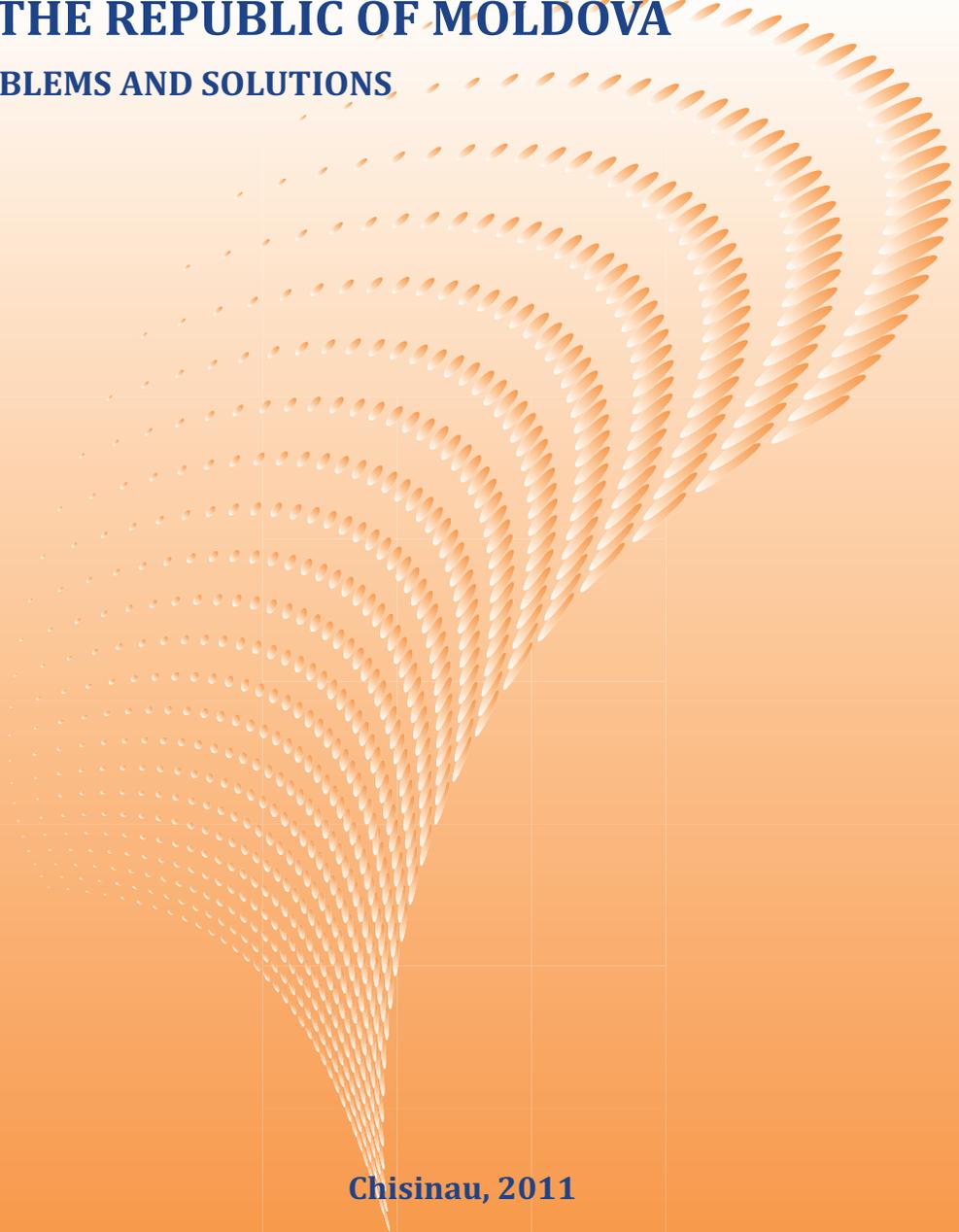




# **TRAFFICKING IN PERSONS FOR FORCED LABOUR EXPLOITATION IN THE REPUBLIC OF MOLDOVA**

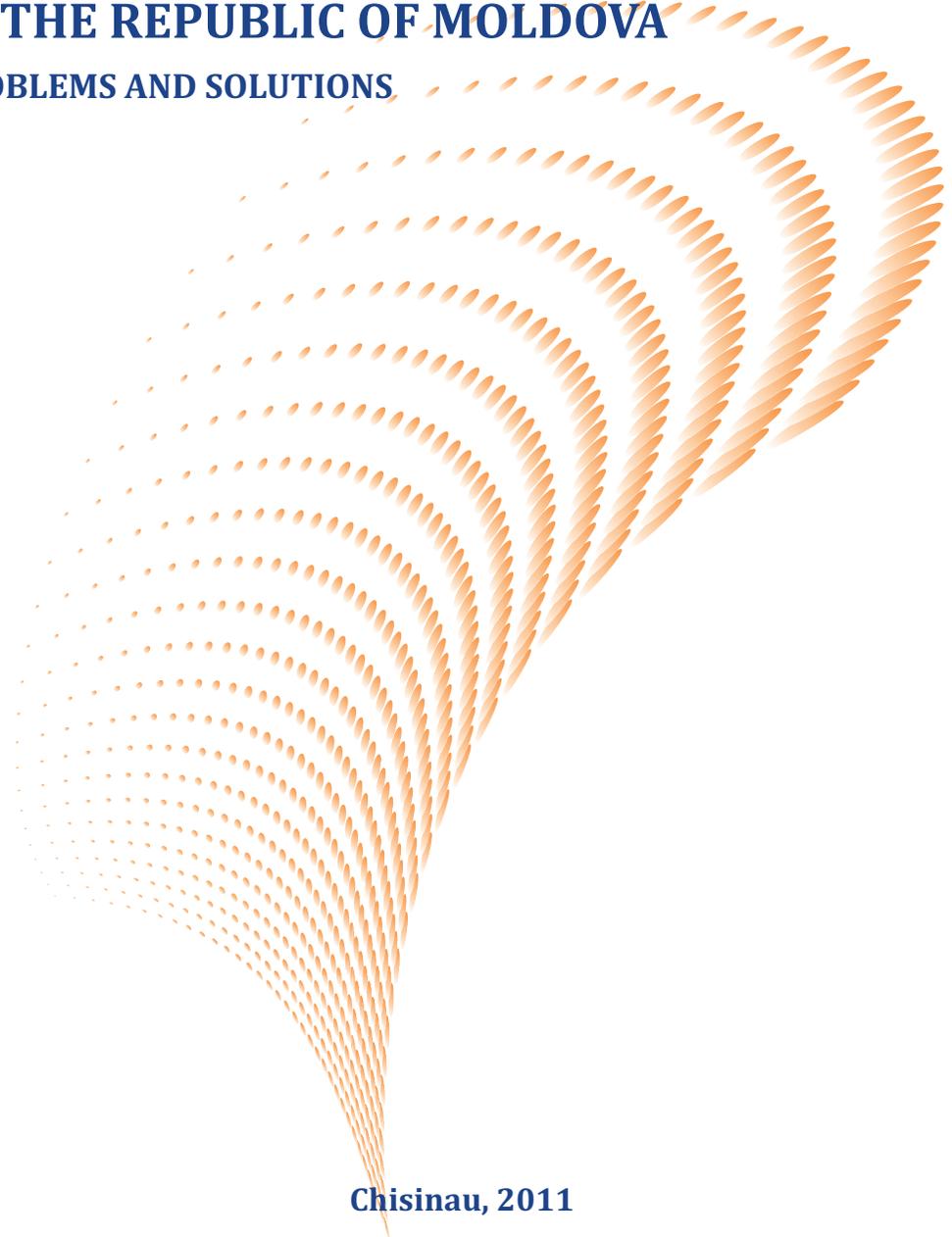
**PROBLEMS AND SOLUTIONS**



**Chisinau, 2011**



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The research results, interpretation of facts, conclusions and recommendations presented in this publication reflect the views of the author and are under the responsibility of the International Centre “La Strada” and not necessarily reflect the views of the United States Department of State.

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**CONTENTS**

<b>EXECUTIVE SUMMARY.....</b>	<b>7</b>
<b>FOREWORD.....</b>	<b>15</b>
<b>ACKNOWLEDGEMENTS.....</b>	<b>21</b>
<b>I. Research framework.....</b>	<b>25</b>
1.1. Objectives and tasks of the research.....	25
1.2. Research methodology.....	26
<b>II. Trafficking in persons and forced labour in the rules of international law and scientific literature. Terminological and conceptual issues.....</b>	<b>33</b>
2.1. Definition of “trafficking in persons” in Palermo Protocol and its elements.....	33
2.2. Forced labour and trafficking in persons.....	36
2.3. Labour exploitation and decent work.....	42
<b>III. Trafficking in persons and forced labour in the rules of national law. Criminalisation of trafficking in persons.....</b>	<b>51</b>
3.1. Tasks and issues of criminalisation of trafficking in persons.....	51
3.2. Trafficking in persons in criminal law.....	55
3.3. Forced labour in various fields and rules of law.....	61
<b>IV. Problems in criminal prosecution and legal proceedings.....</b>	<b>73</b>
<b>V. Comparative analysis of the judicial practice.....</b>	<b>79</b>
5.1. Problems of the law enforcement practice.....	79
5.2. Participants in a criminal procedure.....	90
5.3. Signs of trafficking in persons for forced labour exploitation.....	94
<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>113</b>



# EXECUTIVE SUMMARY

## EXECUTIVE SUMMARY

This report is a product of the study of forms of manifestation in Moldova of the trafficking in persons for forced labour exploitation phenomenon, as well as of existing issues in criminal prosecution and legal proceedings in criminal matters related to the crimes of trafficking in persons/children for forced labour exploitation.

The main tasks of the research included:

- 1) analysis of notions “trafficking in persons” and “forced labour” in documents of international law and scientific literature on this topic;
- 2) identification and analysis of issues in the criminalisation of crimes of trafficking in persons for forced labour exploitation, establishment of a relation and impact of the concepts of “trafficking in persons” and “forced labour” in documents of international law on criminalisation of trafficking in persons in the rules of national law;
- 3) data collection, processing and analysis of the law enforcement practice in criminal matters related to the crimes of trafficking in persons/children for forced labour exploitation, focusing on the issues of practical application of relevant articles of the Criminal Code and their connection with the legal construction of crimes.

The report contains recommendations for state authorities and organisations participating in actions against trafficking in persons on overcoming the problems that exist in criminal prosecution and legal proceedings in criminal matters related to the crimes of trafficking in persons/children for forced labour exploitation.

### ***Trafficking in persons and forced labour in the rules of international law and scientific literature. Terminological and conceptual problems***

The report points out that for the proper practical application of provisions of the Palermo Protocol and observance of the relevant international obligations the Republic of Moldova needs to understand the notion of trafficking in persons. This concept is quite difficult and causes arguments on this topic among experts especially regarding trafficking in persons for forced labour exploitation. The main difficulty is caused by the fact that the Palermo Protocol do not define the elements included in the notion

of trafficking in persons which are indispensable for its application in practice.

In developing the definitions in national law there are used ILO Conventions dedicated to forced labour. However, the notion “forced labour” from the ILO Convention No. 29 can not be directly used in the interpretation of the definition of “trafficking in persons” of the Palermo Protocol since the ILO’s concept of forced labour is much different from the concept of Palermo Protocol. These differences are of a purely scientific nature, but they can have a considerable impact on the way the governments will identify and protect victims of trafficking in persons and forced labour.

The analysis of the scientific literature on this topic has shown that the notions “labour exploitation” and “forced labour” are not conceptualised in relation to notion of trafficking in persons and have no generally recognised definition and there is no yet developed a common approach to conceptualisation. The experts only note the need of standardisation of these notions at the international level.

The mildest forms of labour exploitation, such as violation of safety regulations, excess of the fixed duration of the working day, detention of wages, etc are violations of labour legislation by employers. For these violations the employer is liable under labour and administrative law. When, in addition to these violations the employer himself or through other people is using illegal means to engage and retain employees in situations of exploitation, then the situation can be classified as forced labour and/or trafficking in persons for forced labour exploitation which is subject to criminal prosecution.

### ***Trafficking in persons and forced labour in the rules of national law. Criminalisation of trafficking in persons***

When criminalising trafficking in persons and forced labour in the Republic of Moldova shortcomings and errors were admitted. First of all the developers of the relevant rules of criminal law did not take into account that the notion “trafficking in persons” in Palermo Protocol is not legalistic and reflects a complex social phenomenon which includes various forms of exploitation of man. When transferring this notion from international law in the criminal law of the country the social reality should have been transformed in a legal one and created a legal construction of “trafficking

in persons” convenient for practical application taking into account the specific character and traditions of the national law. However, it was not achieved. The developed articles of the Criminal Code turned out to be very difficult to understand and inconvenient for practical use.

Besides, in Articles 165 “Trafficking in persons”, 206 “Trafficking in children” and 168 “Forced labour” of the Criminal Code were included different means of influence for engaging and retaining people in situations of forced labour, in other words in these articles were included different signs of forced labour. Afterwards, the Supreme Court of Justice while developing clarifications to these articles had given another interpretation of this notion and of the practiced criminal means of influence. All this can create difficulties in practical application of these articles.

The analysis also showed that Article 168 provides a much milder penalty for forced labour, than Articles 165 and 206 for trafficking in persons/children for forced labour exploitation. These regulations being under competition, the classification of crime under the Article 168 allows to use conditional sentence and to close the case due to conciliation of the parties which is not permitted by law, if the action of the accused was qualified under Articles 165 and 206.

### ***Problems in criminal prosecution and legal proceedings***

The report points out that the problems in practical application of regulations of criminal law on trafficking in persons/children for forced labour exploitation are observed already during several years. The analysis of various information leads to the conclusion that issues in criminal prosecution and legal proceedings are related not only with the well-known deficiencies in staff training, organisation of their work and shortage of necessary resources. These issues may be caused by the following factors:

- a) issues in criminalisation, namely the drawbacks in the legal construction of crimes of trafficking in persons /children and forced labour which do not allow to carry out criminal prosecution effectively (elements of the crime are too complex, deficiencies or lack of clarifications on qualifying essential elements, discrepancy between the criminal standards and the real nature of crimes, etc.);
- b) drawbacks in the country chosen approach to counteract trafficking in persons for forced labour exploitation (excessive focus on

prosecution, while ignoring other legal or organisational and technical countermeasures);

- c) the country's lack of experience in creating legal mechanisms to implement human dignity.

### ***Comparative analysis of judicial practice***

The analysis of the judicial practice in cases of trafficking in persons revealed a poor judicial practice in cases of trafficking in persons for forced labour exploitation, as well as the existence of the following issues:

- Courts of law do not use the possibility to charge under Articles 165 and 206 of Criminal Code for crimes of trafficking in persons/ children committed inside the Republic of Moldova;
- Criminal cases are handled by courts of law during a long period of time (several years);
- Criminal prosecution is carried out ineffectively and as a result many defendants can escape punishment;
- Errors occur in judicial decision-making (unjustified acquittal, application of unreasonably lenient penalties, sentencing to fine under those articles of the Criminal Code that do not provide such penalty, etc.);
- Material and moral damage in favour of victims is rarely collected;
- Courts of law commit errors in qualifying crimes (not always properly address issues on delimitation of trafficking in persons from forced labour and organisation of beggary, disclaim transportation as proved, if the recruiter did not personally accompany people during transportation, etc.);
- Reclassification of cases frequently occurs from the Articles 165 and 206 of the Criminal Code of the Republic of Moldova (CCRM) on Article 168, which fact allows the defendants to escape penalty or get a very lenient penalty;
- Victims very often change their testimony during trial and for various reasons do not come to court sessions;
- Many witnesses have been intimidated and pressed by defendants;
- Among criminal cases there were not cases concerning trafficking in persons for forced labour exploitation, committed in several countries (Turkey, United Arab Emirates, Israel, Greece, Czech Republic, Poland), which are mentioned in different studies as countries where Moldovan citizens are subjected to forced labour.

Besides, the analysis of the judicial practice allowed gathering useful information about the phenomenon of trafficking in persons for forced labour exploitation. It has been found that in several cases the profit from labour exploitation of victims was received not only by the employer, but also by the intermediary, who did his best to engage and retain victims in this situation. At the same time the employers had direct fault for violation the terms of labour organisation and remuneration. This makes a little difficult to prosecute these cases, because they fall badly within the existing exploitation concept where only the employer is responsible for exploitation. In the abovementioned cases the penalty for exploitation must have been carried by both the employer and intermediary. But in practice such intermediaries carry a mild penalty and the employers are not punished at all since they are in another country.

### ***Conclusions and recommendations***

The report ends with a list of the most essential conclusions of the research and the relevant recommendations.



# FOREWORD

## FOREWORD

The phenomenon of trafficking in persons has deep roots in the past to the days of the existence of the slave-trade, when a man was treated as a thing, the possession of a slave was considered a social privilege and was supported by the state. With the development of public morals the slave-trade transformed from a privilege into a crime, but has not disappeared from the face of the earth, taking new various forms which in the early '90s of the XX-th century started to be called trafficking in persons. These social phenomena are not supported by the states and their legislation anymore, as it was in previous times when people captured in some countries were openly sold as things at the slave markets in other countries, where they and their descendants were doomed to lifelong slave and unpaid labour, rightless existence. Nowadays human traffickers act differently. Using criminal means of influence, they seek and help people, who as a rule are from socially vulnerable categories to move from the country of their residence to another country hoping to improve their condition. But instead they find themselves in a more difficult life situation, being mercilessly exploited, their human rights and freedoms are trampled in order to enrich. People trapped in a situation of trafficking in persons in other country, become even more vulnerable than in their homeland because they, as usually violate the established rules of stay in the country, work outside the official labour market and do not know the language of that country. Human traffickers use all sorts of tricks to retain them in condition of exploitation, restrict their freedom of movement. This is the reason why victims of trafficking in persons find it difficult to escape from this situation and to seek justice. Thus, the acquisitiveness makes some of our contemporaries to start using people like themselves as things. That is precisely why the notion “trafficking in persons” is used, to emphasize that even today there is a social phenomenon when people are used as things, but of course this notion is embedded with a deeper and broader meaning than a sale purchase transaction the subject of which is man.

The complexity and diversity of the nature of the trafficking in persons phenomenon are still causing difficulties in conceptualisation of the notion “trafficking in persons”. The experts on issue offer different approaches for conceptualisation and the disputes are not ceased to this day. The first internationally recognised definition of the term “trafficking in persons” appeared in 2000 in the Protocol to Prevent, Suppress and Punish

Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, which is usually called by the specialists as Palermo Protocol. At the same time a special attention and concern of the international community caused the becoming more frequent cases of export-import of women for sexual exploitation from the country of origin to destination country, usually with higher levels of economic development. The subject of these crimes are most often young women aged 18 to 25 years, initially sidetracked about their future work in the destination country. Often these crimes were committed by organised criminal groups. The rights and dignity of the affected women were roughly trampled, they were subject to various forms of coercion, abduction, deception, etc. in order to force them to work in sex industry, which is unacceptable for most people and is extreme humiliation of human dignity.

Initially the task of the developers of the Palermo Protocol was to develop a document only on trafficking in women and children, who most often are subjected to sexual exploitation but then this task was extended. That is why the first definition of “trafficking in persons” in documents of international law covered various manifestations of this phenomenon and took into account that trafficking in persons can be not only for sexual exploitation, but also for exploitation of forced labour, services and other purposes. Moreover, Palermo Protocol and its clarifying documents pointed out the need to conceptualise all the manifestations of this phenomenon and not only those related to sexual exploitation of victims and implemented with the participation of an organised criminal group and transnational element. Still, during several years trafficking in persons for most people was associated with sexual exploitation of women. In many countries the criminal prosecution was carried out only for trafficking in persons for sexual exploitation.

Only a few years after the adoption of the Palermo Protocol at the insistence of international human rights organisations and especially after the adoption of the Council of Europe Convention on Action against Trafficking in Human Beings in 2005<sup>1</sup> with increasing frequency was paid attention to cases of trafficking in persons for forced labour exploitation, were introduced appropriate changes in criminal law of various countries.

<sup>1</sup> Ratified by Law of the Republic of Moldova No. 67-XVI of 30 March 2006 “On ratification of the Council of Europe Convention on Action against Trafficking in Human Beings”. (Official Monitor of the Republic of Moldova, 2006, No. 66-69, art. 277).

It was found that addressing these cases requires much more efforts of specialists, and it is rarely successful and in order to develop common approaches in counteracting trafficking in persons taking into account such cases there is a need of different approaches than in cases of trafficking in persons for sexual exploitation.

Moldova also has difficulties in combating trafficking in persons for forced labour exploitation. Our country’s authorities face criticism for the fact that the crimes of trafficking in persons for forced labour exploitation are seldom investigated, and criminals remain unpunished<sup>2</sup>. Moldova is strongly recommended to undertake additional efforts to overcome this situation using the successful experience of the country obtained in previous years in combating cases of trafficking in persons for sexual exploitation.

This research of the International Centre for Women Rights Protection “La Strada”, Moldova (hereafter – International Centre “La Strada”) is an attempt to analyse the reasons of the existing difficulties in criminal prosecution and legal proceedings on criminal cases related to trafficking in persons for forced labour exploitation and work out some recommendations for the state authorities and organisations participants in actions against trafficking in persons.

<sup>2</sup> U.S. Department of State, “Trafficking in Persons” Report, June 2011, page 260. Can be accessed at: [www.state.gov/g/tip/rls/tiprpt/2011](http://www.state.gov/g/tip/rls/tiprpt/2011).



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## ACKNOWLEDGEMENTS

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# I. Research framework

## I. Research framework

### 1.1. Objectives and tasks of the research

This research is aimed at identification and examination of the forms of manifestation of trafficking in persons for forced labour exploitation phenomenon in Moldova, as well as issues existing in criminal prosecution and legal proceedings on criminal cases related to crimes of trafficking in persons/children for forced labour exploitation.

As a result of this research should be developed recommendations for the state authorities and organisations participants in actions against trafficking in persons on the following aspects in organising actions against trafficking in persons for forced labour exploitation:

- a) strengthening the prosecution of the perpetrators, including improvement of legal regulations in this area;
- b) protection and assistance to victims;
- c) prevention of such cases, including enhancing materials to train specialists.

The main tasks of the research include:

- 1) the analysis of the notions “trafficking in persons” and “forced labour” in documents of international law and scientific literature on this subject;
- 2) identification and analysis of problems in the criminalisation of crimes of trafficking in persons for forced labour exploitation, establishment of a relation and impact of the concepts of “trafficking in persons” and “forced labour” in documents of international law on criminalisation of trafficking in persons in the rules of national law;
- 3) data collection, processing and analysis of the law enforcement practice in criminal matters related to the crimes of trafficking in persons/children for forced labour exploitation, focusing on the issues of practical application of relevant articles of the Criminal Code and their connection with the legal construction of crimes;
- 4) the analysis of information on real cases of trafficking in persons for forced labour exploitation and related practices, highlighting their elements, especially the criminal means of influence and further conceptualisation of notions;

- 5) development of recommendations to overcome problems that exist in criminal prosecution and legal proceedings on criminal cases related to the crimes of trafficking in persons/children for forced labour exploitation.

## 1.2. Research methodology

The methodology of the research included several stages and was implemented within several projects. At the beginning of 2010 a preliminary survey of the law enforcement specialists was conducted within another research of the International Centre “La Strada”<sup>3</sup>. This survey had a reconnaissance nature and was aimed at identification of the issues that exist in prosecution for committing crimes of trafficking in persons/children for forced labour exploitation.

Then, at the beginning of 2011 a secondary analysis of studies and other materials available on this topic was carried out, the research hypothesis and the approach to develop the research program was elaborated, including to the methods of primary data collection. The research program included:

- 1) the analysis of the existing conceptual approaches to the interpretation of the notions “trafficking in persons for forced labour exploitation” and “forced labour” in international law which was the basis of the criminalisation process within national law as well in scientific literature on this topic;
- 2) the analysis of the legal construction of “trafficking in persons for forced labour exploitation” and “forced labour” in national law;
- 3) collection, processing, analysis and interpretation of data of the law enforcement practice on criminal cases related to crimes of trafficking in persons/children for forced labour exploitation (Articles 165 and 206 CCRM).

In February-April 2011 primary data was collected on real cases of trafficking in persons/children for forced labour exploitation, prosecution of this crimes and legal proceedings. The following methods of primary data collection and processing were used:

- a) the analysis of materials of judicial practice on criminal cases related to trafficking in persons (Article 165 of the CCRM) and trafficking in children (Article 206 of the CCRM) related to trafficking in persons for forced labour exploitation and beggary (24 criminal cases);
- b) the analysis of real cases of trafficking in persons/children for forced labour exploitation from the International Centre “La Strada” database (25 identified cases which were provided with direct assistance and 580 presumed cases which were provided with telephone counselling by the Hotline specialists of the International Centre “La Strada”);
- c) the analysis of presentation of the issue in media.

Access to criminal cases for the members of the research group was provided by the representatives of the Supreme Court of Justice of the Republic of Moldova within the project “Preventing Corruption and Impunity in the Fight Against Trafficking through Empowering the Media and Fostering Cooperation between Civil Society and Law Enforcement Agencies”. This project was implemented by the International Organisation for Migration, Mission of to Moldova, with the financial support of the United States Department of State. The criminal cases were provided for study by the representatives of the Supreme Court of Justice with observance of all formalities for the protection of personal information. Access to primary information obtained during the study had only the members of the research group, who have pledged to abide during the study by the ethical standards of the International Organisation for Migration and not disclose personal information. All the data obtained for scientific purposes while processed were anonymised. Total of 370 criminal cases were provided from which were selected all the cases related to trafficking in persons for forced labour exploitation and begging (24 criminal cases). Each case was examined as a source on information about the manifestation of separate elements and signs of the trafficking in persons for forced labour exploitation phenomenon. That is why the report includes the descriptions of separate cases which allow to understand how exactly any given sign is manifested and how it affects the overall assessment of the situation of trafficking in persons.

In view of the small number of criminal cases and a short period of time (2001-2008), during which the events described in these cases took place, that is 1 to 5 cases studied in each year, the information obtained from the

<sup>3</sup> Overview of the child trafficking phenomenon in the Republic of Moldova. International Centre “La Strada”, Chisinau, 2010. The electronic version of the publication in Romanian, Russian and English languages can be downloaded from the Internet: <http://www.lastrada.md/date/rapoarte/en.html>

materials of the criminal cases was compared with the data from other studies, information from the “La Strada” International Centre database, as well as with the descriptions of the similar cases from media in order to analyse, interpret data and formulate conclusions and recommendations.

For these purposes from the “La Strada” International Centre database which contains descriptions of more than 500 cases of trafficking in persons 25 questionnaires were selected filled from interviews of victims of trafficking in persons for forced labour exploitation in 2001-2011. The structured interviews of the affected people were carried out by the Centre’s trained specialists in different years while identifying these cases using the standard questionnaire, containing 20 questions. Besides, the report included the descriptions of the cases of trafficking in persons for forced labour exploitation which were gathered by the Hotline staff of the International Centre “La Strada” during anonymous counselling provided to labour migrants and members of their families. All the details of the studied cases were carefully considered.

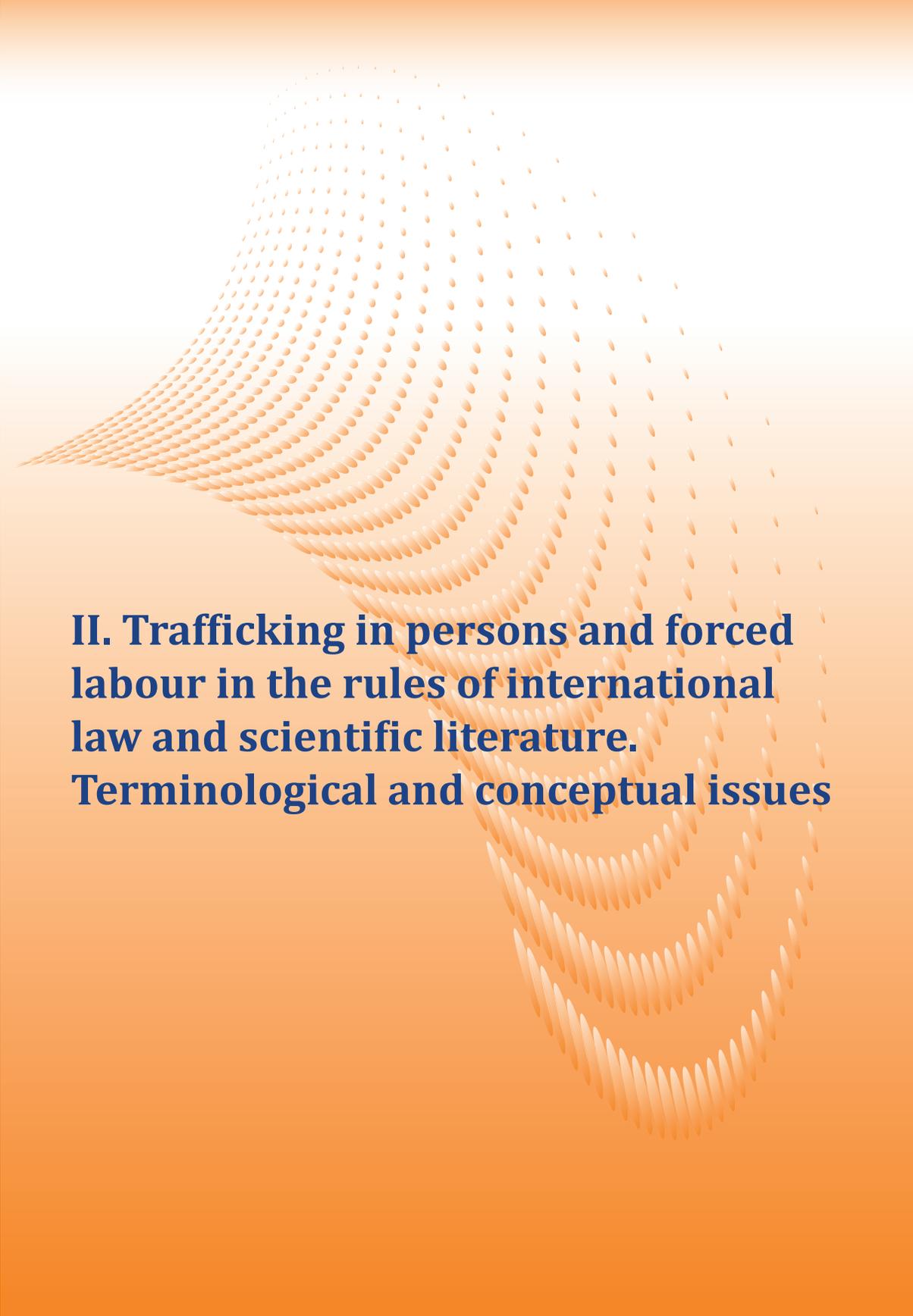
All the names of the persons involved in trafficking in persons mentioned in the reports are fictional.

Empirical information obtained in the result of processing and analysis was compared with the theory in this field, documents from international law, legislation of the Republic of Moldova, data available from other studies, advanced experience of other countries in this field and recommendations of the literature on this topic. The analysis was carried out taking into account the approach to the trafficking in persons issue as to grossest human rights violation, considering such basic principles of the democratic rights as personal dignity, social justice, etc.

Conclusions and recommendations of this research were previously discussed with experts in the field and adjusted taking into account their remarks and suggestions.

Continuing the theme of restrictions it should be noted that the method of qualitative analysis of information was mostly used in this research with the occasional use of the method of quantitative analysis. Due to lack of information on the issue and high latency of the phenomenon there was no intention to make quantitative assessment of the prevalence of trafficking

in persons/children for forced labour exploitation in Moldova, because the gathered information in not enough to do such work. The research also did not include the task to analyse the signs of the crimes (object, subject, objective aspect and mental element of crime) of trafficking in persons, trafficking in children and forced labour, enshrined in the criminal law of the Republic of Moldova.



## **II. Trafficking in persons and forced labour in the rules of international law and scientific literature. Terminological and conceptual issues**



## II. Trafficking in persons and forced labour in the rules of international law and scientific literature. Terminological and conceptual issues

### 2.1 Definition of “trafficking in persons” in Palermo Protocol and its elements

The first internationally recognised definition of trafficking in persons appeared in 2000 in Palermo Protocol. As it was mentioned this definition covers various forms of exploitation, including forced labour:

- a) *“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
- b) *the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- c) *the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- d) *“Child” shall mean any person under eighteen years of age.”*

*Article 3 of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime.<sup>4</sup>*

Definition of “trafficking in persons” from the Palermo Protocol has played a crucial role in the development of the legislation of the Republic of Moldova, as well as of the national legislation of other countries in the

<sup>4</sup> Ratified by Law of the Republic of Moldova No. 17-XV of 17 February 2005 (Official Monitor of the Republic of Moldova., No. 36-38, art. 126).

field of combating trafficking in persons aimed at practical implementation of this Protocol. It is therefore important to understand the elements of this definition.

Based on Article 3 of the Palermo Protocol it is accepted to divide the definition of “trafficking in persons” into **three main groups of elements**:

- A) **Actions** - recruitment, transportation, transfer, harbouring, or receipt of persons;
- B) **Means** - threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- C) **Purposes** – exploitation which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

For practical use and observance of Palermo Protocol – organisation of actions against trafficking in persons it is important to understand the notion of each element, be able to identify their signs. For instance, the recruitment itself of a potential migrant to perform some work in other country is not a crime – there are dozens of organisations in Moldova which provide assistance in finding work abroad legally and have the relevant license to perform this work. Transportation of people abroad in most cases also is not a crime. These actions become elements of trafficking in persons only in combination with other elements or signs of trafficking in persons, primarily if these actions are committed using forbidden means of influence intended to involve and retain the person in exploitation. Also, it is important to understand what is exploitation and what are its signs.

It should also be mentioned that this classification is rather conventional. Actions which are numbered among group A also are often considered as successive stages of involvement of a person in trafficking in persons which are prior to the final stage - exploitation. Means of influence from the subgroup B are also some actions undertaken by criminals in all stages of trafficking in persons in order to retain victims in this situation.

It is therefore important to have an exact description of each element of trafficking in persons. Only in this case trafficking in persons can be identified, that is to divide it from other cases of finding the workers in

difficult situation. But this is where appear difficulties, since the Palermo Protocol do not define elements that are included in the notion of trafficking in persons, thus providing space for lawmaking at the national level.

The Palermo Protocol also lacks definition of “forced labour”. This document of the international law only suggests that forced labour, along with sexual exploitation, slavery, practices similar to slavery, etc represent one of the forms of exploitation. In other words, the Palermo Protocol understand labour as we actually understand labour in everyday life – activities in the economic area, both within and outside the official labour market.

Lack of definitions of the elements of the notion of “trafficking in persons” cause difficulties in practical application of the Palermo Protocol and in consolidation of its provisions in national law. Besides, trafficking in persons, as a concept enshrined in the international law is increasingly criticised lately. There are opinions that trafficking in persons can be considered as a way of involving a person into forced labour. The recruiters lie to potential victims and help them to move the country of destination where they became vulnerable without knowledge of language, having no money and friends, with a debt for transportation. The employer from the country of destination gets benefit from this situation of the employee, appointing a miserable payment for his work which is far below the market level or forcing him to work for free.

To understand the existing conceptual approaches further we will examine in more details the concept of such notions as “forced labour” and “labour exploitation”, as they have great importance for the purposes of this research. In order to do this we shall apply to other international documents. Regarding the notion of “forced labour”, as an element of trafficking in persons, the United Nations recommend, **where applicable**, to use concepts developed in other Conventions of the International Labour Organisation (hereafter - ILO)<sup>5</sup>.

It should be noted that the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005) basically repeats the concept of “trafficking in persons” of the Palermo Protocol, a little bit deepening and expanding it. Since the definition of “trafficking in persons”

<sup>5</sup> Model Law against Trafficking in Persons. United Nations, Vienna, 2010, page 15. The electronic version of this publication can be downloaded from the Internet: [http://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)

from the Protocol is identical to the definition of “trafficking in human beings” from the mentioned Council of Europe Convention, we will not dwell on the last definition.

## 2.2. Forced labour and trafficking in persons

The notion forced labour is conceptualised by the International Labour Organisation (hereafter - ILO). There are several ILO Conventions dedicated to forced labour such as Convention concerning Forced of Compulsory Labour, 1930 (ILO Convention No. 29) and Abolition of Forced Labour Convention, 1957 (ILO Convention No. 105). In its first Convention on this issue of 1930 ILO provides the following definition of forced labour:

*“Forced labour or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.  
(ILO Convention No. 29, art.2, par. 1).*

Therefore, the ILO definition of forced labour contains **two main elements**:

- 1) work must be done under **the menace of penalty** and
- 2) work must be done **involuntarily**, that is without the employee’s consent.

It should be considered that this definition was developed long time ago – more than 80 years ago. For this reason ILO occasionally provides clarifications on this definition taking into account the realities of the present days. Thus, detailed clarifications concerning two elements of this definition are provided in the publication of the International Labour Office<sup>6</sup> Geneva “A global alliance against forced labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”<sup>6</sup>, issued in 2005. In this publication ILO provides interpretation of the definition of “forced labour” based on the outcome of the activities of its control bodies for 75 years since the adoption of the Convention No. 29.

Regarding the first element of forced labour - **the menace of penalty**, ILO notes that in present days under the menace of penalty should be understood

<sup>6</sup> The Global Alliance against Forced Labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Geneva, 2005. The electronic version of this publication can be downloaded from the Internet: <http://www.ilo.org/global/publications/books/lang-en/nextRow--220/index.htm>

various means of retaining a person in situations of forced labour. By such means ILO considers the actual presence or credible threat of:

- physical violence against worker or family or close associates;
- sexual violence;
- supernatural retaliation;
- imprisonment or other physical confinement;
- financial penalties;
- denunciation to authorities (police, immigration, etc) and deportation;
- dismissal from current employment;
- exclusion from future employment;
- exclusion from community and social life;
- removal of rights and privileges;
- deprivation of food, shelter or other necessities;
- shift to even worse working conditions;
- loss of social status.

All the above listed ILO calls forms of menace<sup>7</sup>. In our view it is a big stretch in order to bring the realities of life under the definition of forced labour, internationally recognised. The menace is a verbal promise of punishment in case of disobedience, but not dynamic actions used as means (methods, tools) to keep a person in a forced labour situation. It is more correct to speak about the first element of forced labour not as threat of punishment, but as well as in Palermo Protocol, about means of influence, since the notion “means” is larger than “threat” (means of influence include the threat).

Regarding the second element of forced labour – **lack of voluntariness or lack of consent** on the work carried out, ILO currently considers that even if a person initially gave his consent to labour it shouldn’t be taken into account when analysing the situation of forced labour. “Many victims enter forced labour situations initially of their own accord, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour. They are subsequently unable to leave their work owing to legal, physical or psychological coercion”<sup>8</sup>

<sup>7</sup> The Global Alliance against Forced Labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Geneva, 2005, page 6, par.14

<sup>8</sup> The Global Alliance against Forced Labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Geneva, 2005, page 6, par.15

At the same time the lack of consent ILO calls “the route” into forced labour (involvement into forced labour situation?) and relates to it:

- birth/descent into “slave” or bounded status;
- physical abduction or kidnapping;
- sale of person into the ownership of another;
- physical confinement in the work location – in prison or in private detention);
- psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance;
- induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.);
- deception or false promises about types and terms of work;
- withholding and non-payment of wages;
- retention of identity documents or other valuable personal possessions.

The interpretation of “lack of consent” as a “route” into forced labour also raises many questions. This is a rather disputable logical construction. In our view the list of elements of this group in many respects is similar to elements of the first group and also represents means of influence but at the stage of involvement the person into forced labour situation (except the first element, which does not apply to actions).

ILO recommends using in practice the numbered elements of both groups in order to identify cases of forced labour, but does not explain how exactly it should be done. But, it follows from the very definition of forced labour a combination of at a minimum of two such elements should be identified in order to speak about a case of forced labour. But these elements in many respects are similar and can be divided only if the forced labour situation is examined during the development process – from the moment of involvement and further.

It should be mentioned that the basic elements of forced labour are connected only with the means of involvement and retaining person in forced labour situation. Neither the definition of forced labour itself, nor its basic elements in the current ILO interpretation say anything about working and living conditions of worker, the duration of the working day, wage amount. Meanwhile many victims of forced labour work and live in terrible conditions, their working day can last 18 hours, and wages

are much below the market. However, according to ILO a forced labour situation is identified not as much by difficult and hazardous working conditions, as **the nature of the relationship between the employee and the employer**. ILO notes: “Forced labour cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives. Forced labour represents a severe violation of human rights and restriction of human freedom...”<sup>9</sup>.

Thus, the analysis of the definition of forced labour and its two main elements from ILO Convention No. 29 and its current interpretation in ILO’s publications shows that the definition itself is very laconic and provides much space for its interpretation by ILO. Meanwhile this interpretation and terminology used in publications are quite controversial. The list of elements of the two groups of forced labour basic elements does not provide a complete description of forced labour situation sufficient for identification of such cases in practice. Thus, for instance ILO considers deception as “route” into forced labour, but deception is also frequently used as means to keep in forced labour situation. For instance, employers often promise the workers to pay the wages after the realisation of the crop, to constructors - after the date of substantial completion, but then they do not fulfil their promises. In our opinion a threat and deception are very similar. Both they are verbal promises used to force a person to take a necessary decision, to subdue his behaviour. But a deception promises a future benefit, misinforms a person, creates an illusion of freedom in decision-making, and a threat promises to harm, and roughly enforce obedience.

Besides, the ILO’s definition of forced labour says nothing about victim’s vulnerability. A person entered a forced labour situation cannot properly respond or take advantage of protection of the state due to his vulnerability (difficult life situation). In our opinion the victim’s vulnerability which makes him obey is also an important element of forced labour.

The definition of forced labour does not say anything about working conditions, length of the working-day, wage amount. Yet, these characteristics are important for practical identification of cases of forced

<sup>9</sup> The Global Alliance against Forced Labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Geneva, 2005, page 5.

labour, especially when are used subtle forms of coercion. And ILO itself recommends the use of these signs as exploitation indicators while evaluating trafficking in persons situation according to the methodology DELPHI<sup>10</sup> developed by this organisation.

As it was stated above ILO regards forced labour to a severe violation of human rights and restriction of human freedom. Indeed, the means of influence applied to engage and keep a person in forced labour situation, as well as the working conditions, wage amount demeans human dignity. The problem is that it remains at a declarative level and is not further developed with a conceptual understanding of the notion “forced labour”. “Human dignity” – is a deep dialectical concept. **There is a need to develop the approach to forced labour in terms of human rights and develop a legal mechanism of human dignity protection in this field which help move from the declarative level of reasoning about human dignity to the practical level of implementation of this basic principle of the democratic rights. For this purpose it is necessary to introduce the notion “labour dignity”.**

If speaking about the differences in the ILO concept of forced labour and the concept of trafficking in persons of the Palermo Protocol, than as it was already mentioned, Palermo Protocol separates forced labour from other form of exploitation – sexual exploitation, slavery, practices similar to slavery, servitude or the removal of organs. ILO understands labour as “all work or services”, i.e. any kind of human activity both legal or illegal (including prostitution, begging, etc.). ILO considers that “... an activity does not need to be recognised officially as an *economic activity* for it to fall potentially within the ambit of *forced labour*”.<sup>11</sup> ILO classifies sexual exploitation under the menace of violence, slavery, practices similar to slavery, servitude as forms of forced labour. Since the ILO notion of “forced labour” absorbs human exploitation in all spheres of human activity, and also contains such element as “route” into forced labour, ILO considers trafficking in persons as one of the forms of forced labour.

Speaking about the difference of trafficking in persons and forced labour it should be also mentioned that according to international conventions the state by no means shall support trafficking in persons. At the same time

<sup>10</sup> Can be accessed at: [www.ilo.org/forcedlabour](http://www.ilo.org/forcedlabour)

<sup>11</sup> The Global Alliance against Forced Labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Geneva, 2005, page 7, par.16.

states officially use some form of forced labour for ideological, political and other reasons. International conventions allow it. Thus, Article 2 par.2 of the ILO Convention No. 29 permits the use of forced labour in the following areas:

- a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
- b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
- c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
- e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

Besides, forced labour of the convicts is not forbidden, there are only several restrictions for its use. However, according to ILO evaluation the states use only 20% of total forced labour. The main part is used by private agents who are abusing the situation of the vulnerable people.

**Thus, the analysis shows that the definition of “forced labour” in ILO Convention No. 29 is too laconic and needs improvement. It allows this notion to be widely and variously interpreted both at international level and when transferring into the national law.**

**The concept of “forced labour” in modern interpretation presented in ILO publications is rather difficult, controversial, the logical constructions that are used cause many questions. But these**

publications have undoubted importance in detailed description of the means of influence used to involve and keep people in forced labour situation, which can be used in the national law. However the notion “forced labour” cannot be directly used in the interpretation of the definition of “trafficking in persons” of the Palermo Protocol, since the ILO’s concept of forced labour is much different from the concept of the Palermo Protocol. These differences are of a purely scientific nature, but they can have a considerable impact on the way the governments will identify and protect victims of trafficking in persons and forced labour and should be taken into account while developing national legislation for practical application of Palermo Protocol.

### 2.3. Labour exploitation and decent work

According to Palermo Protocol, exploitation as a goal of trafficking in persons “...includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. In recent years the notion “labour exploitation” is also used in a number of publications of international organisations and experts on the subject, as well as during various discussions of international level within the context of trafficking in persons, though there is no such term in the definition of “trafficking in persons” of the Palermo Protocol. Moreover, “trafficking in persons for labour exploitation” was criminalised in a number of European countries<sup>12</sup>. Therefore, we will try to analyse the notion “labour exploitation” using different sources of information.

There is no internationally recognised definition of “exploitation” as a goal of trafficking in persons. The word “exploitation” comes from the French “exploitation” - use, deriving profit (from the labour of others, natural resources, transport, means of labour). Although nowadays the use of other’s labour is an all-pervasive phenomenon still exploitation of other’s labour or labour exploitation has negative connotation as notion.

The notion of exploitation in a fullest manner is investigated in the works of Karl Marx, but he connected this notion exclusively to economy. Marx

<sup>12</sup> А. Боршевский. Нарушение конституционных прав граждан: торговля людьми. Противодействие торговле людьми в зарубежных странах. «Закон и жизнь», 2010 №1, стр. 37. (A. Borshesky. Violation of the constitutional rights of citizens: trafficking in persons. Actions against trafficking in persons in foreign countries. “Law and Life”, 2010 No. 1, page 37)

considered that the most striking form of exploitation is slavery which is based on the slave’s full deprivation of rights, physical coercion to free labour and withdrawal of labour results.

Slavery is fundamentally different from other forms of exploitation. A person in slavery is inevitably forced to work, where this situation is permanent and often is inherited. Permanence is an important feature of slavery. The social status of the slave is fixed by the state through legislation which establishes “condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”<sup>13</sup>. The slave owner has all rights of ownership of the slave - possession, use, disposal. Implementation of the owner’s property rights destroys human individuality as a person who is the bearer of individual rights. Slavery degrades a man in legal terms to the status of a movable property, the slave has no rights. Nowadays, slavery in its classical form remained only in one African country. But many countries continue to use practices and conditions similar to slavery, servitude.

The works of Marx highlight the notion of slavery very well and help to understand that **there is no need to criminalise slavery at national level as an element of trafficking in persons, because it cannot exist without the support from the state.** Only the state can declare the ownership of slaves. If the state supports slavery it would not prosecute it under the law. Even the most terrible working conditions which can be identified nowadays can be classified only as conditions similar to slavery. **This demonstrates that not all the elements of trafficking in persons from the Palermo Protocol shall be criminalised at national level.**

According to Marx’s theory, physical coercion to labour, free withdrawal of labour results, workers’ full deprivation of rights is not observed in capitalism anymore. In capitalism an employee voluntarily enters into a labour agreement with the employer. He may at any time terminate this agreement and make an agreement with another employer. Both parties are equal participants in this treaty. However, Marx considered that exploitation still exist in capitalism. Marx saw the roots of exploitation in capitalism in the exploiter’s ownership of means of production and in achieving a certain level of development of the productive forces. According to Marx’s theory, a capitalist in a capitalist economy as the owner of the means of production assumes the difference between the new cost created by the hired workers and their labour cost as wages

<sup>13</sup> 1926 Slavery Convention of the League of Nations, par.1. art.1.

("added value"). A material prerequisite for exploitation is such a level of productive forces development when a person can produce a product to cover both his minimum requirements (necessary product) and a surplus (surplus product), which is assumed by the owners of the means of production. Thus, according to Marx, exploitation is deriving profit by the employer from the labour of the workers.

Non-Marxist economic theories usually also have a negative attitude towards exploitation but consider it as a necessary element of the market economy, diminishing along with its development. They consider that the new cost is created within equal participation of all productive factors and not only by the workers. **As Marx's theory, so non-Marxist economic theories agree to the Palermo Protocol only on the fact that labour is related to economic area.** At the same time the economic theories do not provide a clear understanding to how one can measure the level of exploitation and establish employer's accountability for exceeding a certain level.

That is why the notion "labour exploitation" should be examined in connection to the notion "**decent work**". **Man's work in a democratic society has to be decent, i.e. ensuring the development of human individuality.** In practice the employers due to various reasons do not always create decent working and payment conditions for workers, thus exposing them to **exploitation**. **The level of exploitation may vary, depending on it the exploitation can take various forms from mild forms to the most severe which include forced labour and slavery.** In order to clearly define the forms of exploitation there is a need of a clear system of signs of exploitation.

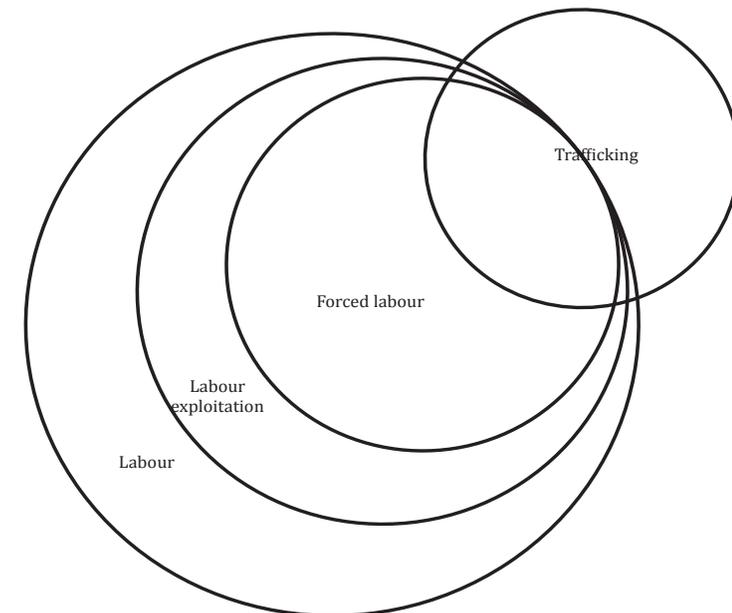
However, on the international level there is no agreement of opinions concerning the forms of labour exploitation and their signs. Most of experts agree that labour exploitation is something that lies beyond decent working conditions of the worker and market level of his wage, but at the same time something less severe than forced labour. At the same time in a number of countries trafficking in persons for labour exploitation is subjected to criminalisation and not trafficking in persons for forced labour exploitation. Obviously this is due to the lack of an accurate terminology.

What is clear is that **the notion "labour exploitation" and "forced labour" are connected to organisation of labour and living conditions on the workers, remuneration, working conditions, length of the working-**

**day, nature of relationships between the employee and employer and the severity of labour consequences for workers.**

Specialists from different countries are concerned about the lack of a common terminology on this subject and try somehow to classify and relate the notions "decent work", "labour exploitation", "forced labour" and "trafficking in persons".

Thus, for instance a well-known in the sphere of combating trafficking in persons the international non-governmental organisation **Global Alliance Against Traffic in Women (GAATW)** in one of its recent publications tried somehow to differentiate the notions "labour", "labour exploitation", "forced labour" and "trafficking in persons". In doing so the authors complain that these notions are too complex, largely overlapping and it is difficult to develop for them some kind of a theoretical framework. In order to somehow present the differences between these notions the authors use the following diagram<sup>14</sup>:



It should be noted that this diagram like any model of complex processes does not fully reflect the actual processes. Besides, in our view the

<sup>14</sup> Beyond Borders: Exploring Links between Trafficking and Labour. GAATW Working Papers Series, 2010.

inscription “labour exploitation” should be replaced by “light forms of labour exploitation”, since the forced labour is also labour exploitation.

**The specialist from the Washington College on Law, American University** in one of the recent publications<sup>15</sup> in February 2011 also tried to draw a distinction between the aforementioned notions. In order to assess the level of labour exploitation they proposed to use the following scale of marks from 1 to 10:

1-2	3-5	6-8	9-10
Forced labour	Exploitation regarding wages and/or working conditions	Some safety or wage issues	Fair wages, safe working conditions

The mark 9-10 corresponds to the level of decent work. At the same time unlike the GAATW publication the authors emphasize two levels of exploitation between decent work and forced labour. Besides, the authors themselves admit that there is no clear division on the scale between 2 and 3, due to cases when workers get high wages for the work in severe exploiting conditions. In authors’ opinion only the court can determine if the employer has crossed the line between the exploitation and forced labour. But the authors do not provide any criteria for the courts which can be justified for the common law countries, but in no way is acceptable for civil law countries among which is the Republic of Moldova.

**Baerbel Heide Uhl**, the member the Group of Experts on Trafficking in Human Beings of the European Commission and a well-known author of various publications on trafficking in persons and human rights considers that the term “exploitation”, included in Palermo Protocol in 2000, now “...is the core element of many countries’ legal definition of trafficking in human beings”<sup>16</sup>. At the same time this term is not defined in the Palermo Protocol or in international law and there is no even an approach developed in order to measure the level of exploitation. All this complicates the identification of victims of labour exploitation and the access for these people to the relevant help of the society.

<sup>15</sup> Slavery, Forced Labor, Debt Bondage and Human Trafficking: from conceptional confusion to targeted solutions. Issue paper 2. Center for Human Rights and Humanitarian Law, Washington College on Law, American University, 2011. Can be accessed at: <http://rightswork.org/2011/02/slavery-forced-labor-debt-bondage-and-human-trafficking-from-conceptional-confusion-to-targeted-solutions/>

<sup>16</sup> Terminology matters: what do we mean when we refer to “exploitation”? Baerbel Heide Uhl, 2011. Can be accessed at: <http://rightswork.org/2011/02/terminology-matters-what-do-we-mean-when-we-refer-to-exploitation%E2%80%99/>

Baerbel Uhl notes that during a long time in international conventions there was not used the notion “sexual exploitation”, but the notion “immoral purposes”. The word “immoral” means unprincipled, contrary to morality. Morality or ethics include spiritual qualities and virtues necessary to a man in society, the rules that govern human behaviour in society. Morality is in close connection with law and has an impact on its development. Only in the 1949 Trafficking Convention has been used the term “exploitationthe prostitution of another” and it introduced an economic and labor-relataed meaning into international ant-trafficking framework, but this has not led to the fact that all trafficked persons started to be perceived as workers or subjected to any economic necessity to make his or her living.

Despite the very interesting information in this publication it should be mentioned that the author does not provide any new idea to address terminological issues, she only underlines “the urgent need to go back to the concepts that are defined (used) in international law, such as “forced labour” and “slavery” and to explore their relevance for the anti-trafficking framework”.

Also, there are many OSCE publications dedicated to issues on trafficking in persons, forced labour and labour exploitation. OSCE not only pays a great attention to these issues, but even declared the fight against trafficking in persons for labour exploitation as a priority in its policy. Interesting practices has a British non-governmental organisation “Antislavery International”<sup>17</sup> and other organisations. But so far all these are just expert opinions. In practice there is a need to develop a standard terminology in this field.

Trafficking in persons for labour exploitation or for forced labour exploitation in fact represents a violation of labour rights of migrants. Exploitation in manifested in violation of human rights when working and living conditions, demeans human dignity and hinder the development of individuality. The organisations that protect the rights of migrants have wide experience in this field. It is necessary to use their experience and relate it to the concept of trafficking in persons and institution of human dignity. It is necessary to answer the question about which are the main features of such notion as decent work (minimum standard), under what conditions the violations of labour rights of migrants evolve into labour

<sup>17</sup> Klara Skrinvankova. Between decent work and forced labor: examining the continuum of exploitation . 2010.

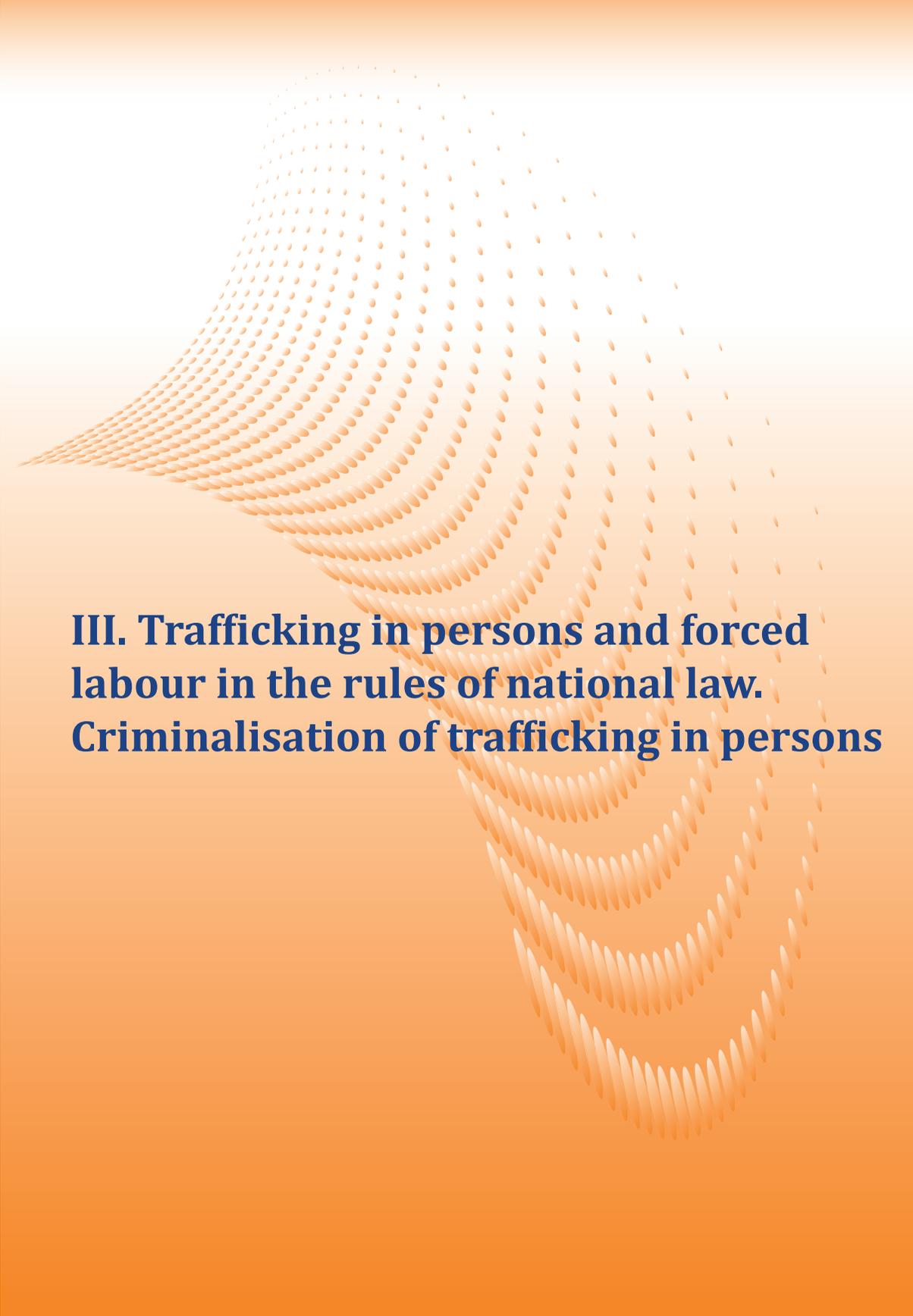
exploitation, forced labour or trafficking in persons. It has to be done taking into account that the labour of migrants is used not only within the official labour market. Manifestation of labour exploitation and forced labour depends on where people are exploited: in legal (open) labour market or in illegal (shadow) market. In first case the elements of forced labour can be integrated into the normal employment relations.

Exploitation is manifested also in violations of the labour legislation (noncompliance with the labour safety standards, non-payment or late payment of wages, etc.). Trade unions have a wide experience on this subject. Under what conditions these violations evolve in so dangerous forms that become crimes and are subjected to criminalisation? It is necessary to separate the elements and signs of labour exploitation, as a criminal offence from the elements and signs of labour exploitation, as a violation of the labour legislation.

Also, it is necessary to analyse and summarise the other countries' experience gained in the field of combating trafficking in persons with lack of definitions of such notions as "exploitation" and "labour exploitation" and in absence of a single/standard approach to exploitation.

**Thus, the analysis shows that the notions "labour exploitation" and "forced labour" in relation to notion of trafficking in persons are not conceptualised, they have no generally recognised definition and there is no yet developed a common approach to conceptualisation. The experts only note the need of standardisation of these notions at the international level.**

**The mildest forms of labour exploitation, such as violation of safety regulations, excess of the fixed duration of the working day, detention of wages, etc. are violations of labour legislation by employers. For these violations the employer is liable under labour and administrative law. When, in addition to these violations the employer himself or through other people is using illegal means to engage and retain employees in situations of exploitation, then the situation can be classified as forced labour and/or trafficking in persons for forced labour exploitation which is subject to criminal prosecution.**



### **III. Trafficking in persons and forced labour in the rules of national law. Criminalisation of trafficking in persons**



### III. Trafficking in persons and forced labour in the rules of the national law. Criminalisation of trafficking in persons

#### 3.1. Tasks and issues of criminalisation of trafficking in persons

The power of the concept of trafficking in persons set forth in the international conventions on trafficking in persons (Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings) is in its capacity to establish a link between the set of events and actions, which take place in the countries of origin, transit and destination of trafficking in persons. This fact enriched our understanding of the modern world, the consequences of globalisation and development of the migration processes. The main task of the developers of the Palermo Protocol was to make the field of application of this protocol as wide as possible, to cover all forms of trafficking in persons and to protect as many people as possible, since any person regardless his age or sex can become victim of such trafficking.

But in consequence the concept of trafficking in persons turned out to be very complex, and this subsequently led to **a difficulty in criminalisation of trafficking in persons at the national level**. Too many elements, which are divided in three groups:

- A) actions (recruitment, transportation, transfer, concealment or receipt of a person), which in itself are not criminal but acquire a criminal character under criminal means of influence and presence of the purpose of exploitation;
- B) means (coercion, abduction, deception, etc.), which also are certain actions and can be applied at all stages of trafficking in persons from recruitment till exploitation;
- C) purpose of exploitation, which is not always a crime only its separate forms, which have vague lines between.

Besides, these elements can be supplemented by such factors as transnationality and the organised crime involvement.

Real cases of trafficking in persons include only several elements from those listed in the definition of “trafficking in persons” of the Palermo

Protocol. Therefore there is an important question in criminalisation, such as what combination of elements is characteristic to a case of trafficking in persons.

The answer to this question provides the United Nations publication “Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”.<sup>18</sup> According to the point 33, the part two of this Guide (page 268):

*“The obligation is to criminalize trafficking as a combination of constituent elements and not the elements themselves. Thus, any conduct that combines any listed action and means and is carried out for any of the listed purposes must be criminalized as trafficking.”*

Thus, to the plans of the developers of the Palermo Protocol trafficking in persons are a combination of three groups of elements – at least one action of the group A, at least one means of the group B and one purpose of exploitation from the group C.

As applied to **trafficking in persons for forced labour exploitation these three groups of elements** will include:

- A. Actions** – recruitment, transportation, transfer, concealment or receipt of persons;
- B. Means** - threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- C. Purpose of exploitation** - forced labour and services.

Besides, in criminalisation of trafficking in persons it is necessary to apply a differentiated approach, depending on the role played by the country on the stage of global trafficking in persons (country of origin, transit country or country of destination).<sup>19</sup>

<sup>18</sup> Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. Versions in English and Russian languages are downloadable from the Internet: [http://www.unodc.org/pdf/crime/legislative\\_guides/Legislative%20guides\\_Full%20version.pdf](http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf)

<sup>19</sup> А. Боршевский. Нарушение конституционных прав граждан: торговля людьми. Противодействие торговле людьми в зарубежных странах. «Закон и жизнь», 2010 №1, стр. 37. (A. Borshesky. Violation of the constitutional rights of citizens: trafficking in persons. **Actions against trafficking in persons in foreign countries.** “Law and Life”, 2010 No. 1, page 37)

Difficulties in criminalisation of trafficking in persons were anticipated by the developers of the Palermo Protocol on trafficking in persons. Thus, the point 13 the part two of the Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto warns that the wording and terms of this convention were developed for general purposes of various countries:

**“Thus, the level of abstraction is higher than that necessary for domestic legislation. Therefore, in drafting legislation, care should be taken not to incorporate verbatim parts of the text but reflect the spirit and the meaning of the various articles”<sup>20</sup>.**

In order criminal prosecution for trafficking in persons to be successful it is necessary to develop and enshrine in the Criminal Code such a legal construction of this crime which would be efficiently applied in practice. **Elements of trafficking in persons, as a social phenomenon, may differ significantly from the legal construction of trafficking in persons, as a crime.** The conceptualisation of the phenomenon should cover all forms of the phenomenon, and the criminalisation – only the extreme and highly dangerous for society. The difficulty of criminalisation of trafficking in persons phenomenon consists also in the fact that a person can be condemned not for a set of interrelated events and actions, but for concrete criminal actions committed with criminal intent. For an effective criminalisation of trafficking in persons it is important to understand what are exactly these criminal actions, criminal intent, what consequences it may have for the victim and how it can be proved. I.e. practical application is more important for criminalisation than a scientific approach.

Besides, criminalisation of trafficking in persons should take into account the legal traditions and fit well into the law system. Since the definition of “trafficking in persons” covers such notions as “forced labour”, “exploitation”, etc., it is necessary to relate the rules of the Criminal Code concerning trafficking in persons, to those rules of the same code concerning other notions included into the definition of trafficking in persons, as well to the rules of the Labour Code and Contravention Code.

<sup>20</sup> Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. UN, New-York, 2004, page 249. Versions in English and Russian languages are downloadable from the Internet: [http://www.unodc.org/pdf/crime/legislative\\_guides/Legislative%20guides\\_Full%20version.pdf](http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf)

Therefore, the people who had to develop certain rules of the Criminal Code of the Republic of Moldova in order to implement Palermo Protocol had a very difficult task. At the same time it should be noted that criminalisation of trafficking in persons in Moldova was carried out in a very short time, under a great international influence. Besides, Moldova as a young independent state had and still has difficulties in developing legal rules, and not only in the field of criminal law. Historically Moldova lacks experience in theoretical drafting in legal field. In the days of the Soviet Union this theoretical drafting was carried out in Moscow. Moldova faces an acute shortage of specialists in system thinking who may cover the entire legal system. Therefore, the legal system of the Republic of Moldova largely is a legacy of Soviet science the development of which cannot be called systemic.

A big issue is also the fact that the Soviet science did not recognised human dignity – a category of natural law which has a great importance for implementation of the Palermo Protocol. A totalitarian regime does not need individuality and its rights, and a person is viewed as a cog in a state machine, not as a valuable and unique individuality. Human dignity is the basic principle of the democratic right which is enshrined in the Constitution of the country and then in legal rules as positive commitments, permissions and restrictions including within criminal law. In the structure of the legal system of a law-governed state human dignity should act as a legal institution – a complex association of rules that regulate social relations at the intersection of various fields of law. Moldova has a lot of work to do in order to overcome this legacy of the Soviet law and bring its system into compliance with the rule of law.

Since gaining independence Moldova has adopted a new Constitution and Article 1 of which stipulates: “The Republic of Moldova is a democratic constitutional State, where human dignity, his rights and freedoms, free development of human personality, justice and political pluralism are the supreme values and are guaranteed”<sup>21</sup>. Therefore, human dignity was enshrined into the Constitution of the Republic of Moldova. But the creation of an effective legal mechanism to implement human dignity at all ranges of relations, including the field regulated by the labour law is still a great task for our country, as it is by the way for other developing countries.

<sup>21</sup> The Constitution of the Republic of Moldova, adopted on 29.07.1994 (Official Monitor RM, 1994, No. 1).

### 3.2. Trafficking in persons in criminal law

The Criminal Code of the Republic of Moldova criminalises trafficking in persons separately from trafficking in children. However, the Criminal Code for some reason relates the crime of trafficking in persons (Article 165 of the CCRM) to the crimes against freedom, honour and dignity of a person (Chapter III of the CCRM), and the crime of trafficking in children (Article 206 of the CCRM) is classified as crime against family and juveniles (Chapter VII of the CCRM).

The legislation provides severe penalties for committing these two crimes (for 5 years of imprisonment up to life imprisonment):

#### **Article 165. Trafficking in persons**

**(1)** *The recruitment, transportation, transfer, harboring or receipt of a person, with or without his/her consent, for the purpose of commercial or non-commercial sexual exploitation, for forced labour or services, for begging, for slavery or similar conditions, for use in armed conflicts or criminal activities, for the removal of human organs or tissues committed by:*

*a) the threat of physical or mental violence not dangerous to the person's life and health, including kidnapping, the seizure of documents, and servitude for the purpose of paying a debt, the amount of which was not set within a reasonable limit, as well as through the threat of disclosure of confidential information of the family of the victim or of other persons, both individuals and legal entities;*

*b) deception;*

*c) the abuse of vulnerability or abuse of power, giving or receiving payments or benefits to get the consent of a person controlling another person; shall be punished by imprisonment **for 5 to 12 years** with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 5000 conventional units with the deprivation of the right to practice certain activities or the liquidation of the legal entity.*

**(2)** *The same actions committed:*

*a) by a person who previously committed an act set forth in par. (1);*

*b) against two or more persons;*

*c) against a pregnant woman;*

*d) by two or more persons;*

*e) by an official or a high-ranking official;*

*f) with violence dangerous to the person's life, physical or mental health;*

g) with torture, inhumane or degrading treatment aimed at ensuring the person's subordination, or with the use of rape, physical dependence, or a weapon,  
shall be punished by imprisonment **for 7 to 15 years** with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 5000 to 7000 conventional units with the deprivation of the right to practice certain activities or the liquidation of the legal entity.

**(3)** The actions set forth in par. (1) or (2):

a) committed by an organized criminal group or by a criminal organization;  
b) that cause severe bodily injury or a mental disorder, or the death or his/her suicide;  
shall be punished by imprisonment **for 10 to 20 years** with the deprivation of the right to hold certain positions or to practice certain activities for 3 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 7000 to 9000 conventional units with the deprivation of the right to practice certain activities or the liquidation of the legal entity.

**(4)** The victim of trafficking in human beings shall be exempted from criminal liability for any crimes committed by him/her in relation to this procedural status.

#### Article 206. Trafficking in Children

**(1)** The recruitment, transportation, transfer, harbouring, or receipt of a child, as well as giving or receiving payments or benefits to obtain the consent of the person who exerts control over the child for the purpose of:

- a) commercial or non-commercial sexual exploitation in prostitution or a pornographic industry;
- b) exploitation by forced labour or services;
- b<sup>1</sup>) practicing begging or other base purposes;
- c) exploitation in slavery or in conditions similar to slavery including illegal adoption;
- d) participating in armed conflicts;
- e) participating in criminal activities;
- f) removing human organs or tissues;
- g) abandonment abroad;
- h) sale or purchase,

shall be punished by imprisonment **for 8 to 12 years** with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 3000 to 5000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

**(2)** The same actions involving:

- a) physical or mental violence, the use of weapons or the threat of their use;
  - b) sexual abuse and violence;
  - c) the abuse of authority or the child's vulnerability, the threat of disclosure of confidential information to the child's family or to other persons;
  - f) the removal of human organs or tissues;
- shall be punished by imprisonment **for 10 to 15 years** with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in amount of 5000 to 7000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

**(3)** The actions set forth in par. (1) or (2):

- a) committed by a person who has previously committed the same actions;
- b) committed against two or more children;
- c) committed by an official or by a high-ranking official;
- d) committed by an organized criminal group or a criminal organization;
- e) causing severe bodily injury or mental disorder of the child or his/her death or suicide;
- f) committed against a child aged under 14,  
shall be punished by imprisonment **for 15 to 20 years** with the deprivation of the right to hold certain positions or to practice certain activities for 3 to 5 years or **with life imprisonment**, whereas a legal entity shall be punished by a fine in the amount of 7000 to 9000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

**(4)** A victim of trafficking in children shall be exempted from criminal liability for any crimes committed by him/her in relation to this procedural status.

*Criminal Code of the Republic of Moldova No. 985-XV of 18 Apr 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129, art. 1012).*

It should be mentioned that in a similar form as Articles 165 and 206 of the CCRM are currently presented in Moldovan legislation and in this report they have been used since 2003 when the current Criminal Code entered into force. These articles already have been amended several times, but they still cause troubles when applied in practice. Besides, these articles do not work in practice without a special clarification

provided by the Supreme Court of Justice of the Republic of Moldova<sup>22</sup>, which contains definition of the most elements of these crimes.

As the analysis of Articles 165 and 206 of the Criminal Code of Moldova shows that under criminalisation the provisions of the Palermo Protocol were almost completely transferred to the criminal legislation of the Republic of Moldova and became elements of legal construction of two crimes - trafficking in persons and trafficking in children. The only sign which separates cases of trafficking in persons in the criminal law of Moldova is attainment of majority by the victim, i.e. trafficking in mature persons is separated from trafficking in children. As a result these two crimes have sophisticated alternative components which include many elements met in real life in various combinations. Therefore, in criminalisation of trafficking in persons in Moldova happened the situation the drafters of the Palermo Protocol warned about, believing that it may cause difficulties in practical application.

To justify this it should be noted that criminalisation of trafficking in persons was limited by a framework of indicators for the use of Palermo Protocol. As noted, criminalisation should have been carried out taking into account that the crime of trafficking in persons is a combination of three groups of elements. Taking into consideration that cases of trafficking in persons can be classified as mainly by such a sign as purpose of exploitation, it turns out that the definition of trafficking in persons being criminalised technically can be also separated on several crimes only by the same sign in order to simplify the legal construction of crime, make it more understandable and convenient for practical use. In other words under criminalisation, for instance trafficking in persons for sexual exploitation could be separated from trafficking in persons for forced labour exploitation and developed separate legal constructions and articles for these crimes in criminal law. It is no coincidence that in criminal law of some countries, for instance Germany and USA trafficking in persons for labour exploitation is criminalised separately from trafficking in persons for sexual exploitation<sup>23</sup>. But Moldova did not take the advantage of such theoretical possibility in criminalisation.

<sup>22</sup> DECISION OF THE PLENUM OF THE SUPREME COURT OF JUSTICE OF THE REPUBLIC OF MOLDOVA "On the practice of application of legislation on trafficking in persons and trafficking in children" No. 37 of 22.11.2004 *Bulletin of the Supreme Court of the Republic of Moldova, 2005, No. 8 with subsequent amendments.*

<sup>23</sup> А. Боршевский. Нарушение конституционных прав граждан: торговля людьми. Противодействие торговле людьми в зарубежных странах. «Закон и жизнь», 2010 №1, стр. 37. (A. Borshesky. Violation of the constitutional rights of citizens: trafficking in persons. Actions against trafficking in persons in foreign countries. "Law and Life", 2010 No. 1, page 37)

It should also be noted that under the criminalisation of trafficking in persons/children in Moldova the legal constructions of these crimes included some additional elements which were not in the Palermo Protocol which made the legal constructions of these crimes even more sophisticated. Thus, the Articles 165 and 206 of the CCRM included some additional purposes of exploitation which are not stated in the Palermo Protocol such as "using people in armed conflicts", "using people in criminal activities", "removal of tissues for transplantation". Besides, the Article 206 included such purposes of exploitation of children as "exploitation in a pornographic industry", "abandonment abroad", "sale or purchase", "exploitation in slavery or in conditions similar to slavery including illegal adoption". We will not provide a detailed analysis of these aspects as they are beyond the framework of this research.

Besides, in the Articles 165 and 206 of the CCRM were amended some means of influence stated in the Palermo Protocol. Thus, if in the Palermo Protocol "servitude" is related to the purposes of exploitation, then in the cited articles of the Criminal Code "keeping a person under servitude" is related to routes or means to influence victims.

Also, "fraud" was not included in the cited articles of the Criminal Code which generally is done correct in terms of national legislation. Fraud is criminalised by Article 190 of the CCRM, it is related to crimes against property and consists in deception or abuse of trust for appropriation of another person's goods. Fraud, as it is defined in Moldovan criminal law cannot be an element of trafficking in persons/children.

**Article 190. Fraud**

- (1) *Fraud, meaning the unlawful appropriation of another person's goods by deception or abuse of trust, shall be punished by a fine in the amount of 200 to 500 conventional units or by community service for 120 to 240 hours or by imprisonment for up to 3 years.*
- (2) *Fraud:*
- b) *committed by two or more persons;*
  - c) *causing considerable damage;*
  - d) *committed by use of an official position;*
- shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 6 years, in both cases with the*

*deprivation of the right to hold certain positions or to practice certain activities for up to 3 years.*

*(3) Fraud committed by an organized criminal group or a criminal organization shall be punished by imprisonment for 4 to 8 years with (or without) a fine in the amount of 1000 to 3000 conventional units.*

*(4) The actions mentioned in par. (1), (2) or (3) committed on a large scale shall be punished by imprisonment from 7 to 10 years with the deprivation of the right to hold certain positions or to practice specific activities for up to 5 years.*

*(5) The actions mentioned in par. (1), (2) or (3) committed on an especially large scale shall be punished by imprisonment for 8 to 15 years with the deprivation of the right to hold certain positions or to practice specific activities for up to 5 years.*

*Criminal Code of the Republic of Moldova No. 985-XV of 18 Apr 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129, art. 1012).*

At the same time in Articles 165 and 206 of the CCRM the means of influence were significantly extended as compared to Palermo Protocol and differentiated in each article in tree groups by the degree of damage with appropriate penalties differentiation.

The involvement in trafficking in persons/children of the organised criminal group in the sited articles of the Criminal Code is classified as aggravating circumstance. Regarding the possible variants of trafficking in persons, as transnational and national crime it was not reflected in Articles 165 and 206 of the CCRM. In other words these articles can be used also for criminal prosecution of trafficking in persons within the country.

It is worth mentioning that in Articles 165 and 206 of the CCRM, as in the Palermo Protocol, begging is not included into the notion “forced labour”, though as it was stated ILO considers it as a form of forced labour.

As it was mentioned for the proper application of Articles 165 and 206 of the CCRM the Supreme Court of Justice in 2004 developed special clarifications “On the practice of application of legislation on trafficking

in persons and trafficking in children”<sup>24</sup>. Then in 2008 the Supreme Court of Justice came back to this issue<sup>25</sup>.

However, the analysis of these clarifications shows that they need improvement. Unfortunately, they do not provide clearly that trafficking in persons consists of successive steps, starting with recruitment and finishing with exploitation, and that the exploitation is not only the purpose but is also a step of trafficking in persons, as recruitment, transportation, transfer, concealment of a person. This may cause difficulties when applying these clarifications in practice. We will dwell in more details on other remarks to this document in the following chapters on this report.

### 3.3. Forced labour in various fields and rules of law

Forced labour and labour exploitation can and should be banned by the rules of **constitutional, criminal, labour and administrative law** of the Republic of Moldova. Hence, unlike trafficking in persons, the legal construction of “forced labour” shall cover the notions “forced labour” not only in criminal law, but also in other fields of law. It should logically link these notions in a single system and serve tasks and objectives of the entire legislation. Let us analyse if it is true, comparing the notions of forced labour in various fields of law.

#### *Constitutional law*

The right of every person to work is guaranteed by the Constitution of the Republic of Moldova. The Article 43 of the Constitution establishes that “Every person has the right to freely choose his/her work, and to benefit from equitable and satisfactory working conditions...”<sup>26</sup>.

The Constitution contains no direct prohibition of labour exploitation. At the same time, the Constitution contains several guarantees from the State,

<sup>24</sup> DECISION OF THE PLENUM OF THE SUPREME COURT OF JUSTICE OF THE REPUBLIC OF MOLDOVA “On the practice of application of legislation on trafficking in persons and trafficking in children” No.37 of 22.11.2004 *Bulletin of the Supreme Court of the Republic of Moldova, 2005, No. 8 with subsequent amendments.*

<sup>25</sup> DECISION OF THE PLENUM OF THE SUPREME COURT OF JUSTICE OF THE REPUBLIC OF MOLDOVA “On amending the decision of the Plenum of the Supreme Court of Justice “On the practice of application of legislation on trafficking in persons and trafficking in children” No.9 of 22.12.2008 *Bulletin of the Supreme Court of the Republic of Moldova, 2009, N 4-5/51*

<sup>26</sup> The Constitution of the Republic of Moldova, adopted on 29.07.1994 (Official Monitor RM, 1994, No. 1).

if violated serve as signs of labour exploitation. Thus, according to Article 43 of Constitution:

*“(2) All employees have the right of work protection. In this respect the protective measures will bear upon work security and hygiene, working conditions for women and young people, the introduction of minimum wages across the national economy, the weekly period of rest, the paid holidays, difficult working conditions, as well as other specific situations.*

*(3) The length of the working week shall not exceed 40 hours.”*

Forced labour is forbidden according to Article 44 par. 1 of the Constitution of the Republic of Moldova. The Constitution do not provides any clarifications concerning what is understood by forced labour.

It should be mentioned that the constitutional law does not use the notion “decent work”, the state guarantees only “equitable and satisfactory working conditions”. Lack of the notion “decent work” in legal rules complicates the formation of the notion “exploitation”. Besides, our State does not guarantee the right to the market remuneration but only the right to the minimal salary. Therefore, remuneration below the market level in our country cannot be considered as exploitation and legally prosecuted as in the developed democratic countries.

### **Labour law**

The Labour Code of the Republic of Moldova also contains a general rule prohibiting forced labour (Article 7 par. 1 and 3), but with several reservations (Article 7 par. 5). Besides, the Labour Code contains the notion “forced labour” based on ILO Conventions (Article 7 par. 2 and 4).

#### **Article 7. Prohibition of forced (compulsory) work**

**(1) Forced (compulsory) work is forbidden.**

**(2) Forced (compulsory) work means any work or any service imposed to the person without his consent.**

**(3) Forced (compulsory) work is forbidden in any form, namely:**

- a) as means of political or educational influence or as means of punishment for support or expression of political views or beliefs opposite to the ones established by the political, social or economic system;
- b) as means of mobilisation and use of the labour force for the needs of the economic development;

- c) as means of maintenance of labour discipline;
- d) as means of punishment for participation to strikes;
- e) as means of discrimination on the basis of race, nationality, creeds or social status.

**(4) To forced (compulsory) work relevant is:**

- a) **infringement of terms of wages payment or payment in the full size;**
- b) **the requirement of the employer of performance by the worker of labour duties in the absence of some systems of collective or individual protection or in cases when the performance of required work can endanger the life or health of the employee.**

**(5) Are not considered as forced (compulsory) work:**

- a) Military service or other activities replacing it, performed by persons, who according to the law do not discharge obligatory military service;
- b) Work of a condemned person during imprisonment or in cases of suspended sentence punishment, carried out in normal conditions;
- c) Work in conditions of natural calamities or other danger, and also the work being considered as part of usual civil duties, established the law.

*Labour Code of the Republic of Moldova No. 154-XV of 28 Mar 2003  
(Official Monitor of the Republic of Moldova, 2003, No. 159-162, art. 648)*

Thus, the Labour Code relates to the elements of “forced labour” not only the means of influence (coercion) on the worker, but also such elements that are related to the organisation and remuneration of the work, as well as to working conditions:

- a) infringement of terms of wages payment;
- b) payment of wages not in the full size;
- c) violation of provisions on labour protection at the request of the employer.

As mentioned, these elements or signs can be regarded not only to the notion “forced labour”. First of all they suit the notion “labour exploitation”.

### **Administrative law**

The Contravention Code of the Republic of Moldova does not contain such notions as “forced labour” and “labour exploitation”, but include chapter VI which contains two articles concerning offences which infringe on the labour rights of the individual. These articles are related to the accountability of the individuals and legal entities for violations related to labour protection and remuneration.

#### **Article 55. Violations of legislation on labour protection**

- (1) *Violations of labour legislation, of legislation on job security and hygiene and of other provisions on labour protection shall be sanctioned by a fine of 40 to 50 conventional units for individuals, by a fine of 50 to 75 conventional units for responsible persons and by a fine of 80 to 120 conventional units for legal entities.*
- (2) *The same actions committed with regard to a juvenile shall be sanctioned by a fine of 50 to 80 conventional units for individuals, by a fine of 100 to 150 conventional units for responsible persons, and by a fine of 120 to 180 conventional units for legal entities*

#### **Article 57. Violations of timeframes for the payment of salaries, pensions, stipends and allowances and for making other regular payments established in legislation**

- (1) *Deliberate violations by more than 2 months of the timeframe established for the payment of salaries, of mandatory state social insurance contributions, of mandatory health insurance as well as for making other regular payments established in legislation, shall be sanctioned by a fine of 50 to 100 conventional units for individuals, by a fine of 100 to 200 conventional units for responsible persons and by a fine of 200 to 300 conventional units for legal entity.*

*THE CONTRAVENTION CODE OF THE REPUBLIC OF MOLDOVA No. 218-XVI of 24 Oct 2008 (Official Monitor of the Republic of Moldova, 2009, No.3-6, art. 15)*

The Contravention Code attributes the identification of these offences to the competence of Labour Inspectorate:

#### **Article 409. Labour Inspectorate**

- (1) *The contraventions stipulated in Art.55-61 shall be established by the Labour Inspectorate.*
- (2) *The general state labour inspector and his/her deputies and the heads of regional labour inspectorates and their deputies shall be entitled to establish contraventions and to prepare documentation.*
- (3) *Documentation on the contraventions shall be submitted for examination to a competent court of law.*

*THE CONTRAVENTION CODE OF THE REPUBLIC OF MOLDOVA No. 218-XVI of 24 Oct 2008 (Official Monitor of the Republic of Moldova, 2009, No.3-6, art. 15)*

Thus, according to Moldovan legislation the offences concerning the mild forms of labour exploitation, related to labour protection and remuneration are attributed to the competence of the Labour Inspectorate and commission of these offences brings administrative liability in the form of penalties. The more severe forms of exploitation, linked with the use of the prohibited means of influence on the workers in order to engage and retain in the situation of exploitation, are prosecuted within the *criminal law*.

#### **Criminal law**

Forced labour is criminalised in criminal law as an element of trafficking in persons in Articles 165 and 206 of the CCRM and separately, as a specific crime – in Article 168 of the CCRM. Though Palermo Protocol does not bind to criminalise the related crimes, such an approach to criminalisation is logical, because forced labour may not always be an element of trafficking in persons and not always one can prove that it was part of trafficking in persons. United Nations Office on Drugs and Crime also recommends criminalization of offences related to trafficking in persons<sup>27</sup>. Therefore, forced labour can be criminalised as a separate offence. Another question is the fact that the articles of the Criminal Code related to trafficking in persons and forced labour should not be in conflict and there should be clear indications on qualifying crimes under the competition of the rules from criminal law.

#### **Article 168. Forced labour**

*Forcing a person to work against his/her will, keeping a person under servitude for paying off a debt, obtaining labour or services by means of deception, coercion, violence or the threat of violence shall be punished by imprisonment for up to 3 years.*

*Criminal Code of the Republic of Moldova No. 985-XV of 18 Apr 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129, art. 1012).*

Article 168 of the CCRM contains the following elements – means of influence in order to retain in a forced labour situation:

- a) forcing;
- b) keeping a person under servitude for paying off a debt;

<sup>27</sup> A set of manuals on combating trafficking in human beings. Global Programme against Trafficking in Human Beings. UN, 2006, page 37. Versions in Russian and English languages download from Internet: <http://www.unodc.org/documents/human-trafficking/HT-toolkit-ru.pdf>

- c) deception;
- d) violence or the threat of violence.

The article mentions “forcing” twice as “forcing a person to work” and “obtaining labour or services by means ... of coercion”. It’s unclear what is the difference between these notions. Meanwhile, “coercion” should be totally removed from this article since it is a sophisticated notion which absorbs the other elements of this article such as “keeping a person under servitude for paying off a debt”, “deception”, “violence or the threat of violence”. All these are forms of coercion. The legal construction of the crime of forced labour should not include sophisticated elements. It creates problems in the law enforcement practice.

Besides, the article lists far from all means of influence described in scientific publications on the subject and in the ILO clarifications. In our opinion the legal construction of Article 168 of the CCRM needs a radical improvement.

The crimes of forced labour, as well as trafficking in persons are related to the crimes against freedom, honour and human dignity. These crimes are criminalised in chapter III of the Criminal Code. However, for the reasons not entirely clear the Criminal Code provides a much more severe punishment for trafficking in persons for forced labour exploitation, than for the actual forced labour exploitation. But these crimes differ only in the fact that trafficking in persons implies the existence of certain preparatory factors – recruitment, transportation and delivery. Thus, Article 165 of the CCRM “Trafficking in persons” provides punishment by imprisonment for 5 to 20 years, the Article 206 of the CCRM “Trafficking in children” provides punishment by imprisonment for 8 to 20 years or a life imprisonment, and Article 168 of the CCRM “Forced labour” provides punishment by imprisonment for up to 3 years.

It is worth mentioning, that according to Article 16 CC of the RM, which established the classification of the crimes depending on the crime’s nature and level of severity, forced labour and trafficking in persons are related to different categories of crimes. Thus, trafficking in persons (including for forced labour exploitation) are considered as serious and especially serious crimes, trafficking in children is considered as serious, especially serious and extremely serious crimes, and forced labour - as a crime of medium gravity. Criminal law provides for the crimes of medium gravity a maximum penalty of imprisonment for up to 5 years.

Of course, it is possible in different ways to estimate the degree of social danger of the crimes of trafficking in persons and forced labour. The social danger implies not only harm for individual, but also for society and the state. Of course, crimes of trafficking in persons often have a transnational nature, thus causing great damage to the international image of Moldova. Still, the difference in penalties for trafficking in persons for forced labour exploitation and forced labour is too big.

Further, let us compare the notions of the elements of Articles 165 and 168 of the CCRM, which concern the means of influence. We will not analyse the Article 206 of the CCRM since based on Palermo Protocol the means of influence should not be taken into account when classifying the crimes of “trafficking in children”.

Thus, the Article 165 of the CCRM contains the following elements – means of influence for keeping in situation of trafficking in persons, including on the phase of forced labour:

- a) the threat of physical or mental violence not dangerous to the person’s life and health, including:
  - a. kidnapping
  - b. the seizure of documents, and servitude for the purpose of paying a debt, the amount of which was not set within a reasonable limit
  - c. threat of disclosure of confidential information of the family of the victim or of other persons, both individuals and legal entities;
- b) deception;
- c) the abuse of vulnerability or abuse of power, giving or receiving payments or benefits to get the consent of a person controlling another person;
- d) violence dangerous to the person’s life, physical or mental health;
- e) torture, inhumane or degrading treatment aimed at ensuring the person’s subordination;
- f) the use of rape, physical dependence, or a weapon.

As the analysis shows, the Article 165 of the CCRM contains much more elements that relate to the means of influence than the Article 168 of the CCRM. These elements are clearly classified and grouped into three subgroups on severity of damage to the victim.

In our view, the article’s text provide perfectly clear that the listed means of influence relate not only to such stages of trafficking in persons as

**recruitment, transportation, transfer, harbouring or receipt of a person**, but also to the final stage - **forced labour exploitation**. And, generally it is clear that when speaking of forced labour we understand labour when the employer uses the listed forbidden means of influence to keep the worker in this situation.

However, within the clarifications of the Supreme Court of Justice of the Republic of Moldova (art.4.2.),<sup>28</sup> among the others the interpretations of the notion “forced labour” concerning the elements of the crimes of trafficking in persons and children were given, which were already mentioned, including with the reference to ILO Convention:

*4.2. According to the requirements of the International Labour Organisation Convention concerning Forced or Compulsory Labour exploitation of forced labour or services is:*

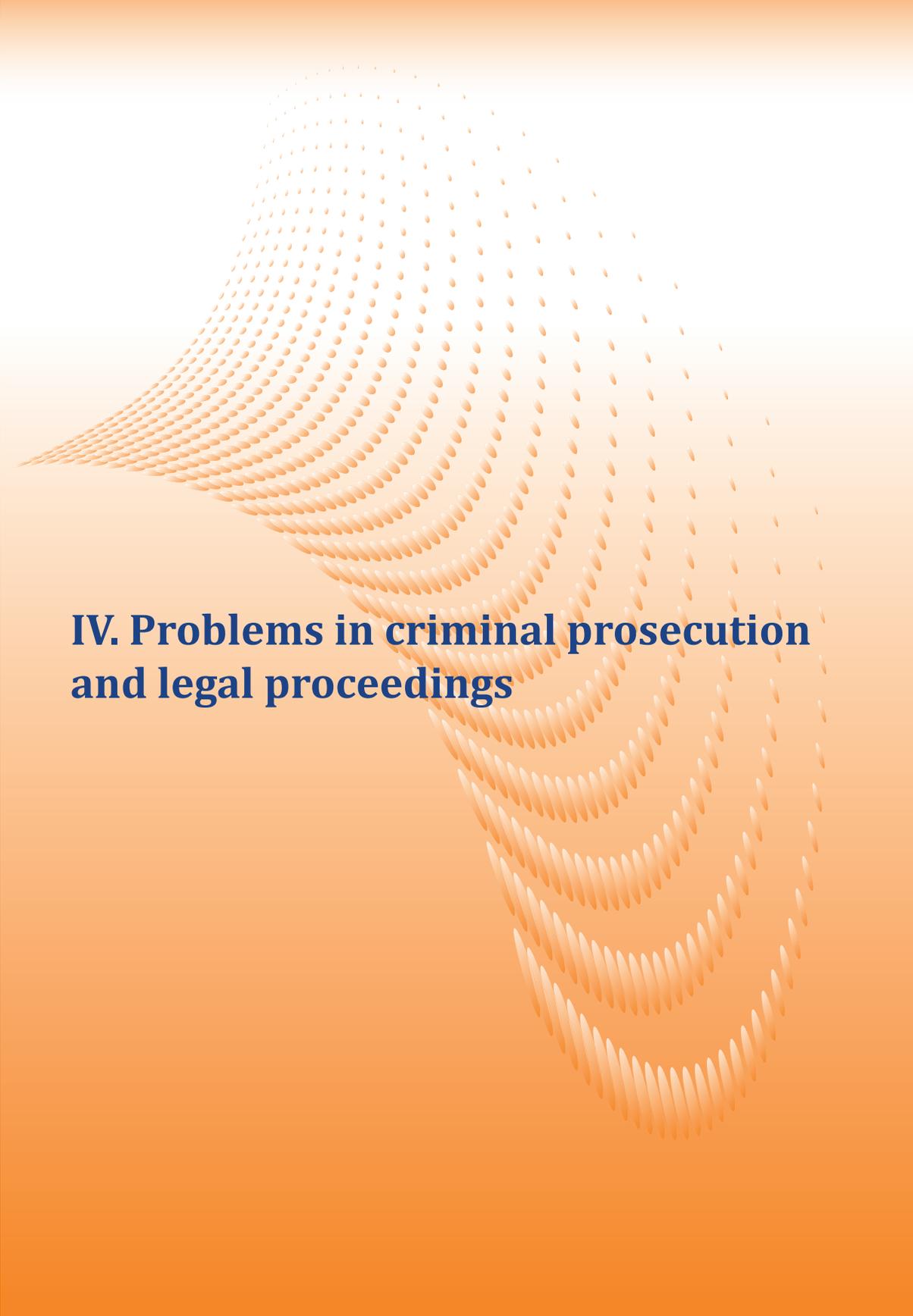
- a) forcing a person to work against his/her will for which the said person has not offered himself voluntarily;*
- b) creating a situation when the victim is forced to perform work that is not required to perform;*
- c) keeping a person under servitude for paying off a debt;*
- d) obtaining labour or services by means of deception, coercion, violence or the threat of violence.*

*DECISION OF THE PLENUM OF THE SUPREME COURT OF JUSTICE OF THE REPUBLIC OF MOLDOVA “On the practice of application of legislation on trafficking in persons and trafficking in children” No.37 of 22.11.2004 Bulletin of the Supreme Court of the Republic of Moldova, 2005, No. 8 page 24*

This definition lists separate means of influence applied in order to keep in a forced labour situation. From this definition it follows that the means of influence listed in para.2.3. of the same document relate only to the steps of recruitment, transportation, delivery-receipt of a person but not to the step of exploitation. In our view this fact only complicates the notion “forced labour” and “trafficking in persons for forced labour exploitation”, especially subparagraph d) of the paragraph 4.2., which does not provide understanding at all about who is guilty in the situation of forced labour – the employer or the employee.

<sup>28</sup> DECISION OF THE PLENUM OF THE SUPREME COURT OF JUSTICE OF THE REPUBLIC OF MOLDOVA “On the practice of application of legislation on trafficking in persons and trafficking in children” No.37 of 22.11.2004 Bulletin of the Supreme Court of the Republic of Moldova, 2005, No.8

Thus, as the analysis of the notion “forced labour” in criminal law shows, it has different interpretations under two articles of the Criminal Code – 165 and 168, and the Supreme Court of Justice provided a third interpretation on this notion.



## **IV. Problems in criminal prosecution and legal proceedings**



## IV. Problems in criminal prosecution and legal proceedings

The sophisticated legal construction of the crime of trafficking in persons in the criminal law allows interpreting the signs of trafficking in persons in various ways. This renders certain freedom to the law-enforcement authorities, but complicates collection of evidence related to the committed crime. Many cases initially classified as trafficking in persons are reclassified under other articles of the Criminal Code after being heard in the courts of law.

Problems related to application of the legislation on trafficking in persons and children by courts of law were noted by the Supreme Court of Justice of the Republic of Moldova<sup>29</sup> as early as in 2006 on the basis of the analysis of cases heard by courts in 2004-2005. It is worth mentioning that at that time the Supreme Court of Justice studied 34 cases involving Article 165 of the CCRM and 7 cases involving Articles 206 and 207 of the CCRM and it is unclear whether these cases included criminal cases related to forced labour exploitation. At that time the Supreme Court of Justice noted a poor judicial practice on these cases, insufficient knowledge of legislation on this subject by some judges, lack of clarifications on many issues relating to application of this legislation. It noted objective difficulties existing in establishing the proof of the crime. The Supreme Court of Justice also noted the reclassification of criminal cases on trafficking in persons, sometimes faulty, with subsequent release from punishment under the amnesty. It was noted that courts of law used to change the classification of crimes on the grounds that victims had changed their testimony, ignoring the fact that most often they were traumatised and perceived the trial as an ordeal. According to the studied cases courts of law did not apply interrogation of victims (even the underaged) in a separate room without defendants or their relatives.

As mentioned, the preliminary survey of specialists from law-enforcement authorities carried out in early 2010 as part of a research of the International Centre “La Strada” revealed issues in the criminal prosecution for trafficking in persons. During the survey specialists mentioned that they had more difficulties with prosecuting for trafficking in persons for forced

<sup>29</sup> Information on the results of the generalisation of judicial practice involving trafficking in persons, trafficking in children, illegal transportation of children from the country and procuring. Bulletin of the Supreme Court of Justice of the Republic of Moldova 2006, No. 5 page 34.

labour exploitation that for sexual exploitation. The following issues were identified:

- 1) Trafficking in persons addressed in the criminal law of the Republic of Moldova has sophisticated elements of crime and includes many features, which in real life may combine in various ways, which creates certain difficulties in classification of this crime.
- 2) The Criminal Code of the Republic of Moldova stipulates criminal penalty for trafficking in persons as for a set of interrelated actions that can be classified as individual crimes, which also creates certain difficulties for qualification of this crime.
- 3) The connection between criminal actions that form the consequent stages of a single crime of trafficking in persons from the recruitment until the exploitation of the victims is difficult to prove.
- 4) The criminal intent of the recruiter is hard to prove.
- 5) Criminal influence at various stages of trafficking in persons is hard to prove if victims were influenced by deceit, abuse of vulnerability or their combination rather than by physical influence (violence, restriction of freedom of movement, seizure of documents).
- 6) Manipulation, a means of influencing the consciousness based on deceit, which is often used by criminals, is poorly studied and is not criminalised.
- 7) If exploitation takes place abroad it is difficult to collect evidence of it.
- 8) Victims of trafficking in persons for exploitation of forced labour and services usually work outside the organised labour market without employment contracts, which complicates collection of evidentiary base.
- 9) Most often victims complain about the refusal to pay the promised wage, rather than about exploitation and harsh working or living conditions. If victims are paid money voluntarily, the incident becomes a mere infringement of the labour legislation, instead of a crime.

Journalistic investigations and mass media publications also mention issues in the criminal cases involving trafficking in persons for forced labour exploitation<sup>30</sup> that allow defendants to escape the liability:

- a) Courts of law hear criminal cases during a long period of time (up to a few years) and sessions are often deferred to another date.
- b) Victims often change their testimony during the trial.

<sup>30</sup> See "Labour Traffic Victims' Cases are Languished in the Courts of Law". Journalistic Investigation Center (JIC), 28 February 2011. Downloadable from the Internet: <http://www.azi.md/ru/investigation/16801>

- c) For various reasons victims do not appear before the court (tiredness from long trial, engagement in other activities, lack of money for travel or departure abroad for work without awaiting until the end of trial, etc.).

The analysis of this information leads to the conclusion that the aforementioned issues in the criminal prosecution and legal proceedings are not related to only well known flaws of staff qualification, organisation of their work and shortage of necessary resources. Obviously, these issues may be caused by:

- a) **issues in criminalisation, namely the drawbacks in the legal construction of crimes of trafficking in persons/children and forced labour which do not allow to carry out criminal prosecution effectively** (elements of the crime are too complex, deficiencies or lack of clarifications on qualifying essential elements, discrepancy between the criminal standards and the real nature of crimes, etc.);
- b) **drawbacks in the country chosen approach to counteract trafficking in persons for forced labour exploitation** (excessive focus on prosecution, while ignoring other legal or organisational and technical countermeasures);
- c) **the country's lack of experience in creating legal mechanisms to implement human dignity.**



## **V. Comparative analysis of the judicial practice**



## V. Comparative analysis of the judicial practice

### 5.1. Problems of the law enforcement practice

During this study we studied **24 criminal cases** that were related to exploitation of forced labour and begging and were heard in the courts of law during 2006-2009. It is worth mentioning that although begging does not fall within the notion of forced labour, in practice there are cases when victims of trafficking in persons for exploitation of begging were, at the same time, exploited in homemaking. Therefore, for the purposes of this research these cases were studied together.

Most mentioned cases were initiated as cases on trafficking in persons and children:

- 15 cases were initiated as cases on trafficking in persons (14 cases under Article 165 of the CCRM and 1 case under Article 122 of the CCRM in the 1961 version);
- 3 cases were initiated as cases on trafficking in children (Article 206 of the CCRM);
- 4 cases were initiated under two articles at the same time – Articles 165 and 206 of the CCRM, on trafficking in persons and trafficking in children at the same time;
- 2 cases were initiated under Article 361<sup>1</sup> of the CCRM on organisation of illegal migration and Article 166 of the CCRM on illegal deprivation of liberty, but these cases featured elements of trafficking in persons for forced labour exploitation.

The total number of defendants in these cases amounted to 37 persons, the general number of victims – to 161 persons.

#### *Results of the legal proceedings*

According to the analysis of the criminal case papers, out of **37 persons** accused in the aforementioned cases:

- **8 persons did not suffer any punishment** and criminal cases involving these persons were dismissed (2 persons were acquitted, 5 – concluded reconciliation with the aggrieved parties and one case was dismissed under amnesty);
- **13 persons were convicted and were given mild sentences** (12 persons – in the form of fines and 1 – in the form of compulsory unpaid work);

- **11 persons were put on probation** for various terms of imprisonment with suspended execution of sentence for a term established by the court of law if during this period they would not commit another crime;
- **5 persons were sentenced to various terms of imprisonment**, with 3 of them actually serving their imprisonment term 1 having died before the start of the legal proceedings and 1 having escaped (the sentence was issued in absentia).

Thus, only 5 out of 37 accused were sentenced to imprisonment. At that only 3 persons were convicted under Article 165 of the CCRM, which stipulates long terms of imprisonment:

1 person was sentenced to 9 years and 6 months of imprisonment under Article 165 par.2 (b);

1 person was sentenced to 7 years of imprisonment under Article 165 par.3 (a) and Article 206 par.3 (a), (b) and (c);

1 person was sentenced to 7 years and 2 months of imprisonment under Article 165 (a), (b) and (c) and Article 362<sup>1</sup> par.1.

2 persons were convicted under Article 168 of the CCRM and sentenced to 1 year of imprisonment and a fine amounting to c.u. 800 and, respectively, to 8 months of imprisonment.

The comparison of criminal case papers shows that for similar illegal actions in similar cases various courts of law acquit some defendants and convict others. As to the degree of issued sentences it should be noted that these have no direct relation to the amount of damage incurred by victims. Thus, the comparative analysis of criminal cases in respect to which the defendants suffered real punishment and serve their term of imprisonment show that two of them were sentenced to approximately the same terms: 7-year imprisonment in one case and 7 years and two months in another case. Yet, in the former case the defendant's actions harmed 38 persons during 2 years, including 5 underaged. It was found that in this case a criminal group (2 accomplices in the case had escaped) operated and crude methods of physical violence were applied. In the latter case one person suffered, no organised crime was involved, no physical violence was applied and exploitation in homemaking lasted for 1 month. It is difficult to tell what guided the court of law in this case.

In a case the defendant was sentenced to 5-year imprisonment under Article 206 par.1 (b), although the minimal term of imprisonment under

this article is 8 years, while the probation may not be applied. This is an obvious miscarriage of justice. However, the Court of Appeal upheld this ruling.

In other case the defendant was found guilty under Article 165, but was sentenced to pay a fine (c.u. 300), although this article stipulates the punishment in the form of a fine only for legal entities.

**The courts of law do not use the possibility to accuse under Articles 165 and 205 of the CC for trafficking in persons/children carried out in the territory of the Republic of Moldova. Courts of law hear criminal cases during long periods of time (for a few years). The material and moral damage for the benefit of victims is exacted extremely seldom** (the court ruled to exact the damage for the benefit of a victim only in one out of 24 criminal cases involving over 160 victims).

8 of 37 defendants were not punished and 13 were sentenced to fines. Meanwhile criminal investigation and legal proceedings involved lots of efforts and public funds because criminal procedures are very expensive. Even in the developed, *i.e.* richer if compared to Moldova, democratic countries the criminal prosecution is applied when there is a material evidence for accusation. If socially dangerous acts are detected at the beginning they try to suppress them by other legal or organisational and technical means, mainly in the framework of labour law. Although the number of studied cases does not allow making generalisations, still these statistics suggests about the inefficiency of the criminal procedure.

Speaking of the efficiency of the criminal prosecution one can not but mention two criminal cases. One of them was initiated in respect to a young man; the other involved a married couple in which the wife was the blood sister of the defendant in the first case. In the first case the young man (29 years old) arranged job placement in agricultural enterprises in various regions of Russia for workers from Moldova illegally during 2006-2007. There were 11 victims involved in this case, but their real number was much larger. The defendant used to take away their passports, restricting their freedom of movement. People worked many hours, almost without weekends. Many were beaten. Most people were paid only a miserable wage for a backbreaking work. The defendant was sentenced in absentia under Article 168 of the CCRM to one-year

imprisonment term and a fine amounting to c.u. 300. He managed to escape and thus he did not suffer the punishment. In the second criminal case the sister of the defendant in the first case along with her husband carried out the same activity of job placement in Russian Federation approximately in the same period. Moreover, they continued their activity in 2008, after her brother was convicted in absentia. Against this couple 2 criminal cases were initiated under Articles 165 and 206 of the CCRM in 2008. One of them involved 13 victims, including 2 underaged, and the second one – 3 victims. After some time the two criminal cases were merged. Interestingly, the case contains a record according to which at one stage of the criminal investigation this couple was acquitted of all accusations on the grounds that:

- 1) *the spouses would take away passports from people to obtain permits for residence for them, rather than to limit their freedom of movement;*
- 2) *all passports were kept in the accounting office of the agricultural enterprise in Russia, where they worked;*
- 3) *the purpose of the spouses as **the leaders of the workers' team** was to enable the migration service to check the legality of the Moldovan citizens' stay in Russia at any moment.*

These conclusions were made disregarding the fact that the case had no supporting documents from Russian Federation. However, in the end the court of the first instance found the spouses guilty, though sentenced them only to a fine.

### ***Reclassification of criminal cases***

During the trial over half of the heard cases were reclassified which allowed reducing the degree of the possible punishment considerably.

As mentioned, 22 out of 24 tried criminal cases were initiated under Articles 165 and 206 of the CCRM, but then most of them were reclassified on other articles of the Criminal Code. Most often cases were reclassified during the criminal procedure from Article 165 of the CCRM on Article 168 of the CCRM (9 cases out of 22). Some cases contain information that the case was reclassified a few times, even at the stage of police investigation (from Article 165 on Article 168, then again on Article 165 and again on Article 168). This, obviously, shows that specialists from

law-enforcement authorities have objective difficulties with classification of cases involving trafficking in persons and forced labour. From the papers of criminal cases it is difficult to understand why this happens because they seldom explain the reason for reclassification. Yet, even if they contain such explanations, it is difficult to understand their rationale. Thus, in one of the cases reclassified from Article 165 on Article 168 of the CCRM it was explained that the case had been reclassified due to the following reasons:

- people went voluntarily;
- they had neither money, nor passports;
- they lived in a hostel and had 3 meals daily.

No comments are applicable to these explanations.

When organising this research we expected the criminal case papers to enlighten as to the reasons for reclassification of criminal cases on trafficking in persons to other articles. Unfortunately, these expectations did not materialise. One thing is clear: the legal construction of trafficking in persons is sophisticated and difficult to apply. Besides, when reclassifying, specialists have to choose among competing norms of the Criminal Code and, apparently, they have no clear understanding how to do it.

It is also worth mentioning that Article 168 of the CCRM stipulates imprisonment for up to 3 years as the criminal penalty. However, in reality, in May 2007 and March 2009, a few defendants under Article 168 of the CCRM were sentenced to a fine only. It is difficult to say whether this was a judicial error or something worse.

Moreover, classification of forced labour as a crime of average gravity gives the court of law legal basis not to execute the sentence during a certain probation period set by the court, as stipulated in Article 90 of the CCRM "Conviction with a Conditional Suspension of the Execution of Punishment". Trafficking in persons and trafficking in children are classified as grave crimes, the gravest crimes and extremely grave crimes and persons who commit these crimes must not be given probation. Substantial difference between the punishments under Article 165, 206 and those under Article 168 with insignificant difference between the elements of the crime enabled almost one third of defendants to be put on probation.

**From criminal case papers**  
**Trafficking in persons for forced labour exploitation in agriculture**

**Alexei, 16, an inhabitant of a village in northern Moldova**

*In 2005 the inhabitant of a village in the North of Moldova placed his underaged adopted son Alexei (16 years old, completed 3 classes) as the helper of a shepherd in a neighbouring village. At the beginning Alexei worked voluntarily but the shepherd paid wage not to him but to his stepfather.*

*After in summer 2007 through Alexei's oversight a few sheep died, the shepherd told him now he had to work without remuneration, because he had to work off the damage. At the beginning Alexei was frightened and then lost his interest for this job at all. Several times he fled from the shepherd to his grandmother, saying he did not want to work for the shepherd, asking to protect him and to allow to stay at hers. But every time the stepfather would come take him by force back to the shepherd. In the end Alexei came to work under the shepherd's constant supervision during the day and at night the shepherd would tie him to his bed, using an iron chain, so that Alex may not escape. This came to the knowledge of a villager, and then to the policeman, who helped Alexei to escape this situation.*

*Initially the criminal case was commenced under Article 165 "Trafficking in Persons", and then it was reclassified on Article 206, par. 2 (a) "Trafficking in Children", then, again, on Article 168 "Forced Labour".*

*The court of the first instance found Alexei's stepfather and the shepherd guilty under Article 168 "Force Labour" and Article 166(1) "Illegal Deprivation of Liberty" and sentenced them to imprisonment with probation taking into consideration Article 90(1) of the CC, the shepherd to 2 years and 6 months term and the stepfather to 1 year with stay of execution if during the set period of time the defendants would not commit another crime.*

It also should be mentioned that classification of the forced labour to crimes of average gravity enables the court of law to dismiss the case due to reconciliation by parties under Article 109 of the CC. As mentioned, 5 out of 37 defendants reconciled with victims. One can only guess how defendants manage to persuade victims to reconciliation. It would be good if for that defendants return their debts in respect to wages for which complaints usually arise. Usually victims do not complain about working conditions, that their remuneration is lower than the market level in the country of destination, they complain about the fact that they are not paid the promised money they

had worked for and need very much. Yet, it may very well be that during the criminal case trial defendants continued applying the same means of influence on victims as during the exploitation, so that the latter agree to reconciliation.

**From criminal case papers**  
**Trafficking in persons for forced labour exploitation (handling operations)**

**Igor, 20, an inhabitant of a small town in northern Moldova**

*In 2007 Igor worked as a loader in a warehouse. One day in autumn he was absent from work after which the boss told him he was fired. Before discharging the boss carried out an inventory of the warehouse and found the absence of MDL 8000. The boss demanded Igor to issue him a bill of debt for this amount. Then he helped Igor to find a job as a loader at a father and his son who always traded in the marketplace of the same town. Igor worked without an individual employment contract and the father and his son paid money to his former boss every month for repayment of his debt – about MDL 1000 a month. Igor was paid only miserable amounts of MDL 200-300 (about USD 20-30) a month. Sometimes the employers would give him some foodstuff old clothes. After 8 months of working his debt owed to his former boss was paid. But his employers got so much to like the idea of a debt and its working off, that before it was paid they began to penalise Igor for various faults, either real or invented – one can not say for sure, such as coming drunk to work and theft of 5 kg of sugar. However, the amounts of "fines" were disproportional with the faults. Besides, the employers would often insult and threaten him and once one of them even beat him right in the market.*

*In September 2008 the father and son, applying threats, made Igor to sign a new bill of debt, this time on their names and amounting to MDL 20,000. Igor signed it for fear of new beating. The workers threatened him in every possible way, swore to find him whenever he would go, if he did not come to work.*

*Yet in October 2008, when 11 months passed from the moment he had began working for the father and his son, Igor lost his patience. He did not want to continue enduring humiliation from his employers and he stopped to go to work and went into hiding. The father and his son began to seek him everywhere. At the beginning they burst in his and his concubine's house and, having not found Igor, burst into his parents' house. They jumped over the fence, broke the latch and searched through the house. At that, one of them swung a knuckleduster at his hand; they shouted and threatened. Only after they found that Igor's father called the police by phone, they ran away.*

*At the beginning the criminal case was initiated under Article 165 par.2 (d) and (f) of the CCRM "Trafficking in Persons", under Article 155 "Threatening Murder or Sever Bodily Injury or Damage to Health" as well as under Article 179 par.1 "Violation of the Inviolability of the Domicile".*

*In February 2009 the court of the first instance found the father and his son guilty under Article 168 of the CC "Forced Labour" and Article 179 "Violation of the Inviolability of the Domicile", but dismissed the case due to reconciliation of the parties, taking into consideration Article 109 of the CC "Reconciliation".*

Analysis of a few criminal cases on trafficking in persons for begging exploitation showed that during the trial these cases may also be reclassified from Article 165 of the CCRM on Article 302 of the CCRM "Organising Begging". Thus, in a case that at the beginning was initiated under Article 165 of the CC RM, after its reclassification on Article 302 of the CCRM the defendant was sentenced to a very mild punishment in the form of a fine amounting to MDL 10,000 (around USD 800). This was despite the fact that he operated in Saint Petersburg, Russia during at least 3 years. According to case papers 5 beggars worked for him (4 disabled persons from Russia and a girl from Moldova) as well as other 3 girls from Moldova who would carry the disabled persons' wheelchairs to various tube stations in the city every day. According to witnesses' testimony, every day each disabled person would pass the defendant a sum amounting to USD 100-300. All 4 citizens of Moldova (aged 19-20) involved in this case as victims testified that the defendant had lured them in Russia by deceit, promising a job in a retirement home or at a construction site, and then forced them to work for him in begging. He beat all of them many times. Once he so beat one of the girls that she was taken to hospital. Afterwards he cynically withheld the money spent for her treatment from her salary little as it was.

As in the analysis of Articles 165, 206 and 168 of the CCRM, the analysis of Articles 165, 206 and 302 shows that for unclear reasons Articles 165 and 206 of the CCRM stipulate a much more severe sentence for trafficking in persons for forced begging exploitation than Article 302 of the CCRM for forcing persons to beg. As a result in practice this leads to unfair penalties. Interestingly, the papers of the aforementioned case involving begging in Saint Petersburg contain information that the defendant's accomplice, who recruited girls in Moldova for him, had been sentenced in 2004 under Article 165 par.1 to 5 years of imprisonment with probation. The defendant

in this case had also been convicted under Article 302 par.1 of the CCRM and was sentenced to a fine. Article 302 of the CCRM should also be revised and logically harmonised with the provisions of Articles 165 and 206.

### **Testimony of witnesses**

Papers of many criminal cases show that victims change their testimony during trial. Thus, in one case, after the witnesses had changed their testimony in the court of the first instance and the bench had found the defendant not guilty, the public prosecutor wrote in his appeal to the Court of Appeal that the victims may very well have changed their testimony under pressure from the defendant. During the inquiry into this case the victims said to the police that the defendant had threatened them and demanded to change their testimony. The defendant was accused not only of trafficking in persons but also of forcing the victims to give false testimony. However, during the trial the victims stated the defendant had not forced them to change their testimony and only mildly asked to take back their declarations.

In his appeal to the Court of Appeals concerning this case the public prosecutor has also generalised his experience with cases involving trafficking in persons as follows:

**"...it should be mentioned that in case of trafficking in persons, due to threats of reprisal against them or their relatives, victims and witnesses are extremely seldom willing to take the initiative and even more seldom to give the same credible and detailed testimony during the trial as during the criminal inquiry"**. These words are telling on the situation with our witnesses' protection in criminal cases.

### **From criminal case papers**

#### **Trafficking in persons for forced labour exploitation in agriculture**

#### **Roman, 40, and other inhabitants of a village in central Moldova**

*In March 2001, Roman, whose family lived in very strained circumstances, learned from his acquaintance that a man in their village would help to find a job in Belarus. Together they came to this person, whose name was Ion, and asked him to take them for work in Belarus. Ion promised to find a job for them in one of agricultural enterprises in Belarus. He also promised a good salary (USD 200 a month), return fare, free board and lodging in good conditions at the expense of the enterprise in Belarus.*

Further Ion, at his own expense, helped him to obtain a foreign passport. In early May 2005, Roman and other seven persons from Moldova (the team of workers) left for Belarus. At the beginning from their village they arrived in Chisinau, where at the train station they were awaited by Ion. He bought them train tickets and sent to Minsk. When they arrived in Minsk, at the train station they were awaited by the representative of the agricultural enterprise, who has helped them to get to their workplace.

After arrival they were accommodated in a cowshed of the farm. They had to sleep on mattresses on the bare floor surrounded by rats. They had to work without weekends from 05:00 a.m. until 10:00 p.m. they were fed once a day. Roman worked 2 months at the construction site and was paid BYR 1500 (USD 80) by the wage office. This money was not enough even to buy a ticket home. Then Roman found himself another job at a man in Belarus. He earned money for return journey and came back in Moldova. Some time later, he addressed the police with a corresponding claim.

In June 2006, a criminal case **involving Article 165 "Trafficking in Persons", par.2 (d)** was initiated and a formal request was sent in Belarus. In September 2006 another criminal case was initiated in respect to Ion on the basis of claims of other victims from the same village. They also complained that Ion helped them to find a job in Belarus in 2003 (weeding of beet). A few months they worked and lived in harsh conditions, were threatened with physical retaliation and were not paid the promised salary. Then these two cases were merged.

When Ion found about that he and other two men came to Roman and threatened him, swore to shot. According to the case, Ion also threatened 3 other victims. However, Roman behaved courageously and wrote another claim, this time to the General Prosecutor's Office. Ion was accused of another crime under **Article 314 "Enforcement to give false testimony"**.

When Ion understood he would have to appear before the court, he paid his debts to the victims.

The investigation found that during a few years (2003-2005) Ion had concluded employment contracts with various agricultural enterprises in Belarus as a **foreman** (leader of a workers team) for various agricultural and construction works. Then he would provide his co-nationals with intermediary services of job placement abroad. He would help them at his own expense to obtain passports and would buy tickets. Then he would appropriate a part of their salary, which was impossible without the help by employees from the enterprises in Belarus.

The court of the first instance was held in March 2007. **The court found that Ion's guilt was not proven. He had not recruited the victims – they themselves would come to him and ask to find them a job. The court also found that Ion had not carried people; they would travel on their own (!!!). The working and living conditions were provided and depended entirely on the enterprise. The victims were paid by the enterprise's wage office. In the court's opinion the fact of intimidation and coercion to give false testimony was not supported by arguments.**

At the same time the case papers show that the victims changed their testimony during the trial. During the inquiry into the case matter they declared to the police that Ion had threatened them and demanded to change their testimony, whereas during the trial each of them would say that Ion had only mildly asked to take back their declarations.

The Prosecutor's Office appealed the decision of the court of the first instance in the Court of Appeal. However, the Court of Appeal upheld this decision. The ruling of the Court of Appeal states that **the court may not just read the investigation papers. The victims have to confirm their testimony in the court.**

### Countries of destination

The analysis of criminal cases showed that the forced labour exploitation of Moldovan citizens took place in Russia, the Ukraine and Belarus. Besides, a range of initiated criminal cases involve trafficking in persons for forced labour exploitation that took place in the Republic of Moldova.

Russia and the Ukraine are mentioned in many studies as countries that receive the largest number of labour migrants from Moldova and that, unfortunately, rank the first among the countries of destination for victims of trafficking in persons for forced labour exploitation. This is due to the geographic proximity of these countries, absence of visa regime and linguistic obstacles for labour migrants from Moldova. At the same time, surprisingly, courts of law have no criminal cases on trafficking in persons for forced labour exploitation in such countries as Turkey, the UAE, Israel and Greece, where, according to the US State Department<sup>31</sup>, the citizens of the Republic of Moldova are also subjected to forced labour. According to data of International Centre "La Strada", these countries include Czech

<sup>31</sup> U.S. Department of State, "Trafficking in Persons" Report, June 2011, page 259. Can be download from the internet: [www.state.gov/g/tip/rls/tiprpt/2011](http://www.state.gov/g/tip/rls/tiprpt/2011).

Republic and Poland. Two reasons may account for this. Obviously, the victims are afraid that addressing the police may influence their further job placement in these countries. Besides, an investigation of a case in these countries may be extremely difficult due to linguistic obstacles.

***A case recorded in the phone call register of La Strada International Centre's Hotline on Trafficking in Persons for Forced Labour Exploitation***

***Constantin, 27, inhabitant of a small town in central Moldova***

*In October 2007, La Strada Centre's Hotline was called by a woman, a citizen of Moldova. She told what happened to her husband. In his 27 her husband Constantin had a 4-year experience of work in Czech Republic under an employment contract. When he found another job in Czech Republic the new employer took his passport. For the first month of work the employer paid the salary to her husband, and then he refused to do so. Moreover, the employer threatened Constantin with physical retaliation if the latter would appeal for help to someone and said that he would allow him to leave only if he finds someone else to work instead of him. Some time later Constantin finally managed to leave the job and come home. He did receive his salary anyway. Constantin did not want to address the police for fear it would prevent him to find a job in Czech Republic in the future. He thinks he simply had bad luck and plans to leave for Czech Republic again to find another job.*

**5.2. Participants in a criminal procedure**

***The victims of trafficking in persons***

The total number of victims in the aforementioned **24** criminal cases amounted to **161 persons**, and in 9 cases each one involved over 10 victims. It is worth mentioning that this number is understated, since in a range of cases the number of registered victims does not correspond to the real number of persons who have suffered from defendants' similar actions. Not all victims addressed to the police with complaints.

Thus, in a case of trafficking in persons for forced labour exploitation in agriculture in Russia 8 persons received the status of victims. At the same time, the protocols on interrogation of witnesses in Russian Federation mention that 20 persons from Moldova worked in their agricultural enterprise. In other case, involving trafficking in persons for forced labour exploitation in constructions in the Ukraine, 12 persons received

the status of victims. Yet, according to the witnesses, 60 persons from Moldova worked at the construction site in Kiev. The information that the real number of persons who suffered from trafficking in persons for forced labour exploitation is much higher than the number of persons who received the status of victims during the trial recurs in 5 out of 24 heard criminal cases.

Many victims do not want to address to law enforcement authorities. Often they wait long and hope that the problem with their work remuneration will be solved without addressing to the police. In one of the heard cases at the beginning the victims were recruited in spring 2007, worked for half a year in very harsh conditions in agriculture in Russia and after that were not paid their wages. Then in early 2007 the same recruiter recruited them for other agricultural enterprise in Russia, promising to pay not only a good salary at the new job but also debts for the previous job. People trusted him again, left for work and worked free of charge.

This is explained by the fact that the victims of trafficking in persons for forced labour are increasingly often recruited from among villagers and inhabitants of small towns (men, women, teenagers), with a low level of education, from very poor families, mainly unemployed. This is where their vulnerability lies; they are unprotected and may not figure on the government's assistance. Besides, most often their job placement abroad is arranged by people they know or even their relatives. Therefore, they hope these people will feel remorse and will return their debt.

The fact that victims do not hurry to turn to the police is supported by data of La Strada International Centre. Here is an example:

***From a letter addressed to La Strada Centre, 19.10.2007  
 Trafficking in persons for forced labour exploitation in constructions***

***Liudmila, a town in western Moldova***

*In June 2004, an acquaintance of mine proposed me to work in constructions – interior finishing in Podmoskovye. I do not know his last name and address, only the first name and mobile phone number. He hired a bus for the whole team of workers from Moldova. After arrival at the place of job, the team and I worked for 3 weeks at one construction site at the beginning, after which we were transferred to another construction site, where we worked 5 weeks*

*more, until we finished it. My acquaintance promised to pay us the salary after this site is commissioned. His debt to me only amounted to USD 900. We continued for some time, but could not wait any more, since the term of our registration was coming to its end and we had to come back in Moldova. My acquaintance promised to send money by transfer in Moldova, **but it is over 3 years now** and none of us received the money.*

### **Traffickers in persons for exploitation of forced labour and begging**

As mentioned hereinabove, the 24 tried criminal cases were initiated in respect to 37 individuals, out of whom 26 were men and 11 women. Most of them completed only the general secondary education.

14 defendants were involved in the case as accomplices who worked in pairs – a man and a woman, with 4 pairs married and another one living in common-law marriage. Most of the remaining defendants also were married and had children. 5 defendants had large families – 3-5 children. The absolute majority of the defendants had not had previous convictions.

15 defendants were Roma; most of them had no secondary education, some had primary education (4 classes) or lower.

The analysis of the criminal cases showed that none of them was related to organised crime. In none of the cases the defendants were accused, under Article 165 par.3 (a) of the Criminal Code of the Republic of Moldova (CCRM) or Article 206 par.3 (d), of actions committed by an organised group or criminal organisation. The experience of International Centre “La Strada” also shows that the organised crime is related rather to trafficking in persons for sexual exploitation.

Why, then, people who have never had any relation to the criminal underworld turn to infringing the law and become traffickers in persons for forced labour exploitation? Under what circumstances does it happen? The difficulty consists in the fact that it may happen in various ways. However, one can outline two basic schemes of turning to this crime. Much depends on the area of exploitation and its connection to the labour market, i.e. whether the exploitation occurred:

- a) in the official (open) labour market, but with gross infringement of the law governing its operation (most often this is the case of exploitation in the construction and agriculture);

- b) outside the official labour market (most often this is the case of homemaking and begging).

In the former case at the beginning the victims would work on their own in the countries of destination as successful labour migrants for a few years. Then, on their initiative or at the request of their organisation’s management, they started to invite other people from Moldova for work. These included their acquaintances or people from neighbouring villages. Sometimes their acquaintances from Moldova themselves would turn to them for help in job placement, knowing that these people had already worked for a few years abroad. Thus, at a certain moment of their work abroad the successful migrants learned about the foreign companies’ demand for workers and about workers from Moldova who wanted to leave abroad for work. Presumably at that moment it occurred to their mind that one can earn easy money arranging job placement abroad for their co-nationals and taking a part of their salary for that.

According to their explanations, recorded in criminal case papers, most defendants did not understand their actions fell within the purview of the corresponding article of the Criminal Code. In many cases they pleaded not guilty. Thus, a defendant, a woman of 44, who had arranged job placement for people from a neighbouring village for seasonal agriculture work in Russia, died soon after she had been convicted by the court of the first instance. The court found her guilty for trafficking in persons and sentenced her to 9 years and 6 months of imprisonment. In other case the defendant also pleaded not guilty and complained that he had lost his mother, who died after she had found that the villagers filed a suit against her son, who would help them to find a job.

It is interesting to mention that according to the results of the analysis of criminal cases, the offenders have never been charged in their illegal business practices of job placing abroad, although they arranged it in violation of established under legislation rules.

Some defendants or members of their families even after recruiting and transporting the workers from Moldova in other country, would help them to find a job in a company and then would continue to work in the same company together with the victims. This means **they were not employers** and always would take the role of **intermediary in the settlements with**

**the employer and would account for the quality of works before the employer.** Most often they were called “team leaders”, by analogy with a widespread form of work organisation applied in the USSR. At a certain moment of work these “team leaders” would pass beyond a certain limit and would start committing arbitrariness, grossly violating the rights of their co-nationals (violence, appropriation of a part of wages, etc.). Below in this text we will examine in more detail the methods of exploitation and exertion of pressure over workers, which were applied to involve and retain them in the situation of labour exploitation, but first we would like to emphasise that in the examined cases **not only the employer would benefit from exploitation of victims’ labour but also the intermediary.** This makes somewhat difficult the analysis of these cases, since they hardly fit to the existing notion of exploitation, in which the employer is held liable for infringement of work organisation and remuneration conditions and application of illegal coercion methods.

Cases of exploitation outside the official labour market are less common and easier to discern the features of the labour exploitation, since in these cases victims would work directly for employers. In most examined cases defendants were Roma and used the victims’ labour in their and their relatives or acquaintances’ homemaking and in works related to organisation of forced begging.

### 5.3. Signs of trafficking in persons for forced labour exploitation

#### *Recruitment*

As criminal case papers show, the level of unemployment and poverty in the country is so high that recruiters had no difficulty with finding, in 2-3 days, 20-30 people willing to go abroad for work. Besides, many victims mentioned they came to recruiters on their own, knowing that the latter helped people in finding a job abroad and asked them for help in job placement. In such cases the court of law did not find such actions were recruitment. In some cases the recruiter had only to recruit a few people, who, then, would recruit the necessary number of other workers themselves. In a criminal case it was found that the defendant had recruited only 2 persons for seasonal work in an agricultural enterprise in Belgorod Oblast, Russia. Then these 2 persons recruited for him 30 persons more from their village. Apparently, during recruitment it is not so important

who and how entered in contact, but rather what was promised at the recruitment and what lured the person in exploitation situation.

As previously, an important sign of recruitment consists in recruiter’s actions for arrangement of workers departure from the country, which actually confirm a high degree of recruited workers’ vulnerability. Most recruited persons had neither passports, nor money to get to their workplace. The recruiters, being better-off as compared to their unemployed co-nationals who wanted to go abroad for work, would take upon themselves the organisation expenses for preparation of departure from the country and transportation. They would help at their own expense to obtain passports, would buy tickets for travel or hire a transport means. Of course, doing that, they expected the workers to return them money from their future wages or to work off the debt in their household. Often they would agree with the recruited that those would pay back not only the cost of organisation expenses for departure but also up to 10% of their wages.

Speaking of means of influence during the recruitment stage, it is worth mentioning that in the examined cases none of the defendants resorted to coercion for recruitment or transportation. Most often they resorted to deception. If the proposed job was part of the official labour market (construction, agriculture, logging, etc.), the recruiters would never deceive in respect to the nature of work, since they needed people with certain professional skills. However, they would embellish working and living conditions and exaggerate the wages in order to lure by the job outlook. During the recruitment nobody mentioned that the working hours would amount to 16-18 hours a day, without weekends, that workers would live in rooms unfit for living and would save on meals as well as other unattractive details of the future work and living.

#### *From criminal case papers*

#### *Trafficking in persons for forced labour exploitation in agriculture*

#### *A family (mother and two underaged daughters), a village in central Moldova*

*Olga (12 years old) lived with her sister and mother in a village in Moldova. In May 2004 one of their acquaintances proposed their mother to work in agriculture in Kursk Oblast, Russia. She promised a nice salary, good board and lodging conditions at the expense of the agricultural enterprise in Russia.*

*The mother complained that **she had nobody to leave her underaged daughters with**. Her acquaintance answered **she saw no problem with that, since summer holidays were close and she would be able to take her children with her**. **The mother would work, while children would have a nice time in the country and by the start of the school year would come back in Moldova**. The family needed money desperately and Olga's mother gladly accepted this proposal to work in Russia.*

*In late May, when summer holidays came, the family came to Russia at the workplace. There were other 25 people from Moldova.*

*All workers were managed by a team leader, whose name was Andrei. He immediately took their documents and **declared that the children would have to work as well since he was not going to support them for nothing**. **The children said they had holidays and they wanted to have a rest**. Then **Andrei threatened to beat them if they would refuse to work**.*

*As a result the children had to work in equal terms with adults many hours a day, until late, without weekends. All people were constantly supervised and were not paid money, only given meals. All lived in a campus, which was neither fitted with water supply nor had toilets. On a few occasions the militia came for inspection, but people were afraid of telling the truth about their conditions. When the summer holidays ended, the children were not allowed to come back in Moldova as planned.*

*In summer 2005, after one of the militia's inspections, their mother was deported from Russia. Olga and her sister remained alone in Russia and decided to flee. In May 2005, when a convenient occasion occurred, she and her sister fled the workplace without documents. Someone from among natives helped them to come to the social service. They were referred to one of rehabilitation centres in the territory of Russia. Then the embassy of the Republic of Moldova helped them to return home in Moldova.*

*Only in 2007 they addressed complaints to the police.*

*A criminal case was initiated under **Article 206 par.1 of the CCRM "Trafficking in Children"**. Andrei was sentenced to 8 months imprisonment term.*

nothing to do but accept the job he/she had not agreed initially. Thus, for instance, girls from a village in Moldova, recruited to carry disabled people in wheelchairs who begged in tube stations in Saint Petersburg, were promised by recruiters to work in a retirement home in this city or at a construction site and have a USD 250-300 monthly salary.

**From criminal case papers**  
**Trafficking in persons for exploitation of begging**

**Alexandra, 19, a citizen of Moldova**

*In November 2003, an acquaintance whose name was Grigore proposed Alexandra to work at a construction site in Petersburg. He promised a USD 300 salary. She accepted. Grigore bought her a ticket and accompanied in Petersburg. After arrival he took her documents and explained she had to panhandle in the tube. When Alexandra refused he beat her. He forced her to beg with disabled people in the tube. Only in August 2005 Alexandra was released by the militia and she came back home in Moldova.*

**Svetlana and Maria, 19 and 20, citizens of Moldova**

*In December 2004 an acquaintance whose name was Elena proposed Svetlana and another girl to work in a retirement home in Petersburg. She promised a monthly salary of USD 250. Svetlana went first. At her arrival in Petersburg she was met by Grigore, who took her at his rented apartment, where he lived with his wife, 4 children and a few disabled people. He explained the girl her duty was to carry the disabled people in wheelchairs around the city to certain places, where they would panhandle in the tube. For that he promised to pay her USD 50 a month for one wheelchair with disabled person. The girl refused but she had no money for return journey or to hire another apartment. **She lived in Grigore's apartment for one month, trying to find another job but she did not succeed. One month later she accepted to work for Grigore**. She worked 7 months for him (from January to July 2005) without weekends from 07:00 a.m. until 11:00 p.m. Her duties included carrying 2 disabled persons in wheelchairs around the city (to various tube stations). Besides, she had to supervise the situation and call Grigore if problems with militia occurred. Grigore would immediately come and "arrange the issue". For any error Grigore would beat the girl. He had to pay her for the entire period of work USD 700. However, he paid only USD 450 (he sent it to her mother by post). The remaining money, as he explained to her, was spent for her treatment after he beat her fiercely once.*

If, though, recruiters wanted to lure a person for homework or begging, they would never tell directly where he /she would work. Instead they would deceit and promised to find a well-paid job. When the person remained without money and acquaintances, far from home, he/she had

*Maria worked for Grigore from December 2004 until March 2005 on the same conditions. He would often beat her and did not pay at all. He only bought a ticket home.*

*The case papers mention that under the same conditions another girl from Moldova worked for Grigore, whose name was Alina, from September 2004 until August 2005. She was beaten not only by Grigore but by his wife as well. She was recruited by a girl from Moldova, whose name was Olesea.*

*The case papers mention that every day each disabled person would gather by begging USD 100-300 and would give this money to Grigore.*

**The criminal case was initiated under Article 165 par. 2 (a), (b), (c) and (d) of the CCRM “Trafficking in Persons”.**

*In February 2008 the court of the first instance found Grigore guilty under Article 302 par. 1 of the CC “Organisation of Begging” and sentenced him to pay a fine amounting to MDL 10 thousand (around USD 800). The aggrieved girls had changed their testimony during the trial and had declared they had no material claims against Grigore.*

In other case, a girl who worked as a salesperson in a marketplace of a town in the northern Moldova received a proposal to go to Omsk, Russia, being promised to have a much better-paid job as a salesperson in the marketplace of that city. In reality she had to do all homemaking for 2 years in the house of the woman who recruited her.

### **Transportation**

The transportation is an important element of trafficking in persons. During an earlier study of International Centre “La Strada”, the head of the Intelligence Department of the Centre for Combating Trafficking in Persons (Ministry of Home Affairs), expressed the opinion that it is such element as the transportation which enables us to differentiate trafficking in persons for forced labour exploitation from forced labour<sup>32</sup>. Therefore it is important to know how exactly the transportation is carried out.

Transportation of victims of trafficking in persons to the place of exploitation from villages they lived in was first carried out to Chisinau, the capital of

<sup>32</sup> Tatiana Fomina “Identification of Victims of Trafficking in Human Beings”. Thematic publication “La Strada Express” No. 2, March 2006, page 26.

the Republic of Moldova, and then abroad. To transport people into the capital, the following transport means were used: recruiters’ personal vehicles, hired minibuses or regular buses. Then the recruiters would buy train or airplane tickets for victims.

The analysis of criminal case papers and the data of the International Centre “La Strada” show that very often recruiters arrange transportation of people from Moldova to the country of destination, buying public transport tickets for them. Very seldom they themselves accompany the recruited people during transportation to the place of exploitation. Usually other people connected to the recruiter meet the transported people. Similarly, the recruiters seldom use their personal vehicle or hire a minibus for transportation abroad.

Meanwhile, according to papers of some studied criminal cases, **the court of law may not find the transportation proven if the recruiter did not accompany people personally during transportation** (see the description of the trafficking case in Belarus on page 87), even if all victims testified that the transportation had been entirely arranged by the recruiter, who had bought tickets for them at his /her own expense.

Moreover, violence is not applied during transportation. Usually people travel voluntarily and, as mentioned, the transportation takes on features of a criminal act only if there is the purpose of exploitation. This creates difficulties during the trial. In one criminal case, which was reclassified from Article 165 to Article 168, it was mentioned that one of the reasons for reclassification consisted in the fact that “people travelled voluntarily”.

In most cases the borders were crossed legally, but in 4 out of 24 criminal cases it was found that victims of trafficking in persons crossed the border between the Republic of Moldova and the Ukraine, which is not demarcated, illegally. Thus in one case the defendant took the victim in his own car by a country road, bypassing the established entry points. In other three cases victims were taken across a field.

### **Exploitation**

As mentioned, exploitation of forced labour took place:

- a) in the official (open) labour market, but with gross infringement of

- the law governing its operation (constructions, agriculture, logging and handling operations);
- b) outside the official labour market (homemaking).

A few cases featured combined exploitation in agriculture and constructions as well as in agriculture and homemaking. The period of victims' exploitation ranged between 1 month and a few years.

Very often the exploiters themselves recruited people, but there were cases when other people recruited for them.

Particularly clear signs of exploitation may be seen in cases of exploitation outside the open labour market – in homemaking. The exploiter benefits directly from the worker's labour and represents his /her employer. Usually the exploited is not paid money for his work, only food and clothes, most often well-worn. Masters often beat their servants and limit their freedom of movement.

**From criminal case papers**  
**Trafficking in persons for forced labour exploitation in homemaking**

**Svetlana, 17, an inhabitant of a village in central Moldova**

*In December 2003 Olga (of Roma nationality) proposed to a girl she knew, who was from a poor family and whose name was Svetlana a well-paid job as a salesperson in the marketplace of Odessa city, the Ukraine, where her acquaintance Zinaida worked. Svetlana agreed, but explained she was underage and had neither an ID card, nor a passport, only a certificate of birth. Olga said she would help her to go to the Ukraine and asked her to take her certificate of birth and come to her.*

*When the girl came with the document, Olga invited her to live at hers until her acquaintance Zinaida would come for her from Odessa. In a few days Zinaida came. She asked Svetlana whether she wanted to go to work to the Ukraine and the latter confirmed her willingness to work. Zinaida arranged border crossing bypassing the established entry points and transported the girl to Odessa. After the arrival in her house in Odessa she told Svetlana that she would work at hers, since her physical appearance and ignorance of language did not allow her to work as a salesperson in the marketplace. Svetlana had to accept, since she had neither documents, nor money nor did she know Russian or Ukrainian. Zinaida took away her certificate of birth.*

*Svetlana cooked, did the rooms, washed clothes, bought necessary products and drugs (Zinaida had diabetes mellitus). Every day she accompanied her to work in the marketplace of Odessa city. Besides, she was obliged to bath her mistress and massage her. She was not paid money for her work but was obliged to obey her mistress in anything. If she disobeyed, Zinaida beat her and sometimes made her work even at night. Svetlana got exhausted and wanted to escape this situation. She wrote a letter to her relatives in Moldova and asked for help. The girl's sister turned to the police and soon Svetlana was helped to leave and come back in Moldova. She was exploited for 1 year and 2 months.*

*Then a criminal case was initiated involving the citizen of Moldova Olga. In the court of law Olga explained she had had no bad intentions. She only had wanted to help Svetlana since she knew about her strained circumstances. She found from her husband that their common acquaintance Zinaida from Odessa needed a housemaid and thought this job would perfectly fit the girl.*

*The court of the first instance found Olga guilty of committing **the crime provided for under Article 206 par.1 (b) of the CCRM "Trafficking in Persons"** and sentenced her to a 5 years' **probation** with suspended execution of sentence if during these 5 years she would not commit another crime. The court has also ruled to exact MDL 4000 from Olga to the benefit of Svetlana as compensation for moral damage. The Court of Appeal upheld this decision.*

Speaking about the open labour market, the signs of exploitation are often very obscure. As mentioned, the main issue consists in the fact that in this case most exploiters were not employers but intermediaries. Such a form of exploitation is insufficiently studied as yet and is not described in the relevant scientific literature. It is intermediaries who took upon themselves organisation of works and it is through them that workers from Moldova contacted the management of foreign enterprises. They were almost always called "team leaders".

Interestingly enough, if prohibited means of influence on workers were not used, such cases, classified as trafficking in persons for forced labour exploitation, were very much similar to illegal entrepreneurship (without a license), namely – the intermediation in job placement abroad, which is punished under Article 241 of the CCRM.

Similarly interesting is the fact that some agricultural enterprises in Russia and the Ukraine signed an employment agreement with team leaders for

the whole team of workers. In such cases the team leader was officially accountable for the quality of works and was paid the wages of the whole team by the wage office of the enterprise. Yet, in a range of cases no agreement was signed and the collective wages were paid to the team leader without keeping a record. In all cases the team leader himself /herself deduced the amount spent for organisation of workers transportation to the workplace in the country of destination as well as some percentage or a fixed amount for his /her work (most often 10%) from the collective wages and only after that divided the remaining sum among the workers at his/her own discretion, but taking into account the work performed by each worker.

These employment relations are rooted in the Soviet past. In the '80s all around the USSR the team work form was implemented, in which the wages were calculated for the entire team of workers and then were divided among the workers at their discretion. This order seems to have been inherited, in a somewhat altered form, by some enterprises in the post-Soviet area. While in the Soviet times money was divided at a general meeting of the team, today the team leader decides on this by himself.

Very often the workers' discontent arises because they think the collective wages are divided unfairly and suspect the team leader of appropriating the largest share of money. They also have difficulty with orientation because at the stage of recruitment for work in Russia or the Ukraine they are told the amount of the future salary in MDL or USD, while the payment is done in RUB or UAH. Besides, often during the recruitment the fact of deductions for transportation organisation is concealed.

Thus, a criminal case (deforestation to clean the route for a gas pipeline in Russia) initiated under Article 165 of the CCRM as trafficking in persons, was afterwards reclassified to fall under Article 190 "Fraud" by the court of the first instance and the defendant was sentenced to 4 years of imprisonment exactly because the team leader had withheld from the collective wage more than he should have. Thus, he appropriated their property (money) illegally. However, the Court of Appeal exculpated the defendant from all accusations and acquitted him. This was because the defendant had promised high wages in USD to the plaintiffs (workers). However, he himself was paid their wages in RUB. His expenses for workers were incurred in MDL and RUB. The court of the second instance made all necessary calculations, converting all expenses into one currency and

thus found that the defendant had completely settled accounts with the plaintiffs. At the same time the analysis of the papers of this criminal case showed that the legal proceedings did not address the fact that:

- a) the defendant had no right to arrange their job placement abroad without a corresponding license;
- b) the workers worked without an employment contract;
- c) the workers lived in an unheated site container in harsh conditions of the Russian North during winter time, which posed a high risk to their health;
- d) the amount paid by the contracting enterprise for execution of works steadily decreased: first, at the transmission of the order from the contracting enterprise to the subcontracting enterprise, then, at the settlement with the defendant and, finally, the workers from Moldova received it multiply reduced.

Thus, this case features signs of exploitation and it is not only the team leader who should be held accountable for them but also the management of the enterprise. While investigating the similar cases by police from developed countries, the analysis of illegal profit resulted from labor exploitation is conducted, including detection of gained profits resulted from remuneration below the market level.

Workers usually address complaints in respect to working and living conditions and work remuneration to the team leader, because it is the team leader who contacts the management. However, it is the employer, *i.e.* the enterprise's management, not the team leader, who is accountable for organisation of work safety, compliance with the established working hours, provision of the weekly rest and leaves and remuneration. In general it is worth mentioning that one should deem these signs only as indirect signs of exploitation if the question is about forced labour or trafficking in persons for forced labour exploitation. The basic signs should be considered to consist of the means of influence on the worker applied to engage and retain him/her in the situation of exploitation. We address the indirect signs in so much detail because foreign experts in this area recommend using them and they are intensely used in trials in the developed countries. Particularly worth emphasising is the fact that such sign of exploitation as the work remuneration below the market level can not be applied at all in our country, because our legislation guarantees only the right to the minimal salary.

**Therefore, the signs of so called light forms of labour exploitation or indirect signs of forced labour, which consist in employers' infringement of the labour legislation (noncompliance with the work safety rules, exceeding the established working hours, retention of work remuneration), can not be used as a direct proof of intermediaries' guilt. For these infringements the employer or the management of the foreign enterprise is held liable under the labour and administrative law. Yet these signs are very important as the proof of the exploitation situation, because they help understanding how humiliating the situation was for the individual's dignity of worker. The intermediaries must be held liable for means of influence they used to engage and to retain victims in the exploitation situation.**

It is worth mentioning that usually, when investigating a case of trafficking in persons, the Moldovan police address request to the law-enforcement authorities of the country of destination. If the reply is favourable, this request results in the criminal case being supplemented with a document from the management of the enterprise where the workers from Moldova were exploited. Of course, the enterprise confirms that it has completely fulfilled its obligations in respect to ensuring the workers with appropriate working and living conditions.

For instance, a certificate presented by an agricultural enterprise from Belarus, where workers from Moldova were subject to exploitation, shows that this enterprise ensured the workers with all necessary items: overalls, three meals daily with a 30% refund of its cost, free of charge accommodation, bed clothing, weekly bath, free of charge travel from the place of residence to the workplace and back. Another agricultural enterprise from Belarus involved in the same criminal case presented a certificate according to which the enterprise had created excellent working conditions for work migrants and the team of workers from Moldova (9 persons) worked badly during beet weeding and, consequently, the enterprise incurred losses. At the same time, the victims testified they had been accommodated in a cowshed of the farm and had to sleep on mattresses on the bare floor, surrounded by rats. They had to work without weekends from 05:00 a.m. until 10:00 p.m. They were given meals once a day. One of the workers worked in the agricultural enterprise for 2 months and his was paid USD 80. The court of law acquitted the team leader (see the description of the criminal case on page 87).

Thus, if the victim is subject to labour exploitation in an enterprise, *i.e.* in conditions of the official labour market, the main sign of exploitation consists in the means of influence applied to retain him/her in the exploitation situation.

### ***Means of influence during forced labour exploitation***

The means of influence represent the most important element and sign for classification of a crime as trafficking in persons for forced labour exploitation. The analysis showed that physical violence and threats with violence as a method of retention in the situation of forced labour exploitation were applied quite often. The papers of 10 out of 24 criminal cases recorded that victims complained they had been beaten for disobedience. Other 3 cases contain information that victims were threatened with physical retaliation. Most often they were beaten for refusal to go to work and for attempts to flee. But in none of the examined cases victims turned to the law-enforcement authorities of the country of destination. Most often exploiters tell them they have acquaintances in the local police/militia and it is useless to turn to these bodies. Thus, the fact of physical violence applied in forced labour becomes known to the police of Moldova long after it took place. Usually they are impossible to prove. The accusation in such cases is founded entirely on the witnesses' testimony, which often changes. Here is an extract from the testimony given to the police by a girl, who afterwards retracted it and declared she had not claims against the defendants:

***From criminal case papers  
Trafficking in persons for forced labour exploitation in agriculture  
and homemaking***

***Victoria, 18, an inhabitant of a village in the southern Moldova***

*"At the beginning I worked in Russia on beet weeding (the team of workers from Moldova was formed of 30 persons). Everybody lived together in one room (both men and women). There was no water, no facilities taking a bath or shower. Everybody became infested with lice. I had to shave my head. We worked from 05:00 a.m. until 10:00 p.m. without weekends. If a worker refused to go to work, he/she was beaten. We were driven on and abused all the time. They told us even not to think of home. We were given horrible food – boiled pearl barley, pottage, fowl meat. In 2 months we were*

*transferred to the threshing floor. We were not paid at all. Everybody's passports were taken away.*

*"Soon our team leader's wife came. She proposed me to work in her house in Moldova. I accepted, since I hoped that in Moldova I would be able to flee, even without my passport. When we came in Moldova, the mistress forbade me strictly to leave the yard and talk with neighbours. She also told me not to think of escape because they were Gypsies and would find me everywhere and, altogether, it was better not to get involved with them. She also promised that her husband would come soon and pay me for work in Russia. Yet, when our team leader arrived he said he had no money and could not pay me. Thus, I worked at theirs from August until December, until my uncle found me. Only then they gave back my passport and left me go home with my uncle."*

Very often victims were taken passports in order to restrict their freedom of movement. Nonetheless, this is also difficult to prove in practice. Defendants often said they collected passports for registration, but almost nobody registered workers because in most cases they worked illegally.

To retain workers in the situation of forced labour exploiters did not always have to take any actions. Inaction in the form of refusal to pay the promised salary also served as an excellent method to restrict the freedom of movement in many cases. It should be kept in mind that often people who get entrapped in the situation of forced labour belong to poor layers of population. They have nobody to turn to borrow money for return journey. Moreover, the illegal nature of their job or illegal crossing of border also serve as a good method of retaining people in the exploitation situation. This increases their vulnerability. Here is a case, when the victim evidently was not forced to work, but he could not leave the workplace because he had no money for a ticket and lived illegally on the territory of the Ukraine, 450 km away from his permanent domicile:

***From criminal case papers  
Trafficking in persons for forced labour exploitation in  
homemaking***

***Tudor, 50, an inhabitant of a village in the southern Moldova***

*In April 2005 a neighbour proposed Tudor to go to the Ukraine to weed beet. He promised UAH 300 a month (around USD 40). They had known*

*each other well for a long time and Tudor agreed immediately because he was unemployed and needed money acutely. Since Tudor had no foreign passport, they crossed the border with the Ukraine illegally in the vicinity of Dubasari town, bypassing the established entry points. They travelled in the neighbour's car with his wife and daughter. In the Ukraine the neighbour's daughter had her own house. After the arrival they accommodated Tudor in a shed and proposed at the beginning to work at construction of some utility structures of the same house. He accepted and in 2 months built a basement and a few utility structures. Then he worked at harvesting of beet in a neighbouring village but was not paid for his work.*

*Nobody limited his freedom of movement but Tudor himself did not go anywhere because he had no passport and he was afraid he would be arrested by the police. When he understood nobody was going to pay him the salary, Tudor walked to Moldova. He had to walk 450 km. He returned home ragged and hungry. He turned to the police.*

*At the beginning the criminal case was initiated **under Article 165 par.1 of the CCRM "Trafficking in Persons" (b) and (c)**, and then it was reclassified on Article 168 "Forced Labour".*

*In August 2007 the court of the first instance found Tudor's neighbour guilty under Article 168 but the case was closed in connection with reconciliation of the parties under Article 109 of the CCRM "Reconciliation". The Prosecutor's Office appealed this ruling in the Court of Appeal, demanding reclassification of the case under Article 165 of the CCRM. However, in its ruling the Court of Appeal rejected the Prosecutor's Office appeal. Then the General Prosecutor's Office appealed to the Supreme Court of Justice but this appeal was rejected due to procedural reasons.*

Deceit in respect to terms of remuneration is also a good method of retaining workers in the situation of exploitation. Many victims agreed at the beginning to go to work for 2-3 months. But having worked this time and not receiving the promised salary, they consented to work more and more. As a result they were paid only money for return journey and new promises. As mentioned, this leads victims to turn to the police only after one or two years.

**Creation of a debt** is also used to retain in the situation of exploitation. We have already presented one of such cases on page 85 (handling operations).

Here is another one.

***From criminal case papers***

***Trafficking in persons for forced labour exploitation in construction***

***Victims – 2 friends, inhabitants of a village from the central Moldova***

*In April 2007, some friends visited an acquaintance whose name was Alexandr in a neighbouring village. They became drunk. In this condition Alexandr proposed to take his friends around the village in his car of foreign make. They drove the whole evening and then went home in a bus. The next day Alexandr found his friends and told them they damaged his car. He made them to draft a bill of debt for EUR 700. Since they had neither money nor jobs, Alexandr proposed them to go to work at constructions with him to Moscow. They agreed.*

*Alexandr himself found a job for them, arranged their travel to Moscow and found a place for living. They worked at the construction site for half a year. The work remuneration was paid to Alexandr and to his friends he would buy only food. Some time afterwards Alexandr left for Moldova without telling them anything and leaving them in Moscow absolutely without money. When they managed to earn money for tickets they came to Moldova and turned to the police with complaints.*

*The criminal case was **initially** commenced **under Article 165 par.2 (b) of the CCRM “Trafficking in Persons”**. The court of the first instance acquitted the defendant under Article 165 of the CCRM and the case was reclassified on Article 352 par.1 of the CCRM “Arbitrariness”. Alexandr was sentenced to 240 hours of compulsory unpaid work.*

*The Court of Appeal upheld this court ruling.*

The wages for half a year of the unlucky friends of Alexandr were obviously higher than their USD 700 debt. But this amount is absolutely cosmic for a poor person in Moldova. This case is not a classical example of trafficking in persons, rather a borderline one, but there is no doubt that the poverty

as well as inability to appraise the amount of one’s debt and work made these persons vulnerable and allowed the cunning acquaintance to use them for a few months.

It is worth mentioning that during the analysis of the examined cases we did not identify new means of influence on victims.

**Thus, the analysis of criminal cases involving trafficking in persons for exploitation of forced labour and begging showed the existence of issues in practical application of Articles 165 and 206 of the CCRM. Most cases during the trial were reclassified on other articles of the Criminal Code, which stipulate milder punishment. Collection of evidence in criminal cases is complicated by the fact that exploitation mainly takes place in other countries and depends on cooperation with law-enforcement authorities of these countries. Criminal investigations and legal proceedings involving these criminal cases in Moldova are often carried out long after criminal actions were committed, which also complicates the collection of evidence. The criminal procedure takes much time and witnesses often change their initial testimony.**

**Many difficulties are related to the legal constructions of the crime of trafficking in persons and children. These legal constructions are very sophisticated and have lots of elements, which complicate their practical application. Courts of law commit obvious mistakes in classification of criminal cases and deciding on the degree of the sentence. Sometimes elements of real crimes do not fit these legal constructions. Very often cases that at the beginning were initiated under Articles 165 and 206 of the CCRM are then reclassified on other articles of the Criminal Code, which stipulate milder punishment. As a result many defendants manage to escape the liability.**



# CONCLUSIONS AND RECOMMENDATIONS

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### *Conclusions*

During criminalisation of trafficking in persons for forced labour exploitation in the Republic of Moldova faults and errors were committed. This was caused both by differences in understanding the notions of “trafficking in persons” and “forced labour” used in the international practice and by the lack of experience in developing such laws in the country as well as the experience in creating efficient legal mechanisms for accomplishment of the human dignity.

As a result the developed legal construction of the crimes of trafficking in persons and forced labour does not meet the requirements of legislative technique (elements of the crime are too complex, deficiencies or lack of clarifications on qualifying essential elements, inconsistency between the norms of criminal law and the real nature of crimes, etc.). The signs of “forced labour” are construed differently in Article 165 of the CCRM “Trafficking in Persons” and Article 168 of the CCRM “Forced Labour”, which list various means of influence to engage and retain a person in the situation of forced labour. Besides, when developing the interpretations to these articles, the Supreme Court of Justice issued another interpretation of this notion and the used criminal means of influence.

The analysis also showed that Article 168 stipulates a much milder punishment for forced labour than Articles 165 and 206 for trafficking in persons/children for forced labour exploitation. Classification of this crime under Article 168 allows applying probation and closing the case due to parties’ reconciliation, which is not allowed by the law if the defendants’ actions are classified under Article 165 or Article 206.

The flaws of the legal construction of the crime of trafficking in persons/children and forced labour are among the causes accounting for inefficient criminal prosecution in cases of trafficking in persons for forced labour exploitation.

Besides, one may also note that legal or organisational and technical means of combating trafficking in persons for forced labour exploitation different from criminalisation are used insufficiently in the country.

The analysis of judicial practice in cases of trafficking in persons revealed a poor judicial practice in cases of trafficking in persons for forced labour exploitation, as well as the existence of the following issues:

- Courts of law do not use the possibility to charge under Articles 165 and 206 of Criminal Code for crimes of trafficking in persons/children committed inside the Republic of Moldova;
- Criminal cases are handled by courts of law during a long period of time (several years);
- Criminal prosecution is carried out ineffectively and as a result many defendants can escape punishment;
- Errors occur in judicial decision-making (unjustified acquittal, application of unreasonably lenient penalties, sentencing to fine under those articles of the Criminal Code that do not provide such penalty, etc.);
- Material and moral damage in favour of victims is rarely collected;
- Courts of law commit errors in qualifying crimes (not always properly address issues on delimitation of trafficking in persons from forced labour and organisation of beggary, disclaim transportation as proved, if the recruiter did not personally accompany people during transportation, etc.);
- Reclassification of cases frequently occurs from Articles 165 and 206 CCRM on Article 168, which fact allows the defendants to escape penalty or get a very lenient penalty;
- Victims very often change their testimony during trial and for various reasons do not come to court sessions;
- Many witnesses have been intimidated and pressed by defendants;
- Among criminal cases there were not cases concerning trafficking in persons for forced labour exploitation, committed in several countries (Turkey, United Arab Emirates, Israel, Greece, Czech Republic, Poland), which are mentioned in different studies as countries where Moldovan citizens are subjected to forced labour.

It is also worth mentioning that the analysis of the judicial practice found that in a number of cases of trafficking in persons not only the employer derived benefits from exploitation of victims' labour but also the intermediary – "team leader", who made everything to engage and retain victims in this situation. However, employers had the direct guilt of breaching the conditions of work organisation and remuneration. This complicates prosecution of these cases somewhat since they do not fit well the existing concept of exploitation,

where only the employer is held liable for exploitation. In the mentioned cases both the employer and the intermediary should have been sentenced for exploitation. In practice such intermediaries are issued mild sentences, while the employers are not punished at all, because they belong to other country.

### **Recommendations**

Considering the information collected during this research it is recommended:

1. To simplify the legal construction of Articles 165 and 206 of the CCRM, marking out trafficking in persons/children for forced labour exploitation as a separate specific crime which would enable a more efficient criminal prosecution.
2. To remove differences in classification signs of the elements of crime of "forced labour" as the element of trafficking in persons and as the specific crime. At this, the real nature of the committed crimes should be taken in consideration and first of all "team leaders' role" in exploitation of forced labour.
3. To differentiate the liability for forced labour, providing for various forms of punishment depending on the conditions under which the forced labour took place, the applied means of influence and the incurred damage.
4. To supplement and to amend Articles 165, 168, 206 and 302 of the CCRM as well as the interpretations of the Supreme Court of Justice "On the practice of application of the legislation on trafficking in persons and children"<sup>33</sup> in order to make them compliant with the real nature of criminal cases and remove the existing inconsistencies in the description of elements/features of criminal means for qualification of human trafficking crime. Mainly, it should be taken into consideration that the perpetrators use similar means of influence to engage and retain people in the situation of trafficking in persons at all stages from the recruitment until the exploitation.
5. To remove unfounded substantial differences between the sentences for use of forced labour as an element of trafficking in persons and as a specific crime.

<sup>33</sup> DECISION OF THE PLENUM OF THE SUPREME COURT OF JUSTICE OF THE REPUBLIC OF MOLDOVA "On the practice of application of the legislation on trafficking in persons and children" No. 37 of 22.11.2004. *Bulletin of the Supreme Court of Justice of the Republic of Moldova, 2005, No. 8 with subsequent amendments.*

6. To take efficient measures for protection of witnesses during legal proceedings.
7. To develop a clear scientific concept of notions “decent work”, “labour exploitation”, “forced labour” and “trafficking in persons for forced labour exploitation” with description of signs of exploitation. To develop a legal mechanism for protection of human dignity in this area, segregating the tasks of labour, administrative and criminal law.
8. To study good practices of other countries, and elaborate the mechanism of criminal investigation in cases of detection of illegal profit resulted from labor exploitation.
9. To train the employees of the law-enforcement authorities and the judiciary in order to enhance their level of knowledge about the problem of trafficking in persons and forced labour, to improve the efficiency of the criminal prosecution in this area and protection of rights of persons who suffered from trafficking in persons.
10. To strengthen the controls of labour inspections in detection of cases of exploitation of labour and forced labour in the country.
11. To raise the population’s awareness about the problem of trafficking in persons for forced labour, the inadmissibility of job placement abroad without a corresponding license, the established criminal liability for trafficking in persons and use of forced labour in order to prevent trafficking in persons.
12. To develop international cooperation with the countries of destination for trafficking in persons for the purpose of efficient detection and combat of cases of trafficking in persons and collection of evidentiary base.

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