover all possible forms of coercion.
86. Additional means of trafficking mentioned in Article 165 par 1 are deception, and the abuse of a position of vulnerability or abuse of power, by giving or receiving payments or benefits of any kind in order to obtain consent of a person who controls another.
87. Moreover, it is noted that next to deception, the definitions of trafficking in the Palermo Protocol and in the Council of Europe Convention, but also in the Anti-Trafficking Law, speak of “fraud” as another means of committing trafficking in human beings. It is recommended to enhance Article 165 accordingly, so as to be more in compliance with international standards and the Anti-Trafficking Law.
88. The forms of exploitation laid down in Article 165 par 1 of the Criminal Code reflect the examples of exploitation found in the Palermo Protocol and the Council of Europe Convention, except for servitude, which is listed as a means to ensure the repayment of a debt, but not as a form of exploitation. This should be changed, to ensure clarity and enhance Article 165’s convergence with international standards.
89. At the same time, a number of types of exploitation mentioned in the Anti-Trafficking Law are not contained in Article 165, namely using women as surrogate mothers or for reproductive purposes, selling human beings to other persons, and compelling persons to engage in activities that violate fundamental human rights and freedoms.
90. While the use of women as surrogate mothers or for reproductive purposes could raise issues under Article 161 covering non-consensual artificial insemination or the implantation of an embryo, or Article 171 on rape, neither of these provisions would appear to cover all potential varieties of trafficking to use women as surrogate mothers/for reproductive purposes. For the sake of consistency, it is recommended to ensure that Article 165 is expanded to reflect this aspect of Article 2 of the Anti-Trafficking Law.
91. At the same time, Article 167 of the Criminal Code on slavery and conditions similar to slavery would appear to cover aspects of trafficking in order to sell human beings to other persons. At the same time, this provision is less specific than Article 165. It is also not clear whether the acts of “placing” and “keeping” a person in a condition where another person owns him/her really covers all types of trafficking, namely recruiting, harbouring, transporting persons for the purpose of selling them. It would thus be advisable to expand Article 165 to include trafficking in order to sell human beings to other persons.
92. Trafficking for the purpose of “compelling persons to engage in activities that violate fundamental human rights and freedoms”, as listed in Article 2 par 3 (k) of the Anti-Trafficking Law, is also not contained in Article 165. While it would of course be preferable to have overall consistency between the Criminal Code and the Anti-Trafficking Law, it should be noted here that

individuals, as opposed to states, are normally not liable for human rights violations, and that all potential scenarios would appear to be covered by the act of trafficking human beings for the purpose of using them in criminal activities under Article 165. It would thus not be necessary to include this aspect of Article 2 par 3 of the Anti-Trafficking Law in the Criminal Code, and when discussing amendments to the Anti-Trafficking Law, relevant stakeholders should also consider deleting this type of exploitation from the Anti-Trafficking Law.

93. It is much welcomed that in Article 206, the Criminal Code contains a specialized provision dealing with trafficking in children. The actions constituting trafficking are for the most part the same as in Article 165 of the Criminal Code, and Article 2 par 1 of the Anti-Trafficking Law, namely recruitment, transportation, transfer, sheltering (harbouring), or reception of a child. One additional action not found in the other provision is “giving, or receiving payments or benefits in order to obtain the consent of the person who is in control of the child”. In the Palermo Protocol, the Council of Europe Convention and the Anti-Trafficking Law, such giving or receiving of payment is defined as a means to recruit, transport, transfer, harbour or receive a person/child, rather than a trafficking action in itself. This point should be clarified in Article 206.
94. In this context, it is noted that the means of trafficking discussed with regard to Article 165 are not included in Article 206. They are, however, also not needed, as Article 3 par c) of the Palermo Protocol, Article 4 c) of the Council of Europe Convention and Article 2 par 2 of the Anti-Trafficking Law all stress that the means of trafficking (*inter alia* threats, coercion, abduction, fraud, or deception) are not a requirement to determine trafficking of children. Article 206 thus clearly and rightly criminalizes any recruitment, transportation, transfer, sheltering or reception of children with the purpose of their exploitation.
95. The purposes of trafficking in human beings under Article 206 are very similar to the ones found in Article 2 of the Anti-Trafficking Law, namely commercial or non-commercial sexual exploitation in prostitution or a pornographic industry, also forced labour or services, exploitation through slavery, or conditions similar to slavery, including illegal adoption, use of a child in armed conflicts or criminal actions, the removal of organs or tissues for transplant, abandonment abroad or sale or purchase of a child.
96. It is noted that sexual exploitation under Article 206 par 1 a) appears to focus only on prostitution or sexual exploitation in the pornographic industry, but does not list other forms of sexual exploitation, e.g. in a person’s home. In order to ensure that trafficking for all forms of sexual exploitation of children is covered by Article 206, it is advised to expand this provision accordingly.
97. As for trafficking for the purpose of abandoning children abroad (Article 206 par 1 g)), it is noted that such treatment is not listed in the examples of exploitation listed in Article 2 par 3 of the Anti-Trafficking Law. Additionally, it is noted that normally, when trafficking persons including children, perpetrators will commit such actions with the purpose of achieving some sort of benefit or gain. It is difficult to imagine what type of benefit could be

gained by abandoning children abroad. It is thus recommended to amend or clarify this part of Article 206.

98. Finally, it is noted that under-aged girls could also conceivably be used as surrogate mothers or for reproductive purposes. This type of exploitation mentioned in Article 2 par 3 e) should thus also be reflected in Article 206 (see pars 89-90 *supra*).

## **2. Liability for Auxiliary Crimes**

99. In the Criminal Code of Moldova, there are a number of acts that may be associated with trafficking in human beings. Encouraging or forcing a person to prostitution or gaining advantage from the practice of prostitution, or making profits out of the practice of prostitution by a person, are subsumed under the separate criminal provision of “pimping” under Article 220 of the Criminal Code. In this context, it is noted that the Supreme Court’s 2004 Decision rightly stresses that in contrast to trafficking, persons engaging in prostitution are not considered victims as they engage in their actions voluntarily, and that pimping is a crime “against public health and cohabitation”, which also distinguishes it from trafficking in human beings.
100. The “organization of illegal migration” is also a separate act under Article 362<sup>1</sup>. This provision punishes the “organization, for direct or indirect financial or material gain, of the illegal entry, stay or transit on a state’s territory or exit from this territory of a person that is not its citizen or resident”. Article 362<sup>1</sup> pars 2 and 3 foresees aggravated punishment if these actions were committed by or to more than one person, or by a criminal group or organization, or if it resulted in serious damage to public interests, or legally protected rights or interests of persons (natural and legal) protected by law. The Supreme Court’s 2004 Decision states that in the case of migration, borders are always crossed illegally, while victims of trafficking may cross a border legally or illegally. At the same time, it may be added that illegal migration is an end in itself under Article 362<sup>1</sup>, which usually the person illegally entering a country will have consented to. In the case of trafficking, on the other hand, illegal migration is one of the possible means to achieve the exploitation of persons.
101. With regard to child pornography under Article 208<sup>1</sup> of the Criminal Code, it is noted that Moldova ratified the Council of Europe’s Convention on Cybercrime. This Convention, in its Article 9, states that the following should be established as criminal offences under domestic law, when committed intentionally and without right, and through a computer system: producing child pornography for the purpose of its distribution (through a computer system), offering/making such pornography available, or distributing or transmitting it, procuring child pornography for oneself or another person, or possessing child pornography in a computer system or on a computer-data storage medium. Child pornography shall be pornographic material that visually depicts a minor, or a person appearing to be a minor, engaged in sexually explicit conduct, or realistic images representing a minor engaged in such conduct.
102. Under Article 208<sup>1</sup> of the Moldovan Criminal Code, child pornography is “[t]he production, distribution, broadcasting, import, export, offering, sale,

exchange, use, or holding of pictures or of other images of one or more children involved in explicit, real, or simulated sexual activities or pictures or other images of genital organs of a child represented in a lustful or indecent manner including in an electronic version”<sup>31</sup>. While Article 208<sup>1</sup> covers most aspects of Article 9 of the Convention on Cybercrime, certain aspects could be made more explicit, namely the term “electronic version” could be made more explicit to cover computer systems and computer-data storage media.

103. Other potential auxiliary crimes covered by the Moldovan Criminal Code are set out in Annex 1 attached to this review<sup>32</sup>.
104. At the same time, it noted that the Moldovan Criminal Code does not criminalize the use of services of trafficking victims in cases where the client/user of services knew that the person in question is indeed a trafficking victim. Such liability for persons knowingly benefiting from acts of trafficking is not binding under the relevant instruments; the Palermo Protocol does not mention it at all, while Article 19 of the Council of Europe Convention calls upon state parties to *consider* introducing such liability. Arguably, such criminal liability for beneficiaries of not only sexual exploitation, but also forced labour or other services could reduce the demand for services obtained through trafficking. On the other hand, it will often be difficult to prove whether such persons will actually have known, or should have known that they were benefiting from services obtained through trafficking in human beings<sup>33</sup>, and may well prevent such clients from helping to identify victims of trafficking and otherwise assist in criminal investigations. States may thus consider introducing such liability to their legal systems<sup>34</sup>, but such considerations should also be accompanied by in-depth discussions on the repercussions and practical effects of this type of extensive criminal or administrative responsibility.
105. In addition to the Criminal Code, the Law on the Transplant of Human Organs, Tissues and Cells deals specifically with the protection of rights of donors and beneficiaries of organ, tissue and cell transplants and, *inter alia*, preventing the sale of human body parts. In Chapter VIII of this Law, Article 27 prohibits financial profits from donating human organs, tissues or cells, and Article 28 prohibits trafficking in human organs, tissues and cells. Article 28 par 2 qualifies this form of trafficking as a criminal offence punishable by the criminal legislation in effect, and presumably refers to Articles 165 and 296 of the Criminal Code, which both list the removal of human organs and tissues as exploitative purposes for trafficking. It is advised to consider introducing a

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<sup>31</sup> See also Article 90 of the Contraventions Code, which also sanctions producing, selling, distributing or storing pornographic products.

<sup>32</sup> In this context, see also the Moldovan Contraventions Code, which punishes violations of the labour code (Article 55) and involving juveniles in work dangerous to their health (Article 58).

<sup>33</sup> At the same time, the Explanatory Notes to the Council of Europe Convention note that the difficulty of finding evidence is not necessarily a conclusive argument for not treating a given type of conduct as a criminal offence and that this problem is sometimes overcome by inferring the perpetrator’s intention from the factual circumstances (pars 234 and 235).

<sup>34</sup> This recommendation was already made in Comments on the draft Law of the Republic of Moldova on Prevention and Combating Trafficking in Persons, issued jointly by the Council of Europe and ODIHR in consultation with the OSCE Mission to Moldova on 2 September 2004, Opinion Nr. TRAFF-MOL/013/2004, Opinion of the Council of Europe Expert, Chapter V – Liability for Trafficking in Human Beings, General remarks.

more specific reference to criminal legislation in Article 28 of the Law on the Transplant of Human Organs, Tissues and Cells.

106. Generally, however, it would appear that the Criminal Code of Moldova amply covers relevant auxiliary crimes to trafficking in human beings, and that the Supreme Court has taken positive measures to ensure that other courts differentiate between the relevant provisions. Given that the Supreme Court Decision dates from 2004, it may be advisable to issue updated guidelines to reflect past changes effected to the Criminal Code.
107. It should however be noted that the existence of auxiliary or similar crimes should never be a substitution for punishing the crime of trafficking in human beings itself, as they only touch on fragments of this crime, but do not in themselves reflect the heinous and human rights defying nature of this crime. The fight against trafficking will only be successful if such acts are prosecuted for what they are, leading up to sufficiently grave sanctions.
108. Upon ratifying the Lanzarote Convention, additional criminal provisions for engaging in sexual activities with children, child prostitution, the participation of children in pornographic performances, corruption of children and soliciting children for sexual purposes will need to be introduced to the Moldovan Criminal Code (Articles 18, 19, 21-23 of the Lanzarote Convention).

### **3. Non-punishment of Victims**

109. According to Article 26 of the Council of Europe Convention, State Parties shall provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.
110. In Article 165 on trafficking in human beings, par 4 specifies that victims of trafficking shall be exempted from criminal liability for offences committed by them “in connection with this status”. Article 209 par 4 embodies the same principle in cases of trafficking in children<sup>35</sup>.
111. It is noted that both provisions do not require that a victim was “compelled” to commit an act; instead, they merely state that the crime must have been committed in connection with their status as victims. This is a quite vague formulation which at a first glance appears to be oriented in the interests of the victim. On the other hand, it may be difficult to define in practice whether a certain action was committed in connection with a person’s victims’ status or not. It may thus be advisable to amend Articles 165 par 4 and 209 par 4 so that victims are only exempted from such crimes which they were compelled or coerced into committing as victims of trafficking. In practice, this exemption from punishment should apply to all illegal actions including such matters as possessing illegally obtained or falsified travel or identity documents.

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<sup>35</sup> See also Article 89 par 2 of the Contraventions Code, which also exempts persons engaged in prostitution against their will from liability, and also the more general provision of Article 32 of the Anti-Trafficking Law stipulating exemption for victims of trafficking from civil, criminal and administrative liability.

#### **4. Corporate Liability**

112. Under Article 22 of the Council of Europe Convention, state parties shall adopt legislative and other measures to ensure that legal persons can be held criminally, civilly or administratively liable for trafficking offences committed for their benefit by any natural person acting either individually or as part of an organ of the legal person. The respective natural person needs to have a leading position within the respective legal entity based on the power of representation, the authority to take decisions on behalf of or exercise control within the legal person. The relevant domestic legislation shall also foresee legal persons' liability if a lack of supervision or control by a natural person rendered possible the commission of a trafficking offence for the benefit of the legal person by a natural person acting under its authority. The liability of a legal person shall be without prejudice to the criminal liability of natural persons having committed the offence.
113. According to Article 21 par 3 of the Criminal Code, legal entities (but not public authorities) are subject to criminal liability if they failed to comply, or complied improperly with "direct legal provisions" obliging them to perform or prohibiting them from performing a certain activity. Criminal liability also applies if a legal entity is guilty of carrying out an activity that does not comply with its founding documents or declared goal, or if the act causes or threatens to cause considerable damage to a person or society or the state, and was committed for the benefit of the legal entity, or was allowed, sanctioned, approved, or used by the body or the person empowered with the legal entity's administrative functions. Criminal liability of a legal entity does not exclude criminal liability of an individual for the crime committed (Article 21 par 5)<sup>36</sup>.
114. Articles 165 and 209 on trafficking in human beings, respectively children, specifically apply to legal entities as well. Both provisions contain special sanctions for trafficking committed by legal entities, which exceed those imposed on natural persons.
115. In this context, the Criminal Code would appear to cover almost all cases of potential liability of legal entities envisaged by Article 22 of the Council of Europe Convention. It is, however, questionable whether Article 21 par 3 of the Criminal Code also covers the case when a lack of supervision or control rendered possible the commission of a trafficking offence for the benefit of a legal person by a natural person acting under its authority. In such cases, the act is committed by the employee or agent of a legal entity, not the person leading the legal entity. It is thus questionable whether this is the same as a person "empowered with the legal entity's administrative functions" under Article 21 par 3, or whether this provision only refers to a person leading a company.
116. In the case described above, such actions would not necessarily be "allowed, sanctioned, approved or used" by the person in charge, as required by Article 21 par 3, as the supervisor could also, due to lack of supervision or control, not even know about the committed act/actions. Unless such liability for legal entities is covered by Article 21 par 3 of the Criminal Code, or elsewhere in

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<sup>36</sup> This is reiterated in Article 31 par 3 of the Anti-Trafficking Law.

Moldovan legislation, it is recommended to include it in Moldovan legislation, possibly in civil or administrative offences legislation.

## **5. Sentences and Punishment**

117. Under Article 23 of the Council of Europe Convention, States party to the Convention are held to ensure that the criminal offences mentioned in Articles 18-21 are punishable by effective, proportionate and dissuasive sanctions. In its pars 1-2, this provision contains very explicit descriptions of punishments for both real persons and legal persons, which will be dealt with further in subsections 5.1 and 5.2 respectively.
118. Under pars 3 and 4, Article 23 deals with ways to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences<sup>37</sup>, and the closure of establishments used to carry out trafficking in human beings.
119. In this context, it is noted that under the Criminal Procedure Code, movable assets and real estate may be sequestered to ensure the reparation of damages caused by a crime (Articles 202-210 of the Criminal Procedure Code, also Article 388 on securing civil action and Article 397 on special confiscation of goods). Up to the completion of civil proceedings, these provisions ensure the confiscation of assets obtained through trafficking. However, it is not clear what will happen once civil proceedings are completed and whether in the long run, traffickers are indeed “deprived” permanently of their assets – this should be clarified in relevant provisions of the Criminal Procedure Code and, if necessary, additional provisions shall be introduced to reflect the wording of Article 23 par 3 of the Council of Europe Convention.
120. As for the temporary or permanent closure of establishments used to carry out trafficking in human beings, it is noted that Article 31 par 1 of the Anti-Trafficking Law specifies that in cases where trafficking is conducted through businesses acting as a disguise for such illegal actions, the entity’s license shall be withdrawn and the legal entity liquidated based on a court judgment. In the interests of transparency, it would be advisable to indicate in Article 31 par 1 which type of procedure such sanctions should fall under (possibly this is the sequestration procedure under the Criminal Procedure Code).
121. Article 24 of the Council of Europe Convention deals with aggravating circumstances. Under this provision, danger to the life of a victim, whether deliberately or by gross negligence, offences against children, offences committed by public officials in the performance of their duties, or by criminal organizations shall be considered aggravating circumstances leading to enhanced punishment. Aggravated punishment under Moldovan law will be dealt with further in the following subsections on natural and legal persons respectively.

### ***5.1 Natural Persons***

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<sup>37</sup> See, in this context, Section 4 (ii) of the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01).

122. According to Article 23 par 1 of the Council of Europe Convention, sanctions for crimes of trafficking committed by natural persons shall include penalties involving deprivation of liberty, which can give rise to extradition. Under Article 2 of the Council of Europe's European Convention on Extradition, extradition is granted in respect of offences punishable under the laws of the requesting and requested parties by deprivation of liberty or under a detention order for at least one year or a more severe penalty.<sup>38</sup>
123. Article 165 of the Criminal Code on trafficking in human beings foresees staggered sanctions depending on the severity of the crime. Under par 1, if physical or psychological violence is used that is not dangerous to a person's life or health, then the punishment involves *inter alia* 5 to 12 years' imprisonment.
124. The same actions lead to aggravated punishment if committed repeatedly, against two or more persons, against a pregnant woman, by two or more persons, by an official or by a high-ranking official, if they are accompanied by dangerous violence for a person's life, physical or psychological health, or if they are committed by way of torture, inhuman or degrading treatment to ensure a person's compliance, or through rape, physical bondage, use of a weapon or threat or disclosure of confidential information to the person's family and other persons, as well as through other means (Article 165 par 2 a) – g)). In these cases, the punishment amounts to, *inter alia*, 7-15 years' imprisonment.
125. In this context, it is questionable whether the aggravated sanction for trafficking committed by officials or high-ranking officials fully reflects the contents of Article 24 of the Council of Europe Convention, according to which this would only apply if the official in questions commits the act "in the performance of her/his duties". In such cases, the aggravated sanction required stems from the fact that a person representing the state, who actually is obliged to protect persons residing in a certain country from all possible harm and ill-treatment, is actively engaging in doing the opposite in his/her official capacity. This should be reflected more clearly in Article 165 par 2, and also in Article 206 par 3 (see par 127 *infra*).
126. Acts of trafficking that are committed by an organized criminal group or organization, or that result in serious bodily harm or mental illness of a person shall lead to even more severe sanctions (Article 165 par 3 a) and b)). In these cases, the punishment shall be 10-20 years' imprisonment, and the deprivation of the right to occupy certain positions or exercise a certain activity for a period of 3-5 years, or life imprisonment.
127. Under Article 206, trafficking in children is punishable with 8-12 years' imprisonment, and the deprivation of the right to occupy certain positions, or exercise a certain activity for a period of 2-5 years. According to Article 206 par 2, certain actions<sup>39</sup> will lead to aggravated sanctions (*inter alia* 10-15

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<sup>38</sup> European Convention on Extradition, ETS 24, adopted by Council of Europe States on 13 December 1957, ratified by the Government of Moldova on 2 October 1997.

<sup>39</sup> Such actions include the use of physical or psychological violence against children, subjecting the child to sexual abuse, and commercial/non-commercial sexual exploitation, torture, inhuman or degrading treatment to ensure the child's compliance, as well as rape, taking advantage of the physical dependence of a child, using a weapon, or the "threat of disclosure with [the] divulgation of

years' imprisonment), while Article 206 par 3 foresees yet another increase in sanctions (inter alia 15-20 years' imprisonment or life imprisonment) depending on the circumstances of the case<sup>40</sup>.

128. As required by Article 23 par 1 of the Council of Europe Convention, all of the above sanctions may "give rise to extradition". Following Article 554 par 3 of the Moldovan Criminal Procedure Code, extradition of a person to a foreign country is possible if the alleged crime is punishable by Moldovan legislation with at least one year of imprisonment. While it is impossible to objectively determine whether a particular sentence will in all cases be "effective, proportionate and dissuasive", as required by Article 23 par 1, it should be noted that with the exception of what was discussed under par 125 *supra*, the sanctions found in the Moldovan Criminal Code (5 years' to, in aggravated cases, 20 years' imprisonment) would appear to be in line with what is required by the Council of Europe Convention. .
129. With regard to child trafficking, it is noted that the maximum punishment of 12 years', in aggravated cases 15 and 20 years' imprisonment, is the same as for trafficking in adults. However, the special gravity of trafficking in children is nevertheless taken into consideration by the fact that the minimum punishment is raised to 8 years' imprisonment, in aggravated cases 10 and 15 years' imprisonment. Taking into consideration that the maximum punishment under Moldovan law is 20 years, these sanctions follow the maximum of what is possible under Moldovan criminal law, and would thus also appear to be effective, proportionate and dissuasive.
130. With regard to other relevant criminal actions and their sanctions, both are listed in the Criminal Code under Annex 1 attached to this review.

### ***5.2 Legal Persons***

131. According to Article 23 par 2 of the Council of Europe Convention, legal persons held liable under Article 22 on corporate liability shall also be subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary measures.
132. Based on Article 63 of the Criminal Code, legal entities may be subjected to the following sanctions: fines, deprivation of the right to practice certain activities<sup>41</sup> or liquidation<sup>42</sup>.

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confidential information to the child's family, or to other persons". Other aggravating circumstances include subjecting the child to slavery or similar conditions, use of children in armed conflicts, and the removal of organs or tissues for transplant.

<sup>40</sup> Such aggravated sanctions will be applied in cases where acts of trafficking in children are committed repeatedly, against two or more children, by a decision-making person or a person with a high-ranking position, or an organized criminal group or organization, or if such acts have resulted in the child's death, his/her suicide, serious bodily injury or mental illness.

<sup>41</sup> Based on Article 73 of the Criminal Code, this is essentially a prohibition to make specific transactions, namely to issue shares or bonds, receive subventions or facilities, and other advantages from the state, or to practice other activities

<sup>42</sup> Based on Article 74, this is the closure of an entity with the ensuing consequences as laid down in civil legislation. A court will decide to liquidate a legal entity in cases where it finds that the seriousness of the committed crime makes it impossible to preserve this legal entity and allow it to continue its activities.

133. Under Article 165 on trafficking in human beings, legal entities are sanctioned with fines amounting to 3000 to 5000 conventional units (60,000-100,000 Lei<sup>43</sup>), the deprivation of the right to exercise a certain activity, or the liquidation of the enterprise. Under the aggravated circumstances laid down in Article 165 par 2 (see pars 124 and 126 *supra*), the fines for legal entities are raised to 5000-7000 conventional units, meaning 100,000 to 140,000 Lei<sup>44</sup>, the deprivation of the right to exercise a certain activity, or the liquidation of the enterprise. Article 165 par 3 foresees even more severe punishment for legal entities, namely fines amounting to 7000-9000 conventional units, or 140,000-180,000 Lei<sup>45</sup>, the deprivation of the right to exercise certain activities, or the liquidation of the enterprise.
134. The punishment for trafficking in children under Article 206 is essentially the same for legal entities – starting with fines amounting to 3000-5000 conventional units, the deprivation of the right to exercise a certain activity, or the liquidation of the enterprise in cases under Article 206 par 1. In aggravated cases under par 2, the fines also amount to 5000-7000 conventional units, the deprivation of the right to exercise a certain activity, or liquidation of the enterprise. Finally, in even more aggravated cases, the fines amount to 7000 to 9000 conventional units, the deprivation of the right to exercise a certain activity or with the liquidation of the enterprise.
135. In this context, it is noted that the range of punishment for legal entities is the same for both trafficking in adults and trafficking in children. While the fines exacted appear to be sufficiently dissuasive for companies to not engage in trafficking in human beings (in cases where fines would not be an appropriate punishment, courts can always order the liquidation of the enterprise), it is questionable whether they are proportionate in this case. It would be preferable if the range of fines for trafficking in children for legal entities would be higher than the range of fines for trafficking in adults, to underline the especially heinous nature of this type of trafficking. It is recommended to amend the Criminal Code accordingly.
136. With regard to other relevant crimes, legal entities may be held liable for mediating, facilitating or encouraging the adoption of a child for profit, material or other interests (Article 205 par 2), child pornography (Article 208<sup>1</sup>), money laundering (Article 243), smuggling (Article 248, and illegal migration (Article 362<sup>1</sup>). In all cases, the fines mentioned in the Criminal Code appear sufficiently effective, dissuasive and proportionate, given that also here, in aggravating circumstances, courts may liquidate offending legal entities. However, given the implications of the crime of child pornography, it would be advisable to enhance the punishment under Article 208<sup>1</sup>, currently limited to fines or the deprivation of the right to practice certain activities, so that in cases where child pornography becomes a regular criminal industry, aggravated liquidation would be a possible alternative under the Criminal Code.

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<sup>43</sup> At the time when this review was drafted, this would amount to approximately 3 785 – 6 308 EUR.

<sup>44</sup> At the time when this review was drafted, this would amount to approximately 6 308 – 8 832 EUR.

<sup>45</sup> At the time when this review was drafted, this would amount to approximately 8 832 – 11 355 EUR.

**C. Legislation Related to the Protection of Victims of Trafficking in Human Beings**

137. As the protection of and assistance to victims of trafficking is one of the purposes of the Palermo Protocol (Article 2 b)), this Protocol has a special Chapter II on protection of such victims, which also includes assistance. Likewise, the Council of Europe Convention also focuses on protection of the human rights of victims, which States shall ensure by designing a comprehensive framework for the protection of victims and witnesses, while guaranteeing gender equality (Article 1 b)). The details of such protection and assistance are set out in Chapter III on protecting and promoting the rights of victims, and Article 28 on the protection of victims, witnesses, and collaborators with judicial authorities, especially during and after investigation and prosecution of perpetrators. Both international instruments stress the need for protection of privacy/private life and identity of victims, encourage States to provide for the physical, psychological and social recovery of victims, oblige them to permit foreign victims to remain on their territory and allow victims who are nationals of their states to return home. They also stress the need for protection and physical safety of victims. Article 17 of the Council of Europe Convention stresses the need for the promotion of gender equality and gender mainstreaming in protection and assistance measures.
138. In the Moldovan Anti-Trafficking Law, Article 20 deals with protection and assistance of victims of trafficking in human beings, while Article 24 deals with protection and assistance to victims who are foreign citizens or stateless persons. The distinction between both provisions is not quite clear, and there appear to be some overlaps – while Article 20 appears to focus more on assistance to victims in the country, it likewise contains references to a reflection period during which the implementation of expulsion orders is banned (this is repeated in Article 24 par 4). This would imply that Article 20 applies to foreign and stateless victims of trafficking as well, as these are in danger of expulsion. On the other hand, while Article 20 specifies that the provision of assistance and protection shall not depend on the victims' willingness to cooperate, this is not reiterated in Article 24, although it also affects foreign and stateless victims. It is recommended to distinguish clearly between assistance offered to foreign and stateless victims of trafficking and the types of assistance offered to each category (in this context, see par 169 *infra*).

**1. Protection of Private Life and Personal Data**

139. Both Article 6 of the Palermo Protocol and Article 11 of the Council of Europe Convention stress the need to protect the privacy/private life and identity of victims of trafficking. Article 11 stipulates that personal data should be stored and used in conformity with the conditions provided by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. It also stimulates States to adopt measures encouraging the media to protect the private life and identity of victims. Article 28 of the Council of Europe Convention provides particular protection for victims and witnesses (particularly if they are children) in the course of judicial proceedings.

140. While there is a Law on Personal Data Protection in Moldova, Article 21 of the Anti-Trafficking Law regulates the protection of private life and identity of victims in a detailed manner. It is thus assumed that with regard to victims of trafficking, Article 21 constitutes a *lex specialis* in relation to the more general Law on Personal Data Protection.
141. Article 21 of the Anti-Trafficking Law states that when registering, maintaining and using personal information regarding victims of trafficking, special rules of confidentiality shall apply. In this context, it would be good to specify which confidentiality rules Article 21 is referring to, and to indicate that personal data should only be stored for the specific purpose of combating trafficking in human beings<sup>46</sup>.
142. Article 21 par 2 prohibits the disclosure of information on the private life and identity of victims of trafficking and the conditions of these persons' trafficking. The disclosure of information on state protection measures for such victims, information on persons providing such protection, and about persons providing assistance in combating trafficking in human beings is likewise prohibited (Article 21 par 3). All persons are obliged to observe the confidentiality of such information, including those involved in preventing and combating trafficking and the protection of victims, law enforcement bodies, courts, centres for protection and assistance and social workers. Presumably, this will also include the media. In the Moldovan Law on the Freedom of Expression, there is, however, merely a general provision on the right to respect for private and family life (Article 10), which shall not apply in case information is obtained in a public place where a person cannot reasonably count on privacy. Section 4.11 of the Code of Conduct for Journalists also offers special protection for persons in vulnerable situations, e.g. victims of accidents, disasters, and crime, especially sexual assault, except in cases where the victims or their family give their consent or where it is in the public interest to do so.
143. The protection of a victim's identity is paramount to ensuring the safety of the victim and his/her family. It would therefore be advisable to include in the relevant legislation, preferably both the Law on Freedom of Expression and the Code of Conduct for Journalists, a provision taking into consideration the special dangers that victims of trafficking and their families are under. In order to protect these people's lives and health and to prevent re-trafficking, mass media should be obliged to keep the identity of these persons and their families confidential at all times (it is difficult to imagine in which cases the public interest to disclose such identities would override the victims' need for protection). Liability for failing to maintain such confidentiality under Article 10 par 4 of the Law on Freedom of Expression should be expanded accordingly, and should lead to effective, dissuasive and proportionate sanctions. Such protection should, as necessary, also include family members or other persons helping or associated with victims.
144. This would reflect Article 28 of the Council of Europe Convention, which requires States to adopt legislative and other measures to provide effective and appropriate protection to victims, persons collaborating with investigating and

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<sup>46</sup> See Explanatory Notes to the Council of Europe Convention, par 141.

prosecuting authorities, witnesses, and, if necessary, family members, from potential retaliation or intimidation in particular during or after investigation and prosecution of perpetrators. This may also include, *inter alia*, identity change.

145. Based on Article 21 par 5 of the Anti-Trafficking Law, victims whose lives and health are threatened by real danger may request to have their names or surnames, date and place of birth, changed under the terms of the Law on Civil Status Acts and the Law on State Protection of an Injured Party, Witnesses and Other Persons Providing Assistance in Criminal Proceedings (now the Law on Witness Protection and Protection of other participants in criminal proceedings, hereinafter the “Law on Witness Protection”). Upon request from the competent prosecutor and following a court decision, this option will then be made available to the respective victim.
146. Disclosure of information about safety measures and confidential data regarding victims of trafficking in human beings, disclosure of information about criminal prosecution and measures provided to ensure the safety of participants at criminal proceedings, are punished in compliance with legislation on criminal and administrative offences (Article 21 par 6 of the Anti-Trafficking Law). Presumably, this refers to, *inter alia*, Articles 315 and 316 of the Criminal Code on disclosing data from criminal investigations and disclosing information on security measures for judges and participants in a criminal case. In both cases, perpetrators are punished by fines, the right to hold certain positions or to practice certain activities and in grave cases with imprisonment. It would be preferable and would ensure greater transparency and foreseeability of the Anti-Trafficking Law if Article 21 par 6 would contain clear references to the criminal and administrative offences mentioned therein.

## **2. Identification of Victims and Reflection Delay**

147. The Council of Europe Convention devotes a separate provision to the identification of victims (Article 10). According to this provision, legislation shall ensure that proper identification of victims is conducted by properly trained public authorities in collaboration with other states and relevant support organizations. If competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, Article 10 par 2 specifies that this person shall not be removed from the territory of the respective country until the identification process has been completed.
148. Under Article 13, the Council of Europe Convention also requires States to provide for a recovery and reflection period to allow presumed victims to recover and escape the influence of traffickers and take an informed decision on whether to cooperate with authorities. This period shall last for at least 30 days and while it lasts, presumed victims shall be authorized to remain in the country and expulsion orders may not be enforced. They are also entitled to assistance (Article 13 par 2).
149. The identification of victims of trafficking is regulated in Article 15 of the Anti-Trafficking Law, which states that it shall be carried out by competent public authorities with the support of non-governmental organizations, or by

non-governmental organizations that have reason to believe that a person is a victim of trafficking (see also Article 12 par 3). Article 20 par 3 specifies that identification and referral of victims of trafficking to protection and assistance services shall be undertaken promptly and adequately by the competent state bodies. Generally, it would appear that the identification of victims is thus conducted in a manner that reflects international standards expressed in the Council of Europe Convention. In this context, it is welcomed that the National Plan aims to enhance the early identification of victims, also supporting measures to facilitate self-identification.

150. Article 20 specifies that once a competent authority, or international or non-governmental organization active in the field has reasonable grounds to believe that a person is a victim of trafficking (presumably this refers to identification of the victim), such person shall be offered all protection and assistance measures provided for. It is commendable that Articles 20 par 3 and 24 par 4 reflect the 30 days' reflection period mentioned in Article 13 of the Council of Europe Convention. During this time it shall be prohibited to implement any expulsion orders issued against these persons and victims are entitled to psychiatric and psychological counseling, medical and social assistance, and free legal assistance.
151. In this context, it is noted that the above assistance is provided to victims, which according to Article 2 par 11 shall be persons "presumed or found to be subjected to acts of trafficking". This would appear to indicate that under the present Anti-Trafficking Law, the term "victims" covers both presumed and identified victims, while Article 20 par 2 expressly differentiates between victims and presumed victims in terms of certain assistance. Article 20 par 3 also appears to imply that there is a distinction between identified and presumed victims, as protection and assistance measures are offered to persons where there is reasonable ground to believe that they are victims of trafficking.
152. Given the extreme vulnerability of victims prior to identification, it is paramount that the Anti-Trafficking Law states clearly that the 30 days' reflection period shall provide presumed victims of trafficking with the chance to recover and escape traffickers. This reflection period is distinct from the overall identification phase and should be treated as such. Further, presumed victims shall benefit from main assistance and protection measures offered also to victims (see par 148 *infra* outlining the requirements of the Council of Europe Convention in this context).
153. In this context, it is noted that while during the reflection period, the expulsion of victims is prohibited under Articles 20 par 3 and 24 par 4, the Anti-Trafficking Law does not specify a similar ban on expelling a person during the identification phase, as required by Article 10 par 2 of the Council of Europe Convention. In practice, this means that in cases where identification takes longer than the 30 days' reflection period, presumed victims could potentially be expelled. It is recommended to review this aspect of the Anti-Trafficking Law and ensure that it is specified that while the identification of a person as victim is pending, the implementation of expulsion orders shall likewise be suspended.

### **3. Residence Permits**

154. According to Article 7 of the Palermo Protocol, states shall consider adopting legislation allowing victims to remain on the territory of a given state, temporarily or permanently, as appropriate. Humanitarian and compassionate factors should be taken into account. Article 14 of the Council of Europe Convention reiterates this principle by obliging states to issue renewable residence permits if authorities consider this necessary due to the victim's private situation, or for the purpose of this person's cooperation with competent authorities in investigation or criminal proceedings. Granting such a permit shall be without prejudice to the respective persons' rights to seek and enjoy asylum.
155. Based on Article 24 par 6 of the Anti-Trafficking Law, foreign citizens and stateless persons who are victims of trafficking in human beings shall benefit from temporary residence permits, if they are placed in centres for protection and assistance to victims or if they participate in criminal proceedings against perpetrators. These shall be issued by the Ministry of Information Development (Article 10 par 1 (8)). These temporary residence permits may be prolonged in individual cases. Such victims shall also receive immigration certificates valid for a certain period (Article 10 par 1 (6)), as well as identity documents (Article 10 par 1 (11)).
156. It is noted that under Article 17 of the Anti-Trafficking Law, victims of trafficking may be accommodated in centres for protection and assistance for up to thirty days. This period may be prolonged upon recommendation of a physician (for up to six months), upon the request of criminal bodies or courts (during criminal proceedings), upon the request of a prosecutor if life and health of the victim are threatened by real danger (for a period deemed necessary for the protection of the victim), or upon a justified and reasoned request of the victim (for up to thirty days). These centres shall also issue provisional identity documents for the period of accommodation (Article 10 par 1 (11)).
157. The Anti-Trafficking Law does not, however, regulate what will happen to foreign or stateless victims who fall outside the two categories mentioned in Article 24 par 6. According to Article 24 par 1, victims of trafficking may not be repatriated to their countries of origin or third states if, upon estimating the risk and safety, it may be presumed that their personal safety or the safety of their families would be in danger. Generally, Article 68 par 1 (e) of the Law on Foreigners of Moldova specifies that foreigners who are or have been victims of trafficking in persons shall be tolerated on Moldovan territory until the cause for this has ceased to exist. In such cases, it is, however, questionable when and based on which considerations the danger of re-trafficking or of violence will be considered to have subsided. In any case, it would be advisable to ensure that persons who remain on Moldovan territory as tolerated foreigners will be permitted to work and obtain a longer-term residence permit, at least once a certain time has elapsed<sup>47</sup>.

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<sup>47</sup> See, in this context, Comments on the draft Law of the Republic of Moldova on Prevention and Combating Trafficking in Persons, issued jointly by the Council of Europe and ODIHR in consultation with the OSCE Mission to Moldova on 2 September 2004, Opinion Nr. TRAFF-MOL/013/2004, ODIHR Comments, par 21.

158. Finally, the Anti-Trafficking Law should reflect Article 14 of the Council of Europe Convention by stating that the granting of residence permits to victims of trafficking shall be without prejudice to their right to seek and enjoy asylum under the competent legislation.

#### **4. Repatriation of Foreign Victims**

159. The countries of origin of victims of trafficking should facilitate and accept, with due regard for the victim's safety (and his/her rights and dignity), the (preferably voluntary) return of the respective victim without undue or unreasonable delay (Article 8 of the Palermo Protocol and Article 16 of the Council of Europe Convention). At the request of a receiving state, a requested state is obliged to, equally without delay, verify whether a victim of trafficking is its national or had the right to permanent residence in its territory at the time of entry into the territory of the receiving state. In case victims are without proper documentation, then their states of origin should issue such documents or authorization as necessary to enable the victim to return to his/her country. Article 16 par 5 also obliges states to adopt legislation or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organizations, to avoid re-victimisation.
160. In the Moldovan Anti-Trafficking Law, Article 19 par 1 obliges the Republic of Moldova to contribute without undue delay to the repatriation and reception of victims of trafficking who are its citizens, or stateless persons entitled to permanent residence on the territory of Moldova upon entry into another state, taking into account the need to ensure their security.
161. As required by both the Palermo Protocol and the Council of Europe Convention, Article 19 par 2 obliges the competent Moldovan authorities to verify, upon request of a country of destination, without undue delay whether a victim of trafficking is a citizen of Moldova or whether he/she was entitled to permanent residence in Moldova upon entry into the country of destination. The soliciting state shall then be duly informed. Simultaneously, the competent Moldovan authorities undertake measures for foreign victims' repatriation to their respective home states. Par 3 of Article 19 also requires authorities to issue travel documents or other authorization to facilitate repatriation for those citizens or holders of permanent residence in Moldova who do not possess the necessary documents to return. These provisions appear to comply with the requirements of Article 16 of the Council of Europe Convention.
162. Article 24 of the Anti-Trafficking Law stipulates that the Republic of Moldova will provide assistance to the voluntary repatriation of foreigners and stateless persons on an emergency basis, and shall ensure completely safe transportation to the state border. Par 5 of this provision reiterates that in case of loss, theft or destruction of identity or travel documents, the Ministry of Foreign Affairs and European Integration shall grant, upon request of a foreign state, assistance in receiving such permits and documents necessary for return to their country of origin. These victims may, however, not be repatriated if, upon estimating the risk and safety, reasons are found to presume that their

personal safety or the safety of their families will be endangered (Article 24 par 1) (see also par 159 *supra*). The above provisions are much welcomed, as they duly take into consideration the safety of the victim and his/her family, when planning and implementing repatriation.

163. Under Article 16 of the Anti-Trafficking Law, the social rehabilitation of victims of trafficking in Moldova shall aim to reintegrate them into a normal way of life and shall include legal and material assistance, psychological, medical and professional rehabilitation, employment and a dwelling space. To facilitate such social integration and reduce the risk of re-trafficking, the National Plan foresees involving victims of trafficking in active measures on the labour market such as, e.g., job fairs and workshops. It also provides for the organization of professional training courses, minimum allowances, accommodation, scholarships and humanitarian aid to victims and their children. The above shall be organized by the National Employment Agency, the Ministry of Labour, Social Protection and Family and local public administration, in collaboration with international and other organizations.
164. Generally, the Anti-Trafficking Law appears to reflect the principles laid down in the Palermo Protocol and the Council of Europe Convention on rehabilitation and repatriation. With regard to the former, it is advised to maintain and expand consolidated programmes for reintegration in the future as well, and to ensure that these programmes will eventually be completely funded by the state budget of Moldova.

#### **5. Assistance to Victims**

165. Both Article 6 of the Palermo Protocol and Article 12 of the Council of Europe Convention focus on assistance to victims of trafficking, which aims at assisting them in their physical, psychological and social recovery. The types of assistance included in Article 6 par 3 of the Palermo Protocol are:
- Appropriate housing
  - Counseling and information, in particular as regards their legal rights, in a language that the victims can understand
  - Medical, psychological and material assistance
  - Employment, educational and training opportunities
166. Article 12 par 1 of the Council of Europe Convention reiterates and expands this list:
- Standards of living capable of ensuring the subsistence of victims, through such measures as appropriate and secure accommodation, psychological and material assistance
  - Access to emergency medical treatment
  - Translation and interpretation services, where appropriate
  - Counseling and information, in particular as regards victims' legal rights and the services available to them, in a language that they can understand

- Assistance to enable victims' rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders
  - Access to education for children
167. Article 10 par 2 of the Council of Europe Convention stresses that presumed victims shall likewise benefit from the assistance described *inter alia* in Article 12 par 1.
168. Article 12 pars 3 and 4 additionally provide necessary medical or other assistance, authorization to access the labour market, vocational training and education to victims of trafficking lawfully within the territory of the respective state.
169. Under the Anti-Trafficking Law, numerous provisions mention assistance and protection measures for victims. Article 20 specifically stresses that victims of trafficking shall be offered assistance in physical, psychological and social recovery through specialized medical, psychological, legal and social measures. This provision stresses in its par 4 that protection and assistance services shall not be conditioned upon the willingness of victims to make statements and participate in the prosecution of traffickers. As discussed above under par 138 *supra*, the distinction between Article 20 and Article 24 should be clarified, and relevant provisions should be explicit as to which forms of assistance and protection are also offered to presumed victims of trafficking.
170. The Moldovan Parliament adopted a Decision in 2008 approving the Strategy of a National Referral System to Protect and Assist Victims and Potential Victims of Trafficking in Human Beings and an Action Plan for the Implementation of the Strategy on the National Referral System to Protect Victims and Potential Victims of Trafficking in Human Beings during 2009-2011, which also foresees detailed action points to be implemented in this period.
171. Individual types of assistance and protection outlined in the Palermo Protocol and the Council of Europe Convention will be dealt with in the sub-sections set out below.

### ***5.1 Appropriate and Secure Accommodation***

172. Under Article par 3 (a) of the Palermo Protocol, states should consider providing appropriate housing to victims of trafficking to help them recover. This is reiterated and enhanced in Article 12 par 1 a) of the Council of Europe Convention obliging states to provide, at the least, standards of living capable of ensuring the subsistence of victims of trafficking, through such measures as e.g. appropriate and secure accommodation. The necessity for States to take due account of victims' safety and protection needs is reiterated in Article 12 par 2.
173. In the Anti-Trafficking Law, Article 16 on social rehabilitation of victims of trafficking also foresees the provision of a dwelling space, in order to reintegrate victims of trafficking into a normal way of life. Centres for protection and assistance to victims of trafficking in human beings established

under Article 17 of the Anti-Trafficking Law provide “civilized conditions of accommodation and personal hygiene” and security and protection.

174. These centres may be established by the government, international and non-governmental organizations (see also Article 12 par 2), with notification to the National Committee, public administration authorities and non-governmental or private organizations, on the basis of an agreement on joint activities. According to Government Decision No. 1362 approving a Framework Regulation on the Organization and Operation of Assistance and Protection Centres for Victims of Trafficking of Human Beings, the Ministry of Social Protection, Family and Children (now the Ministry of Labour, Social Protection and Family) shall coordinate the opening of such centres and monitor their activity. This same Decision sets out that the Ministry of Interior, using the staff of the General State Guard Department, shall ensure the safety of these centres for victims.
175. Accommodation is provided to victims of trafficking for up to thirty days; the duration of accommodation may be prolonged for the reasons outlined in Article 17 par 4 of the Anti-Trafficking Law (see par 156 *supra*). Article 17 par 5 contains an exception for pregnant women, who may stay for up to one year.
176. While appropriate accommodation will always depend on a victim’s personal circumstances, this will also require qualified staff, round-the-clock victims’ reception and the ability to respond to emergencies. Special confidentiality measures, such as keeping the addresses of victims secret and maintaining strict rules of visits from outside, shall guarantee the victims’ security and protect them from attempts of traffickers to recapture them.<sup>48</sup>
177. In this respect, the centres mentioned under the Anti-Trafficking Law are much welcomed, as is their coordination and presumably evaluation through monitoring. At the same time, the Framework Regulation approved by Decision No. 1362 appears to only focus on the assistance and protection centre in Chisinau, which appears to be the only government-run centre in Moldova. It is recommended to draft a framework regulation that covers all framework centres, also non-governmental ones, to ensure similar standards of victims support throughout the country.
178. The existing Framework Regulation on the Chisinau centre specifies that this centre has a maximum capacity for 30 persons, and that it is equipped in accordance with quality standards, corresponding to the individual and age specifics of the beneficiaries. Assistance to each individual victim is based on an individual intervention plan. Both staff and the manager of the Centre are hired based on their qualifications and the need of the centre; they are also obliged to maintain the confidentiality of the program and of the victims’ records at all times. The centre functions around the clock, based on the referral, assistance and accommodation needs of victims. Its manager concludes agreements with territorial law enforcement bodies to ensure the safety of the victims and of the institution.
179. While the existence of this and other centres is much welcomed, it is noted that the Framework Regulation contains no specifics as to what happens when

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<sup>48</sup> Explanatory Notes to the Council of Europe Convention, par 154.

the capacity of the centre is reached. It is recommended to ensure in a more general Framework Regulation covering all such centres in Moldova that in such cases, the respective victim will be referred to another centre immediately. Further, it is recommended to include in such Framework Regulation additional provisions to ensure the safety of victims and the centre, namely access and visiting rules, and regular guards ensuring access only to a specific group of persons.

### ***5.2 Material Assistance, Social Welfare and Similar Assistance***

180. Article 6 par 3 of the Palermo Protocol specifies that states shall consider implementing measures to provide for, *inter alia*, the social recovery of victims of trafficking, including in particular the provision of material assistance (par 3 (c)). Article 12 of the Council of Europe Convention, particularly its par 1 a), reiterates this obligation. Such assistance is not necessarily financial aid, but may also consist in aid in kind (e.g. food and clothing).<sup>49</sup> Special additional assistance is provided by Article 12 par 3 to victims lawfully resident in a country if they do not have adequate resources and need such help.
181. Article 16 of the Anti-Trafficking Law on social rehabilitation of victims also speaks of the provision of material assistance. The centres for protection and assistance to victims are likewise set to provide social care to victims (Article 17 par 1).<sup>50</sup> Article 20 on protection and assistance to victims specifies in its par 1 that victims of trafficking shall be offered *inter alia* assistance in social recovery, also through specialized social measures. Persons presumed to be victims of human trafficking shall be deemed “vulnerable persons” and benefit from the minimum package of social and medical assistance provided by the institutions of the Ministry of Health and Social Protection (Article 20 par 2). These provisions would appear to amply reflect the requirements of the Palermo Protocol and the Council of Europe Convention.
182. According to Article 6 par 3 (d) of the Palermo Protocol, victims shall be provided with employment, educational and training opportunities. This is reflected in Article 12 par 4 of the Council of Europe Convention, which notes that states shall authorize lawfully resident victims to access the labour market, vocational training and education.
183. Article 16 of the Moldovan Anti-Trafficking Law on social rehabilitation complies with this in that it also mentions assistance in professional rehabilitation and employment as measures of re-integration. Article 18 of the same Law likewise states that professional integration of victims of trafficking shall be carried out with the support of employment agencies, which shall offer priority services free of charge in the field of labour mediation, information and professional counseling, professional orientation, and vocational training, as well as consultancy and assistance in starting up a

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<sup>49</sup> *Ibid.*, par 156

<sup>50</sup> In this context, it should be noted that a National Programme on the Development of an Integrated System of Social Services was adopted in 2008 for 2009-2012, and that a Government Decision approved Minimum Quality Standards for social services rendered to victims of family violence in 2010.

business. Further, victims of trafficking are entitled to undergo vocational training courses financed by the unemployment fund (Article 18 par 3). As mentioned above, the National Plan also foresees certain measures to facilitate social integration with regard to employment (see pars 56 *supra*).

184. It is thus believed that the above provisions on assistance more than adequately fulfill the requirements of Articles 6 of the Palermo Protocol and 12 of the Council of Europe Convention.

### ***5.3 Provision of Translation Services***

185. Both Article 6 of the Palermo Protocol and Article 14 of the Council of Europe Convention speak of providing victims with counseling and information in a language understood by them. In addition to this, Article 14 par 1 c) specifically states that assistance provided to victims shall include translation and interpretation services, where appropriate. This is particularly relevant for foreign victims of trafficking, who often do not speak the language of the country to which they have been trafficked. Such language problems add to their isolation and are often one of the factors preventing them from claiming their rights.<sup>51</sup>
186. Article 24 par 3 of the Anti-Trafficking Law stipulates that foreign and stateless victims of trafficking shall be informed of the judicial and administrative procedures in force in Moldova and their countries of residence in a language that they can understand. This appears to be limited to the translation of materials, and seems to not cover interpretation services to assist them with formalities or other daily matters<sup>52</sup>. The Framework Regulation on assistance and protection centres also does not mention interpretation services. With regard to services offered by the centres (psychological counseling, medical aid, etc), it would be helpful to have interpretation services at the disposal of victims in order to ensure that they are provided with the assistance that they need. The Anti-Trafficking Law and ensuing secondary legislation should be amended accordingly.

### ***5.4 Access to Legal Information, Counseling and Assistance***

187. Article 6 par 2 of the Palermo Protocol mentions the need to provide victims of trafficking with information on relevant court and administrative proceedings, as well as with assistance to ensure that their views and concerns are presented and considered at appropriate stages of criminal proceedings. Further, Article 6 par 3 (b) speaks of counseling and information to victims of trafficking, in particular as regards their legal rights, in a language that they can understand (see par 185 *supra*). Both forms of assistance are likewise reflected in Article 12 par 1 d) and e) of the Council of Europe Convention.

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<sup>51</sup> *Ibid.*, par 158

<sup>52</sup> With regard to criminal proceedings, see Article 16 of the Criminal Procedure Code, which provides that persons not speaking the state language are entitled to have knowledge of all documents and materials of a case, and use an interpreter before court and prosecuting authorities. The same applies to administrative procedures (Article 379 of the Contraventions Code).

188. In Article 16 of the Anti-Trafficking Law, legal assistance is mentioned as one of the ways of socially rehabilitating and reintegrating victims of trafficking. The centres for protection and assistance also provide emergency legal care for such victims under Article 17, and Article 20 on protection and assistance to victims also mentions specialized legal measures to ensure recovery of victims (par 1). Under Article 20 par 5, the competent public authorities shall inform victims of trafficking of their rights and about the authorities, institutions, and organizations that are competent in the field of preventing and combating trafficking in human beings and protecting and assisting victims. The Ministry of Health and Protection has a special role in this through its social assistance bodies (Article 10 par 1 (4 b)). Article 20 stresses that also non-governmental organizations shall provide protection and assistance to victims of trafficking, including the protection of their interests in civil or criminal suits. Article 24 par 3 specifically mentions that foreign citizens and stateless persons shall be informed in a language that they understand of the judicial and administrative proceedings at their disposal in Moldova and of countries of residence (see par 186 *supra*).
189. Likewise, the National Plan specifically aims to inform trafficked persons about their rights, including the risks of criminal procedure, through legal counseling services provided by the Ministry of Interior and the Ministry for Foreign Affairs and European Integration, in collaboration with international and non-governmental organizations. According to Article 6 par 2 of the Moldovan Law on Legal Aid, citizens of Moldova are entitled to legal aid, but also foreigners and stateless persons “in the proceedings and the cases that refer to the competence of the public administration authorities and of the courts of law of the Republic of Moldova”. It is assumed that this relates to all administrative and court proceedings in Moldova.
190. The above legislation and the National Plan thus appear to fulfill the requirements set by the Palermo Protocol and the Council of Europe Convention. In particular the programmes set out in the National Plan are much welcomed and the competent authorities are encouraged to ensure, in the future, that these will be completely state-funded, so that support from other states, from non-governmental and international organizations will no longer be needed.

### ***5.5 Provision of Psychological and Medical Care***

191. According to both Article 6 of the Palermo Protocol and Article 12 of the Council of Europe Convention, states are held to implement measures to provide for, *inter alia*, physical and psychological recovery of victims of trafficking by providing them with medical (including emergency medical treatment) and psychological assistance. In addition to this, Article 12 par 3 notes that states shall provide necessary medical or other assistance to victims lawfully resident in this state, if they do not have adequate resources and need such help.
192. Psychological and medical rehabilitation are specifically mentioned as measures to ensure social rehabilitation of victims under Article 16 of the Anti-Trafficking Law. The centres for protection and assistance to victims also

provide psychological and medical care (Article 17 par 1), and Article 20 par 1 mentions specialized medical and psychological measures as ways to ensure victims' physical, psychological and social recovery. Article 10 par 1 (4c) likewise tasks the Ministry of Health and Social Protection to develop medical assistance programmes, including psychiatric assistance, and designate medical institutions to assist victims of trafficking.

193. Article 20 par 2 offers social and medical assistance to presumed victims of trafficking (see par 181 *supra*), while recognized victims of trafficking shall benefit from free assistance in the medical institutions defined by the Ministry of Health and Social Protection.
194. The above provisions on medical assistance are much welcomed, particularly the free medical assistance for victims of trafficking, which presumably also covers emergency medical care. The relevant provisions of the Anti-Trafficking Law would thus appear to reflect the requirements of the Palermo Protocol and the Council of Europe Convention.

## **6. Provision of Protection in Criminal Proceedings**

195. Both the Palermo Protocol and the Council of Europe Convention stress that victims' safety and protection needs shall duly be taken into account (Article 6 par 5 and Article 12 par 2 respectively). Article 28 of the Council of Europe Convention specifically stipulates that states shall provide effective and appropriate protection from potential retaliation or intimidation during and after investigation and prosecution of perpetrators for victims, persons reporting criminal offences or otherwise cooperating with the investigating or prosecuting authorities, witnesses and, where necessary, family members of victims and witnesses. Such protection may include physical protection, relocation, identity change and assistance in obtaining jobs. According to Article 28 par 4, protection shall be extended as necessary to members of groups, foundations, associations, or non-governmental organizations which aim at fighting trafficking in human beings or protecting human rights if they assist or support victims during criminal proceedings concerning the offence of trafficking.
196. On a general note, the centres for protection and assistance to victims mentioned under Article 17 of the Anti-Trafficking Law also expressly provide security and protection to victims. Further protection measures for victims can be found under Article 21 par 5 of the same Law (see a more in-depth discussion of this article under par 145 *supra*).
197. Also, Article 23 of the Anti-Trafficking Law specifies that courts and criminal prosecution bodies shall grant to victims of trafficking measures to safeguard their physical safety and rights, as regulated by the Criminal Procedure Code<sup>53</sup>

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<sup>53</sup> In this context, see Article 18 par 2 of the Criminal Procedure Code, which permits hearings to be closed exceptionally, while Article 110 allows for means of being interviewed without being present, through appropriate technical devices that will prevent recognition of the witness in case of danger for the life, physical integrity, or liberty of a court witness or close relative. Article 58 par 7 specifically states that the obligation for victims of crimes to appear before court or the prosecution when summoned does not extend to victims of trafficking in human beings

and the Law on Witness Protection. Article 11 par 1 b) of the Anti-Trafficking Law reiterates that the Ministry of Interior is tasked to provide physical protection to victims in this context upon request.

198. While the above protection measures apply only to victims, the scope of the Law on Witness Protection is wider, as it covers witnesses (during the investigations and the court phase), damaged parties, and persons “with no legal procedural status, who agree to provide data related to the preparation of grave, very grave, and exceptionally grave offences” (Article 2 of the Law on Witness Protection). Protection may also be extended to family members of the persons listed above, upon the request of the protected person.
199. For those persons covered by its scope, the Law on Witness Protections offers emergency measures and general protection measures through special protection programmes. Emergency measures are guards, interception of communication, supervision, temporary relocation, protection/constraint of movement, personal protection, and special alarm equipment. General protection measures involve the protection of identity data, special hearings, change of residence/workplace/place of study, change of identity or physical appearance, alarm systems, change of telephone numbers, and guards. This would appear to adequately reflect the requirements of Article 28 pars 1 and 2 of the Council of Europe Convention.
200. The extensive protection provided by the Law on Witness Protection and by the Criminal Procedure Code for victims and other endangered persons is much welcomed. However, it is noted that neither these laws, nor the Anti-Trafficking Law protect members of groups, foundations, associations, or non-governmental organizations assisting or supporting victims, as mentioned in Article 28 par 4 of the Council of Europe Convention. While proceedings are ongoing, such entities should also receive appropriate protection – it is recommended to take this into account in the relevant legislation.

### **7. Special Measures of Assistance and Protection for Children**

201. In the Palermo Protocol, Article 6 par 4 stresses that states shall take into account the special needs of children, including appropriate housing, education and care. At the same time, the Council of Europe Convention contains several specific provisions on protection and assistance to child victims of trafficking., e.g. Article 10, which *inter alia* foresees representation by a legal guardian upon identification as a victim of trafficking, and the establishment of a child’s identity/nationality, and the location of his/her family (if this is in the child’s best interests). Article 12 on assistance to victims specially mentions access to education for children as one of the assistance measures to help victims in their physical, psychological and social recovery. Article 14 also foresees a right to residence permit for children.
202. It is much welcomed that in Moldova, the Anti-Trafficking Law contains a special Chapter IV which covers both the prevention and combat against trafficking in children, but also assistance and protection to child victims of trafficking in human beings.
203. Article 26 of the Anti-Trafficking Law outlines special principles for combating trafficking in human beings, which includes involvement of

children over 10 years of age in all actions affecting him/her, taking into account the age, degree of maturity, and his/her best interests. Child victims shall likewise be informed about their situation and rights, protection and assistance measures, available services, repatriation procedures and family reunification processes. Laudably, if the age of a victim of trafficking is not known, he/she shall be presumed to be a child, as required by Article 10 par 3 of the Council of Europe Convention (Article 27 of the Anti-Trafficking Law). Child victims are also entitled to a 30 days' reflection period under Article 29 par 5 in order to decide personally, through their legal representative or guardian, if they will testify against their traffickers.

204. As required by Article 11 of the Council of Europe Convention, Article 26 par e) of the Anti-Trafficking Law obliges the responsible authorities to ensure that both the respective child's identity, as well as details allowing identification, is not made public in any case. Under Section 4.13 of the Code of Conduct for Journalists, the identity of minors involved in events with a negative connotation shall always be protected, except where parents have consented to the disclosure of identity, where this is in the best interests of the child.
205. While the absolute ban on publication of children's identity in Article 26 is commendable, this provision does not take into consideration that in certain cases, disclosing a child's identity could assist in tracing family members or could for other reasons be in the child's best interests, as rightly recognized by Article 11 of the Council of Europe Convention. It is recommended to consider amending Article 26 par e) accordingly.
206. At the same time, relevant stakeholders should discuss whether in trafficking cases, the disclosure of a child's identity should really be permissible upon parental consent in the Code of Conduct of Journalists – perhaps trafficked children could be distinguished from other children who find themselves in situations with negative connotations and a regulation similar to that found in Article 11 par 2 of the Council of Europe Convention could be introduced.
207. Under Article 29, children shall receive protection and assistance from the state from the moment when there is reasonable ground to believe that they are victims of trafficking until their identification, integration and complete recovery, irrespective of their cooperation with authorities. Children deprived of a family environment are entitled to alternative family-type or community-type care.
208. Following identification, children shall be urgently referred to the competent services for child protection, assistance and rehabilitation. Once authorities and other entities (specifically the National Committee and public administration authorities including law enforcement authorities, territorial commissions, centres, non-governmental organizations and other competent organizations) receive information about child victims of trafficking, they shall immediately inform tutorship and guardianship bodies to secure protection of the children's rights. All agencies whose activities are related to child victims are held by Article 29 par 8 to establish special practices and programmes for their identification, referral, protection and assistance, while maintaining the confidentiality of information on the personal data and

victims' status of children. These measures are laudable and more than comply with the requirements of the Council of Europe Convention.

209. The Anti-Trafficking Law even goes beyond what is required by the Council of Europe Convention in its Article 29 par 10, which provides that where child victims are deprived of parental care, or where they do not know their parents' whereabouts, an emergency search may be conducted for the children's family or tutorship or guardianship may be instituted, as provided by law (Article 29 par 4). This guardian will ensure that all decisions are taken in the interests of the child, make statements on behalf of the child, and participate with the child in all criminal procedure and judicial actions, until a solution is reached that takes into consideration the best interests of the child.
210. If accommodated in centres for protection and assistance, children shall be accommodated separately from adults (Article 29 par 6). They are entitled to accommodation in centres for a period of up to six months or the duration of legal proceedings (Article 29 par 7). It is recommended to ensure that in exceptional cases, this period may be prolonged, should this temporarily be in their best interests.
211. Under Chapter III, Section 2 of the Framework Regulation on Operation and Assistance Centers, it is specified that children shall be accommodated in centres on a temporary basis and that the long-term aim shall be reintegration into their (biological or extended) family. Once a child has left the centre, the centre will monitor the family of the child for another year, to avoid re-trafficking or cases of domestic violence. Children shall also be ensured the right to attend state educational institutions under the terms of the Law on Education (Article 29 par 9 of the Anti-Trafficking Law). These measures ensure the sustainability of previous assistance and protection measures and are as such much welcomed.
212. The repatriation of children is regulated in Article 28, which states that such return is only possible if a parent, relative or legal guardian has given prior consent to receiving the child into his/her care, or a government agency or child protection agency from the country of origin has given consent and is able to undertake responsibility for the child and grant him/her assistance and protection. More details on the repatriation of children is found in the Government's 2008 Decision approving a Regulation on the Procedure for Repatriation of child and Adult Victims of Human Trafficking, Trafficking of Illegal Migrants, and Unaccompanied Children.
213. If children cannot be returned to their countries of origin (e.g. due to potential danger for them or their families) nor integrated into the country of destination, or when such solutions are not in their best interests, they shall be relocated to a third country, provided the respective child approves of this (the opinion of children over 10 years of age shall be taken into account).
214. In this context, it is noted that Article 16 of the Council of Europe Convention stipulates that repatriation or return of children shall not take place if there is an indication that such return would not be in their best interest. This would appear to be broader than Article 28 par 5 of the Anti-Trafficking Law, as certain solutions could not endanger a child, but still not be in his/her best interests. It is thus recommended to expand the scope of Article 28 par 5 so

that it complies with the wording of Article 16 of the Council of Europe Convention.

215. According to Article 28 par 3 of the Council of Europe Convention, child victims are entitled to special protection measures in relation to the investigation and prosecution of perpetrators, taking into account their best interests. Such special protection measures are not mentioned explicitly in the Anti-Trafficking Law, the Criminal Procedure Code or the Law on Witness Protection. It is recommended to lay down special rules for child victims or witnesses in the relevant legislation.

### **8. Compensation and Legal Redress**

216. According to both Article 6 par 6 of the Palermo Protocol, states shall ensure that their domestic legal systems offer to victims of trafficking the possibility of obtaining compensation for damages suffered. The Council of Europe Convention has a separate provision on compensation and legal redress, namely Article 15, obliging states to provide proper information on judicial/administrative proceedings in a language that the victims understand and the right to legal assistance and free legal aid. This same provision stipulates the right to compensation under states' domestic systems, both from perpetrators (par 3) and via other conditions, e.g. a victims' fund or measures or programmes aimed at social assistance and social integration of victims, which could be funded by funds obtained through fines and other sanctions.
217. Under the Anti-Trafficking Law, victims of trafficking are provided with information on judicial and administrative proceedings in a language that they understand (Article 24 par 3 of the Anti-Trafficking Law) and shall receive free legal assistance and aid (Articles 16, 17 par 1, 20 par 1, and 24 par 4 of the Anti-Trafficking Law). Both Moldovan and foreign/stateless victims would appear to also be entitled to legal aid under the Law on Legal Aid (see par 188 *supra*).
218. According to Article 23 par 2 of the Anti-Trafficking Law, victims of trafficking are entitled to compensation for damages, as provided by the law. Presumably this provision refers to civil proceedings, although it would be preferable if this were specified in more detail. Article 31 par 2 of the Anti-Trafficking Law is more explicit in that it states clearly that legal entities bear civil liability for damages inflicted on victims, but only refers to such cases where this is a result of businesses being used as disguises for trafficking activities under Article 31 par 1.
219. The section on damages in the Civil Code covers damages to property and moral damages and contains a special provision on damage caused by bodily harm or other harm to a person's health (Article 1418), which shall also cover costs incurred by the bodily harm and damage to health. Article 1422 of the Civil Code refers to moral damage caused by physical or mental suffering, the amount of which shall be assessed based on the nature and severity of mental

or physical suffering caused by the injured person and the degree of guilt of the persons causing the damage<sup>54</sup>.

220. The above provisions would appear to meet the requirements of Article 15 of the Council of Europe Convention, which covers material and non-material damage, to be claimed from the perpetrator. At the same time, it would be preferable to make the types of compensation granted and the fact that they can be claimed from the perpetrator somewhat more explicit, as the current references in the Anti-Trafficking Law are quite vague.
221. At the same time, it is not clear whether the damages foreseen in the Civil Code and the Criminal Procedure Code would also include damages received from state funds, e.g. a victims' protection fund, in case the perpetrator is not found or cannot be convicted due to lack of evidence, has disappeared or declared himself/herself bankrupt. As such a fund is not mentioned in the Anti-Trafficking Law, it is presumed that it does not exist. Given the hardships faced by victims of trafficking and the trauma that they habitually experience, it is recommended to consider establishing a victims' fund (unless a fund for victims of violent crimes in general already exists – in this case, victims of trafficking could benefit from such fund), which could ensure that victims of trafficking receive proper compensation also in cases where perpetrators cannot be found or are not in a position to pay damages.<sup>55</sup>
222. As for the social integration and assistance for victims, it is reiterated that both are provided for in the Anti-Trafficking Law in Articles 16 on the one hand and Articles 20 and 24 on the other.

*[END OF TEXT]*

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<sup>54</sup> During criminal procedures, the reparation of damages may be taken into account starting from the investigation phase ((Articles 57 par 13, 197, 202-210, 273 par 2, 397 par 1, 403-404, 416).

<sup>55</sup> This recommendation was already made in Comments on the draft Law of the Republic of Moldova on Prevention and Combating Trafficking in Persons, issued jointly by the Council of Europe and ODIHR in consultation with the OSCE Mission to Moldova on 2 September 2004, Opinion Nr. TRAFF-MOL/013/2004, Opinion of the Council of Europe Expert, par 18.

**Annex 1: Sanctions for other relevant crimes under the Moldovan Criminal Code**

Criminal offence	Article in Criminal Code	Punishment (main and supplementary)	Aggravated punishment
Less severe bodily injury/damage to health	Article 152	140-240 hrs community service/up to 3 years' imprisonment	3-6 years' imprisonment
Threatening murder or severe bodily injury or damage to health	Article 155	180-240 hrs community service/fine of 200-400 conventional units/up to 2 years' imprisonment	
Compelling a person to remove organs or tissues	Article 158	Up to 5 years' imprisonment/deprivation of the right to occupy certain positions/exercise activities for up to 3 years	3-7 years' imprisonment/deprivation of the right to occupy certain positions/exercise activities for 2-5 years
Illegal abortion	Article 159	Fine of 200-500 conventional units/deprivation of the right to occupy certain positions/exercise activities for up to 3 years/up to 2 years' imprisonment	
Kidnapping	Article 164	2-6 years' imprisonment	4-10 years', in especially severe cases 6-13 years' imprisonment
Kidnapping a juvenile by close relatives	Article 164 <sup>1</sup>	Fine of up to 300 conventional units/180-240 hrs community service/up to 6 months' imprisonment	
Illegal deprivation of liberty	Article 166	120-240 hrs community service/up to 2 years' imprisonment	2-7 years', in especially severe cases 5-10 years' imprisonment
Slavery and conditions similar to slavery	Article 167	3-10 years' imprisonment/deprivation of the right to occupy certain positions/exercise activities for up to 5 years	
Forced labour	Article 168	Up to 3 years' imprisonment	

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Criminal offence	Article in Criminal Code	Punishment (main and supplementary)	Aggravated punishment
Rape	Article 171	3-5 years' imprisonment	5-12 years', in especially severe cases 10-20 years' imprisonment
Violent action with sexual character	Article 172	3-5 years' imprisonment	5-12 years', in especially severe cases 10-20 years' imprisonment
Sexual harassment	Article 173	Fines of 300-500 conventional units/140-240 hrs community service/up to 3 years' imprisonment	
Abuses by parents and other persons adopting children	Article 205	Fines of 150-400 conventional units/up to 3 years' imprisonment	Fines of 200-400 conventional units/1-3 years' imprisonment/ deprivation of the right to occupy certain positions/exercise activities for 2-5 years  In more serious cases: fines of 250-400 conventional units/3-5 years' imprisonment/deprivation of rights the same  In very grave cases: 3-7 years' imprisonment/ deprivation of right the same
Illegally taking children out of the country	Article 207	2-6 years' imprisonment	
Involving juveniles in criminal activity or encouraging them to commit immoral acts	Article 208	Fine of 200-500 conventional units/150-200 hrs community service/up to 5 years' imprisonment	Fines of 300-700 conventional units/180-240 hrs community service/up to 6 years' imprisonment.  In more serious cases, 3-7 years' imprisonment.
Child pornography	Article 208 <sup>1</sup>	1-3 years' imprisonment	
Money laundering	Article 243	Fines of 1000-2000 conventional units/up to 5 years' imprisonment/deprivation of the right to occupy certain positions/exercise activities for 2-5 years	Fines of 2000-5000 conventional units/4-7 years' imprisonment, in very grave cases 5-10 years' imprisonment

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Criminal offence	Article in Criminal Code	Punishment (main and supplementary)	Aggravated punishment
Smuggling	Article 248	Fines of 150-300 conventional units/180-240 hrs community service/up to 2 years' imprisonment	Fines of 200-600 conventional units/4-6 years' imprisonment, in more serious cases fines of 300-800 conventional units/4-6 years' imprisonment. In extremely grave cases 3-8 years' imprisonment or even 3-10 years' imprisonment
Forgery of public documents	Article 332	Fines of up to 500 conventional units/up to 2 years' imprisonment/deprivation of the right to occupy certain positions/exercise activities for up to 5 years	Fines of 500-1000 conventional units/1-6 years' imprisonment, deprivation of right 2-5 years
Sale or purchase of official documents	Article 359	Fines of up to 200 conventional units	
Taking, misappropriating, concealing, damaging or destroying documents, imprints, stamps or seals	Article 360	Fines of up to 400 conventional units/150-200 hrs community service/up to 3 years' imprisonment	Fines of up to 500 conventional units/180-240 hrs community service/up to 5 years' imprisonment
Fabrication, possession, sale or use of false official documents, imprints, stamps or seals	Article 361	Fines of up to 300 conventional units/150-200 hrs community service/up to 2 years' imprisonment	Fines of 200-600 conventional units/180-240 hrs community service/up to 5 years' imprisonment
Organizing of illegal migration	Article 362	Fines of 300-500 conventional units/1-3 years' imprisonment/deprivation of the right to occupy certain positions/exercise activities for 1-3 years	Fines of 500-800 conventional units/3-5 years' imprisonment, deprivation of right the same. In more serious cases fines of 800-1000 conventional units/5-7 years' imprisonment/deprivation of right 3-5 years