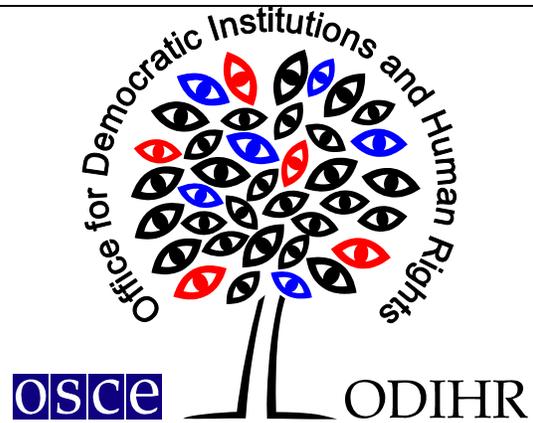


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**Comments on the Amendments to
Article 8 on Extraterritorial Jurisdiction,
Article 149 on Trafficking in Human Beings and,
Article 303 on Compelling into Prostitution
of the Criminal Code of the Republic of Ukraine**

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

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1. INTRODUCTION

1. *The Parliamentary Committee on the Fight Against Corruption and Organised Crime of the Republic of Ukraine made a request to the OSCE Project Co-ordinator in the Ukraine, for comments on the Amendments to Articles 8, 149 and 303 of the Criminal Code of the Republic of Ukraine (hereinafter also referred to as “draft Provisions” or “draft Articles”).*

2. *Further, the OSCE Project Co-ordinator in Ukraine requested assistance from the OSCE ODIHR in this regard and a preliminary comment was drafted in response thereto, on April 27, 2005, bearing OSCE ODIHR file reference: Opinion-Nr:TRAFF-UKR/027/2005.*

3. *The abovementioned preliminary comment was submitted to the Parliamentary Committee on the Fight against Corruption and Organised Crime of the Republic of Ukraine, for consideration.*

4. *On 15 November, 2005 the Verkhovna Rada of Ukraine, held a working session called “Discussion of Draft Laws on Changes to the Criminal Code of Ukraine on Combating Trafficking in Human Beings”. The draft Provisions referred to herein were discussed at this session, amongst two other versions of the provisions criminalising trafficking in human beings. It should be noted that some changes were already introduced to the draft Provisions before the aforementioned working session.*

5. *On 29 November, 2005 the Verkhovna Rada of Ukraine voted for the draft Provisions in their first reading, and undertook to introduce further changes into the draft Provisions before its next reading.*

6. *The amended version of the draft Provisions was provided to the Office of the OSCE Project Co-ordinator in Ukraine, thereafter, the said Office, turned to the OSCE ODIHR, to provide brief follow-up comment thereto. This comment constitutes a response to that request, made on 30 November, 2005.*

7. *It should be noted, that as appropriate, the preliminary comment issued on 27 April, 2005, bearing OSCE ODIHR file reference: Opinion-Nr:TRAFF-UKR/027/2005, shall be referred to and is attached as an annex hereto. It should also be noted that in order to avoid repetition, recommendations in the aforementioned preliminary comment will not be reiterated, unless necessary.*

2. SCOPE OF REVIEW

8. These comments do not equate to a full and comprehensive review, rather they have been drafted to serve as considerations which should be taken into account in light of international standards in the field of combating trafficking to which the Republic of Ukraine has committed or may seek to commit.

9. In this regard, the OSCE ODIHR and the OSCE Project Co-ordinator in Ukraine would like to make mention that the comments contained herein are without prejudice to any recommendations and comments to the Amendments to Articles 8, 149 and 303 of the Criminal Code of the Republic of Ukraine that both aforementioned institutions may wish to make on the draft Provisions in the future.

3. EXECUTIVE SUMMARY

10. The draft Articles and amendments thereto, are drafted in the spirit of compliance with international standards which obligate criminalization of trafficking in human beings. For the purposes of further improvement of the draft, the OSCE ODIHR encourages the consideration of the below recommendations.

11. It is recommended that:

- A. the amendments to Article 8 are welcomed; [par.12]
- B. consideration is given to drafting a separate article on trafficking in children; [par. 15 and 16]
- C. further consideration is given to providing definitions contained in the article, such as “slavery and slave like practices”, “forced labour of services”; [par.17 and par. 18]
- D. consideration be given to the operation of Article 303 vis-à-vis Article 149, and to make certain that those indeed guilty of trafficking in human beings are not prosecuted and punished by lesser sentence solely under this article; [par. 20]
- E. future efforts are proposed to be made in order to ensure that appropriate provisions to establish a national legislative framework within which not only prosecutions are ensured, but also prevention of trafficking in human beings is made possible and most importantly, the protection of and assistance to victims of trafficking in human beings, are introduced in the Republic of Ukraine.

4. ANALYSIS AND RECOMMENDATIONS

4.1 Article 8 - The operation of the law on criminal liability in regard to offences committed by foreign nationals or stateless persons outside Ukraine

12. The amendments to Article 8 were commented upon in the Preliminary Comment issued on April 27, 2005, bearing OSCE ODIHR file reference: Opinion-Nr:TRAFF-UKR/027/2005, and the recommendation to retain the amendments, contained therein, remains valid.

4.2 Article 149- Trafficking in Human Beings

13. Article 149-1 of the draft Provision is clear as to the acts, means and purpose. What is important to consider, are the definitions ascribed to the terminology used in the article and their operation in cases of prosecution based on this draft Provision. The definitions will be discussed below.

14. The sanctions ascribed have been increased and are therefore indicative of Ukraine considering trafficking in human beings as a crime of serious nature.

15. Article 149-3 of the draft Provisions, by adding the wording “regardless of the use of any means of influence” in the case of minors, correctly reflects the standards laid down in Article 3 (c) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (hereinafter “the Protocol” or “the Palermo Protocol”). For the purposes of further clarity, Article 149-3 may, additionally, refer to the means applicable in Article 149-1 directly, in order to ensure a clear understanding of the wording “means of influence”.

16. Further to the above, and as recommended previously, it may nevertheless be considered to draft a separate provision on trafficking in children¹. This is particularly so, for reasons of consistency, as trafficking in children is not only an aggravating circumstance, warranting a higher sanction, but a crime which contains one less element to be proven than trafficking in persons (who are over the age of 18 years).

17. Regarding “Note 1 – Exploitation of a Person”, it appears that a need to include further definitions remains. In particular, definitions for “all forms of sexual exploitation”, “forced labour of services”, “slavery or practices similar to slavery” (which now, correctly includes “debt bondage” – as debt bondage is considered ‘a practice similar to slavery’²), should be considered, especially in the case that these are not criminalized or defined elsewhere in the Ukrainian Criminal Code. Clear definitions would facilitate a common basis for understanding of the crime.

¹ Paragraph 22 of OSCE ODIHR Preliminary Comment, file reference: Opinion-Nr:TRAFF-UKR/027/2005, issued on 27 April, 2005.

² Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1926

18. Regarding “debt bondage”, it is unclear why this definition has been deleted. It is worthwhile to clarify, in this case, that “debt bondage” comes within the definition of “exploitation” and therefore it was unnecessary to list separately in Article 149-1, as previously. This is now recognized in the draft Provisions and has been rightly deleted. It is also understood that “debt bondage” is indeed considered “a practice similar to slavery” and has been rightly included in the definition of exploitation contained in Note 1. This however, does not mean to suggest that the definition of “debt bondage” should be deleted altogether, if it is considered to be helpful to the authorities and especially if it clarifies the definition of a “practice similar to slavery”³.

19. It is commendable that Note 2 defining “Vulnerable Condition” includes taking into consideration a persons “social” condition, as well as their physical or mental condition.

4.3 Article 303. Compelling a Person to Engage in Prostitution

20. Through the addition of the terms “by means of deceit, blackmail, abuse of trust”, in Article 149-1 and not only Article 149-2 as previously, seems to raise the benchmark for prosecution under this Article. It should be considered whether the sanction articulated in Article 303-1, is therefore at all adequate to a crime committed through use of “blackmail, deceit, abuse of trust”.

21. It is also very important to consider the operation of this article vis-à-vis Article 149, and make certain that those indeed guilty of trafficking in human beings are not prosecuted and punished by lesser sentence solely or primarily under this article. There exists a real danger that this article may be used instead of Article 149 on trafficking in human beings, unless the difference between the two is made clear.

4.4 Additional Comments and Recommendations

22. Additionally, further future efforts are proposed to be made in order to ensure that appropriate provisions to establish a national legislative framework within which not only prosecutions are ensured, but also prevention of trafficking in human beings is made possible and most importantly, the protection of and assistance to victims of trafficking in human beings, are introduced in the Republic of Ukraine.

³ Please see paragraph 18 of OSCE ODIHR Preliminary Comment, file reference: Opinion-Nr:TRAFF-UKR/027/2005, issued on 27 April, 2005, which states that “In this case “debt bondage” would come within the definition of “practices similar to slavery”. Thereafter, “debt bondage” may be defined in a separate Note to the draft Provision, as a separate and specific practice similar to slavery, and in accordance with Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1926.” Which statement did not intend to suggest deletion of the definition.