



Opinion Nr.: TRAFF – MOL/013/2004 (MASz)  
2 December 2004

## COMMENTS ON THE DRAFT LAW OF THE REPUBLIC OF MOLDOVA ON PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS

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## 1. INTRODUCTION

The Council of Europe, the OSCE mission to Moldova and the OSCE/ ODIHR have been requested by the Moldovan authorities to provide comments on the “Draft Law on the Prevention and Combating of Trafficking in Human Beings”, in its working version of October 2004.

This comment does not constitute a comprehensive review of the draft Law on Prevention and Combating Trafficking in Persons of the Republic of Moldova and it follows the preliminary recommendations made by the OSCE Mission to Moldova and the OSCE ODIHR, dated 6 April 2004.

Subsequent to the submission of the preliminary recommendations of 6 April, and the receipt by the government of recommendations from other international governmental organisations and non-governmental organisations working in Moldova, the draft Law on Prevention and Combating Trafficking in Persons of the Republic of Moldova was revised by a group of experts. The group of experts, in revision of the law, considered the recommendations made by all interested parties and government authorities. The draft Law on Prevention and Combating Trafficking in Persons of the Republic of Moldova being the subject of this comment is the result of this very process of revision.

Within the framework of the Council of Europe, this request falls under the Programme against Corruption and Organised Crime in South-eastern Europe (PACO). Dr. Athanassia SYKIOTOU, Lecturer of Criminology (Greece), was asked by the Council of Europe to review this draft law and to provide an expert opinion.

Within the framework of the OSCE, the request of the Government was made to the OSCE Mission to Moldova, who further requested assistance from the OSCE ODIHR. The OSCE ODIHR and the OSCE Mission to Moldova subsequently developed these comments. In this regard, the OSCE ODIHR and the OSCE Mission to Moldova would like to make mention that the comments provided herein are without prejudice to any recommendations that both aforementioned institutions may wish to make on the draft Law on Prevention and Combating of Trafficking in Persons of the Republic of Moldova in the future. Additionally, the comments have been drafted based on a translation<sup>1</sup> of the aforementioned law, which may result in discrepancies in interpretation.

The Council of Europe expert provided comments on the general structure of the law and the specific provisions, both from a legal point of view as well as from an implementation perspective. As mentioned in the introductory notes, the draft law was reviewed against the relevant Council of Europe legal instruments as well as other European and international standards regarding the prevention and the fight against trafficking in human beings, including new evolving standards. The main findings of the expert opinion are that the draft law reflects positively the commitments undertaken by the Republic of Moldova at European and international level. The draft law addresses in a comprehensive manner the problem of trafficking in human beings and encompasses many well-drafted articles. The expert formulated a series of suggestions for redrafting and further completing certain articles, including a few recommendations for the incorporation of new articles, which would address some ambiguities and gaps that still exist at this stage of the drafting process and would improve the overall text.

The main recommendations of the Council of Europe expert, the OSCE/ ODIHR and the OSCE Mission in Moldova are:

- to clarify the definitions of “trafficking in human beings” and “trafficking in children”;
- to clarify the definitions of “exploitation of a person”, “debt bondage”, “servitude”, “state of vulnerability”;
- to consider the newly proposed provision on the principle of non-discrimination;

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<sup>1</sup> Unofficial translation of the draft Law of the Republic of Moldova on Prevention and Combating Trafficking in Persons as provided by the OSCE Mission to Moldova on 28 September, 2004.

- to amend the relevant provisions of the draft law to ensure the respect of the confidentiality of personal data and its storage in conformity with the European Convention for the Protection of the Individuals with regard to the Automatic Processing of Personal Data;
- to amend the draft law to remove the condition on the issuance of reflection period and residence permits only to the victims of trafficking housed in the Centre for the Protection and Assistance of the Victims;
- to ensure that during the reflection period, victims are not seeing enforced any expulsion order against them;
- to ensure that the Criminal Code criminalises the behaviour of a public official when the officials commits the offence of trafficking in the performance of his duties, as an aggravating circumstance);
- to consider revising the provisions on the protection and assistance to child victims of trafficking in order to ensure full account of the best interests of the child;
- to ensure the provisions on co-operation between authorities and civil society are clearly conducive to the development of such co-operation.

The OSCE/ODIHR and the OSCE Mission in Moldova further recommends:

- to ensure the clear and consistent application throughout the draft law of the definition of the term “victims of trafficking” to be understood as comprising both presumed victims and those proven to have suffered from the crime.

The Council of Europe expert opinion also recommends:

- to consider criminalising the use of services of a victim of trafficking in knowledge from the point of view of general prevention, as well as several new proposed provisions such as on the identity of child victims, the security of the centres, denial of entry, etc.

In conclusion, following the above-mentioned suggestions, the draft law will constitute a basis providing for a good foundation for the development of a comprehensive anti-trafficking action in Moldova and for a well-balanced approach between prevention, prosecution and protection. The adoption of such a law will undoubtedly constitute a positive development. Whether or not the law will have an impact on the situation of trafficking in human beings in Moldova will, however, depend largely on the way in which the law is implemented and enforced by the Moldovan authorities.

## **2. OPINION OF THE COUNCIL OF EUROPE EXPERT ON THE DRAFT LAW OF THE REPUBLIC OF MOLDOVA ON PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS <sup>2</sup>**

(based on an English translation provided by the Council of Europe)

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I have been asked by the Council of Europe to give an expert opinion on the Draft Law of the Republic of Moldova on Prevention and Combating of Trafficking in Persons.

In this regard, taking into consideration the Recommendation of the Council of Europe 1526 (2001) on the subject of trafficking of human beings related to the Republic of Moldova and also recommendations and resolutions of the Council of Europe related directly or indirectly to the trafficking issue, such as Recommendation No. R (91) 11 concerning the sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states; Recommendation No. R (97) 13, concerning intimidation of witnesses and the rights of the defense; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1467 (2000) on Clandestine immigration and the fight against traffickers; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation; Recommendation Rec(2001)11 concerning guiding principles on the fight against organised crime; Recommendation Rec(2001)16 on the protection of children against sexual exploitation; Recommendation Rec(2002)5 on the protection of women against violence; Resolution 1307 (2002) on the sexual exploitation of children: zero tolerance; Recommendation 1545 (2002) on a campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 1611 (2003) on trafficking in organs in Europe; Recommendation 1523 (2001) on domestic slavery; Recommendation 1663 (2004) on domestic slavery: servitude au pairs and mail-order brides; and also the draft Council of Europe Convention on Action against Trafficking in Human Beings;

Taking into account the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, the European Union Framework Decision of July 19, 2002 on combating trafficking in human beings, the European Union Framework Decision of March 15, 2001 on the standing of victims in criminal proceedings and also the European Union Council Directive of April 29, 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Taking into account the United Nations Convention Against Transnational Organised Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and also the United Nations Convention on the Rights of the Child and its Protocol, as well as the guidelines of international organisations such as UNICEF for the protection of the rights of children victims of trafficking in South-eastern Europe (May 2003);

and having in mind the Final Report of the Council of Europe on the Pilot project in Romania and Moldova (2001–2002) concerning the Criminal Law Reform on Trafficking In Human Beings in South-Eastern Europe, the Criminal Code Reform of the Republic of Moldova valid since July 2003 and also the preliminary recommendations on the Draft Law of the Republic of Moldova on Prevention and Combating of Trafficking in Persons made by the OSCE-ODIHR on April 2004;

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<sup>2</sup> The views expressed by the expert in this technical report do not necessarily reflect official positions of the Council of Europe or of the authorities for which the expert works.

I am pleased to give the following expert opinion on the aforementioned Draft Law of the Republic of Moldova.

## ***Introductory comments***

In general terms the draft law in relation to the Criminal Code reflects the commitments undertaken by the Government of the Republic of Moldova to prevent and combat trafficking in human beings, especially women and children and to protect and assist the victims of trafficking with full respect of their fundamental rights, being a signatory since November 2000 of the UN Convention against Transnational Organized Crime and the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

It has to be noted that the remarks made by the Recommendation of the Council of Europe 1525 (2001) have been partly taken into consideration, in particular point 12 of the Recommendation as well as most of the comments provided by the OSCE.

However, it is considered that some amendments would need to be made to the Draft Law as well as to articles 165 and 206 of the Criminal Code, concerning the responsibility of the persons implicated, in order for the Moldavian Law to be totally in line with the international and European texts.

## ***Chapter I: General Provisions***

### **General remarks**

#### *(1) Article 4(5)*

The principle of non-discrimination appearing in Article 4(5) should constitute a separate article under Chapter I: General Provisions, as it was also recommended by OSCE (point 3.1) and as it appears in Art.3 of the draft European Convention against trafficking actually under preparation by the CAHTEH Committee of the Council of Europe.

In order for the draft law to reflect the respect to this fundamental principle, applying equally to all victims of trafficking, I would suggest that the Article states that: *“The implementation of the provisions of the Law, in particular the enjoyment of measures to protect and promote the rights of victims of trafficking finding themselves on the territory of Moldova, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*.

Such provision would ensure that protection measures apply in a non-discriminating manner to all victims without depending the protection to any condition.

### **Specific comments**

#### *(2) Article 2(1)*

The definition of the crime of trafficking in Article 2 (1) of the Draft Law is consistent with that of Article 3 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 as well as the Moldovan Criminal Code; however it needs to become more clear on some points. In particular, it is suggested that the words *“of offering or accepting or receiving payments or gains”* should be amended to read *“of giving or receiving payments or benefits of any kind”*.

(3) *Article 2(2)*

Article 2 (2) where it reads “even if these actions were not connected to the use of a form of coercion provided in subparagraph 1)”, should be amended to read “even if these actions were not connected to **any of the means** provided in subparagraph 1)”.

(4) *Article 2(3)*

Article 2 (3) needs to be more clear as to the content of exploitation. Exploitation does **mean** “to compel a person to perform a work” or to “maintain a person in the state of servitude”, but **it can include** these activities, as exploitation can be oriented to any kind of activity which could give profit out of a person.

In this context, I suggest that the words “*exploitation of a person shall mean*”, should be amended to read “*exploitation of a person shall mean the abuse of a person in order to gain profit out of him/her, consisting also in reselling him/her to another person and shall include:*”.

*Article 2(3)a*

According to the definition given by Art.2 of the ILO Convention (No 29 of 1930) on compulsory labour, this can be seen as any kind of labour or service demanded to a person under the threat of any punishment and to which (labour or service) this person is not voluntarily offered. Furthermore, only the violation of the legal provisions is not enough to constitute a compulsory work or service. This means that the use of force and the violation of the legal provisions are not equivalent to be connected with “**OR**”.

In this context, the first phrase of Art.2 (3) **a**, reading actually “*compelling to perform a work or other services by force or in violation of the legal provisions..*” should be amended to read “*forced labour or services which is the state of compelling a person to perform labour or other services by force, threat or other forms of coercion in violation to the legal provisions...*”.

*Article 2(7)a and c*

In my opinion there is no point in repeating again what is “forced labour or services” under Art.2 (7) **a** and **c**. Besides, what is described under those two paragraphs is already contained in the proposed version of Art.2 (3) **a**. Thus, I propose to delete Art.2 (7) a and c.

*Article 2(3)b*

Article 2 (3) **b** needs to include all forms of slavery and servitude. In this sense, the words “*maintaining in the state of servitude or using other ways to deprive a person of his/her freedom...*” should be amended to read “**slavery or practices similar to slavery or maintaining a person in the state of servitude** or using other ways to deprive a person of his/her freedom...”.

*Article 2(3)c*

Article 2 (3) **c** refers to exploitation for pornographic purposes including the production and distribution of pornographic material. However, this kind of exploitation is not only limited to the production and distribution of the pornographic material, but it can also be oriented to the putting into circulation of the pornographic material by any means, or to the purchasing, selling, transporting or even possessing such material. In that sense, I suggest that the Article 2 (3) **c**, that now reads “*compelling to engage in prostitution, in pornographic performances, including for the production and distribution of pornographic material, or in other forms of sexual exploitation*”, should be amended to read: “*compelling to engage in prostitution, in pornographic performances, **including for the production, distribution, circulation by any means, purchase, sale, transport or possession of pornographic material, or in other forms of sexual exploitation***”.

*Article 2 (3) i*

Article 2 (3) **i** should be amended and instead of “*compelling to engage in other activities that violate fundamental human rights and freedoms*”, it should read “*compelling to engage in other activities **even if not expressly mentioned above** that violate fundamental human rights and freedoms*”.

*New Article 2(3)j proposed*

At the end of Article 2 (3), a new paragraph must be added in order to stress the irrelevance of the consent of the victim to the exploitation. This is already mentioned in Art.29 (3) but in the context of the liability of the perpetrators. I suggest not to be moved from Chapter V, but to be also formulated as an explanatory note to the exploitation under Chapter I. In this sense, a new paragraph can be added at the end of Art.2 (3), becoming Art. 2(3) j, reading: **“The consent of the victim of trafficking in human beings to the intended exploitation set forth in subparagraph 2 (3) shall be irrelevant where any of the means specified in subparagraph (1) and (2) of article 2 have been used”**.

(5) *Article 2(5)*

Article 2(5) should be amended and instead of “travel tickets”, it should read **“as well as any kind of travel document”**.

(6) *Article 2(7) b*

Furthermore, the “debt bondage” mentioned as “forced labour or services” under Art.2 (7) b, is rather wrongfully placed there. “Debt bondage” is a form of slavery rather than just a kind of “forced labour”, since the subject is first of all deprived of his/her freedom, kept as a hostage until he/she or a third person pays off the debt to the trafficker, (which debt, of course, most of the times is an unlawful debt fabricated by the traffickers). The paying-off the debt is the reason for the hostaging.

Thus, I suggest that para **b** of **Art.2 (7)** which now reads “debt bondage” should be amended to constitute alone **Art. 2 (7)** and should read: **“debt bondage” is the state of a person deprived of his/her freedom, including freedom of movement, kept as a hostage until he/she or a third person pays off a lawful or unlawful debt”**.

(7) *Article 2(8)*

Article 2 (8) is not clear. It should be deleted and “servitude” should be placed together with “servitude like practices” (and not services!) under Art.2 (9). So, Art.2 (9) instead of now reading “servitude like services - placing...”, should be amended to read: **“servitude and servitude like practices constitute the placing...”**. However, it could be better if this article was merged to Art.2 (3) b.

(8) *Article 2(10)*

Article 2 (10) that reads “state of vulnerability” – special state in which a person is found, due to:”, should be amended to read: “state of vulnerability” – special state in which a person is found **and which is of such nature that the person is more likely to succumb to abuse or exploitation, especially due to:”**.

*Article 2 (10) b*

Article 2 (10) b, that reads “situation determined by pregnancy, illness, infirmity, physical or mental deficiency” should be amended to read “situation determined by **age**, pregnancy, illness, infirmity, physical or mental deficiency”, since children also are more vulnerable by their age to become victims of trafficking.

(9) *Article 2(11)*

Article 2 (11), that reads ““victim of trafficking” is the person presumed or found as injured person as a result of the actions...”, should be amended to read ““victim of trafficking” is the **natural** person presumed or found **to be subject to the actions...**”.

## **Chapter II - Institutional Framework. Prevention and Combating of Trafficking in Human Beings**

(10) *Article 8(2)5*

It is suggested that Article 8 (2) 5 includes training programmes in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings, as suggested by the Draft European Convention on trafficking of the Council of Europe -CAHTEH (draft art.5 para 2).



Thus, I propose that Article 8 (2) 5 that now reads “to implement training programmes for civil servants in charge of prevention and combating of trafficking in human beings” should be amended to read “to implement training programmes for **persons vulnerable to trafficking and for civil servants concerned with trafficking in human beings**”.

(11) *Article 9 (1) 4 c*

From the point of view of implementation it is not quite clear in Article 9 (1) 4 **c** who will assess the “risk group” in order for the persons who belong to that to get hired by the companies (will this be the task of the Ministry of Labour or of the National Employment Agency???)

(12) *Article 10(3)*

Concerning the database referred to in Article 10 (3), a specific reference should be made to the respect of confidentiality. In that sense, I suggest that Article 10 (3) that reads “The Ministry of Interior, supported by other ministries and departments, shall develop, administrate and maintain an updated database regarding the phenomenon of trafficking in human beings”, should be amended to read: “The Ministry of Interior, supported by other ministries and departments, shall develop, administrate and maintain an updated database regarding the phenomenon of trafficking in human beings **with respect to the confidentiality of the personal data of the victims of trafficking in conformity to Article 20 of the present Law**”.

### **Chapter III - Protection and Assistance of the Victims of Trafficking in Human Beings**

(13) *Article 16(4)2*

Article 16 (4)2 that concerns the prolongation of the duration of accommodation upon request of the criminal prosecution bodies or courts, should not set a maximum for the accommodation but it should leave it to the discretion of the criminal authorities.

Thus, Article 16 (4)2 that now reads “in case when the life and health of the victim are threatened by a real danger, the duration of accommodation may be prolonged even after the termination of the criminal proceedings for a period of up to 2 months on the basis of the notification of the prosecutor” should be amended to read “in case when the life and health of the victim are threatened by a real danger, the duration of accommodation may be prolonged even after the termination of the criminal proceedings **for as long this is deemed necessary for the protection of the victim by notification of the prosecutor**”.

(14) *New Article 16(9) proposed*

In order to assure the security of the centres, another paragraph should be added at the end of Article 16 (8) becoming Article 16 (9) that should read: “**For the security of the premises where victims are accommodated, the centres may ask for the assistance of the Police**”. This is provided by other countries’ anti-trafficking law (e.g. Art.4 para 1 of the Greek presidential decree 233/2003 on the assistance of victims of trafficking).

(15) *Article 19(1)*

Article 19 (1) that reads “The victims of trafficking in human beings shall be granted special physical, legal, medical and social protection and assistance” should be amended to read “The victims of trafficking in human beings shall be **assisted in their physical, psychological and social recovery by special medical, psychological, legal and social measures**”.

(16) *Article 19(3) & Article 23 (4)*

Article 19 (3) now reading “The state, through its competent bodies and organizations, shall take prompt adequate measures of identification and referral of the victims of trafficking in human beings to the

protection and assistance services, offering them a reflection period of up to 30 days” , should be amended to read: “The state, through its competent bodies and organizations, shall take prompt adequate measures of identification and referral of the victims of trafficking in human beings to the protection and assistance services, offering them a reflection period of up to 30 days. **During this period it shall not be possible to enforce any expulsion order against him/her**”.

This should be also added at the end of Article 23 (4), since it deals in particular with the protection of aliens.

(17) *Article 20(1)*

In Article 20(1) a specific paragraph should be added in order to include that personal data regarding victims of trafficking will be stored in conformity with the conditions provided for by the Convention for the Protection of the Individuals with regard to the Automatic Processing of Personal Data (CETS 108).

(18) *Article 22*

At the end of Article 22 a new paragraph should be added to provide that a Compensation Fund shall be established by seized assets in order to secure compensation to the victims of trafficking, as a subsidiary mechanism if the traffickers assets are not sufficient or if no assets are found. This has also been proposed by the OSCE Recommendations on the Draft Law of Republic of Moldova, the OSCE Action Plan to combat trafficking in human beings (PC.DEC/557, 24-7-2003, 24-7-2003) and the Final Report of the Council of Europe on the Pilot project in Romania and Moldova (2001–2002).

## **Chapter IV - Prevention and Combating of Trafficking in Children. Assistance and Protection of Children – Victims of Trafficking in Human Beings**

(19) *New Article 25 (5) proposed*

A specific paragraph should be added at the end of Article 25 and should read: “**Ensure that identity or details enabling the identification of a child victim of trafficking of human beings will not be publicly known by any means, except to facilitate the tracing of family members or secure the well-being and protection of the child**”. This follows the guidelines of UNICEF and has been proposed in Art.11 para 2 of the draft European Convention against trafficking – CAHTEH.

(20) *New Article 27 (5) proposed*

In respect to the guidelines of UNICEF on the protection of the rights of children victims of trafficking (point 3.8.2-2), a paragraph should be added at the end of Article 27 referring to the repatriation of the child, which could form Art.27 (5) and should read: “**Child victims shall not be returned to their country of origin if, following a risk and security assessment, there are reasons to believe that the child’s safety or that of their family is in danger**”.

(21) *Article 28 (1)*

Article 28 (1) should be aligned to the provision of Art.19 (4) and instead of reading: “The state shall secure the protection and assistance of the children – victims of trafficking in human beings since the time of their identification until the complete integration and recovery of the child” it should be amended to read: “The state shall secure the protection and assistance of the children – victims of trafficking in human beings **from the moment there are grounds to believe that the child is a victim of trafficking until his/her identification and the complete integration and recovery of the child, independently of their cooperation with the authorities in accordance to Article 19 (4)**”.

(22) *Article 28 (4)*

In order to align with the guidelines of UNICEF (point 3.2.1-1), the last phrase of Article 28 (4) should be amended and instead of reading: “and shall participate with the child in the criminal investigation and judicial actions”, it should read: “and shall participate with the child **throughout the entire criminal**”.

investigation and judicial actions **until a durable solution in the best interest of the child has been implemented**".

## **Chapter V- Liability for Trafficking in Human Beings**

### **General remarks**

This Chapter is related to the criminalisation of trafficking in the Criminal Code. However, two behaviours should be criminalised and need to be included in the Criminal Code:

- a) the behaviour of a public official which needs to become an aggravating circumstance in Art.165 and 206CC, when the official in the performance of his duties commits the offence of trafficking and
- b) the behaviour of the person who uses the services of a victim of trafficking in knowledge, which should also be included in Art. 165 and 206CC, as provided in Art.18 of the Draft European Convention against trafficking (it is also punishable under the Greek Criminal Code with at least a 6 month imprisonment, Art.323 A para 3 CC).

It is a pity that the article on the use of services has disappeared following several discussions with the experts. It is of extreme importance for the point of view of general prevention to criminalise the behaviour of the "client". This is not related to the use of services of voluntary prostitution, since trafficking is not voluntary and it has to restrain eventual "clients" from fostering the demand.

### **Specific comments**

#### *(23) Article 29(3)*

The last phrase of Article 29 (3) that reads "*if any of the forms of influence and coercion specified in sub-paragraph 2) of article 2 were used*", should be amended to read "*if any of the **means** specified in sub-paragraphs 1) and 2) of article 2 were used*".

#### *(24) New Article 29(4) proposed*

A last paragraph should be added to Article 29 (as para 4) that should read: "**Persons implicated in the trafficking of human beings will be denied entry on the territory or their visas will be revoked**" (as it is provided in the Draft European Convention -CAHTEH, art.7 para 5). Corresponding amendments to the Criminal code should also be made.

#### *(25) Article 30*

At the end of Article 30 another phrase should be added: "**Liability of legal persons will be without prejudice to the criminal liability of natural persons who have committed the offence**" (as it is also provided in the Draft European Convention against trafficking- CAHTEH, art.21 para 4).

### **Conclusion**

As a conclusion I have to stress that this is a rather promising legal instrument, however the implementation of this Law will not be effective unless sufficient resources are secured.

## COMMENTS OF THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS AND THE OSCE MISSION TO MOLDOVA

### ***Introduction***

The OSCE ODIHR and the OSCE Mission to Moldova wish to note that the draft Law on Prevention and Combating Trafficking in Persons of the Republic of Moldova (hereinafter, “draft Law” or “draft ATL”) generally reflects the commitments<sup>3</sup> of the Republic of Moldova in combating trafficking in human beings, and protecting and assisting victims of the crime, with due respect for their fundamental rights and freedoms. The following comments are offered to further bring into line the provisions of the draft Law with international and European standards.

Furthermore, the comments contained herein are made owing to the commitments to combat trafficking in human beings expressed by OSCE participating States in, amongst others, the OSCE Action Plan to Combat Trafficking in Human Beings (PC Dec.557/2003), OSCE Maastricht Ministerial Council Decision No. 2/03, December 2003 endorsing the OSCE Action Plan to Combat Trafficking in Human Beings, OSCE Vienna Ministerial Council Decision No. 1, November 2003, OSCE Bucharest Ministerial Council Decision No. 6, December 2001, and OSCE Porto Ministerial Council Declaration, December 2002.

### ***Chapter I: General Provisions***

1. The definition of “trafficking in human beings” and “trafficking in children” and “child” contained in Article 2 and Article 29(3) of the draft Law which refers to consent of the victim, is generally in compliance with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.
2. Regarding the definition of “exploitation of a person” elaborated in Article 2(3) of the draft ATL, it is welcomed that the definition seeks to address various forms of exploitation in which a victim may find him or herself and provides a non-exhaustive list therefore remaining amenable to the changing nature of the crime of trafficking in human beings. Nevertheless, it is suggested that the term “debt bondage” and the term “slavery” (not “servitude”) and “servitude –like practices” (not “services”)<sup>4</sup>, be clearly defined. For instance, “debt bondage” should be defined separately.
3. As portrayed by the fact of the inclusion of the definition of “victim of trafficking” in Article 2(11) of the draft ATL, a clear attempt has been made at ensuring that victims of trafficking, who may not be considered victims in accordance with the Moldovan Code of Criminal Procedure<sup>5</sup> (hereinafter “MCPC”) are afforded the requisite rights and assistance contained in Chapter III of the draft ATL. Therefore, it is interpreted that victims of trafficking, according to Article 2(11) of the draft ATL are granted a specific legal status complimentary to, or preceding that received by virtue of the MCPC and vested with the rights attached thereto and set out, generally, in Chapter III of the draft ATL.

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<sup>3</sup> Including, the UN Convention against Transnational Organized Crime and the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

<sup>4</sup> It being understood, that an error in translation may be part of the reason for the confusion of terms.

<sup>5</sup> Article 58, Criminal Procedure Code of the Republic of Moldova, of June 12, 2003.

4. Additionally, in light of point 3, it is pivotal to ensure that consistency in terminology and understanding of this new complimentary legal status is ensured throughout the draft ATL, and in particular in its implementation.<sup>6</sup>
5. It is also noted, that the definition in Article 2(11) has a clear nexus with Article 14 on Identification of Victims of trafficking, on which comments are provided below.

## ***Chapter II: Institutional Framework- Prevention and Combating of Trafficking in Human Beings***

6. It is to be welcomed that the draft ATL goes to such great lengths and detail in establishing an institutional framework to deal with the crime of trafficking and most importantly, the victims of trafficking in human beings. The Chapter contains many of the necessary ingredients for the successful functioning of a national mechanism through which trafficking victims may be identified, referred and assisted. The structure includes express provisions delineating co-operation of authorities with non-governmental organizations, the implementation of a national action plan, training of authorities and monitoring of action to combat trafficking and protect victims, including monitoring of the functioning and adequacy of legislation, by a National Committee composed of members from various relevant authorities and civil society. The establishment and functioning of such national mechanism, is in practice, what will ensure the respect of the human rights of victims of trafficking finding themselves on the territory of Moldova. Notwithstanding the breadth of scope and detail of the provisions contained in this Chapter II, comments for consideration are offered below.
7. In view of the fact, that one of the most striking advantages of introducing a specific law on combating trafficking, is indeed the opportunity to establish a strong national approach to the combating of trafficking and assistance of victims thereof, Article 7 is proposed to further consider including an indication of who will appoint and dismiss the members of the National Committee and their terms of office, as the current Article 7(3), merely states that the Government will approve the composition of the Committee.
8. It is welcomed that by virtue of Article 7(2) the National Committee has been defined as a consultative body of the Government of Moldova. In addition to the periodic reporting foreseen by Article 7(9), it is understood that other forms and frequency of the consultative role, will be developed in the future, on the basis of the Activity Rules stipulated in Article 7(3).
9. It is suggested that Article 9(7) and 9(9) be cross-referenced with the right of victims of trafficking to receive residence permits as stipulated by Article 23(6).
10. It is welcomed that Article 10(1) 2) ensures physical protection of a victim of trafficking in human beings during criminal proceedings. Furthermore, the obligation to protect victim witnesses, their families and any other person who provides assistance in criminal proceedings (as in Article 22(1) draft ATL), as already enshrined in other Moldovan normative acts, may also be stated here.
11. Article 13 rightly recognizes that training of public authorities in the field of trafficking is imperative. It is a preventative measure as well as a protective measure, especially since it is these authorities who will be amongst others, responsible for the accurate identification and

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<sup>6</sup> It is to be considered whether establishing such legal status for so-called “presumed victims” may also be achieved through drafting a provision in Chapter III on Protection and Assistance, which would clearly state that where any relevant authority, NGO, any international organizations, or relevant authorities of another State, or a person him or herself has “reasonable grounds to believe that a person has been a victim of trafficking in human beings” all relevant protection and assistance measures set out in the draft ATL shall be afforded. Such provision could then set out exactly which articles of the draft ATL would apply to this newly created complimentary status.









