

Combat of Trafficking in Women for the Purpose of Forced Prostitution

Ukraine Country Report



Vienna, 1999

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The Ludwig Boltzmann Institute of Human Rights (BIM), founded in 1992, is a private research centre affiliated to the Faculty of Law at the University of Vienna. The institute's tasks include interdisciplinary research in the field of human rights and fundamental freedoms in Austria, Europe and other parts of the world. BIM services a broad concept of human rights and presently focuses on the implementation of various international human rights treaties in the Austrian national law, on the analysis of solutions for specific human rights problems, on research projects in Eastern European countries, in Bhutan, in Ethiopia and in Uganda, on empirical and dogmatic research work as well as on the training in the field of human rights.

In the course of this research seven country reports on trafficking in women, namely in Austria, the Czech Republic, Slovakia, Hungary, Bulgaria, Romania and Ukraine as well as a study on international standards were elaborated. A country report on Bosnia-Herzegovina will follow.

2nd edition

Vienna, December 1999

Legal Study
on the Combat of Trafficking in Women
for the Purpose of Forced Prostitution
in Ukraine

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1 Introduction

The monetarisation of social and personal relationships, the excessive importance of market values in the conditions of economic and social crisis lead objectively to the treatment of women as goods, to the growth of prostitution and trafficking in women.

Trafficking in human beings encompasses

“all acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harboring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage”¹.

It is necessary to clearly divide the concepts of prostitution and trafficking in persons in the Ukrainian legal discourse. Although these phenomena are closely connected, confusing these social phenomena complicates using legal mechanisms for prevention and replaces the strategies for counteracting trafficking in people by strategies of counteracting prostitution. Such division is very important not only in practical work, but also from the point of view of human rights advocacy. Each trafficked person must be regarded first of all as a Ukrainian citizen.

Ukraine is a country from which women are exported to the world slavery markets: to Turkey, Poland, Hungary, Czech Republic, Greece, Germany, Italy, Spain, Russia, United Arab Emirates, Israel, the United States and other countries. Ukraine, together with the other countries of the former Soviet Union, is identified as the country of origin for these markets, though in the course of recent years it has been acquiring more and more characteristics of a transit country as well. It is Ukrainian citizens who constitute a considerable part of the “live goods” on the open and underground markets of Europe and Asia.

The statistical opacity of the phenomenon of slavery-like practice and prostitution makes the study of its spreading and consequences problematic. It is practically impossible to obtain information from the official sources.

For instance, the quantitative data, which could give information on the existence and spreading of forced prostitution in Ukraine, is not even present among the indices of the Ministry of the Interior. There is only field data, which exists only for the internal use and is not accessible to the general public. According to the data of the Ministry of Statistics, only 6 criminal court proceedings with the charge of forcing to prostitution took place in Ukraine in 1996, and there were only 82 proceedings for running brothels².

¹ Definition from: Human Rights Standards For The Treatment Of Trafficked Persons, prepared by the Foundation Against Trafficking in Women, the International Human Rights Law Group, and the Global Alliance Against Traffic in Women

² Information of Ukrainian Ministry of Internal Affairs

2 The Mechanisms for the Control over Women's Rights Realisation in Ukraine

In this chapter, the possible forms of control over observing women's rights at national level are considered.

Many Ukrainian legislative acts proclaim the necessity to observe women's rights. In particular, this is done in Article 24 of the Ukrainian Constitution:

“The citizens enjoy equal constitutional rights and freedoms and they are equal before the law. There can be no privileges or restrictions on the basis of race, color, political, religious or other beliefs, gender, ethnic and social origin, ownership of property, place of residence, language etc. The equality between women's and men's rights is ensured by providing women with equal opportunities in civil, political and cultural sphere, in education and professional training, in labor and remuneration, special provisions for women's health and labor protection, retirement benefits and creating conditions when women can combine career and maternity, legal protection, financial support of maternity and childhood and providing other benefits for pregnant women and mothers”³.

However, declaring equality in the Constitution article is not by itself a guarantee of equality in real life.

Let us name the existing mechanisms that have been used or that are going to be used in the nearest future.

- 1. Preparation of special reports.** An annual report is prepared on observing human rights in Ukraine, in particular, women's rights. It is planned to give special attention to the problem of trafficking in women as a flagrant violation of women's rights in contemporary world. Such regular reports are prepared and presented by the Ombudsperson according to the Law⁴. The post of an Ombudsperson was introduced in Ukraine only in 1998. The report of 1999, that is going to be presented in autumn, is going to deal with the issues of counteraction and prevention of trafficking in women in Ukraine.
- 2. Parliamentary Hearings** on implementing the Convention for Elimination of All Forms of Discrimination against Women. On July 12, 1995, before the Fourth World Conference on the status of women in Beijing, the first Parliamentary Hearings “On implementing the UN Convention in Ukraine” were conducted. This was the first instance when gender-based dis-

³ The Ukrainian Constitution (adopted in 1996). Kyiv, 1998, p. 16

⁴ Unfortunately, the Ukrainian Ombudsperson Nina Karpachova has not yet prepared and presented her annual 1999 report in Ukrainian Parliament (Verkovna Rada). According to official information from her adviser, she is busy with preparation of such a report, which will be available only in Ukrainian language. In the middle of 1999, La Strada Ukraine was given materials about the situation of trafficking in women from Ukraine and within Ukraine for this report. In our opinion, the main reasons for postponing the report's presentation in Parliament are the President's elections in fall 1999 and the crucial changing in Ukrainian Parliament in the end of 1999 and beginning 2000. One more reason – the issue of human and especially women's rights becomes marginal in Ukrainian political space.

crimination was discussed publicly in Ukraine. Currently new parliamentary hearings are planned on this issue. Their approximate date is autumn 1999⁵.

3. **Creation of special bodies** for control over observing human rights, in particular the institution of the Human Rights Ombudsman at Verkhovna Rada (Ukrainian Parliament).
4. **Creation of special governmental structures** for dealing with women's and gender issues. In 1996 the Ministry of Family and Youth Affairs was created. Unfortunately in March 1999 it reduced its status to the State Committee and in December, 1999, according to the governmental reform in Ukraine it was liquidated at all.

As we can see, the mechanisms for the control over women's rights realisation in Ukraine exist only formally and can not be used as effective channels of influence on the Governmental policy towards women's rights and gender equality.

⁵ The Parliamentary hearings about the situation of women in Ukraine were planned for fall 1999, but were also postponed for the same reasons as the Ombudsperson's Annual report. They were planned as part of the preparation of the regular report of Ukraine about the implementation of the UN Convention Against All Forms Discrimination Against Women in Ukraine to the CEDAW Committee, which will have to be presented in 2000.

3 Trafficking in Women: Situation in Ukraine

3.1 Prostitution and Trafficking in Women in the USSR

It must be noted that trafficking in women with the aim of forcing them to work in the sex business cannot be regarded only as modern phenomenon. Prostitution and pimping, that is, providing intermediary services to prostitutes and their clients, existed in the Soviet times as well. However, they were never really widespread, for the following reasons:

1. The existing ideology quite strictly condemned both prostitution and using prostitutes' services by men.
2. The economy system ensured the possibility to have modest, but stable income, and thus the number of women who wanted to be prostitutes, was small.
3. The police was closely controlling this activity, effectively applying criminal responsibility to pimps, according to Article 210 of Ukrainian Criminal Code, "Keeping brothels and pimping", and administrative responsibility to prostitutes, according to Article 168 of the Administrative Offences Code, "Prostitution".
4. The trafficking in women across borders was practically impossible.⁶

The large gap between rich and poor layers of the population was one of the reasons for emergence of trafficking in women and prostitution of women in Ukraine. It is this difference that increases the numbers of both prostitutes and their clients.

One of the reasons for spreading of trafficking in women in Ukraine is the low effectiveness of the action of law enforcement bodies directed at counteracting this phenomenon.

The proposals of employment abroad most commonly involve such kinds of jobs as waitresses, striptease dancers, singers or dancers in restaurants, massagers, hotel maids, governesses, cleaners, tutors, manicurists or seasonal workers. Sometimes, women are explicitly recruited as prostitutes and know that they will work in the sex-sector, but do not know they will be held in forced labour or slavery.

Drafting the deceitful employment agreements is done so that the conditions of employment and job description are very vague and unclear. Various techniques are used to create the illusion of good perspectives for employment abroad and the reliability of the firm, for instance, various "job competitions".

3.2 Factors in Spreading Trafficking in Women in Independent Ukraine

The crime of "trafficking in people" and, in particular, "trafficking in women" has a long history, causes and roots. The independent Ukraine encountered it, however, only in the end of the 20th century.

⁶ Гуторова Н.А. Проблеми кримінальної відповідальності за торгівлю жінками, вчинену організованими групами. – Боротьба з торгівлею жінками: вдосконалення законодавства та завдання органів внутрішніх справ України. Вісник університету внутрішніх справ. Спеціальний випуск. – Харків, 1999. С. 26

Among the reasons for spreading trafficking in women in Ukraine there are both **internal** and **external** ones.

The most important factors are the difficult economic situation and practical impossibility for women to get employed in Ukraine. The low life standard and the high level of unemployment make women seek jobs abroad. It is no surprise that the results of focus group research show that 80 per cent of women expressed the wish to work abroad⁷. The restrictive migrant policy in the destination countries, the high level of internal unemployment and the unknowing of the foreign languages by Ukrainian women restrict official job possibilities. Regarding the situation of working migrants in European and other developed countries, the most accessible sphere for Ukrainian women is the sector of domestic labour and the sex industry, in its legal and illegal forms.

Internal reasons include legal ones. First of all, it is the absence of regulations concerning slavery-like practice and sex business in Ukraine and the lack of protection for the victims. The absence of regulations concerning the sex business in Ukraine leads to its criminalisation. Even those women who are ready to work as voluntary prostitutes within the country can not bring themselves to effect. They ought to find adequate jobs abroad, mostly in the illegal (because they are foreigners) sex business. Many women are ready to work in prostitution abroad, but they are not willing to be held in forced labour or slavery. In a situation of lack of legal regulation and misunderstanding of the position of trafficked women and their human rights by Ukrainian policemen, women prefer to have deals with pimps and traffickers, but no with the police.

Psychological reasons, though insufficiently researched, are also very important. The general crisis has led to lowered self-esteem and worsening of psychological state of the women. Following the principle “it cannot be worse”, women agree to various dubious proposals, without even considering the possible consequences.

Among the **external** reasons, both “positive” and “negative” ones are present. The “positive” ones are as follows:

- the opening the state borders and fall of the “iron curtain”;
- the increased opportunity for Ukrainian citizens to travel around the world, both for pleasure and in search for jobs.

The negative ones are:

- the internationalisation of shadow economy
- the emergence of international criminal organisations
- the corruption among the civil servants
- The inability for Ukrainian citizens to migrate legally to work legally abroad. They have to migrate and work illegally which forces them into situations of violence.

⁷ International Organization for Migration, Prevention of trafficking in women from Ukraine: Ukrainian informational campaign. Kyiv, 1998, p.11

3.3 The Ways of Getting Ukrainian Women into Modern Slavery Abroad

The analysis of the stories of trafficked persons who turned to the International Women's Human Rights Center La Strada – Ukraine, shows that while still at home, they mostly did not foresee or expect the situation into which they would get abroad (working in forced prostitution and/or in forced labour or even slavery). They fully understood their circumstances only after crossing the Ukrainian border.

The ways for recruiting women for such “employment” are varied and at the same time traditional and specific for this sphere. But this does not mean, that these means are being used only for illegal criminal business and trafficking in women (or human beings in general). There are lots of good examples of finding legal jobs abroad for Ukrainian specialists or happily getting married with foreign men. But we would like to stress that besides the legal forms, the following ways can be used as instruments for illegal migration and trafficking in human beings.

1. **Advertisements on employment abroad** are published in all newspapers that offer work for Ukrainian citizens. Content analysis of the newspapers “Robota dlya vas”/*Work for you*/, “Aviso”, “Proponuemo robotu”/*Work offers*/, RIO (Kyiv), “Gorodskaya gazeta”/*City newspaper*/ shows that each of the issues contains 5 to 20 “suspicious” advertisements with proposals to young and good-looking women. Here are the most typical examples that give food for thought: “High-paid contractual job in a night club for young good-looking girls. Full subsistence, free lodging. Travel passport required. Pay from 2.000 DM”, followed by the address where the interviews with the candidates are held. Or consider the following advertisement: “A dancing group is invited to work abroad”, with a telephone number. A single newspaper may contain a few more similar proposals.

The same analysis revealed the sad fact that generally the newspapers publish about 80 per cent of job proposals for men (mainly within the country, but also abroad, particularly in Russia and the Czech Republic). Even where the job in question is gender indifferent, men are openly preferred. Only 20 per cent of the proposals are for women. The work offered is mostly sewing, housework and secretarial work. Unfortunately, there is no anti gender discrimination laws to stop such practice in Ukraine. There is no wonder that Ukrainian women try to find their “work happiness” abroad, using every opportunity, even illegal, because of deficit or absence of legal job propositions.

And still, only under 20 per cent of women, who subsequently become trafficked persons, go abroad as the result of answering the advertisements of employment agencies.

The advertisements offering work abroad transfer from national newspapers and the local newspapers in large cities to the press in small towns, district centres. Young people there are more naive and they less reliable information. It is very difficult to check such firms because of the bad law first of all. The second reason is the high level corruption among police.

2. Interviews with women who are trafficked into the sex industry and evidence provided by experts (workers of Ukrainian embassies abroad and the policemen) reveal that a large portion of women go following an **invitation coming from some acquaintance**. They go through networks of intermediaries and suppliers who are not registered as firms. A “trafficker” gets US\$ 200,- to 5.000,- for one woman recruited to work abroad (the sum depends on the country, the status of the intermediary, the conditions of the agreement, etc.).

3. Through **marriage advertisements and contracts**. There is a practice of inviting Ukrainian women and girls via marriage agencies, with the stated purpose of marriage. Men who turn to an agency pay large sums of money for such a woman, and then they can resell her, or use her themselves and then give her back. They never restore psychic and moral damage to the woman, but only to the firm who has sold “the goods”. The interview with a woman who had been sold to a Frenchman for US\$ 2.000,-, showed that she had been misled by a Kyiv agency. The client told the firm that he was not going to marry because he had been married three times. He only needed a woman for sexual service and housework. The victim had been told at the firm that a French millionaire wanted to marry her, and for such great proposal she must pay them US\$ 500,-, which she did⁸.

Of course, there are a lot of very successful and happy cases of Ukrainian women getting married with foreigners. But unfortunately, this sphere is becoming part of the criminal business, closely connected with trafficking in women. We do not think that the closing of such agencies would be a solution, but consider the lack of legal regulation of such business in Ukrainian law as main problem. The reason is that marriage agencies are a very new kind of business in Ukraine and had been absent as legal business in Soviet Union at all. Without improving the regulation of their activities, such agencies will continue to be a means of trafficking Ukrainian women abroad. We suggest that they have to guarantee safety and the absence of “criminal background” of their male clients to women, as well as real contacts with partner marriage agencies in foreign countries, etc. These agencies should have to provide information about the regulations on marriage, children and citizenship law in the different countries, on cultural traditions etc.

4. There are also cases of getting into slavery and violence conditions through the **Internet**, the world wide “web of brides”.

One of such sad cases happened not long ago to a woman from a small town in the South of Ukraine. She spoke English and had Internet access, so she put her photograph and description on a web page for brides. After some time she started exchanging letters with a man from Norway. He introduced himself as a computer firm owner. The letters were interesting, and in a few months he invited her to Norway, for the personal meeting. At this stage, there was no talk of marriage. The woman applied legally for the visa and had a return airplane ticket. The man met her at the airport, and took her to his place. And then the nightmare started. He locked her up and raped her. He made her starve and invited his friends to share her. The end came when she managed to call the police. The man was arrested, and the girl returned to Ukraine.

5. Through **tourist firms**. In contrast to employment agencies, such firms apply for tourist visas, which do not allow legal employment. Thus, Ukrainian women will seek employment abroad at their own risk. The tourist firms are not accountable for their fate there. They play a very important role link to trafficking by providing visas and transportation. In many cases traffickers have close contacts with such firms or even are owners or managers in such firms.
6. The **Au Pair system**⁹. It started its existence in 1960, but Ukrainian citizens gained access to it only a few years ago. Currently in Ukraine there are many agencies that employ young people using this system. By itself Au-pair system is a very good chance for young Ukrainian citizen to study foreign languages, cultural tradition and life in others country. But unfortu-

⁸ Ibid., p.38

⁹ This issue was described by the coordinator of Hot line in International women rights center “La Strada-Ukraine” in her article for scientific editions (in Ukrainian). See also I. Shvab Ways for getting women and girls into foreign sex business, in: Newsletter of the University for the Interior. – Special edition. Kharkiv, 1999, pp.80-84

nately sometimes Au-pair system is been using as a channel for trafficking in women. For best regulation of Au-pair system it is necessary to disseminate more information about it, its real tasks and possibility. There is a very big role both Ukrainian and foreign non-governmental organisations (NGOs) in this process.

It is necessary to stress that currently there are no efficient ways for protecting Ukrainian women from becoming trafficked abroad. So far, the main hope is educational work: providing information and knowledge to Ukrainian women.

3.4 The Receiving Countries for Trafficking in Ukrainian Women

The priority countries for trafficking in Ukrainian women with the aim of forcing them to work in the sex-industry were determined by expert evaluation, interviews with trafficked women, the analysis of La Strada-Ukraine hotline materials, and the data provided by a number of European NGOs that work in the sphere of prevention of trafficking in women in Ukraine. These countries are as follows: Turkey, Greece, Cyprus, Italy, Spain, Yugoslavia, Bosnia and Herzegovina, Hungary, Czech Republic, Croatia, Germany, United Arab Emirates, Syria, China, the Netherlands, Canada, Japan, Israel, Russia.

Some information comes from the women who returned home and told about their experience abroad, overcoming their fear. Women tell their awful stories on the hotline of International Women's Human Rights Center "La Strada - Ukraine", and ask for help.

Tanja lived in a small town in Lugansk region. She was 20 years old. Her father left the family when she was 4 and her brother was 2 years old. In 1991 her brother was run over by car. He stayed alive but became disabled. His mother couldn't work because she had to take care of him. Tanja graduated from a technical school but couldn't find work. No factories and plants in the city could offer employment. Sometimes the family had nothing to eat except bread and water.

The woman was slim and good-looking. A friend of her mother proposed to her to go to her relatives in the United Arab Emirates and to work as a housemaid at a rich villa. The salary was US\$ 4.000,-. It seemed incredible luck to the girl. She got the passport and visa and flew to Abu-Dabu. After the arrival her passport was taken away and she was informed that she had been sold for \$7.000,- and from that moment she had to work in a bar attracting clients.

After some time the girl managed to escape and turned to the police of UAE for help. A policeman arrested her and she was condemned for 3 years for false charge. The girl has been in prison for 11 months. According to the law of the country, even for voluntary prostitution a woman can be taken to jail for 1 year, and there was no attorney at the court and no one could challenge the sentence. Having an attorney during the court proceedings would have cost US\$ 5.000,- – 7.000,-, and the woman's family did not have such money.

La Strada wrote a letter to Ukrainian Ambassador in UAE and to the Shah of the country but unfortunately has not got any positive results yet. The Ambassador turned into different institutions in the country, but they would not reconsider the case without an attorney. Ukrainian Ambassador visits the girl in the prison, which is in the desert. The girl wants to go back home but she is afraid that people will talk and no one will marry her.

Tanja's mother called La Strada constantly and she was crying day and night: the lives of both her children are broken and there is no hope for the future¹⁰.

As it is known, trafficking in persons is carried out not only with the aim of their exploitation in sex business and forced prostitution. Debt bondage, forced labour, unequal marriage are also forms of trafficking.

¹⁰ The name of girl was changed. La Strada – Ukraine got this story through its hot-line in February 1998.

Marriages to foreign nationals, in particular to those of the Middle East countries, is quite a widespread phenomenon in Ukraine. Some time ago, when the Soviet Union still existed, these countries have supplied the majority of the foreign students studying at Ukrainian higher educational establishments. When the marriage does not work, various problems emerge. One of these is connected with the children of Ukrainian women from such marriages.

Many Ukrainian women are being held in Israeli prisons. They were going to work in that country but then they were forced to be prostitutes. Unfortunately, there is still no solution for this question. While they are prosecuted for prostitution, those who coerce them into it, the traffickers and intermediaries, who are gaining profits, are not punished and are recruiting new victims.

Raja is 23 years old. She lived in Kiev. Three years ago her mother has taken a lodger. He was a student from Jordan, his name was Azim. Raja's mother told to La Strada:

After some time my daughter fell in love with him. He didn't want to marry her and I knew he didn't love her. But soon my daughter had a child, a boy. We named him Arthur. After the child was born, Azim disappeared. He went to Jordan. My grandson was one year old, when Azim came back and began to insist on adopting the child. I was against it but my daughter wanted her son to have a father. So they registered the adoption. Some time passed and Azim began to ask Raja to go to Jordan to see his father. I asked my daughter not to do it, but she wouldn't listen. They left Kiev. I knew that as Raja was not happy with him in Kiev, she wouldn't be happy with him in Jordan either.

After some time my daughter called me. She was crying and said that they lived with Azim's parents. His parents were not bad, but the life there was terrible. Azim didn't allow her to leave the house, made her cover her face and to eat with her hands. (They have such custom). He still didn't want to marry her. Raja realised that Azim needed the son only to get state benefits for the child. He got a piece of land and hoped to get some other benefits.

It was going on for about half a year. But one day Azim said to my daughter that she had to move to another man. She began to protest but he showed to her the money he had received from that man and explained that she was the slave of that man.

Raja called me. The Ukrainian embassy helped me to return my daughter to Ukraine, but my grandson had to stay in Jordan. Now we don't know who can help us to return our boy. From time to time Azim calls to Kiev. He wants us to sell our flat and use the money as ransom for my grandson¹¹.

¹¹ The name of girl was changed. La Strada – Ukraine got this story through its hot-line in March 1998.

4 The Law on Prostitution and Trafficking in Human Beings in Ukraine

4.1 Ukrainian Law on Prostitution and Prostitution-related Crimes

In Ukrainian law, prostitution is not a criminal offence, and therefore it is not prosecuted by the criminal justice. At the same time, prostitution is regarded as civil offence, which threatens the civil order and security¹² and goes in the same category as minor hooliganism, spreading of false rumours, violation of fire security rules, drinking alcohol in public places etc.

Article 181 (1) on **prostitution**, which was introduced into the Ukrainian Code on Civil Offences in 1987 and modified in 1997,¹³ states:

“Prostitution entails issuing of warning or a fine equivalent to five to ten tax-free minimum monthly salaries. The same offence committed within one year from the issuing of the civil penalty entails a fine equivalent to eight to fifteen tax-free minimum monthly salaries”.

Whereas prostitution in itself is treated only as civil offence, **forcing a woman to prostitution** is regarded as criminal offence, which is prosecuted according to the Ukrainian Criminal Code. Article 119 says:

“Forcing a woman to sexual relationship by a person, from whom she is dependent either financially or officially is prosecuted by one year of imprisonment or by the same term of compulsory labour”¹⁴.

Number of registered sexual crimes classified by Article 119 of the Ukrainian Criminal Code (Forcing a woman to sexual relationship) and of persons who have committed them:¹⁵

Year	Crimes registered	Persons charged
1991	1	0
1992	2	3
1993	2	2
1994	1	0
1995	4	3
1996	6	2
1997	3	2

Source: Informational Service of the Ukrainian Ministry of Interior

¹² Chapter 14 of the Ukrainian Code on Civil Offences

¹³ Decree of Verkhovna Rada (Ukrainian Parliament) Presidium No. 4134-11 of 12 June 1987, modified according to the Law No. 55/97 ВР of 7 February 1997. Кодекс України про Адміністративні порушення. – Київ, 1997. С. 217

¹⁴ Кримінальний Кодекс України. – Київ, 1997, С. 94

¹⁵ The data of 1998 and 1999 are absent yet

Article 119 provides for the amenability for such kind of sexual crime, which is committed against the victim's will, using such instruments of coercion as financial or professional dependency of the victim on the offender. These actions come under the jurisdiction of Article 119 only in the following cases:

1. the victim was financially or professionally dependent on the offender, or
2. the offender has used or tried to use his financial or official power over the victim in order to coerce her into sexual relationship¹⁶.

The essential features of the crime, provided for by Article 119 (that is, the intention and the means for carrying it out) are as follows:

- the intention to coerce the woman into sexual relationship
- the means of using her financial or professional dependency.

In the case of coercion of the woman into sexual relationship various kinds of threats are used, including the following:

- threats to bereave of home
- threats to bereave of financial assistance
- threats to bereave of food
- threats of firing from work
- threats to cross out of the waiting list for dwelling
- threats to bereave of bonuses
- threats to bereave of promotion, etc.¹⁷.

Do the actions, which can be qualified as trafficking in women or export of women with the aim to hold them in conditions of forced labour or slavery in the sex industry, possess these essential features?

If the things which happen to Ukrainian women who have become trafficked are to be analysed carefully, it often comes out that they have been blackmailed by the traffickers; they have been threatened to be left without food, money, dwelling, identity papers.

However, in the overwhelming majority of cases these threats are pronounced outside the Ukrainian borders. This happens, after the women, on the allegedly voluntary basis, have been exported to work as cleaners, waitresses, housemaids, saleswomen, dancers etc, and only abroad they find out that they have to work as prostitutes.

The situation is further complicated by the fact that it is not uncommon for the women to receive these threats from foreigners, who are joined in unitary criminal groups. If this is taken into account, it is not surprising that the trafficked persons very seldom have courage to name their agents and to testify against them in court.

¹⁶ М.Ю. Коржинський Коментар до Кримінального Кодексу України. – Київ, 1997. С.340
¹⁷ Ibid.

In the case of trafficking it is very difficult to determine whether the trafficked woman has been influenced through the factors of financial or professional dependency on the offender. This happens because in many cases the traffickers and the procurers use debt pressure on the women. They help in putting in order the identity papers, in some cases they pay a part or the total expense of the fare, and the women (on the basis of oral agreement) must repay this sum after they have earned money abroad. Women work to repay the sums, but both the work and the sums are different from what was agreed earlier.

Data show that even on the “item” of debt to the traffickers, the women return 5 to 20 times as much money as the traffickers have paid for them. The financial pressure continues until they repay the total sum, which is freely determined. Afterwards the women continue contributing a half to three-fourths of the money they earn¹⁸.

Article 210 of the Criminal Code penalises “**Running brothels and pimping**”:

“Keeping brothels or pimping for prostitution is prosecuted by imprisonment for the term of up to five years”.

Numbers of registered sexual crimes classified by Article 210 of the Ukrainian Criminal Code (pimping and keeping brothels) and of the persons who have committed them:¹⁹

Year	Crimes registered	Persons charged
1991	3	3
1992	2	1
1993	21	29
1994	30	13
1995	49	45
1996	82	24

Source: Informational Service of the Ukrainian Ministry of Interior

This crime is characterised by action taken with the aim of acquisition, ownership and maintaining the functioning of some premises (house, apartment, room etc.) for some time as place for sexual activity.

The objective side of this crime is also formed by pimping, that is, searching for persons willing to be engaged in prostitution or dissipation, giving them the opportunity to do so and creating the necessary conditions. The analysis shows that this article cannot in fact be used for the prevention of trafficking in women, as its essence, as reflected both in the Article and in the comments, does not coincide with the actions typically committed by the traffickers.

This article deals (as the essential features of the crime are interpreted) only with the acquisition, ownership or ensuring the functioning of some premises (immovable property). That means that the brothel must be located in Ukraine. (It is not clear, how the new kinds of prostitution spreading in Ukraine should be classified, for instance the “vehicle” prostitution, and it is unknown,

¹⁸ *International Organization for Migration*, Prevention of trafficking in women from Ukraine: Ukrainian informational campaign. Kiev, 1998, p. 39

¹⁹ The data of 1997-1999 is absent.

whether the vehicle in question should be regarded as “a brothel”.) In the case of trafficking, the women are forced to prostitution in a different country.

The disposition of the existing articles of the Ukrainian Criminal Code (Article 119: Coercion of women into sexual relationship; Article 123: Illegal detention; Article 208: Coercion of minors into criminal activity, including prostitution; Article 210: pimping for dissipation) does not fully reflect the specific features of the criminal act of trafficking in women. It does not define the actions that cause the grave consequences.

4.2 Ukrainian Law against Trafficking in Women

On March 24, 1998, on the last day of its session, the Ukrainian Parliament adopted a new Law on making amendments to the acting legislation on banning trafficking in people in Ukraine, which was signed by the President of Ukraine, Leonid Kuchma. on 13 April 1998.

According to this Law, there are going to be changes in the Criminal Code of Ukraine. In particular, it entails a new version of Article 124 (1), “**Trafficking in people**”.

“Open or hidden power over a person, connected with the transition of that person, with or without his or her consent, over Ukrainian border, or without it, with subsequent trading, or any other paid transition of the person, with the intention to exploit him or her in sex business, porno business, crime, putting into debt bondage, adoption with the intention of getting financial revenue, using the person in armed conflicts, exploitation of his or her labour is prosecuted by imprisonment for the term of up to eight years, with or without the confiscation of personal possessions.

The same action committed to a person under 16, to a group of persons, or recurrently, or using a preliminary criminal agreement with other people, or abusing authority, or using financial or other dependency of the victim is prosecuted by imprisonment for the term of five to ten years, with or without the confiscation of personal possessions.

The action, described in Part 1 and 2 of this article, committed by an organised group, or connected with illegal transition of children over the border of Ukraine, or retaining them abroad, or intending to take organs or tissues for transplantation from the victim, or forced donor activity, or when this action resulted in grave consequences is prosecuted by imprisonment for the term of eight to fifteen years with the confiscation of personal possessions”.

Amendments to the Ukrainian Criminal Code adopted by Ukrainian Parliament on March 24, 1998 will also be made to a number of other articles.

Thus, it is supposed to amend Article 7 (1), which deals with “The concept of grave crime”. This article exists in the following form: “As ‘grave crime’, intentional action enumerated in the second part of this article, is regarded, which is especially dangerous to the community”. It is proposed to add to its second part the statement on “‘trafficking in people’ (Article 124 (1))”.

There are also going to be amendments to Article 26, “Especially dangerous recidivist”, which defines, which persons can be recognised by the court as especially dangerous recidivists. Now, a

person can be considered an especially dangerous recidivist, if he or she has been convicted to imprisonment for especially dangerous crimes against the state, and “trafficking in people” is now going to be regarded as such.

The amendments took into consideration as well the problem of illegal adoption and they foresee changes to those articles of the Criminal Code that are relevant to this topic.

The fact of adopting the Law on criminal responsibility for trafficking in people in Ukraine is undoubtedly extremely important on the way of overcoming this type of criminal offence. At the same time, there is still room for improvement and further elaboration, especially regarding the protection of the victim and the witnesses who agree to give testimonies against the traffickers. In order to accomplish this, it is necessary to join the efforts of the government power structures, lawyers and women’s non-governmental organisations.

4.3 The Activity of the Ministry of Interior Concerning Prevention of Trafficking in Persons

The Ukrainian Ministry of Interior has taken the following action:

1. Participation in expert evaluation of the current Ukrainian legislation on the problem and its correspondence to international norms. Upon the completion of the evaluation a number of proposals were submitted concerning amendments to some of the legislative acts.
2. According to the President’s instruction, the text of Comprehensive Programme for prevention and counteraction to trafficking in women and children has been prepared, which is currently being considered at Ukrainian Cabinet of Ministers.
3. A number of proposals concerning the collaboration between law enforcement bodies, in particular on strengthening legal protection and rendering legal assistance to the victims who have suffered criminal or illegal action at international level.
4. A number of practical steps have been taken for strengthening counteraction to crimes against women and children, in particular sexual crimes.

4.4 Practical Implementation of the Law in Ukraine

The first case on Article 124 (1) was started in Kherson in spring 1999. The investigation is performed concerning two women who transported girls to the Balkans, in order to “work” in night-clubs and casinos. The initiator of this business was a young woman from Kherson who worked with her friend. One of them took girls to Lviv, and got US\$ 250,- for one girl, and the other took them to Yugoslavia and sold them there for DM 1.000,- -3.000,-. The number of trafficked girls has not yet been finalised. The total number of such cases is currently 17²⁰. Only two of them have been taken to court²¹.

²⁰ Data from December 1999

²¹ Денісов С.Ф., Мислива О.О. Кримінальна відповідальність за торгівлю неповнолітніми. - Боротьба з торгівлею жінками: вдосконалення законодавства та завдання органів внутрішніх справ України. Вісник університету внутрішніх справ. Спеціальний випуск. – Харків, 1999. С. 57

Such statistics do not reflect the real scale of the phenomenon. Trafficking in people is one of the most lucrative criminal businesses. It spreads quickly in Ukraine, and is practically unpunished. What are the reasons for this? Let us enumerate and analyse them.

The first group of reasons is connected to the activity of law enforcement bodies: the lack of sufficient experience in handling such cases and the absence of clear crime definition and clarifications by the Ukrainian Supreme Court. Moreover, the necessary level of co-ordination between state executive bodies and non-governmental advocacy organisations has not yet been achieved. Further impediments concern the activity of certain elements within the structure of law enforcement bodies, first of all of criminal investigation, local police inspectors, posts and patrols and passport departments.

The second group of reasons is connected to the composition of the crime itself. Trafficking in human beings is a complex crime, which is difficult to prove. It is a specific crime that takes place in several countries at once.

The third group of reasons is connected to the attitude of trafficked persons to collaboration with law enforcement authorities. Women do not want to report offences to the police, as they fear moral condemnation from their relations and the community, lack of understanding by the police officers, persecution by the criminals, generally absence of perspectives for the case itself.

4.5 The Necessity for Perfecting the Activity of Ukrainian Law Enforcement Bodies

Any activity at legislative level would be in vain if there would be no improvements in Ukrainian law enforcement bodies. Therefore it is necessary:

1. to create a special body that would be directly accountable to the Ukrainian President of the Cabinet of Ministers, in order to co-ordinate the action of different bodies and organisations;
2. to create special structures within the Ministry of Interior system that would particularly address the crime of trafficking in human beings. The necessity for creating such special police departments is dictated by the complexities of investigation and field operations in this sphere. In order to record the violations and to prosecute the criminals it is necessary to use the whole range of methods and techniques of investigating and fieldwork, according to the Ukrainian Law “On field and investigation work”. Only in this case, tangible results can be obtained and relevant experience can be gained²²;
3. taking into account the international nature of the problem, alongside with joining Ukraine to international Conventions on the counteraction to the exploitation of prostitution by third parties, to solve the issue of practical interaction between Ukrainian and foreign law enforcement bodies in prevention of trafficking in women and the exploitation of prostitution.

²² Ibid.

5 Critical Review of Ukrainian Legislation Concerning Prevention of Trafficking in Women

There is no doubt that the adoption of Article 124 (1) of the Ukrainian Criminal Code had many advantages. However, it is not ideal and it has considerable drawbacks that decrease the efficiency of its application, and thus, the protection of Ukrainian citizens and the prosecution of criminals.

The imperfection of Article 124 (1) can be explained by the fact that the draft Law on prevention of trafficking in people in Ukraine was never openly discussed by experts or general public. The Law did not undergo sufficient legal expertise, and that is why it has not introduced an effective legal norm²³.

The problem of amending Ukrainian legislation concerning trafficking in women has been considered at various levels. For instance, this was done at a scientific and practical conference, “Combating trafficking in women: ways for improving Ukrainian legislation and Ukrainian Law enforcement tasks”, which was organised in May 1999 by joint efforts of International Women’s Human Rights Center La Strada Ukraine, Ukrainian Ministry of Interior, the University of Interior and Ukrainian Association of Criminologists. At this conference there were presentations by leading professionals in the area of criminal law, police officers who are directly involved in counteracting this crime, representatives of prosecutor offices and courts that act on the basis of current Ukrainian legislation.

5.1 The History of the Legislation

The analysis of the law title shows, at the first sight, no connection with the crime of “trafficking in people”. It was called **The Law of Ukraine on making amendments to a number of Ukrainian legislative acts, in connection to adopting the Law of Ukraine “On amending Ukrainian Code of marriage and family”**. The starting point for its drafting and passing were multiple facts for selling orphans abroad with the aim of subsequent adoption.

According to police data, every year about 12.000 children abandoned by their parents appear. About a half of these are 3 to 7 years old. Ukrainian state boarding schools have about 50.000 orphan children and children who are left without parental care. About 40.000 more children are placed under guardianship. The police are currently searching for about 20.000 parents that have abandoned their children²⁴. This situation constitutes the foundation for trading and kidnapping children and teenagers in Ukraine: they are for sale, because the resources for their support are insufficient. They can be sold not only for adoption, but also for working in brothels. One of the major examples of trafficking of children from Ukraine, that made the legislators adopt the Law against trafficking in people, were the facts revealed by Lviv regional prosecutor office, of trafficking abroad new-born children from the maternity hospitals. The investigation of this criminal case revealed that over the period of 1992-1994 directors of a number of medical establishments of the region were engaged in selling babies. According to the data of Ukrainian Parliamentary Commission in Human rights, citizens of other countries (the USA, Switzerland, Canada, Ger-

²³ Кармазин Ю.А. Українське законодавство щодо боротьби з торгівлею жінками та шляхи його вдосконалення. - Боротьба з торгівлею жінками: вдосконалення законодавства та завдання органів внутрішніх справ України. Вісник університету внутрішніх справ. Спеціальний випуск. – Харків, 1999. С. 4

²⁴ Бакаєв О. “Мауглі” в сучасному соціально-правовому оточенні. // - Іменем закону, 1998

many, France) illegally adopted and took abroad over 800 babies, out of whom 130 were Ukrainian citizens²⁵. The dynamics of spreading such crimes over the territory of Ukraine is appalling. Thus, in Odessa region a criminal case has been started for violations committed by civil servants in the process of adopting children by foreign nationals. In Ternopil region, criminal proceedings have been started for taking 124 orphans for medical treatment to the USA in 1992 and for the failure of 56 of them to return to Ukraine²⁶.

At the same time such kind of criminal activity as trafficking Ukrainian women abroad for forced prostitution and illegal porno industry was becoming more and more widespread.

The Law development team decided to list such different crimes in one article, which was dictated by a number of reasons. Two of them are worth mentioning here:

1. the absence of clear definition of such crimes as “trafficking in women” and “trafficking in children” in the Ukrainian legal discourse;
2. organisational reasons: It is not easy to pass a law in Ukrainian Parliament, whereas the necessity for counteracting trafficking in women and children was very pressing. That is why they were both listed under the term “trafficking in people”.

5.2 Listing the Crimes of “Trafficking in Children”, “Trafficking in Women” and Trafficking in Human Beings” in the Same Law

Some experts believe that there must be a separate article in Ukrainian Criminal Code that would prosecute “trafficking in children”. Selling a child for adoption with a commercial purpose presupposes the involvement of a minor, which is a qualifying characteristic of this crime. Introducing responsibility for trafficking in minors follows from international agreements signed by Ukraine that demand action in prevention of kidnapping and trading in children. And the rights of children and adult people are different things²⁷.

5.3 Imperfection of the Juridical Definition of the Crime Characteristics and Terminology Vagueness in Article 124 (1)

1. Thus, the name of the crime does not correspond to its substance, and its substance does not answer the basic demands of new international legislative acts.
2. Trafficking in women with the aim of forcing them to work in the sex-industry is considered to be one of the constituents of the general crime “trafficking in people”, the other part of which is trafficking in children orphans, with the aim of their adoption. That is why the interpretation of the crime became too general. It did not single out different kinds of trafficking in people and its specific parts, such as trafficking in women with the aim of their exploitation in prostitution.
3. While constructing this article, a principle for criminalisation of socially dangerous actions was not observed, namely, the principle of definiteness and unified terminology. Thus, in the article’s disposition, certain terms have been used that never appeared in criminal law before

²⁵ Денісов С.Ф., Мислива О.О. Кримінальна відповідальність за торгівлю неповнолітніми. С. 56

²⁶ Ibid.

²⁷ Кармазін Ю.А. Там саме. С. 5

and are not even legal terms: “sexual exploitation”²⁸, “porno business”, “keeping in debt bondage”, “labour exploitation”. What these terms actually mean is not clear – neither for practical workers nor even for academics. They are not used in the modern international documents. The etymology of the word “exploitation” (Fr. *exploitation* – using, getting profit) suggests that it means using somebody else’s labour without pay or with pay that does not correspond to its quantity and quality. However, if the term is understood this way, most of Ukrainian employers are exploiters (thus, minimal salary in Ukraine constitutes 75 hryvnias, (about US\$ 15), and thus they would have to be brought to criminal responsibility according to Article 124 (1). It is clear that the legislatures meant something quite different when adopting the norm, however, it should have been defined more precisely²⁹.

4. It is necessary to have a criminal and legal definition of the terms “trafficking in people” and “trafficking in women”. This should be done in accordance with the definition entailed in the “Human Rights Standards For The Treatment Of Trafficked Persons” which was prepared by the Foundation Against Trafficking in Women, the International Human Rights Law Group, and the Global Alliance Against Traffic in Women.³⁰
5. The disposition of the Article mentioned does not show the objective side of the crime in sufficient detail. The objective side is expressed as open or hidden power over a person, connected to legal or illegal transportation over the state border, or without it. However, it is not possible to call power either open or hidden when it is gained by way of deceit, abusing confidence, threats, detention of a child or a person who cannot understand the meaning of the action committed against them. The fact of trafficking and selling or another kind of paid transferral of a person is outside the objective side of the infringement. It is difficult to agree such criminal actions as forceful detention of a victim and her “consent” to stay in sexual or debt bondage. We believe that it is necessary for the law to contain kidnapping people and trafficking in them without mentioning the ways for committing the crime³¹.
6. The subjective side of the crime is imperfect, too. In order to make a person responsible according to Article 124 (1) of Ukrainian Criminal Code, it is necessary to prove that this person realised the fact of subsequent exploitation of other persons in prostitution, using them in porno business, keeping them in debt bondage etc. Life shows that in many cases women are invited abroad on the pretexts of working as waitresses, barmaids, dancers, cleaners, etc. They leave the territory of Ukraine with authentic passports and very often with authentic visas and only abroad get into the situation of forced labour or slavery. Article 124 (1) does not envisage responsibility for such action. In such cases the offenders can only be prosecuted by the laws of another country, if these laws envisage responsibility for trading in people³².

28 There is no internationally accepted definition of the term “sexual exploitation”. Delegates from all over the world who take part in the discussion and negotiations on the Trafficking Protocol to the new UN Convention Combating Organized Crimes are unable to agree on this term. Instead of “sexual exploitation”, the use of terms as “forced labor, servitude and slavery” are proposed by representatives using a human rights approach while creating new international standards against trafficking in human beings. Ukrainian specialists in legal studies should use these recommendations in the process of improving Ukrainian law against trafficking in women and human beings in general.

29 Гуторова Н.А. Проблеми кримінальної відповідальності за торгівлю жінками, вчинену організованими групами. – Борьба з торгівлею жінками: вдосконалення законодавства та завдання органів внутрішніх справ України. Вісник університету внутрішніх справ. Спеціальний випуск. – Харків, 1999. С. 27

³⁰ For this definition, please refer to Chapter 1

31 Варенко В.І. С. 43

32 Ibid.

Thus, people who run this business are practically impossible to prosecute. Such legal shortcomings prevent the legal act to fully perform its punitive function and influence substantially eradication of such socially dangerous phenomenon as trafficking in people.

5.4 Ways for perfecting legislation

Imperfection of the existing legal framework has led to the situation when criminal structures specialising in trafficking in women work practically openly. The number of specialised criminal structures increasing, and among their members are not only criminals but also former prostitutes. For certain pay they recruit women, including minors, for working as prostitutes abroad.

Experts from law enforcement bodies constantly state that trafficking in people and in particular trafficking in women with the aim of forced labour, servitude or slavery is a crime that is typically committed by an organised group. That is why perfecting the legislation on prevention of trafficking in people can be accomplished also through improving legislation on combating organised crime, both within Ukraine and at international level.

It is possible to ensure effective counteraction to organised crime in the sphere of trafficking in people only by adopting a special norm that would envisage criminal responsibility for creating a criminal organisation and participation in its activity. There are drafts of such laws in Ukraine, however, they have never been considered by Ukrainian Parliament.

Ensuring the impossibility to obtain income from criminal activity in the sphere of trafficking in people is an important constituent of attacking organised crime. An important element in achieving this goal is the support of international collaboration between police structures with different functions, and developing methods for counteraction to transnational criminal groups. Taking into account the forecasts for the increase in the number of organised criminal groups of all kinds, it can be expected that new kinds of crime will appear. The nature and felonious character of these crimes will influence the criminal situation in Europe, in particular in the sphere of trading people to the illegal business structures.

Concrete measures for perfecting the Ukrainian legislation against trafficking in women should include the following:

1. to make the necessary amendments to Article 124 (1) that would allow law enforcement bodies to use it in practical work;
2. in order to liquidate the imperfections in the rules and procedure of issuing licenses to commercial structures that employ Ukrainian citizens abroad:
 - to establish control of law enforcement bodies over issuing licenses to such commercial structures and over their activity,
 - to establish administrative responsibility for the employees of mass media agencies that publish advertisements on employment of Ukrainian citizens abroad without licenses approved by law enforcement bodies;

3. in order to overcome the methodology drawbacks and absence of criminology recommendations concerning practical issues in investigation of criminal cases and collecting evidence for crimes dealing with trafficking in people:
 - to develop the methodology for investigating such cases on the basis of the analysis of court and investigation procedures and forward these materials to investigator bodies of Departments of Ministry of Interior;
4. to amend the Civil Code by introducing a mechanism of financial compensation to victims of crimes dealing with trafficking in people, at the expense of the guilty persons.

In addition to amending Article 124 (1) of the Ukrainian Criminal Code, experts have submitted proposals for the adoption of a number of laws that would protect Ukrainian citizens against the crime of trafficking in people. These are as follows:

1. “On legal protection of Ukrainian citizens, their honour and dignity, abroad”
2. “On basic guarantees of children’s rights in Ukraine”
3. “On transplanting of body organs and tissues”

5.5 The Analysis of the Draft of a New Criminal Code in Ukraine

In Ukraine a new Criminal Code is currently being discussed, as well as the process of introducing amendments to the acting legislation, on the banning of trafficking in women and violence against women. Let us analyse the proposals which have been elaborated by the team of authors headed by the Academy member V. Ya. Tatsij.

The recent version of the draft of the Ukrainian Criminal Code was submitted by the Cabinet of Ministers of Ukraine to Parliament on 12 June 1997³³. This project has been agreed upon with the Ukrainian Ministry of Justice, the Ministry of Interior, the Security Office, the Public Prosecution Office and the Supreme Court; it has been evaluated by the Legal Directorate of the Council of Europe, as well as by the Institute of Comparative International Law (Switzerland). It has been given a preliminary consideration by the Parliament’s Committee on the Issues of Legality and Justice³⁴.

The draft Criminal Code contains a totally new Article 166, “**Violation of the labour contract**”, stating the following:

“(1) Violation of labour agreement by an official of an enterprise, or an organisation, irrespective of the form of ownership, as well as by a private person or a person with delegated responsibilities, by way of deceit or trust abuse, or through forcing to perform work, not specified in the contract or labour agreement is prosecuted by a fine equal to 20-100 non-taxable minimum income, or restricting the right to appointment to certain administrative positions, or to engagement in certain types of entrepreneurial activity for the term of up to 5 years, or imprisonment for the term of up to 6 months, or restriction of freedom for up to 2 years.

³³ Registration number 0041/2

³⁴ Українське право. – 1997, Число 2

(2) The same action against a citizen, whose labour agreement included work outside the borders of Ukraine is prosecuted by a fine equal to 50-200 non-taxable minimum income, or restriction of freedom for the term of up to 5 years”.

The article concerning the coercion of the persons under 18 into prostitution, has been changed, too (Article 208 of the acting Ukrainian Criminal Code). In the draft Criminal Code, there is Article 149, “**Forcing into prostitution**”, which is concerned not only with persons under 18, but women generally, irrespective of age:

“(1) Forcing a woman into prostitution, as well as deceitful coercion into prostitution are prosecuted by a fine equal to 20-40 non-taxable minimum income, or restriction of freedom for the term of up to 3 years, or imprisonment for the same term.

(2) Coercion of a woman under 18 into prostitution is prosecuted by imprisonment for the term of up to 5 years”.

However, even with the introduction of these new articles, the problem of the protecting Ukrainian citizens against trafficking and Ukrainian women forcing them into illegal sex still remains unsolved.

The absence of the concept of “trafficking in human beings” and especially of “trafficking in women” in Ukrainian legal framework constitutes its very serious flaw. In order to rectify the position the joint efforts of non-governmental organisations are required, which can attract the attention and concern of the community to this pressing problem. Also, it is indispensable that this problem is worked on by qualified lawyers.

6 Comprehensive Programme for the Prevention of Trafficking in Women and Children in Ukraine

As a result of studying the situation in trafficking in women in Ukraine and the investigation of this widespread phenomenon, the understanding of the principles for a comprehensive approach to its counteraction and prevention emerged. Notwithstanding the fact that in 1998 in Ukraine there exists a law that envisages criminal responsibility for trafficking in people, there is still no integral and co-ordinated national mechanism for its prevention. The activity of executive bodies concerning the prevention and counteraction of trafficking in women and children lack co-ordination and effectiveness.

A comprehensive approach means that such programmes must envisage varied action and equally varied approaches. These are perfecting the legislation, signing international agreements, improving the activity of the police as well as various state bodies and departments, forming a system of preventive action and measures for social rehabilitation of the victims. This experience is unique and it is worth detailed discussion.

6.1 The History of Forming a Comprehensive Programme for the Prevention of Trafficking in Women and Children in Ukraine

In February 1998, the activists of the International Women's Rights Center La Strada came up with a proposal concerning the forming of a Comprehensive programme of action for the prevention of trafficking in women and other forms of violence against women. This proposal was first submitted at a working meeting at Ukrainian Ministry in Family and Youth Issues on 13 February 1998. At this meeting, the implementation of the National plan of action for improving the status of women and promoting their role in the society for 1997-2000 (adopted by Ukrainian Cabinet of Ministers in September 1997) was discussed. This presents a vivid example of collaboration of NGOs and governmental structures. It is worth mentioning because it has lead to tangible results.

In May 1998, the first international seminar "Search for ways of solving the problem of trafficking in people and forming a Comprehensive programme of action" was organised by the International Woman Rights Center La Strada-Ukraine together with the Ministry of Family and Youth Affairs. As a result, the text of the Comprehensive programme was amended and supported by experts from different ministries and NGOs.

At the First All-Ukrainian women's congress that was held in May 1998, the proposals concerning the improvement of women's status were submitted to the Ukrainian President. In October 1998, the President issued an instruction to the Cabinet of Ministers; one of its items was the necessity for developing a Comprehensive national programme of action. The main goal of this Programme is the prevention of trafficking in women and children, and defining a system of measures for counteracting the spreading of this phenomenon.

The responsible body for the programme development was the Ukrainian Ministry of Interior. Its professionals have been working in close contact with the International Women's Rights Center La Strada Ukraine and other NGOs. Besides, many other ministries and departments took part in the programme development. It was discussed at the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Education, the Ministry of Labour and Social Politics, the Ministry of

Health, the State Committee for Youth and Family Issues, the State Committee for Statistics, the State Committee for Border Protection, the Security department, the Office of Prosecutor General, and the Cabinet of Ministers. Currently, the state programme is in its final stage of elaboration.

Unfortunately, in the process of agreement and amendment by the representatives of various state bodies the programme lost its initial human rights perspective. The interests of individual ministries and departments have taken the major place in it. Besides, its important drawback is that the programme has never been available for general public discussion, and in particular for the discussion among Ukrainian NGOs.

6.2 Legal Protection of Women against Trafficking and Coercion into Illegal Sex Business (According to the Text of the Comprehensive Programme for the Prevention of Trafficking in Women and Children)

The programme consists of 35 articles. It envisages the participation of 20 Ministries, local self-government authorities, international donor organisations, Ukrainian and foreign NGOs.

The following articles are dealing with the legal protection of trafficked women and children and the regulation of issues connected to counteraction and prevention thereof.

Article 1 To conduct expert evaluation of conformity of Ukrainian legislation concerning the protection of women's and children's rights with the international legal norms and submit the relevant proposals to Ukrainian Cabinet of Ministers.

(Responsible organisations: State Committee for Family and Youth Issues, Ministry of Interior, Ministry of Education, Ministry of Foreign Affairs, Ministry of Labour, with the participation of the Academy of Law. Term of completion: 2000).

Article 3 To study and summarise international experience in preventing and counteracting trafficking in women and children, rendering assistance to the victims of these crimes, and submit relevant proposals to the Cabinet of Ministers. To publish materials concerning these issues.

(Responsible organisations: State Committee for Family and Youth Issues, Ministry of Foreign Affairs, Ministry of Interior, State Committee of Nationals and Migration Affairs with the participation of Ombudsman, non-governmental organisations and charitable foundations. Term of implementation: 2000-2001).

Article 5 To implement the collection, analysis and provision of information on the crimes described by Article 124 (1) (trafficking in people) of the Ukrainian Criminal Code, that are committed against women and children. To elaborate and adopt forms for organisational statistical reports concerning crimes committed against life, health, wellbeing and dignity of women.

(Responsible organisations: Ministry of Interior, State Committee for Statistics, State Committee of Nationals and Migration Affairs. Term of implementation: starting with 2000).

Article 6 To create a database on persons and organisations that have been identified by law enforcement bodies as engaged in trafficking in women and children and exploitation of prostitution, as the result of search, preliminary investigation, court proceedings or the verification of information that has been obtained from other countries via Interpol channels.

(Responsible organisations: Ministry of Interior, Ukrainian Security Service, State Committee for Border Protection, Ministry of Justice, Ministry of Foreign Affairs, State Tax Administration, with the participation of the Office of Ukrainian Prosecutor General and Supreme Court of Ukraine. Term of implementation: first half of 2000).

Article 7 To draft proposals concerning implementation of compulsory insurance covering the life and health of persons that are employed (or are transported with the purpose of further employment) abroad at the cost of the enterprises and organisations organising their employment. Implement compulsory registration of such persons in the State Registry of Taxpayers.

(Responsible organisations: Ministry of Finance, State Tax Administration, Ministry of Justice, State Committee of Nationals and Migration Affairs. Term of implementation: 2000).

Article 9 To elaborate the system and implement, according to the law, registration of Ukrainian citizens that, while abroad, were known as prostitutes or were arrested for prostitution. To envisage the creation of a database on such persons, using the identification number of the State Registry of Taxpayers.

(Responsible organisations: Ministry of Interior, Ministry of Foreign Affairs, State Tax Administration. Term of implementation: 2000).

Article 10 To elaborate methods for investigating crimes concerned with trafficking in people, in particular in women and children. To research the issue of creating special departments within the structure of law enforcement bodies, that would counteract these crimes, and organize the collaboration with foreign law enforcement structures.

(Organisations responsible: Ministry of Interior, Ministry of Justice, Ukrainian Security Service, Academy of Law, State Committee for Border Protection, with the participation of Ukrainian Supreme Court. Term of implementation: 2000)

Article 12 Introduce a simplified procedure of the return to Ukraine for the people who have fallen victims of crimes connected with trafficking in people, sexual or other exploitation.

(Responsible organisations: Ministry of Foreign Affairs, Ministry of Interior, State Committee for Border Protection, Ministry of Justice. Term of completion: up to July, 2000).

Article 20 To develop and conduct seminars on the issues of prevention of violence against women and children, trafficking in them, elaboration of mechanisms for assisting the victims of these crimes:

with employees of the consulates;

(Ministry of Interior, Ministry of Foreign Affairs, Ministry of Justice, non-governmental organisations)

with employees of Offices for Registering civil state acts;

(Ministry of Justice with participation of non-governmental organisations)

with employees of central executive bodies and activists of Ukrainian non-governmental organisations;

(State Committee for Family and Youth Issues, Ministry of Justice, non-governmental organisations)

with employees of law enforcement bodies, migration and border guard services;

(Ministry of Interior, State Committee for Border Protection, State Tax Administration, State Committee of Nationals and Migration Affairs, Ministry of Justice with participation non-governmental organisations)

with employees of the systems of education, social protection and health service;

(Ministry of Education, Ministry of Labour, Ministry of Health, Ministry of Justice, with the participation of non-governmental organisations. Term of implementation: up to July, 2000).

Article 21 To prepare and to issue informational materials on the legal education, women and children rights protection for the programmes in educational institutions.

(Organisations responsible: Ministry of Labour, Ministry of Health, State Committee of Nationals and Migration Affairs, Ministry of Justice, with the participation of non-governmental organisations and charitable funds. Term of implementation: 1999-2001).

Article 30 To develop and to submit proposals to the Cabinet of Ministers co-operation between law enforcement of Ukraine and relevant institutions in countries, where trafficking in women and children has the biggest value. To study the question on the preparation and signing up the agreement between Ukraine and these countries on prevention of trafficking in people.

(Organisations responsible: Ministry of Interior, Ministry of Foreign Affairs, Ukrainian Security Service, State Committee for Border Protection, Ministry of Justice with the participation of the Office of Ukrainian Prosecutor General and Supreme Court of Ukraine. Term of implementation: 1999).

Article 32 To co-ordinate action and the system of training for the officers of law enforcement bodies, migration and border guard services from the countries of “live goods” origin, in order to use common methods and action in order to prevent and counteract trafficking in people.

(Organisations responsible: Ministry of Interior, Ukrainian Security Service, State Committee for Border Protection, State Tax Administration, with the participation of non-governmental organisations. Term of implementation: starting with 2000).

Article 33 To initiate regular informational exchange between the relevant law enforcement bodies of different countries concerning methods and investigation procedures for the crimes connected with trafficking in people, revealing international criminal groups, provision of statistics and its analysis.

(Organisations responsible: Ministry of Interior, Ukrainian Security Service, State Committee of Border Protection, with the participation of Ombudsman, Ukrainian Supreme Court. Term of realisation: on a constant basis).

Article 34 To take part in drafting a UN Convention on counteracting organised crime, considering the possibility of inclusion into it specific statements concerning counteracting trafficking in people.

(Organisation responsible: Ministry of Interior, Ministry of Foreign Affairs Term with the participation of Ombudsman, Ukrainian Supreme Court. Term of implementation: 1999-2000).

The fact of the adoption of the Comprehensive programme is a big step forward in solving the problem of violation of human rights and one more step to democracy development. However, the Programme has both positive and negative sides.

Positive Aspects:

- The programme involves different Ministries and state institutions in the prevention of and combating against trafficking in women.
- It provides collaboration between NGOs and governmental entities.
- It foresees the creation of statistics on the cases of trafficking, which is very important in any information, prevention and social assistance activities.
- It includes the implementation of special courses on the human rights and trafficking in women issue in schools and institutions, which is very important, because girls of this age constitute an “at-risk group”.

Negative Aspects:

- Some articles, such as Article 9, do not provide a human rights approach. In this article we can see the mixing of the phenomena of trafficking in human beings and prostitution. As it was mentioned before, unfortunately, this is a very common problem for Ukrainian lawyers which can lead towards wrong strategies combating trafficking in people. The implementation of this article will even have negative consequences on the combat of this phenomenon. The women who have been trafficked and forced to work as prostitutes abroad would not

agree to co-operate with the police in the investigation process. Moreover, such position impedes the process of social rehabilitation and reintegration of trafficked persons into community.

- The programme puts a great piece of responsibility on the Ministry of Family and Youth Affairs, but during the last governmental reforms, it was abolished and it is not clear who will take its responsibility. It shows that women and gender issues are not realized as important part of democratic transition in Ukraine.
- There are not enough specialists who can implement this programme
- The question of financing of the project is not very clear.

7 Initiatives of Non-governmental and International Organisations against Trafficking in Women in Ukraine

7.1 La Strada: A Programme for the Prevention of Trafficking in Women

The problem of the prevention of trafficking in people has attracted attention, first of all, of NGOs. The reason for this is that NGOs stress the necessity for observing human rights and react to human rights violations more actively than representatives of governmental structures.

The International programme La Strada: Prevention of trafficking in women in the countries of Central and Eastern Europe started in Ukraine in spring 1997. In March 1998, the Ukrainian Ministry of Justice registered the International Women's Rights center "La Strada Ukraine", the activity of which is directed at preventing trafficking in women and rendering assistance to the victims.

The main directions of La Strada activity in Ukraine are as follows:

- assistance to trafficked persons;
- hotline service;
- conducting research on violence against women;
- expert evaluation of legislation influencing women's status in Ukraine;
- educational work among the youth concerning women's rights and prevention of trafficking in women, as well as other kinds of violence and slavery;
- work with mass media;
- conducting informational campaigns on the relevant issues;
- publishing materials, newsletters, leaflets on the prevention of trafficking;
- conducting seminars, training sessions, conferences on the issue;
- collaboration with Ukrainian and foreign governmental and NGOs with the aim of preventing trafficking in women and providing assistance to the trafficked persons.
- Another important direction is the collaboration with law enforcement bodies and legislatures in perfecting the Ukrainian legislation against trafficking in people, in particular legislation regulating protection of the victims. Having this goal in sight, in May 1999 an International scientific and practical conference "Prevention of trafficking in women and ways for perfecting legislation" was organised jointly with the Ministry of Interior, the University of the Ministry of Interior and the Ukrainian Association of Criminologists. A collection of articles on the issue was published for distribution among police officers and legislatures in order to improve the efficiency in using acting legislation and its perfecting.

7.2 The Projects of the International Organization for Migration in Ukraine

As the reaction to spreading of trafficking in women, United States and the EU, in the framework of Transatlantic Dialogue, have come up with a joint initiative on the issue. Its goal is to prevent trafficking in women from the countries of Eastern and Central Europe and the Newly Independent States (NIS), as well as the transit of women through these countries. The International Organization for Migration (IOM) has conducted an informational campaign in Ukraine. It was directed at clarifying the real image of migration for both potential victims of traffickers and the relevant Ukrainian power structures that are trying to prevent and counteract trafficking in

Ukrainian women. A national survey was conducted, the facts concerning trafficking in women from Ukraine were revealed, as well as social and demographic characteristics of the trafficked persons. The second state of the campaign consisted in disseminating the information via mass media and active direct communication with the general public.

The 1999 IOM project in Ukraine is directed at technical assistance to the recently formed National Council on trafficking in people. The project envisages elaborating and implementing a campaign against trafficking in people in Ukraine that could be fully co-ordinated with the action in other countries, thus creating comprehensive bilateral and multilateral policy.

7.3 NIS-US Women's Consortium

The strategy of the NIS-US Women's Consortium, an NGO, lies in the stimulation of economic opportunities for the women in the risk groups, protecting them and preventing violence against women. The programme is financed from a grant obtained from the US Agency for International Development (USAID). The programme is directed against two major factors that make Ukrainian women easy victims for traffickers: insufficient employment opportunities and violence against women.

7.4 USAID and Programmes of Prevention of Trafficking in Women in Ukraine

In 1998, USAID started a programme in Ukraine that was in particular directed at the prevention of trafficking in women with the aim of forcing them to work in the sex-sector. In summer 1998, a large training seminar was organised in Poland and in the US for senior Ukrainian civil servants and representatives of NGOs, with the goal of forming joint strategies in prevention and counteraction to trafficking in women in Ukraine. In the framework of the project working meetings started for the representatives of different ministries, departments, international and NGOs, the activity of which is directed of prevention of trafficking in people.

At the cost of USAID, a documentary multi-part movie was made. It tells a fictional (though based on real facts) story of a woman who got into the net of live goods traders.

8 Summary and Conclusions

Let us make a conclusion of the research concerning Ukrainian legislation on combating trafficking in women in Ukraine and the actions which are taken by Ukrainian government and NGOs in this field. We would like to underline again, that the main methodological principal, which was used during the research, was the principle of observing human rights, and especially women's rights. Besides, according to the contemporary international instruments, the author tried to show the impossibility and danger of addressing the problem of trafficking in women only to prostitution, what often can be seen in researches of foreign authors as well as in ideas and practical activity of Ukrainian experts, who work in the field of combating and prevention of trafficking.

The main problems described in the research are as follows:

The social and cultural status of women in Ukraine is on the one hand characterised by formal and legal equality of all citizens regardless of their sex, whereas on the other hand deep gender discrimination in all areas of social and private life – social, economical, political, work field, family, etc - prevails. It is also shown why the problem of trafficking in people, especial women, has appeared in Ukraine together with getting of independent status and connected with economical and social problems in the country.

The main political mechanisms for the control over women's rights realisation in Ukraine were mentioned and characterised above. But as it is seen from the analyse of these mechanisms, they exist only formally and can not be used as effective channels of influence on governmental policy towards the protection of women's rights and gender equality.

The general situation of trafficking in women in Ukraine was briefly analysed. The main internal and external factors, which have influenced the spreading and intensification of trafficking in women, and the main ways and means, which traffickers use, were mentioned. The main receiving countries for trafficking in women from Ukraine with the aim of forcing them to work in the sex industry, forced labour and servitude were mentioned.

Ukrainian legislation on prostitution was analysed from the point of observing women's rights. There was shown the disparity to the basic principles of human rights.

The text of the Article 124 (1) of Criminal Code of Ukraine on "Trafficking in people" was analysed in detail. The positive moment of legislative changes in the independent Ukraine is the fact of introducing in March 1998 this article, which does not exist in other post Soviet countries. But at the same time there are arguments for the necessity to improve legislation. Without such improvement this article will not work and protect Ukrainian women from the risk of being involved into the illegal network of traffickers. Concrete ways of improving Ukrainian legislation and law enforcement in this area in accordance with contemporary international documents were proposed. It was also shown that the suggestions of the authors of the project of new Criminal Code of Ukraine, which went through the first hearings in the Ukrainian Parliament, are insufficient for the combat of trafficking in people and need to be further elaborated.

One parts of this research was the analyse of the Comprehensive Programme on combating trafficking in women and children, which was adopted by the Cabinet of Ministry of Ukraine on 25

September 1999 and is a unique example of the attempt to solving the problem of trafficking in people in a certain country by a complex approach.

The peculiarity of this programme is not only that its creation was initiated by NGOs, but also the fact that NGOs are actively involved in its implementation. Positive aspects as well as the lacks of the programme are researched, first of all the disparity of some statements to contemporary international documents and the conception of observing women rights.

Finally, the study provides information about the activity of non-governmental and international organisations, which deal with the prevention of trafficking in women in Ukraine, especially about La Strada's activities. The problem of prevention of trafficking in people has attracted attention, first of all, of NGOs, stressing the necessity of observing human rights and reacting to human rights violations more actively than representatives of governmental structures.

The study cannot to solve all questions which were set in it, but lights possible ways of improving legislation, increasing women's status in society and combating against trafficking in women.

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