



**THE CONCEPTUAL AND OPERATIONAL STRUCTURE
IN UKRAINE**

STATE PROGRAMME OF COMBATING TRAFFICKING IN HUMAN BEINGS

In March 2007, the Cabinet of Ministers of Ukraine approved the State Programme of Combating Trafficking in Human Beings for the Period until 2010¹⁷ (hereinafter, the “*State Programme*”). The previous programme ended in 2005¹⁸.

The overall objective of the said State Programme is to create conditions for combating trafficking in human beings and trafficking-related crimes, to improve the efficiency of the activities targeting the identification of such crimes and their perpetrators, and to resolve the problems concerning the reintegration of trafficked persons. Among other things, the State Programme aims to improve the mechanism of normative and legislative regulation of the issues related to counteracting human trafficking; to provide assistance to trafficked persons; to facilitate the activities of the rehabilitation centres for assistance to the victims of trafficking; to co-operate with NGOs and international organizations; and to use international experience in prevention of and fight against human trafficking; and protection of human rights of those who suffered from the crime. Central and local bodies responsible for the implementation of the State Programme are tasked to submit to the MinFYS a report about the progress in the implementation of the State Programme on a bi-annual basis and the MinFYS shall inform the Cabinet of Ministers accordingly once a year. The “*Plan of Activities to Combat Trafficking in Human Beings for the Period until 2010*”, which is annexed to the State Programme, lists the measures to be taken for the implementation of the Programme and names the entities responsible for putting the State Programme into practice.

The State Programme is still too general. The consolidated approach of the State Programme involving all key actors, including NGOs and IOs, can serve as a good basis for the development of an effective NRM. Also encouraging is that central and local bodies are equally tasked to utilize the funds allocated to them by the state and local budget for the implementation of the State Programme. However, details on the scope and the sources of funding for the activities within the State Programme as prescribed in the Cabinet of Ministers Decree No 106 of 31 January 2007¹⁹, which defines the procedures for the development and implementation of state programmes, are missing. Unfortunately, direct funding of anti-trafficking NGOs by the state and local budget is not envisaged as well. Over and above that, the availability of sufficient funds for the implementation of the State Programme generally remains a major issue.

¹⁷ Cabinet of Ministers of Ukraine, Decree No 410 of 7 March 2007 ‘On Approving the State Programme of Combating Trafficking in Human Beings for the Period Until 2010’.

¹⁸ Cabinet of Ministers of Ukraine, Decree No 766 of 5 June 2002 ‘On Approving the Comprehensive Programme of Combating Trafficking in Human Beings for 2002-2005’.

¹⁹ Cabinet of Ministers of Ukraine, Decree No 106 of 31 January 2007 ‘On the Drafting and Implementation of the State Target Programmes’.

Likewise, some other elements set out in the Cabinet of Ministers Decree No 106 of 31 January 2007 may require more specification. In particular, quantitative and qualitative indicators of the effectiveness of the State Programme implementation are not precisely determined.

Looking at the expected results, it is interesting to note that particular attention is being paid to the inclusion of anti-trafficking issues into educational curricula for children and youth, especially in orphanages and boarding schools. During the interviews for this assessment, the impression was often given that particular educational institutions do not sufficiently assume responsibility for combating this problem as it is not within their terms of reference. While to some extent preventive activities are carried out, apart from a few exceptions, little efforts had been made so far to sensitize and train particularly teachers and school psychologists on human trafficking issues so that they have the skills to identify trafficked children.

The State Programme may indeed contribute to the improvement of professional competence and expert knowledge of the officials and NGO representatives working in the field of combating trafficking at central and local level, if sustainability is ensured. At the moment, even the training activities targeting specific experts often have not led to expected results because of the high turn-over of staff.

Measures aiming at improving co-operation, be it between law enforcement agencies in Ukraine and abroad or with NGOs and international institutions as stipulated in the State Programme, will definitely facilitate the work of all stakeholders. Well-functioning co-operation structures particularly among government institutions and civil society are very essential for an effective NRM. This may involve *i.a.* the immediate referral of trafficked persons to support and assistance services.

As to the provision of assistance to victims of trafficking, the State Programme seems to primarily target Ukrainian citizens. No special provisions refer to procedures for the repatriation and social inclusion of trafficked persons from other countries or address their support and protection needs in Ukraine. There are, however, indicators that Ukraine is – although still low in numbers – becoming a country of destination²⁰. This aspect needs to be further investigated in order to be able to remove possible gaps, so that the human rights of all trafficked persons are properly protected in Ukraine.

²⁰ See also UNODC, *Trafficking in Persons: Global Patterns*, April 2006, according to which Ukraine ranks medium as destination country. Also the latest IOM statistics show that Ukraine is already a destination country. Likewise, see UNODC, *An Assessment on Referral Practices to Assist and Protect the Rights of Trafficked Persons in Moldova*, February 2007, p. 17, which states that most deported victims come from Turkey and Ukraine.

REGIONAL PROGRAMMES OF COMBATING TRAFFICKING IN HUMAN BEINGS

With the adoption of the State Programme, the regions were instructed to develop/revise their Regional Programmes for combating trafficking in human beings (hereinafter, the “*Regional Programmes*”) accordingly. The respondent of the MinFYS reported that 20 Regional Programmes²¹ have been adopted so far.

It was noted that in some regions programmes were not yet developed, for instance due to lack of potential funding for the implementation of these programmes. Those, which had been adopted, usually include only general provisions according to which local budget allocations should be made to fund the implementation of measures of the programme. But it remains to be seen whether the effective budget allocations will indeed be adequate to meet all the needs.

In many other areas, the regional programmes often lack specification as well. For instance, a co-ordination body is usually defined by the regional programme. In some instances, such body is also tasked to assume monitoring functions. However, the roles and responsibilities of this body are not sufficiently specified and much depends on personal engagement of individual staff. Even where monitoring of the prescribed measures is envisaged, indicators to assess the success or failure of the measures are largely missing.

Similarly, most regional programmes provide for regular reporting on the progress of the implementation of the programme. Formal requirements for the submission of reports (e.g. reporting date and path) are mostly determined, but specific guidance as to the content is hardly provided, so it remains unclear what kind of information is specifically expected.

Equally, the regional programmes usually touch upon questions related to co-operation and co-ordination among governmental agencies and with civil society and IOs. But in most instances, the mode of co-operation is not specified, although most regional programmes encourage the involvement of IOs and NGOs in the implementation of projects and the usage of international experiences in the field of prevention of trafficking and protection of trafficked persons.

Most programmes also refer to the importance of providing training and professional development for state employees, pedagogues and others on human trafficking issues,

²¹ The Chernihiv Regional Programme for instance was adopted on 28 August 2007. The Regional Programme of the Cherkasy Oblast was approved on 31 August 2007. The Kyiv City Council approved the Regional Programme on 16 August 2007 and the Lviv Regional Programme was approved on 17 September 2007. The Regional Programme of the Odesa Oblast was first adopted in 2002, and updated in 2007. The draft Regional Programme in Crimea is expected to be adopted soon.

but again there are only a few instances where the type of such training is put in a more specific form.

All programmes provide for a number of measures to prevent trafficking in human beings as well as to provide protection and support services to trafficked persons. Sometimes the involvement of IOs and/or NGOs is explicitly envisaged. As to the protection and support services for trafficked persons, reference is usually made particularly to the necessity of addressing their specific medical, psychological and legal needs and making joint efforts to improve the rehabilitation of trafficked persons and their (re)integration into the labour market. In part, the regional programmes substantiate these measures, especially when it comes to the development of programmes and mechanisms for the social and psychological rehabilitation of trafficked children.

The regional programmes can pave the way for the development of well-functioning regional referral mechanisms in the field of trafficking in human beings as part of the NRM if there is a better understanding of relevant roles, responsibilities and capacities of the key actors and if the question of monitoring and evaluation of measures as well as of co-ordination and co-operation structures involving state actors and civil society are better defined.

While the Governmental Decree No 106 of 31 January 2007 is not directly applicable to regional programmes, it may still serve as a model for the development, implementation and monitoring of such programmes.

INSTITUTIONAL ANTI-TRAFFICKING FRAMEWORK AND KEY GOVERNMENTAL STAKEHOLDERS IN UKRAINE

At national and regional level, bodies have been set up to deal with the issue of combating trafficking in human beings. They involve a variety of actors, though most Ministries or Departments have no special units established for combating trafficking in human beings, but deal with anti-trafficking issues within their scope of responsibilities.

Inter-Agency Council on the Issues of Family, Gender Equality, Demographic Development, and Combating Trafficking in Human Beings

On 5 September 2007, the Cabinet of Ministers of Ukraine approved the creation of an Inter-Agency Council on the Issues of Family, Gender Equality, Demographic Development, and Combating Trafficking in Human Beings (hereinafter, the “*Inter-Agency Council*”).²² Same Cabinet decision terminated the functioning of the previously

²² Cabinet of Ministers of Ukraine, Decree No 1087 of 5 September 2007 ‘On the Consultative and Advisory Bodies for the Family, Gender Equality, Demographic Development, and Combating Trafficking in Human Beings’.

existing Inter-Agency Co-ordination Council on Combating Trafficking in Human Beings previously established by the Cabinet of Ministers in December 2002. This new Inter-Agency Council, which is chaired by the Minister for Family, Youth and Sports, is supposed to be a standing consultative and advisory body established at the Cabinet of Ministers of Ukraine. While the resolution lists all members of the Inter-Agency Council, it also stipulates that the Inter-Agency Council can involve leading researchers, specialists, representatives of enterprises, institutions, NGOs, and funds, including international ones.

The main tasks of the Inter-Agency Council include *i.a.* the analysis of the drafts of state targeted programmes and other legal instruments related to the state policy as well as the development of strategies and recommendations in the above named areas. These recommendations may be implemented through relevant resolutions of the Cabinet of Ministers of Ukraine or instructions by the Prime Minister of Ukraine. The Inter-Agency Council shall also initiate an implementation monitoring of the relevant state targeted programmes and their impact on the situation in the regions and the country. The Inter-Agency Council has the right to establish, as necessary, expert and working groups and engage the representatives of executive agencies, local governments, research institutions, and NGOs for preparing proposals on the efficient implementation of the state policy.

The Inter-Agency Council should hold meetings at least once every three months. If required, extraordinary sessions may be convened. Officials from executive agencies, local governments, enterprises, institutions, and organizations regardless of their form of ownership may be invited to the sessions of the Inter-Agency Council. As the first meeting took place in December 2007 only, no information is available yet as to its functioning.

Expert Working Group on the Issues of Prevention of Domestic Violence and Combating Trafficking in Human Beings

The Expert Working Group on the Issues of Prevention of Domestic Violence and Combating Trafficking in Human Beings (hereinafter Expert Working Group), which is headed by the Deputy Minister of Ukraine for Family, Youth, and Sport, is a multi-agency consultative and advisory body with the Inter-Agency Co-ordination Council for Combating Trafficking in Human Beings (and since September 2007 – with the Inter-Agency Council on the Issues of Family, Gender Equality, Demographic Development, and Combating Trafficking in Human Beings). It is comprised of representatives of governmental institutions, civil society, IOs and research institutions, which participate in the implementation of measures to combating human trafficking and prevention of domestic violence. The Expert Working Group was created for the purpose of prompt co-ordination of implementation of measures aimed at the prevention

of domestic violence and human trafficking. The main tasks include *i.a.* co-ordination of implementation of measures, the resolution of issues determined by the State Programme, the preparation of proposals regarding improvement of performance of central and local executive authorities, co-operation with non-governmental and international organizations, participation in monitoring activities, co-operation on the provision of assistance to victims of violence including human trafficking, their rehabilitation and reintegration into society.²³

Regional Councils

Within the framework of the Regional Programmes, regional advisory boards (hereinafter, the “*Regional Councils*”) were set up in all 27 regions since 2002 in compliance with the Comprehensive Programme to Combat Trafficking in Human Beings for 2002-2005. While the Regional Councils have not been operating in all oblasts, they are apparently still active in some regions (*e.g.* Chernihiv²⁴) or have been re-activated (*e.g.* Odesa²⁵). The new State Programme is expected to lead to a revision of these inter-agency bodies, where they are dormant.

Ministry of Ukraine for Family, Youth and Sports²⁶

Within the framework of the State Programme, the MinFYS assumes a co-ordination role, which is basically performed by the Department of Family, Gender Policy and Demographic Development. The Department is composed of 21 staff members who have to cover five areas, namely social support to families, demographic development, gender policy, combating trafficking in human beings and domestic violence. It was said that the human resources to cover all these areas are indeed low, but they are even lower at regional level²⁷ and funding remains a major problem. Within the Department, the Office of Prevention of Domestic Violence and Combating Trafficking in Human Beings is mainly responsible for all issues related to trafficking in human beings including co-ordination functions as assigned by the State Program.

²³ Ministry of Ukraine for Family, Youth and Sports, Order No 2546 of 16 July 2007 ‘On Creation of the Expert Working Group on the Issues of Prevention of Domestic Violence and Combating Trafficking in Human Beings’.

²⁴ In the Chernihiv Oblast the Regional Council serves as forum for exchange of information, reports on activities and for the development of recommendations. NGOs are also participating in this forum. The Council meets once every three months.

²⁵ In the Odesa Oblast, the members of the Council are representatives of the Security Service, Border Guard Service, Odesa Oblast Department for Combating THB, local NGOs and others.

²⁶ As to the division of responsibilities at Ministry, oblast, regional and city level please see the table in the annex, which had been prepared by the MinFYS.

²⁷ For instance in Chernivtsi Oblast the person dealing with the issue of human trafficking is also responsible for six other components within the Department for Family and Youth.

The MinFYS is also tasked to provide logistical support to the Inter-Agency Council.

State Social Service for Family, Children and Youth

The State Social Services for Family, Children and Youth is *i.a.* responsible for the social supervision, rehabilitation, and adaptation of families with children who find themselves in difficult life situations, foster families, family-type orphanages, and the graduates of boarding school institutions (who comprise the core of the State Social Service's target group) and the provision of social support and assistance to them. The national network of the State Social Service, comprised of over 1,600 Centres for Social Services for Family, Children and Youth and over 3,700 specialized units, has been developed to perform social work tasks for these vulnerable categories throughout Ukraine. The activities comprise *i.a.* the provision of social services (*e.g.* legal, psychological, social-medical, social-pedagogical, social-economic, and information services), social accompaniment and social rehabilitation care²⁸.

State Department for Adoption and Protection of the Rights of the Child

The State Department for Adoption and Protection of the Rights of the Child deals with the development and implementation of state policy on children and family matters. The State Department co-ordinates the activities of the institutions and services for children affairs related to the adoption of children, guardianship, care and placement into foster families and family-type orphanages. The State Department's tasks include the facilitation of implementation of Ukraine's obligations under the UN Convention on the Rights of the Child and other international agreements of Ukraine in the field of protection of the rights of the child, adoption, guardianship and care. Finally, the State Department summarises the practice of implementing the legislation in the field of adoption of children, guardianship and care, placement into foster families and family-type orphanages, prevention of child neglect and homelessness, protection of the rights, freedoms and interests of the child, as well as the development of proposals for the improvement of such legislation.²⁹ In the regions the Services for Minors/Services for Children's Affairs are responsible for overseeing the adherence to the rights and interests of children.

²⁸ http://dss.visti.net/ua_work_summary.phtml

²⁹ http://dss.visti.net/ua_index.phtml. For further details see <http://www.dcssm.gov.ua>
http://www.kmu.gov.ua/sport/control/uk/publish/category?cat_id=50693.

Ministry of Interior of Ukraine

In 2000, a counter-trafficking unit was established within the Ministry of Interior of Ukraine (hereinafter, the “MOI”) and in 2005³⁰ a special Department for Combating Crimes Related to Trafficking in Human Beings was set up. Such departments now exist in all regions. 23 persons are currently assigned to the Department within the MOI.³¹ The objective of the Department for Combating Crimes Related to Trafficking in Human Beings of the Ministry of Interior of Ukraine and the regional departments/units (hereinafter, the “Department for Combating THB”) is to prevent and to detect facts of human trafficking, to combat irregular migration, crimes against public morality, illegal child adoption, violation of the legal procedure related to transplantation of human organs or tissues, production and distribution of child pornography via the Internet, and to control business entities providing services of employment abroad, tourist business entities, matrimonial and model agencies, as well as, where applicable, employment agencies for sailors. The main focus is to identify trafficked persons and to break up national and trans-national criminal networks and prosecute traffickers.

Many representatives of the oblast (regional) Departments for Combating THB claimed that the limited funds hinder the investigation process. In some instances, regional Departments for Combating THB do not even have sufficient petrol to transport trafficked persons. Furthermore, it was noticed that in some regions more specialized personnel with language skills would be needed because of the deep involvement in transnational activities.

The staff from the oblast (regional) Departments for Combating THB attended various training activities, which were supported by IOM, La Strada-Ukraine, and the OSCE. Besides, they regularly participate in training events held by the International Law Enforcement Academy and other educational institutions abroad.

Security Service of Ukraine

Within the Security Service of Ukraine, the *Main Department for Combating Corruption and Organized Crime* is responsible for the issues related to trafficking in human

³⁰ Ministry of Interior of Ukraine, Order No 931 of 20 October 2005 ‘On the Approval of the Regulation on the Department for Combating Crimes Related to Trafficking in Human Beings of the Ministry of Interior of Ukraine and a Reference Regulation on the Directorate (Unit) for Combating Crimes Related to Trafficking in Human Beings of the Main Departments of the Ministry of Interior of Ukraine in the Autonomous Republic of Crimea, the city of Kyiv and the Kyiv Oblast, and the Departments of the Ministry of Interior of Ukraine in the oblasts and the city of Sevastopol.

³¹ The Department is composed of male and female staff, who regularly participate in training activities on combating crimes.

beings. The Security Service focuses primarily on the investigation of organized criminal groups.³²

The EU Commission is currently providing training on human trafficking issues including the identification of victims and of traffickers. Any other in-house training specifically focusing on this area apparently has not taken place as yet.

General Prosecutor's Office of Ukraine

According to Decree No. 26 of the Prosecutor General of Ukraine of 21 March 2007, the supervision of compliance with the law by the bodies responsible for combating trafficking in human beings and related crimes as well as for the investigation of such crimes, for taking measures to protect the rights of citizens from offences and for the punishment of the guilty party is one of the priority directions of work of the prosecution agencies. In order to ensure the appropriate implementation of this function special prosecutors have been appointed within the prosecutor's offices at oblast level and within the divisions of the administration of the General Prosecutor's Office of Ukraine. These prosecutors are instructed to conduct analytical researches on a systematic basis and to co-ordinate the activities of law enforcement agencies in the field of prevention.³³

Furthermore, based on the work results of six months in 2007, the General Prosecutor's Office of Ukraine sent letters to the regional prosecutors in order to strengthen their supervisory functions as regards adherence to law in certain areas. Moreover, drawing from work experiences the General Prosecutor's Office of Ukraine drafted recommendations concerning the detection and investigation of crimes related to trafficking in human beings. These recommendations were forwarded to the field for implementation after approval by the scientific-methods council.

³² For instance, in the Department of the Security Service of Ukraine in Odesa Oblast one staff member is directly responsible for human trafficking issues. The well-established contacts with security services abroad facilitate the co-operation on actions to combat trans-national offences involving criminal groups.

³³ With regard to the supervisory role of the General Prosecutor's Office see also Articles 5, 29 and 30 of the Law of Ukraine 'On the Prosecutor's Office' as well as Orders of the Prosecutor General of Ukraine No 4gn 'On the Organization of Supervision over Compliance with the Law by the Inquiry and Prejudicial Investigation Authorities', No 4/1gn 'On the Organization of Prosecutor's Supervision over Compliance with the Law by the Investigation Authorities' and No 4/2gn 'On the Organization of Prosecutor's Supervision over Compliance with the Law by Special Subdivisions and Other Institutions that Combat Organized Crimes' dated 19 September 2005. Concerning its co-ordination function see *i.a.* Article 10 of the Law of Ukraine 'On the Prosecutor's Office' and paragraph 23 of the Order of the Prosecutor General of Ukraine No. 1 'On the Organization of Work and Administration in Prosecutor's Offices in Ukraine' dated 19 September 2005.

Besides, the General Prosecutor's Office of Ukraine participated in the drafting of various regional programmes (in particular, within the CIS) on combating trafficking in human beings.

Trainings for law enforcement officers involved in investigation / prosecution were held at the National Academy of Ukrainian Public Prosecutor's Office together with researchers, specialists of the law enforcement agencies, judicial, and control bodies dealing with trafficking issues.

Supreme Court of Ukraine and the Judiciary

Article 55 of the Constitution of Ukraine establishes court protection of human rights and liberties. The functioning of the judiciary is determined by the Law on Judiciary of Ukraine (No 3018-III of 7 February 2002). Article 2 of the Law stipulates that the task of the Court is to ensure the protection of human rights and liberties and Article 6 guarantees the protection of rights, liberties and interests of all parties of legal relationship.³⁴ The justice in cases of trafficking in human beings under Article 149 of the Criminal Code of Ukraine is exercised by the general jurisdiction courts. The Law of Judiciary envisages a possibility to introduce specialisation for judges of courts of different jurisdictions on specific categories of cases.

Among other functions, courts of appeal and the Supreme Court of Ukraine study and generalize the court practice and provide methodological assistance to the local courts in the application of legislation. The Supreme Court of Ukraine is the highest judiciary body within the system of courts of general jurisdiction. The Plenum of the Supreme Court of Ukraine is a collegiate body comprised of all Judges of the Supreme Court, heads of the supreme specialized courts and their First Deputies, the Head of the Cassation Court of Ukraine, and the Head of the Court of Appeals of Ukraine.³⁵ Among the functions of the Plenum is the provision of explanations to the courts of general jurisdiction with regard to the application of legislation on the basis of generalization of court practice and court statistics. Resolutions of the Plenum of the Supreme Court of Ukraine are important for ensuring uniform application of legal norms within the judiciary system throughout the country, they also serve as a reference for the law enforcement and judiciary bodies at both pre-trial and trial stages of investigation of criminal cases.³⁶

³⁴ Article 6 of the Law on Judiciary of Ukraine also establishes equal right to court protection for foreign nationals and stateless persons with those of Ukrainian citizens.

³⁵ Article 55 of the Law on Judiciary of Ukraine.

³⁶ Several Resolutions passed by the Plenum of Supreme Court of Ukraine concern the issues directly relevant to courts' treatment of trafficking cases, these include: Resolution No 13 of 2 July 2004 'On the Practice of Application by the Courts of the Legislation Concerning the Rights of the Victims of Crime', Resolution No 3 of 31 March 1989 'On the Practice of Application by the Courts of Ukraine of the Legislation on Compensation of Material Damages Caused by Crime and on Exaction of Unfoundedly Acquired Property', Resolution No 4 of 31 March 1995 'On the Court Practice in the Cases on the Compensation of Moral (Non-property) Damages'.

State Employment Service of Ukraine

The State Employment Service of Ukraine, which is a functional sub-division of the Ministry of Labour and Social Policy of Ukraine, employs specialists of both genders who, within the scope of their functions and responsibilities, pursue the prevention of irregular labour migration and human trafficking. At present a draft Unified Technology of Rendering Social Services to the Population is being tested in all oblasts. After that it is supposed to be approved by the State Employment Service and the Ministry of Labour and Social Policy. The Unified Technology will provide direction for staff of the State Employment Service at central, oblast and local levels in order to promote and increase employment of the population. It specifies the procedures to be applied by the employment centres and aims at pursuing a co-ordinated approach. Particular attention is being paid to the special needs of disabled persons, youth, minors and entrepreneurs who obtained support to start their own business or who intend to do so. A separate chapter within the Unified Technology refers to measures to be taken to prevent irregular labour migration and to combat human trafficking. The latter involves *i.a.* the provision of services for the socio-economic integration of trafficked persons and of job placement as well as the referral to governmental and non-governmental institutions for additional services.

The experiences of the employment centres were included into the chapter of the Unified Technology related to the prevention of irregular external labour migration and the combating of human trafficking. In addition, the Handbook 'Activity of the State Employment Centre in Prevention of the Irregular Outward Labour Migration, Combating THB and Elimination of Child Labour', prepared by ILO and IOM, was distributed in all employment centres and is planned to be posted on the web-site of the State Employment Service.

Educational Institutions

The core anti-trafficking activities of educational institutions are related to the prevention of trafficking in human beings. They offer *i.a.* seminars and courses for young people, hold lectures or run campaigns to make people aware of the risks. Many of these activities are carried out in close co-operation with anti-trafficking NGOs or other institutions. Specialized psychologists and social pedagogues work at schools and at vocational educational institutions to help vulnerable children and youth. The present provisions however do not consider tailor-made support programmes for trafficked persons.

General considerations

At this stage, it is not possible to assess the functioning of the Inter-Agency Council as the first session took place in December 2007 only. Bearing in mind that this body is supposed to cover four areas it remains to be seen how much of its work will in fact be focused on trafficking issues.

The Expert Working Group is the multi-agency consultative and advisory body also with the new Inter-Agency Council. It is already well established. Given its multi-disciplinary composition it is a valuable forum to contribute to the development of a well-functioning NRM. The Department of Family, Gender Policy and Demographic Development within the MinFYS is very active to further this process at national and regional level, also with a view of linking the activities of various stakeholders with referral structures. But resources to pursue all these challenges are limited, both within the Ministry's Department and in the regions.

At present time the roles, responsibilities and capacities of each stakeholder involved in various aspects of combating trafficking in human beings are often not clearly understood. In many areas state actors do not recognize their responsibility for their participation in the identification and assistance of trafficked persons, also because it is not specifically mentioned in their terms of reference (e.g. in the field of education, but also in relation to social services and others). At the same time several social services providers expressed concern over their limited capacities, which constrain them to respond to the special needs of victims of trafficking. Yet, in some instances, such as the employment sector, efforts are under way to attend some of the problems of trafficked persons.

The establishment of the Department for Combating THB within the MOI and in all regions is definitely considered an improvement. It allows specialisation in the field of trafficking in human beings and facilitates the participation of the police in referral structures. Although in some areas their resources are still not sufficient, their conditions of work are usually good.

MAIN LAWS IN THE CONTEXT OF TRAFFICKING IN HUMAN BEINGS³⁷

On 4 February 2004, the Verkhovna Rada of Ukraine adopted the Law of Ukraine 'On Ratification of Convention of the United Nations Organization Against Transnational Organized Crime and Protocols That Supplement It'.³⁸

³⁷ For further details see *i.a.* UNICEF, OSCE, USAID, British Council, Trafficking in Ukraine: An Assessment of Current Responses, Kyiv 2005, p. 23-38; and Marjan Wijers & Roelof Haveman, Guidelines on Trafficking in Human Beings for the Criminal Justice Chain in Ukraine, June 2006.

³⁸ Law 'On Ratification of the UN Convention against Transnational Organized Crime and its Protocols (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and Protocol against the Smuggling of Migrants by Land, Air and Sea)', No 1433-IV of 4 February 2004.

As to the ratification of other relevant international instruments see *i.a.* http://www.un.org/documents/instruments/docs_en.asp; <http://www.ilo.org/ilolex/english/newratframeE.htm>; <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?user=annot>; regarding Council of Europe treaties signed and ratified by Ukraine or having been the subject of an accession see <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO=U&MA=999&SI=2&DF=&CM=3&CL=ENG>

Criminal Code of Ukraine³⁹

Already in 1998, a provision on trafficking in human beings was included to the Criminal Code of Ukraine (hereinafter, the “CC”).⁴⁰ Article 149 of the current CC stipulates that *‘trafficking in human beings or conducting other illegal agreement with a person as an object, as well as recruitment, transportation, harbouring, transfer or receipt of a person, committed for the purpose of exploitation by means of deceit, blackmail, or the use of his/her vulnerable condition, is punishable by deprivation of liberty for a term of three to eight years’*. The second paragraph of this article refers to the same crime but committed *‘in respect to a minor or perpetrated upon two or more persons, or repeatedly, or by a group of persons with prior conspiracy, or by an official through the abuse of authority, or by a person upon whom the victim was dependent materially or otherwise, or committed in combination with violence that is not endangering life or health of the victim or his/her close relatives, or in combination with threats of such violence’*. Such acts are punishable by imprisonment for five to twelve years, with the possible seizure of assets. The third part of this article applies to criminal acts pursuant to paragraph one or two, if they are committed in respect to a minor aged below 14, or by an organised group, or if they are carried out *‘in combination with violence that is endangering life or health of the victim or his/her close relatives, or in combination with threats of such violence or committed by an organized group, or if causing grave consequences’*. These offences are punishable by imprisonment for eight to fifteen years, with the possible seizure of assets. With the latest revision of 2006, internal trafficking is clearly established as an offence under Article 149.

A number of other articles related to other serious offences are also of relevance in the trafficking context. These include *i.a.* Article 146 (Illegal confinement or abduction of a person), Article 150 (Exploitation of children), Article 152 (Rape), Article 153 (Violent unnatural gratification of sexual desire), Article 154 (Compulsion to sexual intercourse), Article 155 (Sexual intercourse with a sexually immature person), Article 302 (Creating or running brothels and trading in prostitution), Article 303 (Pimping or involving of a person into prostitution) and Article 304 (Engaging minors in criminal activity). Since the revisions of 2006 prostitution is no longer considered a criminal offence under Article 303. These changes also enhanced liability for the engaging or forcing into prostitution.⁴¹ The aim of these revisions was to protect victims against blackmail as well as against threats from the accused

³⁹ Criminal Code of Ukraine, Law No 2341-III of 5 April 2001.

⁴⁰ Ukraine became the third country in Europe (along with Belgium and Germany) which established criminal liability for human trafficking.

⁴¹ See Law ‘On Amending Criminal Code of Ukraine with Regard to Enhancement of Liability for Human Trafficking and the Engaging into Prostitution’, No 3316-IV of 12 January 2006.

in case they testify. For the same reason Article 331 of the CC (Illegal Crossing of the State Frontier) was repealed.⁴²

The CC also classifies as a crime the unauthorised sale or dissemination of restricted access information stored in computers, automated systems, computer networks on the carriers of such information (Article 361-2), as well as the denial of a witness to give evidence or denial of an expert or an interpreter/translator to perform the assigned duties (Article 385). However, as to the latter, the Law stipulates that a person shall not be subject to criminal liability for a denial to give evidence during an inquiry, pre-trial investigation or in court against him/herself or against members of his/her family or his/her close relatives the circle of whom shall be established by the law.

Criminal Procedure Code of Ukraine⁴³

The Criminal Procedure Code (hereinafter, the “CPC”) differentiates between victims, civil claimants and witnesses. It describes *i.a.* the procedure for the recognition of a person as a victim and the granting of a legal status as well as the rights and obligations of victims (*e.g.* entitlement to compensation, safety). The CPC does not specifically refer to victims of trafficking but generally defines a victim as ‘a person, upon whom moral, physical or property damage was inflicted by the crime’. According to Article 49 of the CPC the decision to recognise or not to recognise a person as a victim is formalised by a written resolution, which is to be issued by an inquirer, investigator, and prosecutor determination or by the court. The official recognition as victim can only take place when it has been decided by the investigator – upon authorisation of the prosecutor – to open a criminal case. This may be made after the official statement of the victim or after the police submits a case to the investigator. Evidently, it is not necessary to produce the same evidence as for the decision to send a case to court.

Pursuant to Article 99 of the CPC, a victim may appeal against a decision to refuse initiation of a criminal case. Likewise, the victim can also appeal against a resolution to close a criminal case (CPC Article 215).

An investigator who has recognised a person as victim has the obligation to inform the victim on his/her rights. In case the crime caused material damage to the person, s/he or her/his representative must also be informed about the right to file a civil claim (CPC Article 122).

⁴² Law ‘On Amending Several Legislative Acts of Ukraine with Regard to Crossing the State Border of Ukraine’, No 1723-IV of 18 May 2004.

⁴³ Criminal Procedure Code of Ukraine, Law No 1001-05 of 28 December 1960.

Article 52 of the CPC permits a victim and a civil claimant to be represented by a lawyer or any other person of his/her choice, hence they shall enjoy the same procedural rights as the person they represent.

Various basic rights are linked to the legal recognition of a person as victim. According to Article 16 of the CPC, the victim (and also the civil claimant as well as their representatives) participates in court hearings as party and shall enjoy equal rights to bring forward evidence, participate in the examination of evidence and prove their cogency before court. Article 49 lists the rights of a victim, which also apply to his or her close relatives, if the victim died. These rights include *i.a.* the right to furnish evidence; to submit requests; to review all case material from the moment the pre-trial investigation was completed, or where no pre-trial investigation took place from the moment the case was brought to court; to participate in the court trial; to file motions for dismissals; to lodge complaints against actions of the inquirer, investigator, prosecutor and the court as well as to appeal against the sentence or resolutions of the court or of the people' judge; and on certain grounds to be granted security. In cases stipulated in the CPC, victims shall also have the right to support the prosecution during court proceedings. Furthermore, a victim is permitted to participate in the court debates.

Article 52-1 of the CPC explicitly stipulates the right to protection of victims involved in criminal proceedings in case of 'justifiable threat to their life, health, dwelling or property' (see also the Law on Ensuring Safety of Individuals involved in Criminal Proceedings). Article 52-2 of the CPC regulates the rights and responsibilities of persons under such protection and Article 52-3 of the CPC refers to the prohibition of disclosure of personal data of the person under protection, hence their real names will only be known to the prosecutor and the court.

In general, court proceedings are public. Under certain circumstances, however, the judge may order to have a closed court hearing. Pursuant to Article 20 of the CPC this may be the case if the crime is committed by a minor, or in matters related to sexual crimes and other cases to prevent publicity of information on intimate aspects concerning the personal life of participating persons, and also if required to guarantee security for persons under protection. This provision is not automatically applicable in human trafficking cases, as they are not explicitly mentioned by law.

The CPC also contains a number of provisions as to the position of witnesses and civil claimants including their rights and obligations. Pursuant to Article 50 of the CPC a civil claimant shall be a natural or legal person that suffered material damages from a crime and has filed a compensation claim for these damages in accordance with Article 28 of the CPC (civil claim in the criminal procedure). The decision on recognising a person as civil claimant shall be issued by the inquirer, investigator,

prosecutor or a court shall issue a court resolution in this matter. The rights of a civil claimant include *i.a.* the right to participate in the court proceedings as stipulated under Article 50 of the CPC and the right to protection. If a person fails to file a civil claim in the criminal case, or if the civil claim was not proceeded, Article 28 of the CPC stipulates that a lawsuit may then be filed under civil law procedures. In this case the investigator has to issue a motivated decision on the recognition as civil claimant (see Article 127 of the CPC).

The CPC mainly refers to the compensation of material damages, while Article 49 of the CPC also includes moral damages as one of identifying factors of a victim of crime.

Finally, Article 29 of the CPC obliges the inquiry body, investigator, prosecutor and the court in the course of proceeding of a criminal case to take measures to guarantee the compensation for damages caused by the crime and to ensure the potential confiscation of property of the accused.

Civil Code of Ukraine⁴⁴

The Ukrainian Civil Code is of importance in relation to the right to reparation of damages, including material and moral damages. Provision on compensation of property (material) and moral damages is established in Article 11. Article 16 of the Civil Code refers to the right to appeal to the court for the compensation of losses and property and non-property (moral) damages. Principles of compensation are determined in Articles 22 (material damages) and 23 (moral damages); furthermore, it is established that the compensation of moral damages is done irrespective of the compensation of the material damages and their amounts are not interdependent. It is also noteworthy that the term property (*i.e.* material) damages covers both actual losses (*e.g.* caused by the damage to the property or the expenses for repairing the damage) and missed opportunity (*i.e.* income that could have been gained under normal conditions if the rights were not violated).

Law on Ensuring Safety of Individuals Involved in Criminal Proceedings⁴⁵

The Law on Ensuring Safety of Individuals involved in Criminal Proceedings describes the notion of security protection of individuals involved in criminal procedures and the protecting organs including their obligations. The Law provides for the right of victims to make use of security arrangements, such as the right to file petitions concerning

⁴⁴ Civil Code of Ukraine, Law No 435-IV of 16 January 2003.

⁴⁵ Law 'On Ensuring Safety of Individuals involved in Criminal Proceedings', No 3782-XII of 23 December 1993.

security measures, the right to be informed about security arrangements, the right to request and receive from the investigating authority, public prosecutor or court additional protection measures or cancellation of measures and to lodge complaints concerning unlawful decisions or actions of protecting authorities (Article 5 of the Law). Article 7 of the Law contains a demonstrative list of security arrangements, e.g. body guards or guards watching home and property; special individual protection means and warning devices; the use of technical means to listen in on telephone and other communication and visual surveillance; replacement of identity papers and changes of appearance; change of place of work or study; change of residence; enrolment in children's preschool educational institutions or social welfare institutions; closed court hearings; securing confidentiality of information on the person under protection (e.g. by classifying data pertaining to such a person in the documents of verification as well as in investigating and court records, changing the first, middle and last name therein with pseudonyms – as resolved by the investigating authority, public prosecutor or court ruling). The security arrangements are described in more details under Articles 8-16 of the Law.

Law on Social Services⁴⁶

The Law on Social Services lays down organisational and legal norms for the provision of social services to persons who are in difficult situations and need assistance from the outside. Article 1 of the Law provides for a definition of 'social services'⁴⁷, 'recipient of social services', 'difficult life circumstances', 'social workers', 'social service institutions', 'volunteers', 'interim shelters for adults', 'interim shelter for juveniles', 'rehabilitation' and specifies the entities that are engaged in the provision of social services.

It is interesting to note that this Law accepts the function and participation of civil society groups (*i.a.* NGOs) and individuals providing social services. Furthermore, the definition of social service institutions includes all institutions delivering social services regardless of the type of ownership and the area of economic activity as well as individuals. Non-governmental institution delivering social services on a professional basis must be licensed, which raises disputes among the NGO social services providers whether existing state institutions have sufficient experience of provision of support to the victims of trafficking in order to be able to assess licence applications.

While trafficked persons are not explicitly listed among the beneficiaries under this Law, they may fall under any of the relevant categories.

⁴⁶ Law 'On Social Services', No 966-IV of 19 June 2003.

⁴⁷ According to the Law on Social Services these include legal, economic, psychological, educational, medical, rehabilitation and other services.

Pursuant to the Law, the key types of social services comprise material aid (in cash or in kind) and social assistance⁴⁸. Aside the procedure for obtaining social services, the Law also lists in Article 10 the fundamental rights of beneficiaries (e.g. respectful and compassionate treatment by social services providers; discretionary choice of social services providers and the form of social service to be provided; receipt of information on his/her rights, responsibilities and service delivery procedure; accept or refuse social service; claim confidentiality of personal information shared with social services providers; protection of his/her rights and interest through legal proceedings).

The Law prescribes co-operation of all entities involved in the provision of social services including governmental and non-governmental institutions as well as individuals, but fails to specify co-operation structures. Furthermore, it enables non-governmental institutions providing social services to obtain funds from the government on a competitive basis. In this case formalised agreements are to be set up.⁴⁹

Law on Social Work with Children and Youth⁵⁰

The Law on Social Work with Children and Youth describes the organisational and legal basis for social work with children and youth. It determines *i.a.* the key principles of social work with children and youth. In particular, the Law stipulates the institutional aspects of social work with this target group, establishes main principles of such activity and the fundamentals of the state policy in the sphere of social work with children and youth. Article 11 of the Law establishes specific activities in the sphere of social rehabilitation for children and youth, which includes, among others, psychological rehabilitation of children and youth who have suffered from cruelty and violence.

Efforts to develop a comprehensive law on trafficking in human beings

At present, there is no specific law on trafficking in human beings. The MinFYS with the support from the OSCE Project Co-ordinator in Ukraine, however, initiated the process of drafting a comprehensive law on combating trafficking in human beings. The aim is to develop a directly applicable law, which addresses all aspects of human trafficking including identification, provision of assistance and support as well as co-operation mechanisms. Aside from law enforcement agencies, the law should also enable others to identify trafficked persons and the recognition as victims should no longer be dependent on the victim's participation in criminal/court proceedings. According to the MinFYS all identified trafficked persons should benefit from this law.

⁴⁸ Article 5 of the Law describes in more details the different types of social services.

⁴⁹ See Article 13 of the Law on Social Services.

⁵⁰ Law 'On Social Work with Children and Youth', No 2558-III of 21 June 2001.

It is expected that the Concept for the draft law will have been developed and approved by the government by mid-2008.

Proposals for changing the CPC

The Supreme Court of Ukraine prepared a draft Law of Ukraine '*On Amending Criminal Procedure Code of Ukraine*' which proposes to improve the status of the victim. It provides for the mandatory participation of a representative of the victim during pre-trial investigation and court consideration of the case. The representative shall be invited or appointed for the victim among the persons who are entitled to perform advocate activity in Ukraine (*i.e.* a professional advocate). The costs involved for the work of the advocate shall be met by the State. In the opinion of the Supreme Court, this would allow the victim to properly protect his/her rights, which had been violated, and to obtain qualified legal assistance, also on the issue of reimbursement of damage caused by the crime as a professional lawyer is able to help preparing and filing the necessary lawsuit in time, as well as to appeal against the decisions on its solution, if necessary.