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**THE IMPACT OF THE REPUBLIC OF MOLDOVA
ANTI-TRAFFICKING POLICY ON THE TRAFFICKED
PERSONS' RIGHTS**



Chisinau, 2013



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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

I. STATE'S OBLIGATIONS TO PROTECT AND PROMOTE THE RIGHTS OF TRAFFICKED PERSONS

1.1. Introduction of the concept of human rights and fundamental freedoms in the national anti-trafficking policy

A developed regulatory and legal framework of the state policy in the field of combating trafficking in human beings has been created in Moldova, which includes special legislative and normative acts (law, National Action Plan, strategy, provisions/standard procedures to assist victims of trafficking in human beings).

The concept of human rights and fundamental freedoms is integrated in the text of the ***Law on Preventing and Combating Trafficking in Human Beings No. 241-XVI of 20 October 2005*** in the form of **principles** to combat trafficking in human beings, **guarantees** for victims of trafficking in human beings, **responsibilities** of the competent organizations etc. The law also envisages participation of the civil society organizations in providing services and in the coordination structures (National Committee and Territorial Commissions). It allows these organizations to provide victims of trafficking in human beings specialized and qualitative services, which cannot be provided by the state at a certain stage and monitor the performance of duties by the governmental institutions, protecting the victims' of trafficking in human beings rights and legitimate interests. In general, the contents of the law comply with the international obligations of the Republic of Moldova in this field. At the same time, the analysis of the provisions of the law within this research showed a **high level of abstraction of provisions** concerning the rights of victims of trafficking in human beings, lack of indications on the development of standard procedures in assistance and their connection with the budget process. This contributes to the administrative barriers in the implementation and protection of rights. The law does not provide for any connection of the institutional framework of combating human trafficking with the national institutions promoting and protecting human rights.

The National Action Plan for 2012-2013 (the 5th one) contains measures that focus on four main directions of the state anti-trafficking policy. A relevant chapter from the National Action Plan is dedicated to each of them. One of the chapters of the National Action Plan aims to overcome the prob-

lems in assisting the victims of human trafficking, which fact, according to international recommendations, allows implementing a human rights-based approach. However, most of the problems included in this chapter are described abstractly (as shortcomings), or formulated as organizational problems which does not allow to evaluate how the plan implementation impacts on the trafficked persons' rights. The victims of trafficking in human beings do not participate in the development of the anti-trafficking policies.

The NRS Strategy for 2009-2016 aims to create a special democratic institution for the protection of trafficked persons' rights – a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with the civil society, as well as other active participants, working in this field. The NRS Strategy is being successfully implemented, however, this document does not provide for a possibility and procedures to appeal the violations of rights. The monitoring of the strategy implementation is out of sight of the national institutions promoting and protecting human rights.

1.2. Interrelation of the anti-trafficking policy with general state policy in the field of human rights

The enjoyment of **human rights** is interlinked with all spheres of state and social activity, as well as with the life of individuals. The leading role in the protection of human rights belongs to the state. Therefore, the institutional framework for human rights protection includes all the Government's branches – legislative, judicial and executive. The activities of many non-governmental organizations, the media, trade unions, churches are also directly related to protection of human rights.

In Moldova there was developed and is being implemented the second National Human Rights Action Plan (2011-2014) – a political document which encompasses the state policy provisions on strengthening the human-rights protection in different spheres. This document provides a general overview of the status of the human-rights protection in Moldova.

Apart from that national institutions for the protection and promotion of human rights were created in Moldova:

- 4 Parliamentary Advocates forming together with the service personnel the Centre for Human Rights, which activity is regulated by the Law on the Parliamentary Advocates No. 1349–XIII of 17 October 1997;

- Council on Preventing and Combating Discrimination and Ensuring Equality, which operation is regulated by the Law on Ensuring Equality no. 121 of 25 May 2012.

However, the state policy in the human-rights protection area has no strong interrelation with anti-trafficking policy. In this respect, the Dutch experience in creation of the institute of National Rapporteurs, which monitors and evaluates the implementation of the state anti-trafficking policy, its impact on the rights of the victims of trafficking and the human trafficking situation/phenomenon is of a great interest. The Council of Europe Convention on Action against Trafficking in Human Beings (article 29, paragraph 4) recommends to consider appointing National Rapporteurs or similar monitoring mechanisms in all signatory countries.

II. RESPECT FOR THE TRAFFICKED PERSONS' RIGHTS. THE ASSESSMENT OF PRACTICAL ASPECTS

The analysis showed that the Republic of Moldova influenced by the international standards established excessive norms to the rights of victims of trafficking in human beings – such an extensive range of free services is not guaranteed to any other socially vulnerable group. It allows influencing the social processes and developing them in the right direction. But the existing socio-economic and spiritual limits of the society do not allow for an implementation of all trafficked persons' rights established by law. Therefore, the legal status of victims of trafficking in human beings is currently ahead of their social status.

2.1. Trafficked persons' opinions on the assistance, protection and respect of their rights

The assessment of compliance with the principles of assistance and victims' of human trafficking the rights respect is a difficult task. The legislation does not provide any indication on how these principles and rights should be implemented. The absence of minimum quality standards of the services for the victims of trafficking in human beings leads to the fact that it is unclear how many services should be provided and what the expected outcome is. Thus, the state ensured the victims of trafficking in human beings with psychological assistance, and these services are increasingly growing in demand. However, the provision of these services to the population of Moldova is just developing, they are just shaping into a system of

services and the legislation does not empower a certain ministry with the responsible for this assistance.

Based on the above, the evaluation of the policy impact on the rights of victims of human trafficking was carried out by studying the opinions of victims. The analysis of the survey of victims of human trafficking results showed that the principle of **free access to justice** is observed in practice since all the victims were invited to contact the police, but not all agreed to do it. It is more difficult to meet the principle of **inevitability of punishment for traffickers** and the **safety principle for victims of trafficking in human beings and fair treatment for them**. Based on the survey data, we can conclude that not all criminals get duly punished, and not always ethical standards are observed in treatment of victims of trafficking in human beings during the trial. This leads to revictimization of the participants in criminal proceedings.

There is a need to improve the work on informing the presumed trafficked persons about their rights – currently the victims do not always understand exactly what they are entitled to. This information should be supplied in a more accessible way, easy to understand for the victims, who, in many cases, have a low level of education, while others – even mental problems.

All respondents were offered access to a range of services provided by the law, regardless of their participation in the criminal proceeding. Most of the victims stated that they were satisfied with the assistance they received. However, the services provided do not cover all the needs of the beneficiaries and do not always ensure their (re)integration into the society in the difficult conditions of the modern life. Moreover, it has not yet been possible to protect the confidentiality of the private life and identity of all the victims of trafficking in human beings.

The interviewed victims of trafficking gave a number of recommendations to the Government on measures to be taken to improve the implementation of their rights and generally for the improvement of the anti-trafficking policy.

2.2. Experts' opinions on the problems identified

The problems concerning the observance of the rights of victims of human trafficking and assistance principles identified during the victims' of trafficking survey were afterwards discussed with experts from different institutions (governmental, non-governmental and intergovernmental). The questioning of experts confirmed that there still persist some problems with respect for human rights of victims of trafficking in human beings.

The interviewed experts highlighted the following problems of the implementation victims' of trafficking in human beings rights:

- Compensation payment to victims of trafficking in human beings;
- Revictimization of participants in criminal proceedings;
- Inefficient investigation of crimes;
- Low quality of the services provided by the state;
- Insignificant role of the Ombudsman in solving the problems of victims of crimes, including victims of trafficking in human beings;
- Other issues.

The presence of these problems, according to experts, is largely due to the lack of necessary resources, as well as lack of special knowledge in the field of human rights, misunderstanding of the fact that respect for human rights is an essential condition for the sustainable development of a society. Moreover, the experts have different views, sometimes very vague, on how to transfer protection of human rights from the declarative level to a practical one and how to integrate human rights issues in daily activities.

The interviewed experts gave a number of recommendations concerning the measures that should be taken to remove the problems identified in the implementation of trafficked persons' rights.

III. THE ROLE OF THE CIVIL SOCIETY ORGANIZATIONS IN MONITORING THE TRAFFICKED PERSONS' RIGHTS

Human Rights Monitoring – is a recognized area of activity of non-governmental organizations (NGOs). Providing direct assistance to victims, NGOs always have the information about the violations of the rights of affected individuals and can choose various strategies to protect them:

a) to demand respect for the rights of particular individuals applying directly to the relevant public authorities, to Ombudsman or to court, up to the European Court of Human Rights (ECHR);

b) to collect and summarize information about the cases of rights violation, which require systemic changes (legislative and institutional framework, staff training, etc.), and report this information directly to the Government and other governmental institutions invested with relevant authority, or apply for the help of external and internal influential allies/intermediaries. At the same time the NGOs can:

- participate in the external monitoring of the state anti-trafficking response, transmitting to the supervisory authorities the information on violations of the rights of victims of trafficking in human beings and other deficiencies;
- participate in the work of coordination structures in the anti-trafficking field inside the country (the National Committee, Territorial Commissions, working groups), develop and monitor policies together with governmental institutions inside the country making own proposals;
- carry out own independent researches and develop recommendations for the Government policy.

The NGOs from the Republic of Moldova have accumulated some experience of participating in external monitoring of state anti-trafficking policy, including the preparation and submission of alternative reports to the CEDAW Committee. Moreover, the NGOs are actively involved in the work of the National Committee and the working groups created by the Permanent Secretariat, which allows them to participate directly in the development of the state anti-trafficking policy and monitor its implementation. One NGO active in the anti-trafficking field – namely the International Center “La Strada” has relevant experience in conducting independent assessment of the policy using its own resources. However, the usual for developed countries role of the NGOs, that of a “watchdog”, is not very well developed in the anti-trafficking field in Moldova.

To shed light on the causes of this situation, in this research, the specialists of the governmental and non-governmental institutions were asked several questions about the role of the NGOs. It turned out that their views on this issue do not match.

The experts from the governmental institutions noted that they know about the role of NGOs in a democratic state, but consider that in Moldova the conditions to exercise this role are not suitable up to now. Therefore the NGOs:

- should not use fierce criticism towards governmental institutions, but see the common goal – the improvement of the human rights situation;

- should offer solutions (better systemic ones), and not simply criticize the State, which deals with a number of problems;
- should regard the appeal to ECHR as an ultimate solution, as it leads to an outflow of the public funds allocated for social protection, using all the possibilities to solve the problems inside the country.

The specialists of non-governmental and intergovernmental organizations noted that they are aware of the current difficulties of the State and realize that some rights of victims of trafficking in human beings can be fulfilled only over the years, when the State will have the necessary means. That is why NGOs have not yet resorted to using the role of a “watchdog” and prefer to cooperate with governmental institutions in addressing the problems of victims of trafficking and in creating the necessary conditions for the fulfilment of human rights. At the same time, they would like to take a more principled stand in protecting the rights of victims of trafficking, but for this purpose the rights of trafficked persons should be formulated in laws and regulations in such a manner that one could appeal in court their violation. Not all the NGOs consider that they should always be constructive and offer solutions to problems, their task in such cases being resumed to raising the public opinion’s awareness on the cases of injustice and encouraging the Government to eliminate such cases.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The report is finalised by general conclusions and recommendations to overcome identified problems that summarize the conclusions and recommendations made in each chapter of this report. The recommendations include not only the opinion of the author of this report, but also recommendations from victims of trafficking in human beings, as well as specialists from various organizations interviewed during the research. The proposed measures are aimed at strengthening the rights-based approach in development and implementation of the state anti-trafficking policy, ensuring a positive impact of this policy on protection of the rights and legitimate interests of the victims of trafficking in human beings and enhancing efficiency of the measures taken. Implementation of these recommendations will facilitate the coordination of state anti-trafficking policy and policy in the field of human rights; it will offer a sustainable development of the Government’s efforts in this field. The recommendations are designed for the Permanent Secretariat, the country’s leadership, as well as the entire anti-trafficking community in the Republic of Moldova.

LIST OF ABBREVIATIONS

ECHR – European Court for Human Rights

National Committee – National Committee for Combating Trafficking in Human Beings

NAP – National Action Plan to Prevent and Combat Trafficking in Human Beings

NGO – Non-governmental organization

NRS – National Referral System for protection and assistance to victims and potential victims of trafficking in human beings

UN – United Nations

Permanent Secretariat – Permanent Secretariat of the National Committee for Combating Trafficking in Human Beings

RM – the Republic of Moldova

Territorial Commissions - Territorial Commissions for Combating Trafficking in Human Beings

FOREWORD



FOREWORD

Trafficking in human beings is still a problem for the Republic of Moldova. In spite of the measures taken in the country, the phenomenon of trafficking in human beings did not cease to exist. There were 151 crimes of trafficking in human beings (art. 165 of Criminal Code of RM) and 20 crimes of trafficking in children (art. 206 of Criminal Code of RM) registered in Moldova in 2012.¹ Furthermore, the total number of victims according to the Ministry of Internal Affairs is 290 people. A serious challenge for combating trafficking in human beings is the variety of destinations and routes of trafficking, as well as forms of human exploitation. Moldovan women are sexually exploited in Turkey, Russia, Lebanon, United Arab Emirates, the "Turkish Republic of Northern Cyprus", Greece, Spain and other countries.² Trafficking in human beings for the purpose of exploitation of migrant workers from Moldova particularly prevails in Russia and Ukraine in the construction sector, agriculture and services. In 2012 for the first time the number of victims of trafficking in human beings affected by labour exploitation (126) equalled the number of victims of sexual exploitation (126).³ In 2012 there was an increase in human trafficking for the purpose of forced begging.⁴ Differences in living standards between the capital and rural areas generate internal human trafficking in Moldova.

Trafficking in human beings violates fundamental human rights: the right to life, equality, dignity and security; the right to freedom of movement; the right not to be subjected to forced labour, slavery or enslavement; etc. Restoration of the usurped rights of victims of trafficking in human beings – is one of the most important tasks of the state anti-trafficking policy in Moldova, as a State Party of most important international conventions in this field, that selected the path of building a law-governed state and European Integration. Identification and/or improvement of mechanisms ensuring effective implementation of human rights and fundamental freedoms according to national, regional and international regulatory framework are classified as priority measures of the Government of Moldova overall activity for 2011-2014.⁵

¹ National Report on Preventing and Combating Trafficking in Human Beings for 2012, Permanent Secretariat of the National Committee for Combating Trafficking in Human Beings, Chisinau, 2013, p.10; <http://antitrafic.gov.md/lib.php?l=en&idc=30&t=/Reports/National-Reports/>.

² Ibid, p. 13.

³ Ibid, p. 13.

⁴ U.S. Department of State, "Trafficking in Persons" Report, June 2013, p.265.

⁵ Government Activity Program „European Integration: Freedom, Democracy, Welfare” 2011 – 2014, p.10; <http://www.gov.md/doc.php?l=ro&id=3350&idc=445>.

The Republic of Moldova has recognized the challenge of trafficking in human beings and has begun to combat this phenomenon since 2001.⁶ Our country ratified the most important international documents in this field and developed under their influence its own policy, which needs permanent monitoring, periodic evaluation and improvement. The monitoring and evaluation of the policy of the Republic of Moldova in the mentioned field is carried out by various organizations, at different time intervals and for various purposes, such as the internal ones – i.e. to discuss the results of the policy inside the country, or external one – to monitor the fulfilment of commitments according to the international treaties. Thus, the internal monitoring and evaluation are carried out generally by the governmental institutions of the Republic of Moldova – Permanent Secretariat of the National Committee for Combating Trafficking in Human Beings, within the State Chancellery of the Republic of Moldova (hereinafter – Permanent Secretariat) and the Ministry of Labour, Social Protection and Family. The external monitoring and evaluation are carried out by the inter-governmental organizations (OSCE and UN), specially established structures under the international agreements (GRETA - Group of Experts on Action against Trafficking in Human Beings created according to the Council of Europe Convention on Action against Trafficking in Human Beings) and the governments of other countries (the annual report of the U.S. Department of State for the U.S. Congress).

The policy implemented shall not prejudice the legitimate rights and interests of the victims of human trafficking, therefore it is important to ensure monitoring and evaluation of the state policy impact and protect the victims from an unexpected and unwelcome policy effect. This work is assigned to one of the recognized fields of the civil society activity. Meanwhile, the non-governmental organizations working in the anti-trafficking field in Moldova haven't carried out such researches up to now. This research is the first attempt to evaluate the efficiency of the state policy in our country in terms of its impact on the rights of victims of trafficking in human beings.

The International Center "La Strada" planned this research as the political climate in the country – the state's awareness of the necessity to carry out reforms in the field of protection and respect for human rights, willingness to cooperate with the civil society on these issues – create favourable conditions for the promotion of human rights, including the victims' of trafficking in human beings rights. Moreover, this research in the field of human rights is closely related to other activities of the International Center "La Strada"

⁶ First document in this field – Decision of the Government of the Republic of Moldova No. 1219 of 09.11.2001 "On approval of the personnel of the National Committee for Combating Trafficking in Human Beings and the National Plan of action to Combat Trafficking in Human Beings" (Official Gazette of the Republic of Moldova, 2001, No. 136-138, art. 1274).

– direct assistance to trafficked persons and lobbying for their interests. Working directly with the victims of trafficking, the organisation has the opportunity to involve them in researches, identify the existing problems with their rights fulfilment, and afterwards use the information received in the development of the state anti-trafficking policy.

Close cooperation between the International Center “La Strada” and Permanent Secretariat (since its establishment within the Government in 2011) opens good prospects for further use of the results of this research in the development of the National Plan of Action for Preventing and Combating Trafficking in Human Beings for 2014 and the subsequent planning period. The conclusions and recommendations of the research are aimed to develop new progressive approaches to planning national anti-trafficking policies for overcoming the problems identified.

The organisation’s experience in conducting such researches will allow for a further development of the national anti-trafficking policy independent evaluation undertaken by other civil society organizations in the Republic of Moldova.

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RESEARCH METHODOLOGY



RESEARCH METHODOLOGY

Goals and objectives

The current research has the following goals:

- to study the main aspects of the state's and civil society's activity on observance and protection of the rights of victims of trafficking in human beings;
- to conceptualize the notion of "human rights-based approach" and the ways of its implementation in anti-trafficking policy documents in the Republic of Moldova;
- to support the Government's efforts in carrying out reforms, to develop proposals for the country's leadership, Permanent Secretariat, National Committee and other anti-trafficking stakeholders, working to improve the state policy management in this field as well as in human-rights protection area;
- to establish a platform for further discussions with the civil society organizations and elaboration of a joint platform/vision concerning further development of the process of the state's policy independent evaluation, in terms of its impact on the rights of victims of human trafficking by the civil society organizations in the Republic of Moldova.

Based on the research objectives the following tasks will be completed:

- 1) to study the existing international recommendations on the development and content of the state's anti-trafficking policy documents, taking into consideration the human rights concept;
- 2) to determine to what extent the Republic of Moldova anti-trafficking policy documents comply with the international commitments and international recommendations in terms of human trafficking victims' rights protection;
- 3) to study the interrelation of the anti-trafficking policy with the general state policy in the field of human rights;
- 4) to evaluate the extent to which the rights guaranteed to victims of human trafficking by the legislation are respected, as well as measure the impact of the state policy on victims' rights, emphasizing the challenges faced in exercising them and recommending the improvements of that policy;
- 5) to analyze the regulatory framework of the socio-legal mechanism created in the Republic of Moldova to guarantee the respect for

human rights on an extrajudicial basis and the planned measures to reform it;

- 6) to identify what preconditions are needed to improve human rights protection activity in the anti-trafficking field in so far as it relates to data collection on specific cases of violations of the rights of victims;
- 7) to develop proposals of anti-trafficking policies' improvement .

Research methods

To achieve the goals and objectives of the research the following methods of data collection and processing were used:

- a) analysis of the existing international recommendations and scientific works regarding the implementation of a human rights-based approach in the anti-trafficking policy;
- b) analysis of the Republic of Moldova policy documents for their compliance with the international/European standards and recommendations in terms of victims' of trafficking in human beings rights protection ;
- c) analysis of the existing extrajudicial human rights protection mechanisms (analysis of the legislative framework and secondary analysis of the research reports);
- d) interviewing victims – gathering information from victims of trafficking in human beings – beneficiaries of aid programs (15 pers.);
- e) interviewing experts – gathering information on anti-trafficking issues and/or human-rights protection, both those providing direct assistance to trafficked persons/other beneficiaries of social aid, or those participants in the development of the state anti-trafficking policy and/or state policy in the field of human rights (15 pers.);
- f) interpretation and synthesis of the information collected;
- g) author's conclusions and recommendations.

The interviewing of victims of trafficking in human beings was conducted in the form of a structured interview. This work was carried out in May-June 2013. It is significant that these interviews were carried out before the experts' interviews. It allowed for accumulating the information from victims, on the appreciation of the extent to which their rights have been respected and then ask specialists/experts the questions that arise. The interviews were conducted using a standardized questionnaire consisting of 18 questions. All the details of the responses received were carefully analysed and considered.

The experts' interviewing process was carried out in the form of individual discussions – semi-structured interviews. Information gaps existing after those discussions were filled by subsequent phone interviews.

Moreover, the research contains information about the phenomenon of trafficking in human beings accumulated in the register of the International Center "La Strada" during the identification of trafficking in human beings cases and direct assistance to victims.

It is also important to mention that during the development of this research methodology, a special handbook designed to assist civil society organizations in carrying out evaluation of the state anti-trafficking policy was used. This handbook was developed in 2010 with the support of a number of non-governmental organizations (Aim for human rights/the Netherlands, La Strada Czech Republic, La Strada International and SCOT-PEP/UK) and then piloted in several European countries.⁷

Restrictions of the research

The restrictions of the research are related to the concentration on the problems of integration of the human-rights concept in anti-trafficking policy and on the evaluation of general trends in the development of the policy in this field. Under the framework of this research, it wasn't planned to collect an evidentiary base of cases of violations of victims' of trafficking in human beings rights in order to further submit them within the international human-rights protection mechanisms. Given the specific features of the current situation in Moldova – the state's leadership awareness of the need to improve the situation in the field of human rights, as well as willingness to cooperate with the civil society in reforms implementation, the conclusions of this research are planned to be discussed inside the country with the representatives of organizations active in anti-trafficking field in Moldova and then recommend it for implementation.

It should also be noted that the present research is focused mainly on the rights and problems of adult victims of trafficking in human beings with much less attention to the problems of children victims of human trafficking. Moreover, this research was fulfilled mainly based on qualitative information analysis and does not attempt to quantify the information collected.

⁷ Aim for human rights (the Netherlands), Marian Wijers, Lin Chew. The Right Guide. A tool to assess the human rights impact and anti-trafficking laws and policies, 2010.

Restrictions associated with the ethical aspects are related to the participation of victims of trafficking in human beings in the given research. In order not to harm the victims of trafficking in human beings, the research was carried out by a trained member of the research group with experience in working with victims of trafficking in human beings in a highly professional manner. During the survey the WHO ethical and safety recommendations for interviewing trafficked women⁸ were applied. All personal data collected for this study when processed were depersonalized.

Conclusions and recommendations of this research have previously been discussed with the experts on issues in focus and adjusted to their comments and suggestions.

⁸ Cathy Zimmerman, WHO Ethical and Safety Recommendations for Interviewing Trafficked Women, World Health Organization, Geneva, 2003.



**STATE'S OBLIGATIONS
TO PROTECT AND PROMOTE THE
RIGHTS OF TRAFFICKED PERSONS**

I

I STATE'S OBLIGATIONS TO PROTECT AND PROMOTE THE RIGHTS OF TRAFFICKED PERSONS

1.1. Introduction of the concept of human rights and fundamental freedoms in the national anti-trafficking policy

In the past decade the Republic of Moldova ratified the most important international documents in the anti-trafficking field:

- **UN Convention** against Transnational Organized Crime, 2000⁹ and its Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,¹⁰ and
- **Council of Europe Convention** on Action against Trafficking in Human Beings, 2005.¹¹

These international instruments served as a basis to create in Moldova its own comprehensive legislative and regulatory framework in that field, which enshrined the State's obligations to protect and promote victims' of trafficking in human beings rights.

The specific regulatory and legal framework developed in Moldova to combat the phenomenon of trafficking in human beings, includes:

- criminal legislation (special articles of the Criminal Code)¹²;
- special legislative and normative acts in the anti-trafficking field (the Law, the National Action Plan, the Strategy focusing on issues of improving victims' of trafficking in human beings assistance, provisions/standard procedures to assist victims of trafficking in human beings).

Provisions concerning the victims' of trafficking in human beings rights are contained in special legislative and normative acts.

⁹ Law of the Republic of Moldova No. 15-XV of February 17, 2005 "On Ratifying the United Nations Convention against Transnational Organized Crime". (Official Gazette of the Republic of Moldova, 2005, No. 36-38, art. 122).

¹⁰ Law of the Republic of Moldova No. 17-XV of February 17, 2005 "On Ratifying the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplemented the United Nations Convention against Transnational Organized Crime". (Official Gazette of the Republic of Moldova, 2005, No. 36-38, art. 126).

¹¹ Law of the Republic of Moldova No. 67-XVI of March 30 2006 "On Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings". (Official Gazette of the Republic of Moldova, 2006, No. 66-69, art. 277).

¹² Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002 (Official Gazette of the Republic of Moldova, 2002, No. 128-129, art. 1012).

The Law on Preventing and Combating Trafficking in Human Beings

No. 241-XVI of 20 October 2005¹³ created the basis of the state policy in this domain. The Law defined the main terms, established the institutional structure of the anti-trafficking system, procedure to assist victims, etc. The concept of human rights and fundamental freedoms is integrated in the text of this law in the form of **principles** to combat trafficking in human beings, **guarantees for** victims of trafficking in human beings and **responsibilities** of the competent organizations. Moreover, the law provides for the creation of some organizational conditions for monitoring of competent institutions' responsibilities.

Thus, according to article 4 of the given law the **principles** to combat trafficking in human beings in the country include:

- a) respect for human rights and fundamental freedoms;
- b) recognition of human trafficking as a crime against human rights, dignity, freedom and security of a person;
- c) inevitability of punishment for traffickers;
- d) lawfulness;
- e) free access to justice;
- f) insurance of victims' of trafficking in human beings safety and their fair treatment;
- g) comprehensive use of preventive legal, political, socio-economic and information measures;
- h) social partnership, cooperation of public authorities with international and non-governmental organizations, other representatives of civil society;
- i) commensurability among the victims' of trafficking in human beings fundamental rights and criminal prosecution, with no detriment to the defense side;
- j) equal approach to all kinds of national and transnational trafficking, both related and not related to organized crime, etc.;
- k) cooperation with public authorities and competent organizations of other states, as well as with the international organizations, in order to fulfil the tasks on counteracting human trafficking.

¹³ Law on Preventing and Combating Trafficking in Human Beings No. 241 -XVI of October 20, 2005 (Official Gazette of the Republic of Moldova, 2005, No. 164-167, art. 812).

The listed basic principles supplement the special principles on combating child trafficking (art. 26) – observance of children’s rights, respect for children’s rights, etc. Moreover, the provisions of the art. 5 on **non-discrimination** in the implementation of this law, can be attributed to principles, including the provisions on the victims’ of trafficking in human beings rights, which should be ensured with no discrimination based on gender, race, language, religion, political or other opinions, social or national origin, citizenship, ethnic background etc.

Moreover, this law established a number of **guaranties** or State’s positive obligations on observance of victims’ of trafficking in human beings **rights**. According to the Chapter III of the law, the persons recognized as victims of trafficking in human beings have the right to the following free assistance and services:

- a) assistance in repatriation, including, if necessary – to obtain the necessary travel documents;
- b) temporary placement in a specialized centre;
- c) free medical assistance;
- d) psychological, legal and financial aid;
- e) free vocational education and training;
- f) counselling and assistance in organization the entrepreneurial activity;
- g) employment and housing-related assistance.

According to the art. 20 of the law the presumed victims of trafficking in human beings, i.e. persons who presumably suffered of human trafficking are entitled to a minimum package of social and medical assistance. However, the law does not specify what is meant by a “minimum package of assistance” and which particular services are included.

The article 20 of the given law established that victims of trafficking in human beings should be **informed** about their rights. Information must be provided by the specialists of various organizations, who come into contact with the presumed victims. Moreover, the provision of assistance and services **cannot be conditioned by participation in criminal proceedings** associated with the prosecution of traffickers. At the same time, according to art. 23 the victims of trafficking in human beings participants in criminal proceedings are entitled to additional rights for special protection, measures stipulated in the legislation, as well as to compensation for the damage caused. The law guarantees **protection of the confidential information** about private life and identity of victims of trafficking in human beings (art. 21).

The law (Chapter IV) also provides for special rights of victims of child trafficking. Children (persons under 18 years old) victims of trafficking in human beings are ensured with the right to attend state educational institutions, if necessary, a guardian or custodian is assigned, as well as other assistance measures taken.

The law established that the non-governmental and International Organizations have the right to assist victims of trafficking in human beings (art. 12), a fact which contributes to filling in the niches in the services provided by the State for victims of trafficking in human beings, improving the quality of services.

The analysis of the law showed that, generally, its provisions related to guarantees for the victims of trafficking in human beings comply with the international commitments of the Republic of Moldova. Despite the fact, that the law was adopted in 2005, i.e. before the Republic of Moldova ratified the Council of Europe Convention on Action against Trafficking in Human Beings (March 2006), its content complies with the provisions of this Convention. This is explained by the fact that the draft law was developed with the support of the International Organizations and underwent international legal expertise. The importance of incorporating the human rights perspectives in the anti-trafficking policy was repeatedly noted at the international level before the adoption of the above-mentioned European Convention.

However, it should be noted that the principles of the assistance, the guarantees and victims' of trafficking in human beings rights are scattered throughout the whole text of the law. It is inconvenient for practical use and it would be helpful to develop a specific list of rights of victims (adults and children) guaranteed by the State. Such a document was developed in line with the EU legislation by the European Commission in 2013¹⁴ with a recommendation for all the European Union Member States to develop similar documents on the basis of domestic legislation of each country. Moreover, it is recommended to extend this list since the EU legislation contains only **general** minimum standards.¹⁵ In this regard, it is important to note that the rights of victims of trafficking in human beings are described very abstractedly in the international documents. When transferred to the national level, they should acquire concreteness and connection with the budget process/mobilization of the necessary resources. The rights should be formulated in a way they could be respected, including in a legal procedure. If the law doesn't contain the exact wording on the amount of the rights, then it has to contain a corresponding instruction for the Government or the relevant ministry, to develop the necessary normative act/procedures, taking into account the

¹⁴ The EU rights of victims of trafficking in human beings. European Union, 2013.

¹⁵ Ibid , p.2.

State's resources necessary for the respect of these rights. Unfortunately, the Law No. 241-XVI of 20 October 2005 lacks the exact wording regarding the amount of the victims' of trafficking in human beings rights. For instance, the mentioned right to a free medical assistance and the absence of provisions in the law, that assign the Government or the Ministry of Health to develop a subordinate act/procedures, leads to the fact that, in practice, the victims of trafficking in human beings cannot get a free medical insurance policy. The specialists of the Ministry of Health refer to a primary free consultation of the family therapist guaranteed to the victims of trafficking in human beings, the provision of other assistance being the responsibility of the local authorities. On their side, the local authorities bring up the lack of resources and redirect the issue back to the Ministry of Health. As for the psychological assistance, it is even more difficult to determine which public authority is responsible for its provision. Hence, abstract wording of the rights of victims of trafficking in human beings in the law lead to administrative barriers in their implementation – the right “hangs”, not moving from the conceptual level to the practical one. It is difficult to exercise it and to appeal state body's inaction in an administrative or legal procedure. In the absence of the standard procedures, it is not clear what exactly the state is obliged to provide to a particular person and which institution is responsible for funding and supplying assistance.

Law No. 241-XVI of 20 October 2005 also listed the public authorities invested with competences in prevention and combating trafficking and determined the **responsibility** of each authority (art. 10). Moreover, the law obliged these authorities to carry out activities in this field in close cooperation with civil society organizations and International Organizations (articles 6 and 12) that are entitled to carry out activities to prevent trafficking in human beings, identify victims and provide necessary assistance. It allows the civil society organizations to supplement the state assistance or to fill in niches/gaps in the service that are not offered by the state.

To develop **coordination** of the joint activity in this domain the law recognized the necessity of the advisory bodies' establishment:

- a) within the Government – the National Committee for Combating Trafficking in Human Beings (art. 8);
- b) within the Local Public Authorities in rayons, municipalities and the Autonomous Territorial Unit of Gagauzia – Territorial Commissions for Combating Trafficking in Human Beings (art. 9).

According to the law these advisory bodies also consist of representatives of non-governmental and international organizations. This creates the condi-

tions for civil society organizations to undertake a monitoring responsibility. The participation of the advisory bodies allows for the monitoring of the governmental institutions duties' accomplishment in the anti-trafficking field, the protection of victims' of trafficking in human beings rights and legitimate interests.

It should be noted that coordination should become the new management style in the country under the democratic transformations that take place. This management style is based on the combination of centralization and decentralization, control and freedom of action, allowing for a successful leadership in the modern conditions "... move beyond the traditional model of command management".¹⁶ Moreover, coordination allows increasing people's motivation, creativity, and interest in the overall work results. Coordination provides for the development of common goals and performance standards, establishment of an adequate system of communication between the various organizations (in this case – governmental and non-governmental organizations active in anti-trafficking field). However, despite the establishment of many coordination structures within the agencies of the State administration the deep scientific meaning of the term "coordination" has not yet been reflected in the legislation of the Republic of Moldova. Currently, most specialists treat this term just as an exchange of information, without understanding that the development of coordination not only helps to achieve synergies, but is also important for the democratization of the social processes, which ensure the protection of human rights and ultimately – the country's development. Moreover, the law did not determine the role of the national institutions promoting and protecting human rights (i.e. the Parliamentary Advocate¹⁷/Ombudsman) in the coordination structures, as well as generally – in overcoming such gross violation of human rights as trafficking in human beings.

National Action Plan

The Article 7 of Law No. 241-XVI of 20 October 2005 obliged the Government to develop a National Action Plan for a specified period of time in order to prevent and combat trafficking in human beings (hereinafter – NAP). The first NAP was developed in 2001. Presently the **5th NAP for 2012-2013** is in force in Moldova.¹⁸ This document envisages measures that focus on four

¹⁶ Thomas. W.Malone "The Future of Work", Harvard Business School Press Boston, Massachusetts, 2004.

¹⁷ In Republic of Moldova an Ombudsman is the Parliamentary Advocate since he/she is appointed by the Decision of the Parliament.

¹⁸ Decision of the Government of the Republic of Moldova No. 559 of 31.07.2012 "On the approval of the National Plan to prevent and combat trafficking in human beings for 2012-2013, on amending and supplementing several Government Decisions" (Official Gazette of the Republic of Moldova, 2012, No. 165, art. 616).

main directions of the policy: prevention of the phenomenon of trafficking in human beings, assistance to victims, prosecution of perpetrators and development of the international cooperation. The plan also includes a chapter dedicated to general measures of support for the 4 stated directions, which include coordination of actions and the regulatory framework, staff training, carrying out researches, etc. All the NAPs have been developed with an active participation of the civil society organizations and inter-governmental and international organizations working in this field, as well as taking into account international recommendations.

The main recommendations of the international standards regarding the integration of the human rights-based approach in the anti-trafficking policy reflect the need to take measures aimed at protecting the rights of the victims of trafficking in human beings, the rights of migrants, protecting the best interests of the child, developing the gender-sensitive approach, etc. In developing these policy measures, it is also recommended to think about how they ultimately impact the victims of trafficking in human beings since any intervention "...even if planned with the best intention, can lead to an unintended negative impact on your target group".¹⁹ Therefore, when developing a policy, it is important to identify the existing challenges in exercising the rights of victims of trafficking in human beings and design measures to overcome them. It is recommended to involve victims into this work, developing the ability of the rights holders to claim their rights.²⁰

When developing a NAP it is also important to keep in mind that problems differ, namely by the degree of their complexity. Not all the existing problems can be solved within a single plan since the available resources may not be enough to fully address them. It can become a serious impediment that may not be overcome during the fixed period of the plan implementation. Thus, it is necessary to determine to what extent each impediment can be passed in the planning period and to establish appropriate progress indicators. The Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response, published by the International Centre for Migration Policy Development (ICMPD, Vienna) recommends including in the strategic policy documents information about the baseline in problem solving.²¹ Such information should give a clear idea about the condition and extent of each problem solving process during the policy development (noth-

¹⁹ Monitoring and Evaluation Handbook for National Action Plans against Trafficking in Human beings, ICMPD Vienna, 2010, p.53.

²⁰ Office of the United Nations High Commissioner for Human Rights "Frequently Asked Questions on Human Rights-Based Approach to Development Cooperation" UN, New York and Geneva, 2006, p.35.

²¹ Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response, ICMPD, Vienna, 2006, p.29.

ing has been done, or something is already in place) and to what extent this problem will be solved during the planning period. It is very important for the future evaluation of policy implementation. When starting the policy planning it is necessary to consider what has already been done in the country to overcome the focused problem in order to be able to assess at the end of the planning period the achievements made (to separate them from the previous results) or to identify the failures (negative impact of the policy).

Speaking about the degree of implementation of the international recommendations on the use of a human rights-based approach, it should be noted that during several years the NAPs included measures aimed at protecting the rights of victims of trafficking in human beings, protecting the special rights of children victims of trafficking in human beings, development of the gender-sensitive approach. The aspect of protection of migrants' rights is included in the objectives of another state policy in the area of migration.²² The situation regarding the implementation of recommendation on identification of problems in exercising victims' of trafficking in human beings rights and their baseline is more complex. It is important to note, that up to 2012 the NAPs did not include any information about the problems in the anti-trafficking field, because this wasn't provided by the general drafting rules for the policy documents formulated by the Government.²³ It complicated the assessment of the implemented policy impact after the end of the planning period. Only the 5th NAP, on the civil society's proposal, included information about the identified problems. The problems and the rights of victims of trafficking in human beings are mentioned in chapter III of the NAP "Assistance and social protection of victims and witnesses". However, many problems are not quite clearly formulated in this chapter (for instance – deficiencies in identification and repatriation, etc.). Moreover, the wording of problems reflects more the organizational aspects of the necessary conditions for trafficking in human beings counteraction (institutional and regulatory framework creation, staff training, etc.), and considerably less the victims' of trafficking points of view. There is no information about the baseline in problem solving. Victims of trafficking in human beings never participated in the policy development process; their opinions have never been taken into consideration when developing the policy, although it is recommended at the international level.

²² See article 21 para. a) of the National Strategy on Migration and Asylum (2011-2020) approved by Decision of the Government of the Republic of Moldova No. 655 of 08.09.2011 (Official Gazette of the Republic of Moldova, 2011, No. 152-155, art. 726).

²³ Drafting rules and uniform requirements for policy documents, article 36, approved by Decision of the Government of the Republic of Moldova No. 33 of 11.01.2007 "On drafting rules and unified requirements on policy documents" (Official Gazette of the Republic of Moldova, 2007, No. 6-9, art. 44).

The NRS Strategy

At the end of the 20th century the problem of trafficking in human beings was considered primarily as a problem of combating organized crime. Later, the international community called upon the States to go beyond the criminal prosecution in determining its anti-trafficking policy and consider the phenomenon of trafficking in human beings taking into account human rights and fundamental freedoms, emphasizing such concepts as “personal dignity”, “social justice”, “harmonization of the interests of society and the individual”, etc.

Under the influence of the OSCE policy,²⁴ recommendations of the OSCE/ODIHR Practical Handbook – “National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons”,²⁵ as well as with the support of the International Organization for Migration and the International Center „La Strada”, in 2008 the **Strategy of the National Referral System for protection and assistance of victims and potential victims of trafficking in human beings** (2009-2016) was approved in Moldova²⁶ (hereinafter – **NRS**).

The NRS is a special system of cooperation, which brings together all organizations working in the anti-trafficking field in Moldova. Being supported by the NRS, the governmental institutions carry out their obligations of protecting and promoting of trafficked persons’ rights and coordinate efforts under the strategic partnership with civil society, as well as other active participants working in this area. The institutional structure of the NRS is formed of the territorial multidisciplinary teams (groups) created in every rayon of the Republic of Moldova consisting of public authorities and civil society representatives. The main objective of these teams is to identify and promptly assist victims and potential victims of trafficking in human beings, including by their referral under the NRS.

Generally, the NRS may be considered as an **institutional basis of the socio-legal mechanism that ensures the rights and legitimate interests of one of the most vulnerable social groups – victims of trafficking in human beings**. The OSCE/ODIHR Practical Handbook calls this mechanism

²⁴ OSCE Action Plan to Combat Trafficking in Human Beings, PC.DEC/557, 2003.

²⁵ “National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons”. A Practical Handbook. OSCE/ODIHR, Warsaw, 2004.

²⁶ Decision of the Parliament of the Republic of Moldova No. 257-XVI of December 5, 2008 “On approval of the Strategy of the National Referral System for protection and assistance to victims and potential victims of trafficking in human beings and its Action Plan of implementation for 2009-2011. (Official Gazette of the Republic of Moldova, 2009, No. 27-29, art. 66).

a democratic institution²⁷ assuming that “institution” in this case is a social institution, i.e. special form of social organization²⁸ or the order established by the law or customs (informal rules). The social institutions are designed to regulate the joint activities of people in order to meet different social needs, as well as determine and support the order in a society using certain social regulators, serve to a constant reproduction of certain practices and relations in society ensuring its cohesion. The democratic institutions are elements of a law-governed state, which are designed to satisfy people’s political, social and economic needs, contributing to the implementation of the necessary social transformations, allowing for **solving acute social problems**. According to many researchers, democratic institutions are essential and pacing factor of the country’s development.

Mechanisms similar to the NRS can also be created to protect the rights of other vulnerable social groups. Building of such mechanisms in Moldova is a contribution to the building of the law-governed state. At the same time the building of institutions of a law-governed state helps to counteract trafficking. Moldova’s policy under the NRS Strategy is recognized by many experts as successful, which may be regarded as a model for other countries in the region.²⁹

To implement the NRS Strategy initially a special Action Plan for 2009-2011 was developed, and, in the subsequent period, measures to implement the NRS Strategy were included in the NAP for 2012-2013.

At the same time, the analysis of the NRS Strategy made within this research showed that the NRS Strategy contributes more to integration of the THB victims’ assistance into the social and financial policy of the country, rather than to integration into human rights policies. The Strategy doesn’t contain any provisions regarding the appeal procedure for the violations of victims’ of trafficking in human beings rights. The monitoring of the implementation of this strategy is out of sight of the national institutions promoting and protecting human rights (Parliamentary Advocate/Ombudsman and Parliamentary Human Rights Committee).

²⁷ “National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons”. A Practical Handbook. OSCE/ODIHR, Warsaw, 2004. P.25.

²⁸ The word “institution” comes from the Latin “institutum” – facility, habit. Currently the word is applied in various meanings: facility; higher educational institution; body of laws in some area of relations; form of social organization, etc.

²⁹ U.S. Department of State, “Trafficking in Persons” Report, June 2013, p.265.

Standard procedures

The Law on Preventing and Combating Trafficking in Human Beings No. 241-XVI of 20 October 2005 established the need to develop two provisions, which refer to the assistance procedures for the victims of trafficking in human beings:

- Model regulations on the organization and functioning of assistance centers for victims of trafficking in human beings and their protection (art. 17);
- Regulation on repatriation procedure of victims of trafficking in human beings (art. 19).

Later the Government approved:

- a) Model regulations on the organization and functioning of assistance and protection centres for victims of trafficking in human beings - in November 2006³⁰ and
- b) Regulation on procedure for repatriation of children and adults – victims of human trafficking, illegal migrants’ trafficking, as well as unaccompanied children – in August 2008.³¹

These Regulations approved by the Government are of great importance to the observance of the victims’ of trafficking in human beings rights, since they standardize and detail some of the procedures listed by the law. Moreover, they establish the possibility of participation of the civil society in assisting victims of trafficking in human beings, a fact that contributes to improving the services’ quality.

At the same time, as already mentioned, the mandatory standard procedures related to the budget process and guaranteed allocation of the necessary funds should be set for all types of assistance to which victims of trafficking in human beings are entitled. If the state guarantees the rights, it is necessary to formulate them so that violations of the rights could be appealed in court which is not possible at the moment.

³⁰ Decision of the Government of the Republic of Moldova No. 1362 of 29.11.2006 “On the approval of the Model regulations on the organization and functioning of assistance and protection centers for victims of trafficking in human beings” (Official Gazette of the Republic of Moldova, 2006, No. 186-188, art. 1457).

³¹ Decision of the Government of the Republic of Moldova No. 948 of 07.08.2008 “On the approval of the Regulation on procedure for repatriation of children and adults – victims of human trafficking, illegal migrants’ trafficking, as well as unaccompanied children”(Official Gazette of the Republic of Moldova, 2008, No. 152-153, art. 949).

Conclusions

A developed regulatory and legal framework of the state anti-trafficking policy has been created in Moldova, which includes special legislative and normative acts (law, National Action Plan, strategy, provisions/standard procedures to assist victims of trafficking in human beings).

*At the same time the analysis of the provisions of the **Law on Preventing and Combating Trafficking in Human Beings** No. 241-XVI of 20 October 2005 within this research showed a **high level of abstraction of provisions** concerning the victims' of trafficking in human beings rights, lack of indications on the development of standard procedures in rendering assistance and their connection with the budget process. This contributes to the administrative barriers in the implementation and protection of rights. The law does not provide for any connection of the institutional framework in anti-trafficking field with the national institutions promoting and protecting human rights.*

***The NAP for 2012-2013** (the 5th one) contains four chapters, one of which aims to overcome the problems in assisting victims of human trafficking, and according to the international recommendations it allows to implement a human rights-based approach. However, most of the problems included in this chapter are not even clearly formulated (as shortcomings), or as organizational problems. Thus, it does not allow evaluating how the plan implementation impacts the victims' of trafficking rights. The victims of trafficking in human beings do not participate in the development of policies.*

***The NRS Strategy for 2009-2016** aims to create a special democratic institution for the protection of trafficked persons' rights, however, this document does not provide for a possibility and procedure to appeal violations of rights. The monitoring of the implementation of this strategy is out of sight of the national institutions promoting and protecting human rights.*

Recommendations

- To supplement the Law No. 241-XVI of 20 October 2005 with the provisions regarding the need to develop normative acts – minimum quality standards, detailing the order and procedures to assist victims of trafficking in human beings, as well as providing connection of these procedures to the budget process/allocation of the necessary funds.
- *To supplement the Law No. 241-XVI of 20 October 2005 and normative acts adopted in its implementation with the provisions on the role of the national institutions promoting and protecting human rights in the anti-trafficking policy management.*
- To develop, based on the Law No. 241-XVI of 20 October 2005 (principles, guarantees and obligations), a specific list of the victims' of trafficking in human beings rights (adults and children), guaranteed by the State, easy to apply in practice, including to get victims of trafficking in human beings familiar with their rights. Complement this document with the information about the appeal procedures for the cases of violation of victims' of trafficking in human beings rights.
- To combine the development of the human rights-based approach and results-oriented policy management:
 - To involve victims of trafficking in human beings in the policy development, to formulate policy issues from the human rights' perspective);
 - To include in the policy documents the analysis of the existing problems in the rights' of victims of trafficking in human beings enjoyment and information about the baseline of each problem solving process;
 - To develop an independent impact monitoring and evaluation of the anti-trafficking policy, to strengthen the role of the civil society organizations in this work.
- *National institutions promoting and protecting human rights should be involved in the monitoring of NRS Strategy implementation.*

1.2. Interrelation of the anti-trafficking policy with the general state policy in the field of human rights

The Republic of Moldova is a young democracy country. After declaring its independence in 1991, choosing the path of democratic development and building a law-governed state, Moldova embedded the new course of development in its Constitution. According to the art. 1 of the Constitution, the Republic of Moldova is a democratic state, governed by the rule of law "...in which the dignity of people, their rights and freedoms, the open development of human personality, justice... represent supreme values, that shall be guaranteed".³² The Constitution established a system of fundamental rights and freedoms for all the citizens.

During the years of the independent development, Moldova ratified a number of documents of major importance in the field of human rights, paving the way towards a system of human rights protection according to the international standards. But the ratification of the international agreements in the field of human rights only determined the basis of a new legal and socio-political system. The conceptual ideas and mechanisms of the law-governed state hardly make their way through the "concrete" of social relations and traditions established earlier during the totalitarian regime. A really working mechanism ensuring the respect of rights of an individual in specific circumstances of Moldova, but based on the international legal instruments, is still building up. This mechanism is extensive – it includes legislation, independent judiciary, establishment of the democratic institutions as well as the national institutions for the protection of human rights, etc. The new ideas regarding the mechanism's elements are still appearing. It takes time, resources and efforts to carry out the necessary reforms and to develop a common culture of human rights in the country.

Regulatory and legal policy framework in the field of human rights

The basic human rights are enshrined in the Constitution of the Republic of Moldova, which embedded the following rights of citizens of the Republic of Moldova:

- right to life, physical and mental integrity;
- right to be protected;
- right to freedom of movement;

³² Constitution of the Republic of Moldova, adopted on 29.07.1994 (Official Gazette of the Republic of Moldova, 1994, No. 1).

- right to information;
- right to education;
- right to health protection;
- right to labour and labour protection;
- other human rights.

These rights are guaranteed to every human being from the moment of his/her birth and originally come from the inherent dignity of each individual and the equality of all the people. The Government shall:

- *Respect human rights* (refrain from certain actions and prevent violation of human rights);
- *Protect human rights* (take measures so that third parties do not violate these rights);
- *Fulfil human rights* (perform certain actions to strengthen the capacity of people to exercise their rights – create certain conditions or provide services and support to certain groups of people).

That is why the Constitution enshrined **special** rights of several categories of citizens, who are unable to overcome some situations on their own (during certain periods or over a lifetime) so that they could enjoy fundamental human rights. Thus, the Constitution established the right of mothers, children and young people and the right of persons with physical, mental and psychiatric disabilities to a **special protection from the State** (art. 50 and 51). The right to **social assistance and protection** from the State also belongs to the citizens (socially vulnerable) in case of unemployment, disease, disability, old age and other situations where, due to the causes beyond one's control, one loses the source or means for living (art. 47).

The special rights of victims of human trafficking are not enshrined in the Constitution. At the same time one cannot say that the rights of the victims of human trafficking enshrined in international law can be solved by the social policy for the socially vulnerable persons. The victims of trafficking in human beings have the right not only to social, but also to medical, psychological, legal, etc. assistance from the State, and this means that the observance of these rights is not guaranteed by the art. 47 of the Constitution. However, para (2) art. 4 of the Constitution emphasizes **the priority of the international regulations in the field of human rights** over the national laws, and international instruments recognize trafficking

in human beings as a violation of human rights. Therefore, according to the said article of the Constitution, the Republic of Moldova after ratifying the international conventions in the field of counteracting trafficking in human beings, committed itself to protect the **special rights of victims** of trafficking in human beings.

Speaking of the regulatory framework of the state policy in the field of human rights, it should be noted that in Moldova there was developed and is currently being implemented the second National Human Rights Action Plan (2011-2014)³³ – a political document that encompasses the state's policy on human-rights protection strengthening in different spheres. The Plan contains measures on development of the regulatory and institutional framework in the area of the human-rights protection, measures on training professionals, carrying out researches, work with the civil society etc. Several chapters of the Plan include measures for the protection of special human rights provided in the Constitution. Some anti-trafficking measures (NRS strengthening) are included in chapter 4 "Ensuring the right to life and the right to physical and mental integrity" (para. 35 and 36). The inclusion of these measures namely in this chapter of the Plan is apparently based on the fact that traffickers often violate the right of victims to physical and mental integrity. But the measures of the NRS strengthening focus on the victims' of trafficking in human beings rehabilitation and (re) integration and relate more to the protection of the special rights. It should also be mentioned that these measures on the NRS strengthening were also included in the National Plan of Action for Preventing and Combating Trafficking in Human Beings for 2010-2011 and in the Action Plan on the Implementation of the NRS Strategy for 2009-2011.

The main value of the National Plan in the field of human rights, as a political document, is that it provides a broad overview of the status of protection of human rights in Moldova. At the same time, the document, by virtue of the breadth of the covered issues, cannot and does not describe in detail all the problems with respect to human rights of separate categories of population. As a result, it should impede the evaluation of its impact on the change of the situation and the degree of progress made after completing its implementation. Therefore, despite the existence of a general policy document in the field of human rights, it appears advisable to maintain the existence of a separate political document in the anti-trafficking field, until this problem becomes less acute in our country.

³³ Decision of the Parliament of the Republic of Moldova No. 90 of May 12, 2011 "On approval of the National Human Rights Action Plan for 2011-2014" (Official Gazette of the Republic of Moldova, 2011, No. 118-121, art. 331).

The Law on Parliamentary Advocates³⁴ and the Law on Ensuring Equality³⁵ also can be assigned to the regulatory framework of the state policy in the field of human rights. The laws regulate the institutional framework in the field of human rights – national institutions involved in the protection of human rights.

Human rights institutional policy framework

The enjoyment of **human rights** is interlinked with all spheres of State and social activity, as well as with the life of individuals. The leading role in the protection of human rights belongs to the State. Therefore, the institutional framework for human rights protection includes all the Government's branches – legislative, judicial and executive. The activities of many non-governmental organizations, the media, trade unions, churches are also directly related to protection of human rights.

Besides that, UN recommends the creation of special **national institutions for the promotion and protection of human rights**.³⁶ There is no single model of a national institution recommended for all the countries. Each country chooses for itself its own model that suits best the specific social, political and economic circumstances of the given country.

Most existing national institutions can be attributed to the following two types/groups:

- Human Rights Commission or Ombudsman;
- National specialized institutions for the protection of the rights of particular vulnerable categories of population (children, ethnic and linguistic minorities, etc.).³⁷

As a rule, specialized institutions are established to combat discrimination, they are empowered to investigate cases of discrimination, and issue opinions that **have a recommendative** character.

In Moldova there are both types of national institutions:

1) Four Parliamentary Advocates that form together with the service personnel the Centre for Human Rights;

³⁴ Law on Parliamentary Advocates No. 1349–XIII of October 17, 1997 (Official Gazette of the Republic of Moldova, 1997, No. 82-83, art. 671).

³⁵ Law on Ensuring Equality No. 121 of May 25, 2012 (Official Gazette of the Republic of Moldova, 2012, No. 103, art. 355).

³⁶ National Institutions for the Promotion and Protection of Human Rights. Fact Sheets No. 19, Centre for Human Rights, UN, New York and Geneva, 1994.

³⁷ Ibid, p. 6.

2) The Council on Preventing and Combating Discrimination and Ensuring Equality.

The institution of the Parliamentary Advocate was established in Moldova in 1997. The Parliamentary Advocates examine complaints, decisions or actions (inactions) of the central and local authorities, institutions, organizations and enterprises regardless the ownership, form of association and official statuses of any levels, which according to the complainant, violated the constitutional rights and freedoms. Having accepted the complaint for examination, the Parliamentary Advocate has the right to address the relevant authorities and officials for assistance in verification of the facts set forth in the complaint. Having determined the fact of violation, the Parliamentary Advocate sends to the relevant authority or official an opinion containing **recommendations** on the necessary measures for the immediate restoration of the violated rights and freedoms, and notifies the complainant. In such a case, the Parliamentary Advocate, acting as an intermediary, shall make every effort to resolve the issue through reconciliation and finding a mutually acceptable solution. The Parliamentary Advocate has a broad authority to gather the necessary information, but its opinions have a recommendative character only. The Ombudsmen does not substitute the public authorities or law enforcement institutions, analyzing the committed mistakes and issuing recommendations the improvement.

Despite the good conceptual principles that formed the basis of the institute of the Parliamentary Advocate, for further improvement of the Centre's for Human Rights, the Parliamentary Advocates' activity should be subject to reform in the coming years according to the Justice Sector Reform Strategy for 2011-2016.³⁸ Currently, a draft Law on Parliamentary Advocates is being developed, which should replace the current law. The new draft law has been under development for several years now under the auspices of the Ministry of Justice with a broad participation of the civil society organizations. Despite the fact that according to this draft law the Parliamentary Advocate will continue to be appointed by the Parliament, the drafters propose to replace the term "Parliamentary Advocate" with "People's/Public Advocate" in order to emphasize that this institution serves all the people.

Speaking about the relationship of the institute of the Parliamentary Advocate and protection of the rights of victims of human trafficking, it should be noted that according to the art. 1 of the Law on Parliamentary Advocates their activities are aimed at guaranteeing the **constitutional** rights and freedoms of

³⁸ See para. 6.2. of the Justice Sector Reform Strategy for 2011-2016 approved by Law of the Republic of Moldova No. 231 of November 25, 2011 (Official Gazette of the Republic of Moldova, 2012, No. 1-6, art. 6).

individuals. In this vein, one may question if and to what extent the institution's competences include the protection of the special rights of victims of human trafficking, which are not mentioned explicitly in the Constitution, but the international conventions. It is undoubtedly that the protection of the special rights of victims of human trafficking should be in the focus of the Parliamentary Advocate. It is therefore advisable to delete the word "constitutional" from the article 1 of the given law. Analysis of the draft Law on People's Advocates showed that the article 1 of this draft law refers to the activity of the People's Advocate as the one that ensures that the rights and freedoms of individuals are respected (the word "constitutional" is deleted).

Also it should be noted that according to the art. 34 of the Law on Parliamentary Advocates the Centre for Human Rights prepares annually and submits until 15 March to the Parliament the **Report on the observance of human rights** in the Republic of Moldova over the past year. It is advisable to include in this report the information about the respect of victims' of trafficking in human beings rights. It will facilitate the coordination of the state policy in the field of human rights and the anti-trafficking policy, providing sustainable development of the measures directed to protect the victims' of human trafficking rights .

Council on Preventing and Combating Discrimination and Ensuring Equality (hereinafter Council) is a newly established collegial body founded as an important part of the EU integration agenda of Moldova. The Council has the status of a legal entity of public law, established to provide protection from discrimination and ensure equality of all persons. The Council consists of five members who are not affiliated with any political party being appointed by the Parliament for a five-year term; three of them are representatives of the civil society.

According to the art. 12 of the Law on Ensuring Equality, the Council shall perform the following functions:

- 1) examine the compliance of the national legislation with the non-discrimination standards; make proposals to amend the legislation; provide advisory opinions on the compliance of the draft normative acts with the legislation on prevention and combating discrimination; monitor the compliance with the legislation in this field;
- 2) carry out researches on the size, condition and trends of the discrimination phenomenon progress;
- 3) contribute to raising the awareness of the society about the need to eliminate all the forms of discrimination;
- 4) examine the complaints of presumed victims of discrimination;

- 5) identify the offences with the elements found discriminatory according to the Contravention Code; notify the prosecuting authorities in case of discriminatory acts that meet the elements of the offence;
- 6) contribute to the amicable resolution of conflicts arising from committing discriminatory acts by balancing the parties and seeking a mutually acceptable solution;
- 7) other related activities.

The examination of the complaints submitted by the presumed victims of discrimination concludes with the adoption of a Council decision. This decision includes also the recommendations that ensure the restoration of the victim's rights and preventive actions for the future. The decision is communicated to the person who committed the discriminatory action as well as the complainant. The person who committed the discriminatory action is obliged to inform the Council within ten days of the measures taken in response. If the Council does not agree with these measures, it has the right to appeal to a higher authority for the adoption of appropriate measures and/or to inform the public.

At the beginning of each year, up to 15 March, the Council submits to the Parliament a general report on the situation in preventing and combating discrimination.

Unfortunately, many citizens of Moldova associate the Council's activities exclusively with the protection of the rights of sexual minorities, but the concept of this national institution is much broader – it is based on the international "best practice" of combating all forms of discrimination.

It should be mentioned that the national specialized institution for the protection of the rights of particular vulnerable populations is very similar to the **National Rapporteurs**, established in the Netherlands specifically for the monitoring of State's activities, observance of the legislation in the anti-trafficking field and protection of the victims' of trafficking in human beings rights. The National Rapporteur in the Netherlands has its own staff (9 pers.), whose work is funded from the state budget. The Rapporteur is also **empowered to conduct researches and investigations, as well as** to develop **recommendations** for the relevant individuals and organizations, prepare the **annual report** for the Parliament containing the information about the monitoring of the situation/development of the phenomenon of trafficking in human beings. The institution is also responsible for the monitoring and evaluation of the state policy implementation in this field, as well as recommendations from the National Rapporteurs. The Council of Europe Convention on Action Against Trafficking in Human Beings (article 29 paragraph 4 "Specialised authorities

and co-ordinating bodies”) recommends to consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements in all the countries.

Conclusions

The enjoyment of human rights is interlinked with all spheres of State and social activity, as well as with the life of individuals. The leading role in the protection of human rights belongs to the State. Therefore, the institutional framework for human rights protection includes all the Government’s branches – legislative, judicial and executive. The activities of many non-governmental organizations, the media, trade unions, churches are also directly related to protection of human rights.

The second National Human Rights Action Plan (2011-2014) – a political document which encompasses the State’s policy on strengthening human-rights protection in different spheres was developed and is currently being implemented in Moldova. This document provides a broad overview of the human-rights protection system in Moldova.

Apart from that, national institutions for the protection and promotion of human rights were created in Moldova:

- 1) 4 Parliamentary Advocates forming together with the service personnel the Center for Human Rights;*
- 2) Council on Preventing and Combating Discrimination and Ensuring Equality.*

However, the policy in the area of human rights protection doesn’t have a strong interrelation with the anti-trafficking policy.

Recommendations

It is necessary to include information about measures on observance of the victims’ of trafficking in human beings rights in the following documents:

- the National Human Rights Action Plan;*
- the annual Report of the Centre for Human Rights to the Parliament on human rights observance in the Republic of Moldova.*

This will strengthen the interrelation of the state policy in the field of human rights and the anti-trafficking policy; will provide sustainable development of the measures directed to protect the victims’ of human trafficking rights.



**RESPECT FOR THE
TRAFFICKED PERSONS' RIGHTS.
THE ASSESSMENT
OF PRACTICAL ASPECTS**



II

II RESPECT FOR THE TRAFFICKED PERSONS' RIGHTS. THE ASSESSMENT OF PRACTICAL ASPECTS

2.1. Trafficked persons' opinions on the assistance, protection and respect of their rights

Brief information about the statistical average portrait of the people interviewed

In the course of this research 15 individuals, victims of trafficking in human beings, were interviewed - 14 women and one man. The age of the victims:

| | |
|---------------------|------------|
| 21-25 years | - 7 pers.; |
| 26-35 years | - 5 pers.; |
| older than 35 years | - 3 pers. |

Most of the women interviewed (10 pers.) have children:

| | |
|------------|------------|
| 4 children | - 1 pers.; |
| 3 children | - 2 pers.; |
| 2 children | - 4 pers.; |
| 1 child | - 4 pers. |

One respondent was pregnant at the time of interview (June 2013). At the same time many women with children (6 pers.) have no husbands or a dysfunctional family – with problems of violence or alcohol.

Most respondents have low levels of education:

| | |
|---|-------------|
| graduated a secondary school (9 grades) | - 11 pers.; |
| graduated a college/technical school | - 2 pers.; |
| graduated 7 grades | - 1 pers.; |
| illiterate | - 1 pers. |

Out of 15 respondents, 10 confessed that they were subjected to sexual exploitation, including 9 – abroad and 1 – inside the country (internal trafficking in human beings). Destination countries for the victims of sexual exploitation were the United Arab Emirates, Turkey, Turkish Republic of Northern Cyprus, Israel, etc.

5 respondents were subjected to labour exploitation in Kherson Oblast, Ukraine.

The victims were exploited at different times:

| | |
|-----------|------------|
| 2001-2005 | - 3 pers.; |
|-----------|------------|

2006-2010 – 2 pers.;

2011-2013 – 10 pers.

The duration of exploitation differed – from two weeks to several years. The victims were identified in the last years by the police of the Republic of Moldova and other countries, as well as the consultants of the Hotline of the International Center “La Strada”.

During the survey 4 out of 10 respondents, victims of sexual exploitation, told that they have had in the past mental problems – psychosis (1), suicidal tendencies (2), dementia and epileptic attacks (1), as well as other mental disorders (1). The victim, who suffers from dementia, was repeatedly subjected to sale in various countries for the purpose of sexual exploitation.

Observance of the principles of combating trafficking in human beings

As already mentioned, the main principles to combat trafficking in human beings in the country established by the legislation include:

- a) respect for human rights and fundamental freedoms;
- b) recognition of human trafficking as a crime violating fundamental human rights, dignity, freedom and security of a person;
- c) inevitability of punishment for traffickers;
- d) lawfulness;
- e) free access to justice;
- f) insurance of victims’ of trafficking in human beings safety and their fair treatment;
- g) comprehensive use of preventive legal, political, socio-economic and information measures;
- h) social partnership, cooperation of public authorities with international and non-governmental organizations, other representatives of civil society;
- i) commensurability of victims’ of trafficking in human beings fundamental rights and criminal prosecution, with no detriment to the defence side;
- j) equal approach to all kinds of national and transnational trafficking, both related and not related to organized crime, etc.;
- k) cooperation with public authorities and competent organizations of other states, as well as with international organizations in order to fulfil the tasks on counteracting human trafficking;
- l) non-discrimination.

Not all the established principles relate to the fulfilment of trafficked persons' rights and the law does not provide any explanation on how exactly these principles should be implemented and what criteria should be used to estimate the level to which those principles are respected. It also creates difficulties for assessing the compliance with the principles under this research. Therefore, there were selected three basic principles, namely – free access to justice; ensuring victims' of trafficking in human beings safety and their fair treatment; inevitability of punishment for traffickers – their execution being estimated by the victims' of trafficking in human beings opinions analysis. The compliance with the specific principles related to counteracting child trafficking was not verified since all the interviewed victims were adults.

Free access to justice

All respondents stated that they were offered assistance in access to justice/participation in a criminal proceeding. Hence, we can state that this principle is observed in practical work. However, 6 out of 15 respondents refused to participate in a criminal proceeding, because:

- are afraid of retaliation from traffickers and do not trust the police (3 pers.);
- the recruiter is already serving a prison sentence on another case (1 pers.);
- feel compassion for the recruiter, who has 2 children (1 pers.);
- do not want to make statement to police, because his/her mother is implicated in the case (1 pers.).

It should be noted that generally the refusals to participate in the criminal proceedings came from the victims who were trafficked 7 years ago and more (cases from 2001-2006). They weren't identified in a timely manner. Most likely, their refusals to participate in criminal proceedings were related to the fact that many years passed since the time they have been trafficked.

Inevitability of punishment for traffickers. Ensuring safety of victims of trafficking in human beings and fair treatment for them 4 out of 9 participants in criminal proceedings reported that they were not satisfied with the results of the criminal proceeding because:

- disrespect in court/"it looked like I was blamed for everything that happened to me" (1 pers.);
- intimidated by perpetrators in the course of the criminal proceeding (1 pers.);

- didn't receive the compensation (2 pers.);
- the recruiter did not receive punishment, being placed under house arrest, he fled abroad (2 pers.);
- the exploiter has not been punished in the country of destination (1 pers.);
- felt sorry for the perpetrator who received a prison sentence (1 pers.).

It is pleasing that none of the respondents-participants in criminal proceedings complained on the mistreatment from the police or prosecutors, as was observed in previous years. The victims' criticism was mainly caused by the judicial proceedings – breach of ethical standards in the victims' of trafficking in human beings treatment, violation of the victims' /witnesses rights to their physical security and violation of victims' right to compensation for damage. Moreover, in two cases the perpetrators fled from the country and haven't been punished yet. These facts indicate that the principle of inevitability of punishment for traffickers is not always respected.

Referring to the principle of victims' of human trafficking fair treatment, one cannot call fair the fact that, as a rule, the victims of human trafficking do not receive **compensation for damage** as a result of judicial proceedings on the territory of Moldova. This is due to the fact that the main beneficiaries of their exploitation are the persons residing on the territory of other states. In the country, mainly the recruiters are subjected to prosecution – often residents of the same village where the victim lives, people with low income.

During the survey there were cases identified when recruiters offered victims bribes through third parties to change the testimony. At the same time there wasn't identified a single case of proper use of this situation by the victims' lawyers in order to protect the victims right to compensation for damage. In this situation the lawyer should explain the victim that if the defendant offers the victim money, than the victim should tell about this and it would help to reach an amicable agreement. In this case, the victim doesn't have to change the testimony, but state in court that the perpetrator acknowledged his/her guilt and wants to compensate it, so the victim asks the court for indulgence for the defendant. Such an approach to protect the victims' rights to compensation for damage is welcomed in the developed countries. In this case, the victim accepts the apology of the perpetrator, but he/she may not be exonerated of responsibility– still may pose a threat to other people.

It is important to note, that some victims of trafficking in human beings find the memories about being trafficked related to violation of their human rights, equally painful as those about the State's intervention in order to restore the usurped rights under a criminal proceeding. This may indicate to the revictimization of victims.

Speaking about the protection of victims' of human trafficking confidential information about private life and identity, it should be noted that it is rather difficult in practical work, especially for those who take part in a criminal proceeding. One of the victims of sexual exploitation was leaving the village early in the morning, so that no one could see or know that victim was going to a court hearing. Still the villagers became aware of it, and the neighbours forbade her to use the common well. Overcoming the pain of shame, the victim was forced to show a certificate stating that she is not suffering of any sexually transmitted diseases and does not pose threat to the neighbours. Only then the neighbours allowed the victim to use the well.

Information about the rights

In order the victims' of human trafficking rights to be observed in practice, it's necessary to take measures to development the abilities of claiming the access for assistance guaranteed by the State. For this purpose, it is first necessary to inform the presumed victims of trafficking in human beings about their rights. According to the art. 20 paragraph (5) of Law No. 241-XVI of 20 October 2005 on Preventing and Combating Trafficking in Human Beings, the public authorities invested with the authority in the anti-trafficking field are obliged to inform the victims of human trafficking about their rights, about the agencies, organizations and institutions in charge of the victims' of human trafficking protection.

However, during the survey some victims of human trafficking stated that they do not know their rights. It is hard to believe, since all victims-participants in criminal proceedings, as well as victims-beneficiaries of assistance within the NRS are acquainted with their rights against signed acknowledgement, this being a standard procedure. Moreover, all the respondents, except one person, received assistance. Therefore, the majority of those questioned were acquainted with their rights. One conclusion can be draw out of this – obviously, the information about the rights of victims of human trafficking is supplied in a form difficult to perceive and understand by the victims, the majority of which have a low level of education, and some of them – even mental problems.

Access to free assistance and services

As mentioned, according to Law on Preventing and Combating Trafficking in Human Beings No. 241-XVI of 20 October 2005, persons recognized as victims of trafficking in human beings, have the right to the following free assistance/services:

- a) assistance in repatriation, including, if necessary - to obtain the necessary travel documents;
- b) temporary placement in a specialized center;
- c) free medical assistance;
- d) psychological, legal and financial aid;
- e) free vocational education and training;
- f) counselling and assistance in organization the entrepreneurial activity;
- g) assistance in employment and housing issues.

Moreover, the law guarantees that access to this assistance cannot be conditioned by the participation in a criminal proceeding, but the participants in criminal proceeding should receive additional specialized assistance and protection. When supplying assistance, the protection of confidential information about the victims' of trafficking private life and identity must be ensured.

The analysis shows that the State, influenced by the international standards, established excessive norms regarding the victims' of trafficking in human beings special rights– such an extensive range of free services is not guaranteed to other socially vulnerable groups. It allows influencing social processes, developing State protection and assistance for victims of trafficking in human beings, and bringing up international standards. At the same time, the existing socio-economic realities lead to the fact that the **legal status of victims of trafficking is currently ahead of their social status**, not all the rights of victims of trafficking are observed in practical work. This **discrepancy between the legal and the actual status** of the victims of trafficking in human beings at this stage seems inevitable. However, the violation of the victims' of human trafficking rights is difficult to prove and to appeal, given the high level of abstraction of the legislation. As stated above, Law No. 241-XVI of 20 October 2005 determined the need to develop two regulations – a regulation on repatriation procedure for victims of trafficking in human beings and a model regulation on the organization and functioning of assistance centres for victims of human trafficking and their protection. The Law does not mention the need to develop minimum service

quality standards. These standards have not yet been developed; therefore it is unclear how many services guaranteed by the law should be provided and what should be expected from the provision of these services.

In this vein, the evaluation of the policy impact on the victims' of human trafficking rights was carried out by studying the opinions of victims. Most respondents received assistance not only from the State, but also within special programs for victims of human trafficking implemented by the International Organization for Migration, the International Center "La Strada", NGO "Stimul" (Bender), and other non-governmental organizations. The survey showed that 14 out of 15 respondents were subjected to exploitation in other countries. Only 6 of them came back by buying the ticket for themselves and 1 person – was deported (Israel, 2002). Seven persons received repatriation assistance from the State and the International Organization for Migration.

All respondents were offered access to a range of services provided by law regardless of their participation in a criminal proceeding. However, it is quite hard to assess objectively the quality of the services provided since there are no quality standards. If during the assessment we rely on the opinion of the victims, then the quality of services can be assessed as good, since during the survey most respondents confirmed that they were satisfied by the assistance received. Assessing the assistance by the results (whether the (re)integration of victims, whose human rights were violated in the period of exploitation was achieved, so that they could recover and fully enjoy their rights and fundamental freedoms), is more complicated in the framework of the current research. Firstly, some respondents were still in the process of obtaining (re)integration assistance – 4 persons were only going to receive training, and 6 persons said that they need employment assistance. If among the 15 victims one person doesn't have the minimum level of education, 1 is illiterate, 4 of them suffer from mental disorders, 6 of them have problems with abuse and alcohol in the family, than the objective to (re)integrate these people (i.e. make them productive members of the society) is quite difficult.

Three persons stated that still need psychological help, but not in the specialized centre in Chisinau, as they were offered, but at the place of residence, since they have no one to leave the children with. At the place of residence nobody provides such assistance free of charge. Moreover, as already stated, it is not clear which ministry is responsible for the provision of the psychological assistance, this system of assistance just being developed in the country. One person said that would like to receive welfare, and one needs housing, but is not provided with such assistance.

It is known that the victims of labour exploitation often refuse psychological and medical assistance, as well as vocational education. Most often, they ask for assistance in receiving the unpaid salary. Five people victims of labour exploitation surveyed within this research asked for it. At the same time, 2 of them did not refuse the medical care, since they were exhausted while exploited. Thus, one pregnant woman received assistance for maintenance of pregnancy, and another woman was provided with treatment for anaemia, which developed in the period of exploitation.

Recommendations from victims of trafficking in human beings for the Government

During the survey all the victims were asked to recommend something to the Government of the Republic of Moldova in order to improve the situation and overcome the issue of trafficking in human beings in general. These are their recommendations.

- To organize psychological assistance for victims of trafficking in human beings at place of residence.
- To provide temporary allowance for victims of trafficking in human beings.
- To assist victims of trafficking in human beings in obtaining social housing.
- To combat family violence.
- To strengthen the protection of labour migrants, to inform them about the possible risks of labour migration.
- To improve the prevention of human trafficking at the border (the Border Police should work better, their staff should include psychologists).
- To inform more about human trafficking.

Conclusions

The analysis shows that the State, influenced by the international standards, established excessive norms regarding the victims' of trafficking in human beings special rights– such an extensive range of free services is not guaranteed to other socially vulnerable groups. It allows influencing social processes, developing State protection and assistance for victims of trafficking in human beings, and bringing up international standards. But the existing socio-economic and spiritual limits of the society haven't allowed yet to fully implement all the trafficked persons' rights established by law. This leads to a conclusion that the legal status of victims of trafficking is currently ahead of their social status.

The evaluation of principles' of assistance and the rights' of victims of trafficking in human beings observance is a difficult task. The legislation does not provide any indication on how these principles and rights should be implemented. The absence of minimum service quality standards for the victims of trafficking in human beings leads to the fact that it is unclear how many services should be provided, and what is the expected result.

Based on the above, the evaluation of the policy impact on the rights of victims of human trafficking was carried out by studying the opinions of victims. The analysis of the survey's results showed that the principle of free access to justice is observed in practice since all the victims were invited to contact the police, but not all agreed to do it. Besides, not all criminals were duly punished and not always ethical standards are observed in treatment of victims of trafficking in human beings during the trial. As a result, this leads to the victims' of human trafficking participants in criminal proceedings revictimization.

All respondents were offered access to a range of services provided by the law regardless of their participation in a criminal proceeding. Most of the victims stated that they were satisfied with the received assistance. However, the services provided do not cover all the needs of the beneficiaries and not always allow to ensure their (re)integration in difficult conditions of the modern life. Moreover, in practice, it is not possible yet to protect the confidentiality of private life and identity of all the victims of trafficking in human beings.

Recommendations

The interviewed victims of trafficking gave a number of recommendations to the Government on measures to improve the implementation of their rights and the general improvement of the anti-trafficking policy.

- To organize psychological assistance for victims of trafficking in human beings at place of residence.
- To provide temporary allowance for victims of trafficking in human beings.
- To assist victims of trafficking in human beings in obtaining social housing.
- To combat family violence.
- To strengthen the protection of labour migrants, to inform them about the possible risks of labour migration.
- To improve the prevention of human trafficking at the border (the border police should work better, their staff should include psychologists).
- To inform more about human trafficking.

2.2. Experts' opinions on the problems identified

The problems concerning the observance of victims' of human trafficking rights and assistance principles identified during the survey of victims of trafficking, were afterwards discussed with the experts from different institutions (governmental, inter-governmental and non-governmental organisations). They were asked questions on whether they know about violations of victims' of trafficking in human beings rights, and what can be done to improve the situation. The surveyed specialists noted that they know the fact that not all the victims' of trafficking in human beings special rights are respected in practice, because it has not been allowed yet by the existing **socio-economic and spiritual limits of the society**.

Damage compensation

Being asked about the victims' of human trafficking rights that are most difficult to respect in practical work, the majority of the specialists answered that it is the payment of compensation. At the same time, their opinions on what needs to be done to improve the situation are ambiguous and do not always fit into the framework of the existing theories in this field.

The majority of the specialists surveyed are inclined to think that the government should not undertake an obligation to indemnify the victims of trafficking from public funds. According to experts, the perpetrator causes damage to the victim through his/her actions and not the State; hence, the perpetrator is the first one who should be liable for the damage compensation and the government should facilitate this process.

Also, there is no **consensus among the experts on how the current situation with the compensation payment can be improved**. Some of them think that it is necessary to strengthen the cooperation with the countries of destination of trafficking in human beings, including in financial investigations and seek to receive compensation in the countries where the citizens of Moldova were subjected to exploitation or using the international funds. As for the compensation for the damage caused by the recruiters on the territory of Moldova, it could be first compensated from the specially created public fund and then collected from the perpetrators – to compensate the public expenses. Compensation may initially be small, but the person will feel the State's assistance. It is very important in terms of the theory of **restorative justice**.

At the same time, some experts noted that any existing problem needs to be addressed comprehensively seeing the ultimate goal, rather than blindly

following the theory. Thus, one of the specialists commented that the compensation should serve to the objective of the (re)integration of victims, i.e. help them to become independent and productive members of the society. It was observed that the victims of trafficking in human beings, who manage to get at least a small compensation, cannot reasonably deal with the funds received. Having received 2-3 thousand lei, they tend to spend the money on current needs, and then again ask the Government and other organizations to help. Therefore, talking about the state assistance, it would be more efficient to invest public funds in the development of social aid and services rather than one-time payments in favour of victims of human trafficking for the purpose of their (re)integration by increasing the period of assistance, the payment of monthly allowances up to employment, etc.

Since the analysis of the possible ways of solving problems with the payment of compensation to victims of human trafficking in Moldova requires special knowledge and in 2013, at the request of the Permanent Secretariat, a special study on this issue was carried out,³⁹ the current research tends to not focus on it more.

Revictimization of the participants in criminal proceedings

According to the experts of non-governmental organizations sometimes revictimization of participants in criminal proceedings occurs because the Government does not allocate sufficient funds for the protection of witnesses, as well as doesn't help them to pay the travel expenses for the participation in the proceedings. Currently, in order to obtain protection for a witness in a criminal proceeding, it is necessary to prove that there is a real threat to the life and health of the witness. If, for instance, the witness asks for the protection because the recruiter's relatives live in the same village and the victim is afraid, then, most likely, the police officer will tell that this is no real threat, and will take no protection measures. But afterwards, when the victim of trafficking in human beings will face a real threat, i.e. when the defendant's relatives will threaten the victim, demanding to change the testimony, he/she will be defenceless. There is no attention paid to the possibilities of the victim to cover the travel expenses for coming to the court, as well as to the opportunities of care provision for the child left alone at home. At the same time, there are cases when the prosecutor made a ruling on a compulsory presence of the victim, who couldn't attend the hearing within reason. As a consequence, the police officer came to the village to bring the victim to the court being witnessed by the village inhabitants. Moreover,

³⁹ Abigail Stepnitz "Rights, Restoration and Recovery: Compensation for Trafficked Persons in the Republic of Moldova, 2013, <http://antitrafic.gov.md/lib.php?l=en&idc=32&t=/Reports/International-partners-Reports/>.

the judges often treat the victims rudely because they are overloaded with other cases and intend to close the case quickly. The services provided by the public lawyers (free assistance) are of a low quality. As a result, some victims perceive the police intervention into their lives almost the same as the intervention of the perpetrators. Such intervention in most cases brings troubles – retraumatize the victim despite the noble goals of the justice. Obviously, the existing norms under the criminal proceedings need to be analyzed in order to identify and remove the existing barriers in fulfilment of human rights.

The specialists suggested a number of measures that will help to avoid victims' of trafficking in human beings revictimization in the course of the criminal proceeding. It is necessary to:

- a) develop the victim's protection – allocation of more funds and risk assessment;
- b) identify the procedural barriers in protection of human rights and eliminate them;
- c) carry out training for the judicial, prosecutors and police officers not only on the concept of human rights, but also on the socio-legal mechanism of fulfilment of rights/of using the concept of human rights in daily activities;
- d) develop the judges' specialization, and possibly to create special courts for offences against the dignity of the individual, including trafficking in human beings;
- e) develop a concept of protection of the rights of victims of crimes, including victims of trafficking in human beings;
- f) develop a specialized assistance and services for the participants in the criminal proceedings.

Inevitability of punishment for traffickers

According to the experts, in order to assure efficient investigation of trafficking in human beings crimes and to ensure the inevitability of punishment of the perpetrators, it is necessary to:

- a) support the teamwork approach, which is already applied in investigation of crimes of trafficking in human beings (team-based criminal investigation carried out by an investigation officer, criminal prosecution officer and a prosecutor);
- b) develop a specialization in investigation of crimes of trafficking (by

types of exploitation – sexual exploitation and labour exploitation, by countries of destination, etc.);

c) develop free legal assistance from the state/public lawyers.

The experts from non-governmental and intergovernmental organizations also noted the existence of the problem of corruption in courts and police. Some specialists said that the currently implemented law enforcement reform might help to overcome this problem.

Other issues

Within the survey of experts the problem of low quality of social services provided by the State was also noticed, and the need to increase budget allocations for the development of social services emphasized.

According to the experts, the Parliamentary Advocate doesn't play a significant role in the protection of victims' of human trafficking rights. Some specialists noted that the Parliamentary Advocates are currently more concerned about the protection of the rights of perpetrators, rather than of the victims. It was suggested to introduce a special unit of Parliamentary Advocate defending the rights of the crime victims.

All the questioned specialists said that most experts do not have clear information on how to transfer the protection of human rights from a declarative level to a practical one. Not everyone understands that respect for human rights is an indispensable requirement for a sustainable development of a society. The experts also talked about the need to provide training and education on the conceptual issues of human rights, both to specialists and the general public.

Moreover, it was suggested to strengthen the role of research in the development of policies aimed at protecting the rights of the victims of human trafficking, as well as victims of other offences.

Conclusions

The problems concerning the observance of trafficked persons' rights and assistance principles identified during the questioning of victims of trafficking, were afterwards discussed with the experts from different institutions (governmental, inter-governmental and non-governmental). The survey of experts confirmed that in reality there are problems concerning the respect of trafficked persons' rights.

The interviewed specialists have noted the following problems of the implementation of trafficked persons' rights:

- Compensation payment to victims of trafficking in human beings;*
- Revictimization of participants in criminal proceedings;*
- Inefficient investigation of crimes;*
- Low quality of the services provided by the State;*
- Insignificant role of the Ombudsman in solving the problems of victims of crimes, including those of victims of trafficking in human beings;*
- Other issues.*

The presence of these problems, according to experts, is largely due to the lack of necessary resources, as well as lack of special knowledge in the field of human rights, misunderstanding of the fact that respect for human rights is an essential condition for the sustainable development of a society. Moreover, the experts have different views, sometimes very vague, on how to transfer protection of human rights from the declarative level to a practical one and how to integrate human rights issues in daily activities.

Experts' recommendations:

The interviewed experts gave a number of recommendations concerning the measures that should be taken to solve the problems identified in the implementation of trafficked persons' rights.

- To identify and remove procedural barriers for the implementation of trafficked persons' rights, including victims-witnesses in criminal proceeding.*
- To develop a specialization in cases' of trafficking in human beings investigation and prosecution, to create special courts for offences against the dignity of the individual, including trafficking in human beings.*

- *To support the teamwork approach in investigation of crimes of trafficking in human beings (team-based criminal investigation carried out by an investigation officer, criminal prosecution officer and a prosecutor).*
- *To strengthen the protection of witnesses – allocate more funds and make a risk assessment.*
- *To develop specialized assistance and services for the participants in criminal proceedings, including free legal services of public lawyers.*
- *To develop a concept of victims' of crimes rights protection, including the victims of trafficking in human beings.*
- *To establish an Ombudsman unit to deal with the cases of victims of crime.*
- *To identify the procedural barriers in protection of human rights and eliminate them.*
- *To strengthen the role of research in policy development.*
- *To conduct training of judges, prosecutors, police officers and other professionals not only on the concept of human rights, but also on the socio-legal mechanism of fulfilment of rights and methods, using the concept of human rights in daily activities.*
- *To educate the public opinion on the conceptual human rights issues and how to integrate them into daily activities.*

**THE ROLE OF THE CIVIL SOCIETY
ORGANIZATIONS IN MONITORING THE
TRAFFICKED PERSONS' RIGHTS**

III



III THE ROLE OF THE CIVIL SOCIETY ORGANIZATIONS IN MONITORING THE TRAFFICKED PERSONS' RIGHTS

Human Rights Monitoring – is a recognized area of activity of non-governmental organizations (NGOs), which implement human rights activities. The NGOs operating in the anti-trafficking field and providing direct assistance to victims can always obtain information about the cases of violation of their rights. In order to protect the rights of victims of trafficking, the NGOs can choose various strategies:

- 1) to demand respect for the rights of particular individuals affected by trafficking applying directly to the relevant public authorities, to Ombudsman or court, up to the European Court of Human Rights (ECHR);
- 2) to collect and summarize information about different cases of rights' violations, which are caused by the unjustified barriers in the implementation of the rights and require systemic efforts to address them (legislative and institutional framework, staff training, etc.); report this information directly to the Government and other governmental institutions invested with the relevant authority, or apply for the help of external and internal influential allies/intermediaries. At the same time the NGOs can:
 - a) participate in the external monitoring of State activity in the anti-trafficking field, transmitting to the supervisory authorities the information on violations of victims' of trafficking in human beings rights and other deficiencies in the system of combating human trafficking;
 - b) participate in the work of coordination structures in the anti-trafficking field inside the country (the National Committee, Territorial Commissions, working groups), develop and monitor policies together with the governmental institutions inside the country making own proposals;
 - c) carry out own independent researches, develop and publish recommendations for the Government policy.

NGO participation in the external monitoring

The state anti-trafficking policy should be based on a system of rights and corresponding commitments established by the international law, as well as on the existing international mechanisms for monitoring the implementation of the commitments. This helps to impart stability to the ongoing efforts of the Government and allows to expand the rights/strengthen the capacity of

the victims of trafficking in human beings and organizations, which protect their rights for the participation in the policy development, monitoring and evaluation.

The human rights-based approach implies external monitoring of the fulfilment of State's commitments both by means of the international human rights monitoring bodies (committees and groups of independent experts) and other external monitoring mechanisms founded as a result of the international agreements as well as through public and independent evaluation and of the state's actions.⁴⁰

The external monitoring and evaluation of the fulfilment of the State's commitments in the anti-trafficking field most often is carried out in a cyclical manner by the following structures:

- a) treaty bodies established according to "key" international human rights treaties of the United Nations (the Human Rights Committee, Committee on the Elimination of Discrimination against Women, The Committee on the Rights of the Child, etc.);
- b) treaty bodies established according to the international conventions in the field of prevention and combating trafficking in human beings (the Group of Experts on Action against Trafficking in Human Beings /"GRETA" and the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings);
- c) inter-governmental organizations (UN and OSCE) and the governments of other countries, which carry out studies and publish reports on issues of trafficking in human beings in Moldova, which can be focused on different policy documents and aspects, including the observance of the rights of victims of trafficking in human beings (the biennial Global Report on Trafficking in Persons, UNODC; Report by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings; the annual report of the U.S. Department of State for the U.S. Congress).

The NGOs can protect the rights of the victims of trafficking in human beings offering the information to the listed structures about the identified violations of these rights and recommendations to improve the situation. Such information may be offered in various forms (shadow/alternative reports, standardized questionnaire, briefing note, etc.). Such work will be much more efficient if the NGOs combine their efforts and develop a joint docu-

⁴⁰ Office of the United Nations High Commissioner for Human Rights "Frequently Asked Questions on Human Rights-Based Approach to Development Cooperation" UN, New York and Geneva, 2006, p.17.

ment. Usually the treaty bodies develop by themselves the recommendations for NGOs on how they can take part in the external monitoring process. As a result, the treaty body receives not only the Government's report on fulfilment of commitments within the international convention, but also the information from the civil society about the actual state of affairs. This information may be included in the final document, which is developed and approved by the treaty body with the recommendations for the Government of the country, which should be fulfilled prior to the beginning of the next monitoring cycle.

Speaking about the experiences of the NGOs of the Republic of Moldova in the external monitoring of the state policy, then the alternative report on the implementation by the Republic of Moldova of the UN Convention on the Elimination of all Forms of Discrimination against Women can be given as an example. Such a report was developed in 2013 for the Committee on the Elimination of Discrimination against Women (CEDAW Committee).⁴¹ Seven NGOs from the Republic of Moldova, which work in various areas, including in the anti-trafficking field, took part in the report development.⁴² This report, prepared according to a template approved by the CEDAW Committee, contains a special chapter, which describes the problems in counteracting trafficking in human beings. The authors included in this chapter the information about the existing problems in Moldova, such as the protection of victims' of trafficking in human beings personal information and the provision of free health insurance policies for victims of trafficking in human beings. However, unfortunately, these remarks were not included in the final conclusions of the CEDAW Committee for our country, adopted on 18 October 2013 and no recommendations were provided to overcome them.⁴³ Despite this particular failure in defending the victims' of trafficking in human beings interests, the mechanism of the external monitoring is working, albeit slowly, but effectively makes the Government to adjust its policies and eliminate the identified problems.

Moreover, the NGOs from the Republic of Moldova took part in the first monitoring cycle of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings carried out in 2010-2012 by the GRETA Group of experts. Although none of the NGOs had prepared an alternative report, they all passed their information about the shortcomings

⁴¹ Soros Foundation-Moldova, *Alternative Report submitted to the 56th Session of the Committee on the Elimination of Discrimination against Women in relation to the Fourth and Fifth Periodic Report of the Republic of Moldova*, CEDAW/C/MDA/4-5.

⁴² Public Association "Promo-LEX", International Center "La Strada", Moldova, Women's Law Centre, Public Association "Speranta" Centre, Help Age International, Human Rights Information Centre (CIDO), Winrock Moldova.

⁴³ UN Committee on the Elimination of Discrimination against Women. Concluding observations on the combined fourth and fifth periodic reports of the Republic of Moldova. 18 October 2013, p.6.

in the national anti-trafficking response to the experts in a written form or during the meetings, and this information was included in the final report of the country. Afterwards the remarks of this report were taken into account in the development of the NAP for 2012–2013 and the draft NAP for 2014–2016. Thus, for instance, in the GRETA report on Moldova it is mentioned that the NGOs are part of the National Committee, but not as fully-fledged members, having an advisory role. This fact does not allow the NGOs to participate in the National Committee’s decision-making process on a par with the governmental institutions. The GRETA report recommended the Government of Moldova to strengthen the role of NGOs in the decision-making process and provide full membership in the National Committee.⁴⁴ This and other GRETA recommendations were taken into account when developing the NAP for 2012–2013. Afterwards in 2013 the draft of the relevant additions and amendments to the Law No. 241-XVI of 20 October 2005 was developed, which currently is available for public comments on <http://www.antitrafic.gov.md> – the Permanent Secretariat’s website. Their submission to the Government and then to the Parliament is planned for 2014.

Similarly, the NGOs interact with other external experts who, in fact, play a mediating role in the NGO interaction with the Government, the Parliament and other governmental institutions, helping to solve the problems that are well known on the national level. But, as noted, this mechanism works quite slowly, that is why many NGOs prefer to work directly with the governmental institutions and solve the problems inside the country.

NGO participation in the work of coordination structures and the internal monitoring of policy

The legislation of the Republic of Moldova provides two monitoring mechanisms of the implementation of the anti-trafficking state policy:

- NRS Strategy monitoring and
- NAP monitoring.

The **NRS Strategy monitoring** is under the responsibility of the Ministry of Labour, Social Protection and Family. In March 2013 this ministry published its fourth report on monitoring the NRS Strategy implementation for 2012⁴⁵, which also includes the information about the measures taken by the State in cooperation with other partners.

⁴⁴ GRETA. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Moldova. First evaluation round. Strasbourg, 9 January 2012, p.18 (para 57).

⁴⁵ This document is available on the website of the MLSPF (only in Romanian): <http://mpsfc.gov.md/md/rapoarte/>.

The **NAP monitoring** is currently being carried out by the Permanent Secretariat of the National Committee for Combating Trafficking in Human Beings. The Permanent Secretariat was established within the State Chancellery of the Republic of Moldova at the end of 2011 and already published two National Reports on the prevention and combating trafficking in human beings (for 2011 and 2012).⁴⁶ These reports contain data on both the Government's efforts in this field, and the measures taken by the NGOs and the intergovernmental organizations, which rendered the relevant information to the Permanent Secretariat and contributed to the development of the policy and the reports on its implementation.

The 2012 National Report concludes by listing the shortcomings of the policy and the recommendations to overcome them. Prior to the publication of this report, the Permanent Secretariat distributed the draft report among all anti-trafficking stakeholders, and the NGOs had the opportunity to give their suggestions for improving the policy, including in the area of protection of victims' of trafficking in human beings rights. Such an activity management enables the NGOs to participate directly in the formulation of the state anti-trafficking policy.

Independent evaluation of the state policy by NGOs

Speaking of the NGOs experience in this field, it should be noted that in 2012, for the first time, the International Center "La Strada" (NGO) supported by the International Organization for Migration Mission to Moldova conducted an independent study on the Moldova's anti-trafficking policy management for the last 10 years (2001-2011)⁴⁷. This study was carried out at the request of the Permanent Secretariat and focused mainly on the problems of the institutional and regulatory frameworks, as well as organizational aspects. Some conclusions and recommendations of the study were supported by the Permanent Secretariat, in particular – the formulation of additions and amendments to the Law No. 241-XVI of 20 October 2005 regarding the development of a multidisciplinary approach in the policy management, civil society participation, etc.

The named study tangentially touched upon the issue of the human rights-based approach application within the country's anti-trafficking policy planning and observance of the international standards in this field. The present study is a logical continuation of the study from 2012.

⁴⁶ The mentioned documents are available on the website of the Permanent Secretariat (in Romanian, English and Russian): <http://www.antitrafic.gov.md>.

⁴⁷ The Report on the study "Management of the National Anti-Trafficking Policy. Experience of the Republic of Moldova" is available on the website of the Permanent Secretariat (in Romanian and Russian): <http://antitrafic.gov.md/lib.php?l=ro&idc=30&t=/Raport/Nationale/>.

Evidence gathering about trafficked persons' rights violation

As already mentioned above, currently not all the victims' of trafficking in human beings rights are respected since the existing socio-economic and spiritual limits of society do not allow for it. However, so far in Moldova there wasn't officially registered any case of violations victims' of trafficking in human beings rights, which would be appealed in the courts inside the country or in the ECHR with the support of the NGOs.

The NGOs prefer to cooperate with the governmental institutions, both in supplying direct aid to the victims, and taking measures aimed to develop the legislative and regulatory frameworks as well as governmental institutions capacity building. The civil society organizations have firmly occupied the niches in providing services to the victims of trafficking in human beings and have direct access to policy development in this field. Their capacity (knowledge and experience of working with the victims of trafficking in human beings) is recognized and used by the governmental institutions. But the traditional NGOs' role of a "watchdog" which "barks" loudly making statements in the media about the human rights violations, helps to defend the rights in court and attracts public attention to injustice is not exercised to a certain extent, in the developing democracies, including the anti-trafficking field in Moldova.

To shed light on the causes of this situation, in this research, the specialists of the governmental institutions were asked if they know about the role of civil society in a democratic lawful state. Moreover, they were asked if the NGOs in Moldova should be more principled in the protection of victims' of trafficking in human beings rights, more actively use the media, as well as appeal to the ECHR. All the surveyed experts from the governmental institutions noted that they know about the role of the NGOs in the democratisation of public life and understand its value. But most respondents consider that the society has not established yet appropriate conditions to exercise this role, since the social and legal mechanisms of human rights protection in our country are still developing. Particularly, some specialists noted that their rights are also not protected. In these conditions, in their views, the NGOs shouldn't fiercely criticize the work of the governmental institutions and increase the flow of complaints, but see the common goal – improvement in human rights protection situation and cooperate with the governmental institutions to achieve it. The NGOs should work professionally and offer solutions to solve the problems (best of all – systemic ones), and not simply criticize the State, which deals with a number of problems. Also the NGOs should not ultimately appeal to the ECHR, the decisions of which are not always fair (they are based on the European law and the Moldova's leg-

isolation has not yet been fully harmonized with it) and lead to an outflow of the public funds allocated for the social protection. According to the experts the governmental institutions and NGOs must use all opportunities to solve the problem inside the country. At the same time, some specialists of the governmental institutions gave examples of communication with NGOs, when the NGOs principled position initially caused their strong dissatisfaction, but ultimately helped to solve the problems of specific individuals and inspired their respect.

The specialists of the non-governmental and intergovernmental organizations noted that they are aware of the difficulties confronted by the State and realize that some rights of victims of trafficking in human beings can be fulfilled only over the years, when the State will have the necessary means. That is why the NGOs have not yet resorted to using the role of a “watchdog” and prefer to cooperate with the governmental institutions in addressing the problems of victims of trafficking and in creating the necessary conditions for the respect of human rights. In the same regard, they would like to take a more principled stand on protecting the victims’ of trafficking in human beings rights. For this purpose, the victims’ of trafficking in human beings rights should be formulated in laws and regulations in such a manner that one could appeal in court their violation. The NGOs also do not believe that they should always be constructive and offer solutions to problems, their task being to attract the public attention to the cases of injustice and encourage the government to address them effectively.

Conclusions

Currently the NGOs from the Republic of Moldova have accumulated some experience of participating in an external monitoring of the state anti-trafficking policy. Moreover, the NGOs are actively involved in the work of the National Committee and the working groups created by the Permanent Secretariat, which allows them to participate directly in the development of the state policy and monitor its implementation.

However, the usual for the developed countries role of NGOs of a democracy "watchdog", is not very well developed in the anti-trafficking field in the Republic of Moldova.

Answering the question about the reasons of this phenomenon, the specialists from the governmental institutions noted that in Moldova there haven't yet been created suitable conditions for the NGOs to exercise this role. Therefore the NGOs:

- should not use fierce criticism towards governmental institutions, rather seeing the common goal –the improvement of the human rights situation;*
- should offer solutions (better systemic ones), and not simply criticize the State, which deals with a number of problems;*
- should regard the appeal to ECHR as an ultimate solution, as it leads to an outflow of the public funds allocated for the social protection, using first all the possibilities to solve the problems inside the country.*

The NGO and intergovernmental organizations' experts noted that they would like to take a more principled stand on protecting the victims' of trafficking in human beings rights , hence, those rights should be formulated in the laws and regulations in such a manner that one could appeal in court their violation. The NGOs also do not believe that they should always be constructive and offer solutions to problems, their task being to attract the public attention to the cases of injustice and encourage the government to address them effectively.

Recommendations

- *Observance of human rights should gradually become the main criterion for the efficiency of the State Apparatus. The State should not only ratify the international treaties concerning the protection of human rights, but go further, actively creating a favourable environment/conditions for the implementation of their provisions, creating the necessary institutional framework and incorporating human rights standards, both in legislation, and the normative acts, as well as in the standard procedures and practices.*
- *The State should clearly establish the lowest possible level of fulfilment of any trafficked persons' right guaranteed by the law, so that the lack of resources would not prevent the rights' respect.*
- *It is necessary to develop the rights' of victims of trafficking in human beings monitoring system. The NGOs should gradually adopt a more principled position on protecting the victims' of trafficking in human beings rights, contributing to the implementation of the necessary social transformation.*

A large, stylized orange graphic on the left side of the page, resembling a hand holding a torch. The hand is formed by several curved, overlapping shapes, and the torch is a vertical shape extending downwards from the center of the hand. The background is a light orange gradient, and there is a horizontal orange bar at the top right.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Research conclusions

1. Analysis of the Law on Preventing and Combating Trafficking in Human Beings No. 241-XVI of 20 October 2005 provisions within this research showed a high level of abstraction of the provisions concerning the victims' of trafficking in human beings rights and lack of indications on the development of standard procedures in assistance and their connection with the budget process. This contributes to administrative barriers in the implementation and protection of rights. The law does not provide for any connection of the institutional framework in the anti-trafficking field with the national institutions promoting and protecting human rights.

2. The National Plan for Preventing and Combating trafficking in Human Beings for 2012-2013 contains four chapters, one of which aims to overcome the problems in assisting victims of human trafficking, that according to international recom-

Recommendations

To supplement the Law No. 241-XVI of 20 October 2005 with the provisions regarding the need to develop normative acts – minimum quality standards, detailing the order and procedures to assist victims of trafficking in human beings, as well as providing connection of these procedures with the budget process/allocation of necessary funds.

To supplement the Law No. 241-XVI of 20 October 2005 and normative acts adopted in its implementation with the provisions on the role of the national institutions promoting and protecting human rights in the anti-trafficking policy management.

To develop based on Law No. 241-XVI of 20 October, 2005 (principles, guarantees and obligations) a specific list of trafficked persons' rights (adults and children), guaranteed by the State, handy to apply in practice, including the information of victims of trafficking in human beings about their rights. Include in this document information about to the ways to appeal cases of rights' violations.

To combine the development of the human rights-based approach in the policy and result-oriented policy management :

– To involve the victims of trafficking in human beings in the policy develop-

mendations allows to implement a human rights-based approach. However, most of the problems included in this chapter are not either clearly formulated (as shortcomings), or are organizational problems. It does not allow to evaluate to what extent the plan implementation impacts the rights of victims of trafficking. The victims of trafficking in human beings do not participate in the development of the policies.

3. The NRS Strategy for 2009-2016 aims to create a special democratic institution for the protection of victims' of trafficking in human beings rights. However, this document does not provide possibilities and procedures to appeal the violations of rights. Moreover, the national institutions for the promotion and protection of human rights are not involved in the monitoring of this Strategy implementation process.

4. The second National Human Rights Action Plan (2011-2014) was developed and is being implemented in Moldova. This political document encompasses the state's policy on human-rights protection strengthening in different spheres. Apart from that, national institutions for the protection and promotion of human rights were created in Moldova:

1) 4 Parliamentary Advocates forming together with the service personnel the Centre for Human Rights;

ment, to formulate policy issues from the human rights' perspective;

- To include in the policy documents the situation analysis and existing problems in the fulfilment of the victims' of trafficking in human beings rights and information about the baseline of each problem solving process;
- To develop an independent system of monitoring and evaluation to measure the impact of the anti-trafficking policy and strengthen the role of the civil society organizations in this work.

National institutions promoting and protecting human rights should be involved in the monitoring of the NRS Strategy implementation.

It is necessary to include information about the measures on trafficked persons' rights observance into the following documents:

- the National Human Rights Action Plan;
- the annual Report of the Centre for Human Rights to the Parliament on human rights observance in the Republic of Moldova.

2) Council on Preventing and Combating Discrimination and Ensuring Equality.

However, the state policy in the area of human rights protection doesn't have a strong interrelation with the protection of trafficked persons' rights and anti-trafficking policy.

5. The assessment of trafficked persons' rights compliance with the principles of assistance and respect is a complex task. The legislation does not provide any indication on how these principles and rights should be implemented. The absence of minimum standards of the services' for the victims of trafficking in human beings quality leads to the fact that it is unclear how many services should be provided and what the expected outcome is.

The evaluation of the policy impact on victims' of human trafficking rights was carried out by studying the opinions of the victims. The analysis of survey results showed that the principle of free access to justice is observed in practice since all the victims were invited to contact the police, but not all agreed to do it. Besides, not all criminals were duly punished, and not always ethical standards are observed in treatment of victims of trafficking in human beings during the trial. As a result, this leads to the revictimization of victims of trafficking in human beings – participants in criminal proceedings.

All the respondents were offered access to a range of services provided by the law re-

There is a need to improve the work on informing the presumed victims of trafficking in human beings about their rights – currently the victims do not always understand exactly what they are entitled to. This information should be supplied in a more simple way, accessible for the perception and understanding of the victims, who in many cases have a low level of education, while others – even mental problems.

Recommendations from victims of trafficking in human beings

The interviewed victims of trafficking gave a number of recommendations to the Government on measures to improve the implementation of their rights and the general improvement of the anti-trafficking policy.

- To organize psychological assistance for victims of trafficking in human beings at place of residence.
- To provide temporary allowance for victims of trafficking in human beings.
- To assist victims of trafficking in human beings in obtaining social housing.
- To combat family violence.

ardless of their participation in a criminal proceeding. Most of the victims stated that they were satisfied with the assistance they received. However, the services provided do not cover all the needs of the beneficiaries and not always allow to ensure their (re)integration in the difficult conditions of the modern life. Moreover, it is not possible to protect the confidentiality of the private life and identity of all the victims of trafficking in human beings at the moment.

6. The survey of experts confirmed that in reality there are problems with respect of trafficked persons' rights. The experts noted the following problems of the implementation of victims' of trafficking in human beings rights:

- compensation payment to victims of trafficking in human beings;
- revictimization of participants in criminal proceedings;
- inefficient investigation of crimes;
- low quality of the services provided by the state;
- insignificant role of the Ombudsman in solving the problems of victims of crimes, including victims of trafficking in human beings;
- other issues.

The presence of these problems, according to experts, is largely due to the lack of necessary resources, as well as lack of special knowledge in the field of human rights, misunderstanding of the fact that respect

- To strengthen the protection of labour migrants, to inform them about the possible risks of labour migration.
- To improve the prevention of human trafficking at the border (the Border Police should work better, their staff should include psychologists).
- To inform more about human trafficking.

Experts recommendations

- To identify and remove procedural barriers for the implementation of victims' of trafficking in human beings rights, including victims-witnesses in criminal proceeding.
- To develop a specialization in cases' of trafficking in human beings investigation and prosecution, to create special courts for offences against the dignity of the individual, including trafficking in human beings.
- To support the teamwork approach in investigation of crimes of trafficking in human beings (team-based criminal investigation carried out by an investigation officer, criminal prosecution officer and a prosecutor).
- To strengthen the protection of witnesses – allocate more funds and make a risk assessment.
- To develop specialized assistance and services for the participants in criminal proceedings, including free legal services of public lawyers.

for human rights is an essential condition for the sustainable development of a society. Moreover, the experts have different views, sometimes very vague, on how to transfer protection of human rights from the declarative level to a practical one and how to integrate human rights issues in daily activities.

- *To develop a concept of victims' of crimes rights protection, including victims of trafficking in human beings.*
- *To establish an Ombudsman unit to deal with the cases of the crime victims.*
- *To identify the procedural barriers in protection of human rights and eliminate them.*
- *To strengthen the role of research in policy development.*
- *To conduct training of judges, prosecutors, police officers and other professionals not only on the concept of human rights, but also on the socio-legal mechanism of fulfilment of rights and methods of using the concept of human rights in daily activities.*
- *To educate the public opinion on the conceptual human rights issues and how to integrate them into daily activities.*

7. *The NGOs from the Republic of Moldova have accumulated some experience of participating in an external monitoring of the state anti-trafficking policy. Moreover, the NGOs are actively involved in the work of the National Committee and the working groups created by the Permanent Secretariat, which allows them to participate directly in the development of the state policy and monitor its implementation.*

However, the usual for the developed countries NGOs' role of a democracy "watch-dog", is not very well developed in the anti-trafficking field in the Republic of Moldova.

Recommendations

- *Observance of human rights should gradually become the main criterion for the efficiency of the State Apparatus. The State should not only ratify the international treaties concerning the protection of human rights, but go further, actively creating a favourable environment/conditions for the implementation of their provisions, creating the necessary institutional framework and incorporating human rights standards, both in legislation, and the normative acts, as well as in the standard procedures and practices.*

Answering the question about the reasons of this phenomenon, the specialists from the governmental institutions noted that in Moldova there haven't yet been created suitable conditions for the NGOs to exercise this role. Therefore the NGOs:

- should not use fierce criticism towards governmental institutions, rather seeing the common goal – the improvement of the human rights situation;
- should offer solutions (better systemic ones), and not simply criticize the State, which deals with a number of problems;
- should regard the appeal to ECHR as an ultimate solution, as it leads to an outflow of the public funds allocated for the social protection, using first all the possibilities to solve the problems inside the country.

The NGO and intergovernmental organizations' experts noted that they would like to take a more principled stand on protecting the victims' of trafficking in human beings rights, hence, those rights should be formulated in the laws and regulations in such a manner that one could appeal in court their violation. The NGOs also do not believe that they should always be constructive and offer solutions to problems, their task being to attract the public attention to the cases of injustice and encourage the government to address them effectively.

- The State should clearly establish the lowest possible level of fulfilment of any trafficked persons' right guaranteed by the law, so that the lack of resources would not prevent the rights' respect.
- It is necessary to develop the rights' of victims of trafficking in human beings monitoring system. The NGOs should gradually adopt a more principled position on protecting the victims' of trafficking in human beings rights, contributing to the implementation of the necessary social transformation.

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