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Human Trafficking and Legal Practice: a New Challenge for Ukraine

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Abstract

This paper investigates why human trafficking appears to be increasing in Ukraine. Drawing attention to the severe problems in measuring human trafficking, it offers a critical review of legislation and examines the main difficulties facing police investigations. The research argues that not only is the real scale of the phenomenon obscured but that trafficking is unpunished by the lack of forceful and co-ordinated response from law enforcement bodies. Evidential difficulties and a widespread unwillingness of victims to report offences compound this problem. Using a variety of research techniques to investigate recent trends, practices and destinations, it is apparent that existing evidence on trafficking is an amalgam of information collected in different ways, at different times, and using different definitions. Current estimates concerning the numbers of women trafficked from Ukraine every year range from 40,000 to 420,000. Internal field data exists but is not generally accessible to the general public, however it does draw attention to the considerable non-statistical data and indirect trafficking indicators that exist. One deficiency is that trafficking is not well defined in the Ukrainian Criminal Code, so offences are often dealt with under associated legislation and convictions are not specifically recorded as trafficking cases. Finally, Article 149 of the Criminal Code on “Trafficking in people” is analyzed. Whilst the introduction of this article demonstrates a positive moment of legislative change, the paper concludes with arguments to improve existing legislation and law enforcement in accordance with contemporary international approaches. Without such improvements,

the danger is that Article 149 will not protect Ukrainian people, particularly women, from the risk of being involved in the illegal network of traffickers.

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The views contained inside remain solely those of the author who may be contacted at pishulina@policy.hu. For a fuller account of this policy research project, please visit <http://www.policy.hu/pishulina/>

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Introduction

The volume of human trafficking has increased rapidly over the last ten years. There are two plausible explanations for this: firstly, the demand for prostitution and other sexual services has increased in Western Europe. Secondly, the former Socialist countries in Eastern Europe, with their economic and social problems, create a source area from which trafficking in humans to Western Europe can be organized far more easily and more economically than from older source areas¹. These circumstances guarantee this modern slave market 'satisfaction', being reflected in a balance of demand and supply of illegal human resources.

Numerous governmental, non-governmental organizations and agencies around the globe have helped raised this problem at the highest national and international levels². Trafficking in human being and illegal migration are recognized by both Interpol and Europol as significant security problems³. Human trafficking is an extraordinarily complex problem encompassing economic and cultural disparities, technological progress and sophistication, enhanced labour mobility, human rights, and an expansion of criminal networks.

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

Increased economic globalization and privatization have resulted in an increased feminization of poverty, forcing greater numbers of women worldwide to migrate in search of work.⁴ Many end up as victims of illegal and unscrupulous trafficking networks. According to U.S. Senate Resolution 82 on Trafficking, human trafficking "involves one or more forms of kidnapping, false imprisonment, rape, battering, forced labour, or slavery-like practices which violate fundamental human rights."⁵ The growth

¹ Bridget Anderson and Julia O'Connell Davidon *Trafficking – a demand led problem? Save the Children*, Sweden, 2004

² IOM STOP Conference on Preventing And Combating Trafficking in Human Beings – A Global Challenge for the 21st Century – organized under the High Patronage of H.R.M. the King of the Belgians European Parliament's Hemicycle , Brussels, Belgium, 18-20 September 2002

³ STOP Conference materials paper: <http://belgium.iom.int/STOPConference/confdocs/ConfPapers>

⁴ Alfred C.Aman, Jr., *Indiana Journal of Global Legal Studies: "An Introduction"*, 1 *Ind. J/ Global Legal Studies* 1, 1-2 (1993); Katherine Van Wezel Stone, *Labour and the Global Economy: Four Approaches to Trans-national Labour Regulation*, 16 *Mich. J.* 987, 989 (1995)

⁵ U.S. Senate Resolution 82, introduced in 1998

of shadow economies and trans-national criminal networks in the newly independent states and in the Ukraine are negative manifestations of globalization, arising from expanding economic, political and social/trans-national linkages that are increasingly beyond local and state control. An important component of globalization is the trans-national links created by migration. Members of organized crime rings establish contacts with willing collaborators in Diaspora communities throughout the world and work within migrating populations to build trans-national criminal networks. Increased migration also serves as a cover for traffickers transporting women to destinations in the sex industry.

Human trafficking brings with it different kind of harms:

- Trafficking injury to women (victims). Trafficking networks can recruit and transport women legally or illegally for slavery-like work, including forced prostitution, sweatshop labour, and exploitative domestic servitude.
- Injury to communities. Trafficking in women as a shadow economy does not bring financial prosperity to local communities. The women often end up with nothing, or any money they earn comes at great cost to their health, emotional well-being and their standing in the community. The money made by the criminal networks does not stay in poor communities or countries, but is laundered through bank accounts of criminal bosses in financial centres, such as the US, Western European countries or in off-shore accounts.⁶
- Injury to governments, whose officials are either complicit in trafficking or unable to combat it effectively. Trafficking helps perpetuate government corruption⁷. It helps fund the expansion of other organized crime activities, as traffickers are often also engaged in the trafficking of arms and drugs. The quick and continual profits made from trafficking also permit criminal organizations to expand into other areas of illicit activity⁸.

In the existing crime control policies, the most crucial questions are:

⁶ Ibid

⁷ Corruption plays a very special role in the reproduction of crime. In the Ukraine, the level of corruption is so high that foreign experts place it among the most corrupt states in the world. The corruption of law enforcement bodies and of the judiciary system presents the biggest threat to society. In 1997, the Institute of Economic Development at the World Bank investigated corruption among Ukrainian judges. According to this research, more than 20 percent of citizens whose cases had been tried in the Courts of the first instance (District Courts) had bribed judges either with cash or commodities. More than 30 percent of respondents complained about unjustified delays, and 15 percent about the inappropriate behaviour of judges. Assessment of the current situation of corruption leads us to the conclusion that corruption is an integral part of Ukrainian society - and an independent system of social relations. At the same time it is closely linked with other areas of social relations. There is an intricate system of corrupt relationships at different levels of government and law enforcement, making corruption a constituent element of the entire system.

⁸ L.Shelley The Sex Trade: Trafficking of Women and Children in Europe and United States, hearing before the Commission on Security and Cooperation in Europe (the Helsinki Commission), June 28, 1999. <http://www.american.edu/traccc/pdfs/HTMLs/testimony699.htm>

- Creating extensive and reliable systems for collecting comparative data throughout the continent;
- Criminalizing the trafficking in women in all European countries, with relatively uniform criteria and sanctions;
- Developing and increasing the co-operation in crime prevention both internationally and between European countries;
- Improving the status and rights of victims in legislation had by European countries.

1 Research Methodology and Some Methodological Problems

1.1 Main Methodological Difficulties

Before starting our study let us explain the main methodological problems that accompany such research. First, it is extremely difficult to gather accurate data on any criminal activity and very difficult to gather accurate figures on migration. Methodological problems are intensified when the illegal activity under investigation also coincides with a range of other phenomena. As a result, it is hard to place any credence in existing official and unofficial data on the number of trafficked people and irregular migrants. Certainly, the most commonly cited statistics on trafficking were not gathered using the recent definition provided in the Ukrainian Criminal Code, and far less via the UN protocol. Anything gained will be merely a crude estimate, based upon a series of extrapolations and assumptions rather than on “hard” facts.

More generally, the existing evidence on trafficking is unsatisfactory with diverse political concerns leading to a very different research agenda. For example, the questions that interest national criminal intelligence agencies are not necessarily the same as ones pertaining to migration or labour-related issues. Also, an entirely different agenda is used by persons preoccupied with human rights issues. In the absence of a standard definition of the term ‘trafficking’, findings from individual studies are rarely comparable.

In addition, one needs to stress that when researching organized crime such as human trafficking, we cannot for the most part use research methods and techniques that have a direct link with the criminal environment. First of all, trafficking is a very *covert* type of crime, and this causes a number of complications; short deadlines, season-based factors (the main part of the research was done during summer months),

the large territory and the research coinciding with major political changes had a drastic influence over the research process.

Effective measures to combat trafficking in person have not developed as yet - even if it is a serious issue. There is clear lack of objective criteria and tools with which to analyze the quality and scope of trafficking in the Ukraine and many other states.

The study on trafficking in persons is complicated as well by some other issues, as follows:

- The nature of trafficking is a crime, and it is trans-national crime when it includes transfers to other countries;
- Victims of the crime as well as the traffickers are, in most cases, not willing to share information about it.

Nevertheless, this study demonstrates that possibilities to collect and analyze information on trafficking do exist.

1.2 Research Methodology

Two components were used for this study (qualitative and quantitative). The quality of such study was a priority; and, for our research, various methods with which to gain information from experts were used. The interview was chosen as the main method of information collection, as even the most advanced questionnaires would not be able to give us information about all existing concerns.

Specialists from various agencies combating violent crimes were selected – deputy directors of violent crime units in a number of cities of different Ukrainian regions, as well as officers from other law-enforcement agencies. For the consistent acquisition of basic data on the structure of trafficking groups and their activities, we turned to police officers specializing in detecting or investigating organized crime, particular in trafficking in human beings. The following categories of experts were selected for interviewing:

- Investigators working for prosecutors;
- Prosecutors at different levels, representing different divisions;
- Policemen;
- Representatives of the Security Service (SBU);
- Representatives of the Ministry of Internal Affairs;
- Lawyers;
- Scholars.

Some prosecutors, investigators and SBU representatives were not enthusiastic about discussing human trafficking, but were much more open when it came to talking

about other crimes (such as rapes, kidnapping, etc.) Prosecutor investigators and middle/high level representatives from the Criminal Investigations Department at the Ministry of Internal Affairs were the most open when being interviewed. The number of people interviewed was not enough to present the results with any percentage correlation, though such a correlation would provide a clearer picture of the situation.

The qualitative study is supplemented by a quantitative study from different regions of the Ukraine. Different categories of people from the different regions of the Ukraine were examined, including businessmen specializing in wholesale and retail. That category was chosen based on people's personal experiences here in connection with international travel (participating in so-called "shopping tours") and the environment in which they work - where they would often discuss the issues that are the focus of our survey. Compared to other social groups, such entrepreneurs know more about the criminal transportation of people. At the same time, their opinions should not be considered entirely watertight - and should be weighed against experts' opinions. In addition, information from specialized publications and sources was utilized, as were comparative analyses of legal routes.

Statistics are used at least for orientation, and, when possible, concrete cases from file materials will be looked at. Results from public opinion polls, and more technically-oriented newspaper advertisements and articles can also be utilized to a certain extent. For research purposes, we shall use, according to the Ukrainian Criminal Code, the following criminological definition: *Organized crime comprises repeated (systematic) acts of purposefully co-coordinated criminal activities (and activities supporting these acts), where the actors are criminal groups or organizations (largely with a multiple-level vertical organizational structure) whose main goal is to attain the maximum illegal profit while minimizing the risks (ensured via contacts in decisive social structures).* Accidental criminal groups or organizations, and the majority of white-collar crime or terrorism are thus excluded from the scope of organized crime.

2 Trafficking in People: The Situation in Ukraine

One of the areas of the world where trafficking is growing fastest is in the former Soviet Union⁹; and the Ukraine is at the crossroads of East and West. Such a location has allowed the commencement of the “exporting” of girls and women for sexual exploitation and other forms of labour exploitation to countries with higher living standards. With the collapse of the USSR, thousands of Ukrainian and Russian women have been trafficked into sexual exploitation across the globe. The Ukraine, owing to its geographical location and transparent borders with Russia, has long played the role of a transit country for migrant flows from Asia to Western and Central Europe. In addition, due to strict controls at western borders and an absence of real mechanisms for the readmission of detainees, the Ukraine has steadily become a country accumulating illegal migrants¹⁰.

Human trafficking from the Ukraine, especially for sex work, is a serious and increasing problem for the country. The Ukraine is recognized as a country-supplier of “human stock” to Yugoslavia, Hungary, the Czech Republic, Italy, Cyprus, Greece, Turkey, Israel, the USA, the UAE, etc. According to the Embassy of the Ukraine in Greece, there are three thousand young Ukrainian women working in legal or illegal sex businesses in Athens and Saloniki alone - and five thousand such women work in Turkey¹¹. Evidence exists here from a wide variety of sources, including police, NGOs, health care providers, prosecutors and international organizations, about the widespread and growing nature of the problem¹². Among the main countries receiving

⁹ L.Shelley The Sex Trade: Trafficking of Women and Children in Europe and the United States, hearing before the Commission on Security and Cooperation in Europe (the Helsinki Commission), June 28, 1999. (<http://www.american.edu/traccc/pdfs/HTMLs/testimony699.htm>)

¹⁰ Weak border controls and surveillance mechanisms at the green border, at the newly created borderlines between the former Soviet countries, as well as partly insufficient visa regimes, attract traffickers. For example, Belarusian borders are highly vulnerable to illegal migration and women trafficking because of a lack of professional skills on the part of the border guard staff and a lack of appropriate technical equipment, such as reliable transportation and reliable communications, along with computer networks.

¹¹ See: O.V.Druz', O.O.Hryshynska, *Trafficking in Young Women, Observation of Women's Human Rights and Relevant Tasks of Law Enforcement Bodies in the Ukraine*, a collection of academic articles edited by the University of the Interior of the Ukraine and the International Women's Human Rights Protection Center *La Strada Ukraine*, Kharkiv-Kyiv, 1999, p. 88

¹² Minnesota Advocates Group, *Trafficking in Women: Moldova and the Ukraine*, December 2000, p. 16. The International Helsinki Federation for Human Rights in its *Women 2000* report on p.491 cites a figure of 100,000 having been transported across the border illegally since 1991 from the Ukraine. Current estimates appear much higher, however.

“live commodities” from the Ukraine are Eastern Europe, Turkey, Greece, Israel, Russia, the US, the United Arab Emirates and others¹³.

2.1 The Main Reasons for Crime in the Ukraine

Many politicians assume that the main outcomes of the current reforms in the former Soviet Union republics will be the establishment of the free market economy and truly democratic civil society. However, we should expect equally significant criminological consequences from the collapse of the USSR. They are manifested in the penetration of crime and organized crime into the economy, politics and culture, and embrace all layers of society. Total criminalisation threatens to transform the post-communist society into a criminal society. It would be unfair to say that the reforms alone lead to total criminalisation because a completely different conclusion can be arrived at: the crime level is constantly increasing in spite of the changing conditions of human life (the latter both for the worse and for the better). The law of self-preservation makes human beings react and adjust to a changing environment. Criminal and anti-social behaviour is one form of such a reaction and the means of self-preservation, made manifest by high levels of crime and a clear growth tendency. Official statistics show that criminal activity has become one of the most widespread types of activity - it can be called a criminal practice. Criminal practice has become an independent phenomenon now, one performing a specific function in society. This is proved by the fact that the words criminality, criminal society, criminal activity, criminal environment, criminal leader, criminal way of life, etc are commonly used in conversational, written and professional language. Criminal jargon is also widely used in everyday speech, even in speeches from top governmental bodies. (It is enough to call to memory phrases of the former Ukrainian Prime Minister V.Yanukovich, “*Donbas porozhniak ne gonit*” – or the President of Russia V.Putin’s “*Mochit’ v sartire*”)

The table below lists the main types of offence committed by these criminal groups in the Ukraine and their share in the total amount of common criminal offences.

Type of offence	Detected offences	Share of all offences
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¹³ S. Krivosheev, V.Kuts, v.Sobolev. Obzor mehanizmov, sredstv I pravoohranitel'nyh mer dlia bor'by s tovgovley luidmi v Ukraine, IOM 2001

Common criminal offence	4 340	100 %
Theft	1 707	39 %
Major theft	500	0.01% (29% of total theft)
Brigandage	588	14 %
Illegal dealing in drugs, psychotropic substances and precursors	450	10 %
Illegal dealing in weapons	215	5 %
Robbery	187	4 %
Extortion	108	2.50 %
Intentional murder (including attempts)	80	2 %
Gangsterism	66	2 %
Human trafficking	26	0.60 %
The taking of hostages	2	0.05 %

The figures show us that common criminal offences like theft, robbery and illegal drugs dealing constitute the biggest share of all offences (63%).

An increasing number of criminal associations are moving from drug trafficking to human trafficking, which is characterized by high profits, small expenditure and a minimal risk of punishment. It is also worth noting that the exploitation of people is often long-term and, unlike drug trafficking, it does not require preparation, processing and the creation of the initial goods.

2.2 Trafficking in People as a Form of Crime, and Factors enabling the Spread of Trafficking in Ukraine

The crime of “trafficking in people” and, in particular, “trafficking in women” has a long history, and has many causes and roots. The independent Ukraine encountered it only at the end of the 20th century, however. The Ukrainian authorities recognize:

- that trafficking in human beings is an extremely inhumane and detestable form of crime;
- that one can see the growing influence of crime structures behind this smuggling and trafficking in human beings, for which national and international criminal organizations are responsible;

- that this sort of crime leads to major forms of mental and physical harm for its victims;
- that this crime represents an important social-economic burden on all countries affected.

There are **internal** and **external** reasons for the spread of trafficking in women in the Ukraine. The most important factors are the difficult economic situation and the practical impossibility of women to get employment in the Ukraine; so low life standards and unemployment make women seek jobs abroad. It is no surprise that the results of survey show that 80 per cent of women expressed a wish to work abroad. The restrictive migrant policy in the destination countries, the high level of internal unemployment and the lack of knowledge of foreign languages by Ukrainian women restrict official job opportunities. Regarding the situation of working migrants in European and other developed countries, the most accessible sectors for Ukrainian women are those of domestic labour and the sex industry, in its legal and illegal forms.

Internal reasons include legal ones. First of all, there is an absence of regulations concerning slavery-like practices and the sex business in the Ukraine, and a lack of protection of victims. The absence of regulations concerning the sex business leads to its criminalisation. Even those women who are willing to work as voluntary prostitutes within the country cannot bring this into effect. They need 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 slavery, doing forced labour. Given the lack of legal regulations and a misunderstanding of the position of trafficked women and their human rights by Ukrainian policemen, women prefer to make deals with pimps and traffickers, and not with the police.

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

Among **external** reasons, both “positive” and “negative” ones occur.

“Positive” ones are as follows:

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

Negative ones are:

- internationalisation of the shadow economy;

- the emergence of international criminal organizations;
- corruption among civil servants;
- the inability for Ukrainian citizens to migrate legally to work abroad legally; they thus have to migrate and work *illegally*, which forces them into situations of violence.

In discussions about trafficking, particular attention should be given to the question of voluntariness in the migrants' movement. The two protocols assume a neat line of demarcation between voluntary and consensual, and involuntary and non-consensual processes within migration. Such a distinction is widely regarded as deeply problematic with reference to refugees and economic migrants, and it is equally fanciful in relation to the issue of trafficking. In this case, if we see trafficking (or even smuggling) as a process, the idea of an extremely problematic "consent" since individuals can volunteer to enter the process and then find themselves unable to withdraw, however much they may want to; or, conversely, they can be coerced into entering the process, and then proceed voluntarily.

Thus, as for people trafficking, as one of the forms of crime, economic factors predominate. People in the Ukraine face an increasingly difficult economic and social situation, with its severity varying from place to place. Furthermore, similar problems among neighbouring states and new borders have created conditions that contribute to these additional types of crime, such as trafficking. The low income of the Ukrainian population, especially among women, has accelerated decline in living standards. There is also the country's gradual integration into the global market of exchange of goods and services – and all of these factors have created conditions for the *spread of this type of crime in the Ukraine*. Besides this, the country's strategic geographic location and the *"transparency" of its borders* contribute to a certain extent to the Ukraine's finding itself at the crossroads of the world's highways of trafficking in *"live commodities."* International criminal groups quickly seized the opportunity to use the Ukraine both as a transit and as a donor country.

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

Proposals regarding employment abroad most commonly involve jobs such as waitresses, striptease dancers, singers or dancers in restaurants, masseuses, 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 they do not know they will be held in forced labour or in conditions of slavery.

Drafting deceitful employment agreements is done so that conditions of employment and job descriptions are very vague, unclear. Different techniques are used to create the illusion of good perspectives for employment abroad and as regards the reliability of the company, for instance, via the use of various “job competitions”.

Another reason for the spread of trafficking in women in the Ukraine is the low effectiveness of the activities of law enforcement bodies directed at countering this phenomenon.

3 The Mechanism of Trafficking: Survey Results

In order to get additional information on mechanisms related to trafficking in humans in the Ukraine one can resort to a consolidated quantitative survey and expert interviews, which will indicate the more generalized positions of experts. Received data has provided new information and allowed us to clarify some issues.

All experts, unanimously, agree that the basic and primary cause of the human trafficking is uneven socio-economic development¹⁴. “The impact on Ukrainian society as a result of human trafficking will be felt for at least two generations, taking into account the breakdown of social structures, the depletion of human resources and the many broken homes and lives in the wake of criminal forces taking advantage of the difficult economic situation in the Ukraine¹⁵” – says one of the law enforcement authorities in an interview.

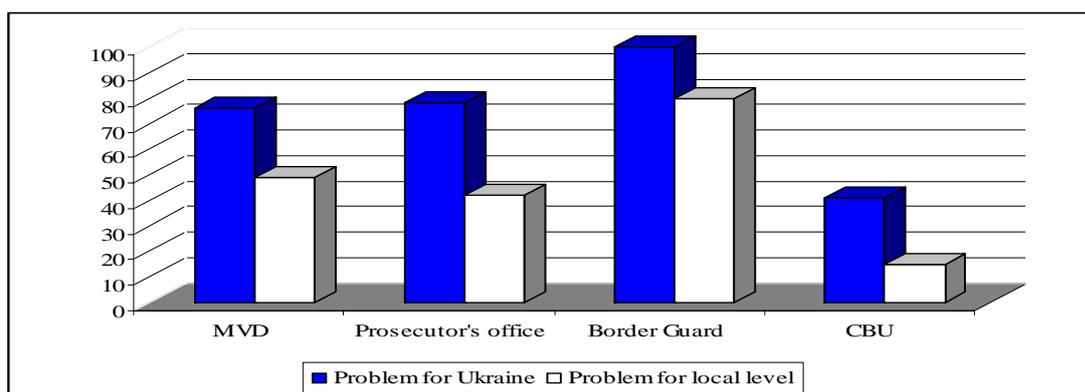
¹⁴ According to different research, women from the Ukraine have a strong economic incentive to seek employment in Central Europe, where living standards are higher than in countries of transition. The main reasons why so many Ukrainian women want to go to abroad are that there has been liberalization of the law enabling international travel both to the Ukraine and to the European Union, and there has been the introduction of a free market economy. Also, a previously unknown unemployment has struck women first - and most of all - both economically and psychologically. Women were the first to lose their jobs and the possibilities of finding a new position are, to say the least, not promising, especially outside the big cities. Migration is especially popular among young women from small, underdeveloped cities and the countryside, where jobs are scarce. Women in these areas cannot find a position in their own professions -such as salespersons, teachers and nurses. It should be added that work in these occupations is very low-paid too, and cannot assure economic independence; The disappearance of the state social security system exacerbates things; there also exists the myth of an easy and affluent life in the West; and a tradition of provision of migrant workers also contributes to the phenomenon of someone's accepting a job abroad

¹⁵ From an interview with an expert

Numerous research work done in the Ukraine in last ten years confirms this. According to the results of the all-nation sociological monitoring performed by the Institute of Sociology of NAS Ukraine, 10.2% of members of Ukrainian households have experience of temporary labour migration¹⁶. There are about 13 million households in the Ukraine, which means that at least 1.5 million people have gone abroad with the purpose of gaining an income. In reality, the number of labour-migrants is even larger since, in each household, there could be several persons who participate in labour-migration. According to the parliament's human rights commissioner Nina Karpachova, more than seven million Ukrainians have left their country in search of jobs abroad; she said the main reasons for emigration are poverty and unemployment. According to the commissioner, 27 percent of people in the Ukraine live in poverty. This figure is even higher in the Crimea, Trans-Carpathia, and in the Khmel'nitsky, Kherson, Volynskaya and Lugansk regions, where 33 to 40 percent of the population live in such a state.

*Thus, low wages level and major socio-economic problems have caused the destitution of a huge mass of people, converting them into a potential risk group for use by slave traders – and women are perhaps the worst off. They are among the first to lose jobs and suffer from discrimination in the labour market, and have a lack of social support. All this forces them to migrate abroad, thereby increasing the risk of falling into the hands of modern slave traders.*¹⁷

Figure 1 Human Trafficking in the Ukraine: at a National and Local Level



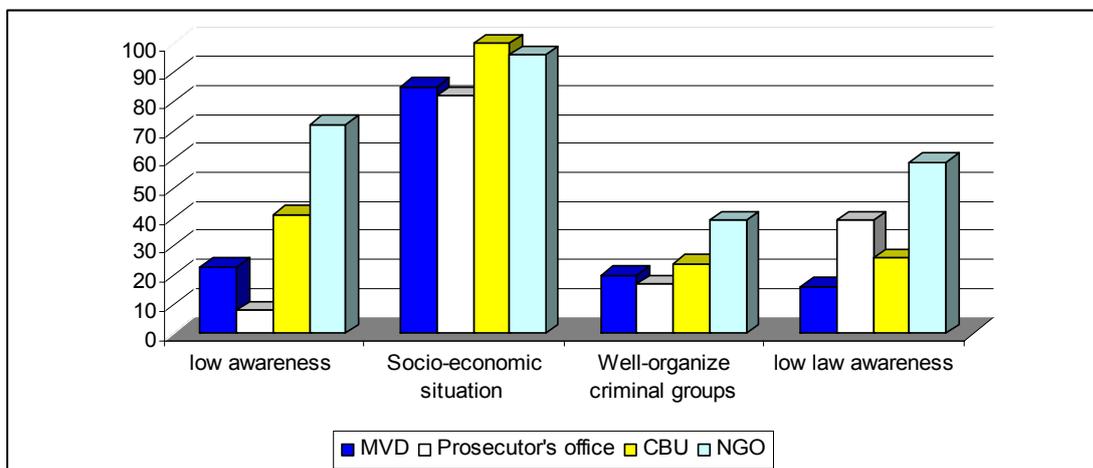
¹⁶ Pribytkova I. Trudovyje migranty v social'noj ijerarhiji ukrainskogo obshchestva (Labour migrants in the social hierarchy of Ukrainian society) "Sociologija: teorija, metody, marketing", Kyiv, 2002, 4, p.159.

¹⁷ According to unofficial data, about 40 million people in Eastern Europe, the majority of them women, live below the poverty line.

It was commonly agreed among experts that females are trafficked from all regions of the Ukraine, from big and small cities. Almost 92% of experts believe that trafficking is a serious problem in the Ukraine, and 70% think that trafficking is widespread. 44% claim they have personally come across trafficking. Representatives of MOI, procuracy and border guards showed common agreement here when responding to the question about the correlation of official statistics with the real scale of human trafficking. They all believe the official statistics show far lower numbers than exist in reality.

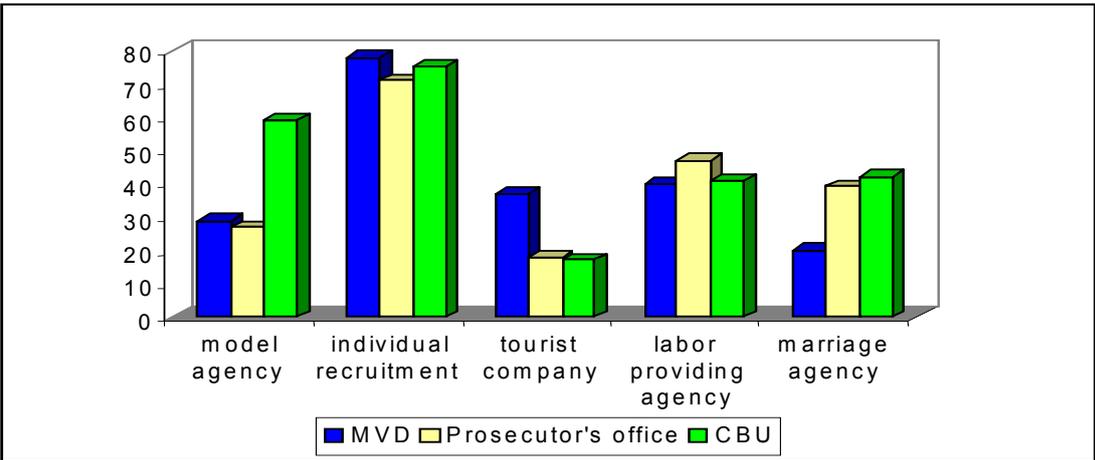
Why human trafficking still exists in the Ukraine. All people questioned during this study were unanimous: human trafficking will exist in the Ukraine while there is still poor social protection and the economic situation is the same. NGOs believe that low levels of legal awareness are another basis for human trafficking. Well-organized criminal groups are not seen as significant factors influencing trafficking in people in the Ukraine. (Though it may be appropriate to treat this last statement as an opinion, and not as reflection of the real situation.)

Figure 2 Main factors for trafficking in the Ukraine



Out of 430 females who participated in the study, 20% claimed they had received job offers for work abroad; 6% said they would agree to work as waiters, 4% as housekeepers, 8% as dancers, and only a non-notable number said they would agree to work as prostitutes or would seek any unqualified job.

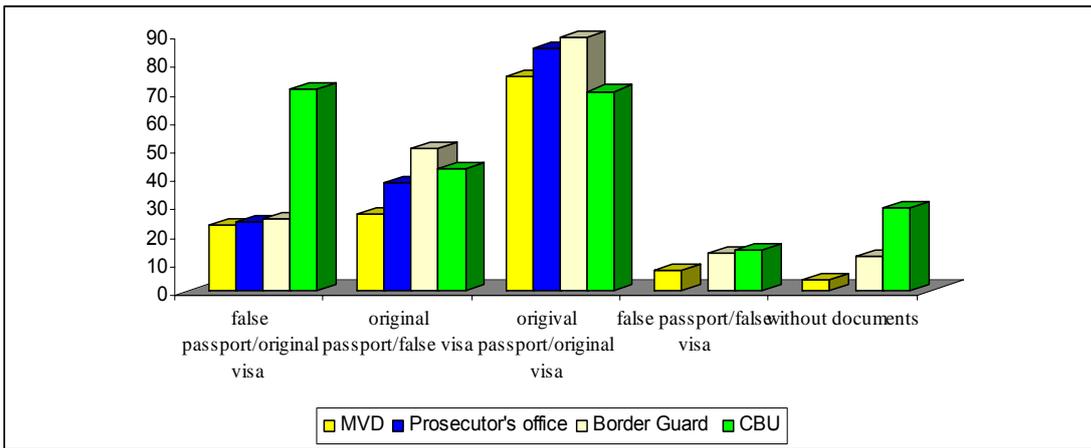
Figure 3 Systems of recruitment



In most cases individual recruitment exists on the ground, which makes the issue even more complicated. Model, employment and marriage agencies play some role, but individual recruitment obviously is the most significant.

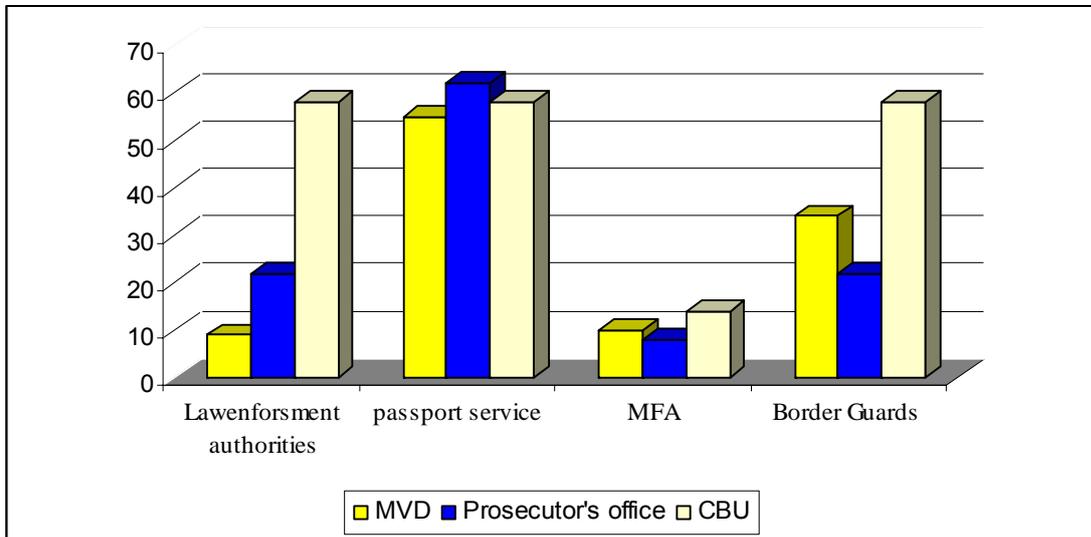
How are the documents that are necessary for border crossings prepared, and how are the borders of other countries crossed? Most experts agreed that victims of human trafficking cross the borders of the Ukraine with real passports and visas. When females met their recruiters, most of them didn't have passports needed to travel abroad; in most cases recruiters themselves process the necessary documents. According to experts, there are usually no or very limited violations involved in the processing and issuing of documents, and some support comes from corrupt officials from the specialized passport service. Yet the involvement of corrupt officials in the trafficking of humans is not such a widespread issue - as has been often indicated - and is not often directly related to trafficking. In many cases officials just do not give enough attention to the facts while issuing passports or visas even when the situation is obviously suspicious.

Figure 4 Methods of border crossing



This suggestion was supported by information obtained with reference to specialized passport service employees being involved in trafficking. Thus, there is an obvious need to focus on preventive measures within the field of activity of such officials, as giving out passports to third persons may point towards human trafficking.

Figure 5 The involvement of corrupt authorities in trafficking



Major attention is being devoted to human trafficking in the Ukraine. Nevertheless, the main functions on preventing and prosecuting this crime are entrusted to law enforcement bodies.

4 Elements of the Crime of Human Trafficking

Trafficking in humans is a complex phenomenon consisting of several phases and stages, the aggregate of which allows the criminal exploitation of people. Viewed as a *process*, trafficking can be said to entail several phases - acquiring/recruitment¹⁸; transportation/transit (according the Ukrainian Criminal Code: crossing *international* borders), which could be across several countries; and control/exploitation (the illegal use of the physical abilities of a person with the purpose of gaining profit) at the place of destination. Different groups, agents or individuals may be involved in different phases of the process, and can organize recruitments, transportation and control in a variety of ways.

The first stage of the human trafficking process is acquiring/recruitment, and then comes transportation of the person who will be exploited or sold for future exploitation. The first two stages of trafficking are carried out on Ukrainian territory, while exploitation usually occurs in some third country, i.e. beyond the jurisdiction of the Ukraine. This can be done in a number of ways, which differ according to the purpose of future exploitation.

4.1 Acquiring / Recruitment

It is a fact that a majority of Ukrainians do aspire to go abroad. They do so on their own initiative and voluntarily, driven by the difficult economic situation of the country.

The ways of recruiting women for “employment” are varied, and at the same time are traditional and specific for this sphere. Though, this does not mean that such means are being used only for illegal criminal business and trafficking in women (or human beings in general). There are many good examples of persons’ finding legal jobs abroad – e.g. Ukrainian specialists – or of women happily getting married to foreign men. Yet we would like to stress that, besides the legal forms, some instruments can be made use of for illegal migration and the trafficking of human beings.

Advertisements on employment abroad are published in all newspapers that offer work to Ukrainian citizens. A content analysis of newspapers “*Robota dlya vas*”/*Work for you!*, “*Aviso*”, “*Proponuemo robotu*”/*Work offers!*, RIO (Kyiv), “*Gorodskaya*

¹⁸ In classifications of trafficking victim acquisition we more often met the term “recruitment”; while some legal experts use the term “acquired”, as opposed to “recruitment” (due to the more appropriate English connotation of the term). See, for example, Anna Repetskaia “Classifying the Elements of Human Trafficking Crime” in “Human Trafficking and Trans-national Crime: Eurasian and American Perspectives”, Roman & Littlefield Publication, Inc. 2005 p. 47

gazeta"/*City newspaper*/ shows that each of the issues contains 5 to 20 "suspicious" advertisements, with proposals for 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 US \$ 1.000*¹⁹", followed by the address where interviews with 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, 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 such offers are for women; and the work on offer is mostly sewing, housework and secretarial work. Unfortunately, there are no anti-gender discrimination laws to stop such practices in the Ukraine. No wonder, then, that Ukrainian women try to find "work happiness" abroad, using every opportunity, even illegal, because of the deficit or absence of legal job propositions. Still, only below 20 per cent of women who subsequently become trafficked persons will go abroad as the result of answering employment agencies adverts.

Advertisements offering work abroad go from national newspapers and local newspapers in large cities to the press in small towns/district centres. Young people there are more naïve, and they get less reliable information. Also, it is very difficult to check up on such companies, principally because of bad laws, not helped by the high level of corruption among the police.

In many cases, realization of someone's plan to find a job abroad is often difficult as western consulates impose restrictive visa policies to reduce the number of illegal labour migrants. People then turn to agents, middlemen or agencies who are specialized in getting visas, and who promise to solve the problem. Such individuals and agencies actively advertise their services in the mass media, but also resort to more veiled forms of labour recruitment. The criminal activity starts with the registration of travel documents.

¹⁹ From the newspaper "Rabota"

According to experts, a majority of the victims of trafficking (84.5%) request help from travel agents and visa brokers to leave the country, and pay intermediary services directly. 13% of the victims refrain from saying how they obtained visas; and only 2.5% receive visas without go-betweens.

On the grounds of the kinds of services being offered we can distinguish between different types of agencies:

- Agencies providing legal tourist visas, insurance and other required travel documents;
- Agencies providing legal visas and organizing illegal jobs abroad;
- Agencies providing false documents or organizing illegal entry into a country;
- Agencies specialized in trafficking young women and providing travel documents, transportation, and employment abroad;
- Agencies specializing in fraud, promising to provide travel documents and highly paid work abroad – yet they do not fulfil their obligations.

According to experts, a majority of illegitimate firms have a “roof”, meaning that they are controlled by organized crime. The organizations, especially those that provide clients with legal documents, have close contacts with officials, sometimes in the highest echelons of power. For example, there is evidence that governmental delegations have been used to smuggle people abroad.

A more widespread method of smuggling people is to give them so-called artistic or sports visas, and to include them in a well-known arts group, ensemble or sports team that frequently travels abroad. In some cases, officials have connived to form fictitious groups for the sole purpose of obtaining legal visas. Such frauds are usually executed by highly organized groups of criminals, controlled by “thieves in the law” or other criminal authorities. The cost of such services varies from \$1.500 to \$10.000 depending on the country of destination. Some agencies specialize in smuggling people to specific countries, such as Greece. The standard price here is \$1.500. The Bulgarian/Greek border, the so-called “green corridor”, is usually crossed with the assistance of local smugglers.

Some agencies and individuals specialize in manufacturing false passports and other documents²⁰. As a result of negligence shown in controls here, hundreds or even thousands of people have migrated illegally. It is also quite common that passport

²⁰ Normally, the following procedure was used: criminals acquire a passport of a person who has a valid visa for a western country, and replace the photo in the passport with that of another person. Such

service officers help people who have been refused a visa to acquire a new passport, with a different surname.

In fact, there is no clear-cut distinction between human trafficking and other forms of illegal migration from the Ukraine. Frequently, the same firms are engaged in the organization of trafficking and illegal migration, using the same methods of recruitment and transportation, and the same intermediaries for getting visas.

Yet the victims of trafficking are somewhat different from other illegal migrants:

- Victims of trafficking are more often women;
- Victims of trafficking are usually younger than other migrants;
- Victims of trafficking are more often unmarried, divorced or live alone;
- Victims of trafficking more often have no prior experience of being/staying abroad;
- Victims of trafficking more willingly entrust themselves to dishonest middlemen;
- Victims of trafficking more often come from rural areas;
- Victims of trafficking more often have a lower level of education, and are less familiar with their rights.

Practice has shown that middlemen tend to give preference to the organization of trafficking in women over illegal migration, because it is more profitable. There are different ways of recruiting or acquiring girls with the purpose of involving them in the sex business:

- Recruiters contact professional prostitutes working in brothels, and suggest they continue their business abroad;
- Recruiters invite girls to work as models, waitresses, dancers or maids, and then, either voluntarily or after being treated violently, they are engaged in prostitution;
- Recruiters blackmail girls who owe money to commercial organizations or private persons, and force them to become engaged in prostitution to pay off their debts;
- Recruiters addict girls to drugs, take them abroad and then force them to engage themselves in prostitution in exchange for drugs.

The commission per girl is \$2.000–5.000 depending on her age and physical appearance.

4.2 Transit

A majority of illegal migrants go to the country of destination in the company of other migrants. In 61% of cases, the group is accompanied by its “enlister”, or an assistant to the agent. Transit is carried out in different ways, depending on the legality of the

falsification is easily done as photographs in Ukrainian passports issued for travelling abroad are not affixed by a seal or other means of protection.

migrants' transportation. Studies show that approximately 72% of migrants cross a border legally, also by using an optimum means of transport in terms of cost and time. In other cases, the migrants are treated as "contraband". Firms that are specialized in smuggling people organize the manufacturing of false documents, develop complex routes of transit, and have close ties with internationally organized crime.

In recent years, the amount of illicit human smuggling organized by travel agencies has increased in the Ukraine. This is due to the fact that many consulates have tightened their visa requirements but is also due to the increasing number of Ukrainians who have become personae non grata in different countries, for different offences.

In practice, many illegal migrants manage to reach the desired country safely via a ramified network of trans-national organized crime, to which Ukrainian criminal organizations also belong. Trade in people has become such a lucrative business that criminal organizations take pains to perfect the chain, i.e. from recruitment and transportation to the safe exploitation of potential slaves into host countries.

4.3 Exploitation

A majority of migrants who become victims of trafficking are employed abroad through intermediary travel companies and agencies operating legally in the Ukraine. Usually, migrants are accompanied by traffickers all the way to their final destination, i.e. place of work. As a rule, conditions experienced by migrants in the country of destination do not correspond to the promises given by the travel agency in the Ukraine. Research has shown that trafficking is carried out for the purpose of:

- acquiring slave labour: (physical coercion, psychological coercion, slavery);
- sexual exploitation (prostitution and the porno business);
- adoption (trade in minors);
- trafficking in organs (obtaining transplants);
- using women as substitute mothers.

5 The Challenges Involved in Measuring Human Trafficking

5.1 Problem of Scale Determinations

An absence of statistics related to people trafficking is one of the main obstacles to defining the scope of the problem - and is one of the specifications of this study. This study indicates very clearly that, up until now, there has been a remarkable paucity of reliable statistics on trafficking. Thus the current extent of trafficking in women in Europe is merely subject to rough estimates, and in most cases how these figures have been attained is unclear. Based on information contributed by EU Member States, Europol estimates that around 500.000 persons enter the European Union illegally every year. For example, following a recent study by the International Organization of Migration (IOM), reference is now being made to 420.000 women having been trafficked out of the Ukraine in the last few years alone²¹. Around half of this number was probably assisted in some way by organized criminal groups²².

Ukrainian officials (for example the Ukrainian Ombudsman) have also been reported as referring to this number of women trafficked from the Ukraine. According to Nina Karpachova, in last 7 years 500.000 women left the Ukraine, out of which 100.000 were sold into the sex business. «*Yet real figures may to be 10 times bigger, as this type of crime is very covert*²³». According to the Head of Anti-trafficking division of the MOI in Dnipropetrovsk, Mr. Mironov, in the Ukraine more than 1.000 000 people generally end up in a state of slavery. The Ministry of Internal Affairs believes that 40.000 Ukrainian women were trafficked abroad in recent years.

Ukraine's consular offices abroad identified, in 1998 alone, over 6,000 such Ukrainian women in Turkey, 3,000 in Greece, and about 1,000 in Serbia. According to Katerina Levchenko, Gender Adviser of the Minister of Internal Affairs "These are only approximate figures, because obtaining objective and official information is almost impossible: trafficking in people is done illicitly among a rather close circle of slave traders, and anyone who divulges any information or cooperates with law enforcement bodies runs the risk of being murdered"²⁴.

Yet these figures appear somewhat exaggerated, and thus dubious, to experts in human trafficking. Still, the Ukraine has no published official statistics on the magnitude of the problem; while unofficial estimates of the numbers of persons being trafficked out

²¹ IOM, Information Campaign against Trafficking in Women from the Ukraine: Research Report 1998, p. 16.

²² WillyBruggeman, Deputy Director, Europol. European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century, September 2002

²³ N. Karpachova, Ukrainian Ombudswoman

²⁴ From an interview with Katerina Levchenko - Gender adviser of the Minister of Internal Affairs

of the country differ. Furthermore, due to some of the definitional areas involved, very accurate estimates would be impossible to make, even in theory.

The statistical opacity of the phenomenon of slavery-like practices and human trafficking makes the study of its spread and of consequences problematic. It is more or less impossible to obtain information from official sources. For instance, quantitative data that could give information on the existence and spreading of forced prostitution in the Ukraine is not even present within records 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. Furthermore, although there are few statistics on trafficking, this research suggests that a notable amount of non-statistical data and indirect indicators of human trafficking exists, and that if this type of information were gathered together in a standard framework and was shared more effectively, a much better understanding of human trafficking could be achieved. Statistics available for use in research (such as this project) are mainly collected by the police, by the Ministry of Interior, the Ministry of Statistics, and NGOs. Government bodies responsible for labour, social health and migration issues appear to be less likely to collect statistics on human trafficking. This suggests that the problem of human trafficking remains too narrowly defined, and that the social, employment and migration aspects of trafficking are too often ignored. In addition, no single agency or institution acts as a focal point for the collection of statistics and data on trafficking in humans. This makes it extremely difficult to make best use of the statistics that do exist, and to develop a co-coordinated approach to data collection.

Finally, it is important to understand why it is that there are so few statistics on a problem which attracts widespread media attention and growing concern among government, NGOs and other agencies. By its very nature, trafficking is a covert crime in which the criminals concerned deliberately try to conceal all details of it. It is an underreported crime where the majority of cases probably remain non-discovered as the victims fear both the traffickers and/or getting an unsympathetic response from the police and immigration authorities. Trafficking in women for sexual exploitation, and to a lesser extent trafficking in children and trafficking in humans are not sufficiently well defined in the Criminal Code, so there is no readily available database from which to obtain statistical information. One of the reasons for the lack of convincing data is that even in if there is trafficking legislation offences against trafficking are often dealt with

under related legislation, meaning that convictions against traffickers are not recorded as trafficking cases.

Due to the fact that before 1998 there were no cases in which a defendant was prosecuted, charged and convicted of participation in a criminal conspiracy, analyses of investigations and court files are very limited. In 1998 the first two cases regarding human trafficking appeared, but the information obtained from such a small sample cannot be generalized – it can be used only as an example. For the same reasons, we cannot fully utilize police and court statistics. Hitherto we have been largely dependant on indirectly obtained information.

Thus, even “closed statistics” gathered by state committees and ministries of the Ukraine are incomplete and doesn’t reflect the real situation. There is some data, which may allow us to identify the scale of problem: i.e. according to statistics collected by State Border Guards Service during the last 16 months there were 436 women deported from Western and Central European Counties for illegal work in the sex industry, and they were registered at Kyiv airport as “Boryspil”.

According to Ministry of Statistics data, only 6 criminal court proceedings on a charge of forcing someone into prostitution took place in the Ukraine in 1996, and there were only 82 proceedings against someone’s running a brothel²⁵.

The Number of Criminal Cases in the Ukraine. Filed under Art. 124 UCC (old) and Art. 149 UCC (new)

Year	1998	1999	2000	2001	2002	2003	2004	2005 (9 month)
Number of cases	2	11	42	91	298	250	950	1104

From March 1998 to December 2001, 145 cases were initiated under articles 149 (and the previous 124-1) of the Criminal Code to prosecute traffickers. In January 2002, eight cases were opened under article 149. Out of these 153 cases, 57 have been investigated and brought to trial. In 2001 alone, 129 suspected traffickers were arrested (60 men, 69 women). Only 10 cases resulted in convictions, and the rest are still

²⁵ Information from the Ukrainian Ministry of Internal Affairs

awaiting trial.²⁶ A significant number of cases pending trial are returned to the prosecutor's office for additional investigation due to there being a lack of evidence.

5.2 *The Reasons for Statistical Opacity*

Here, we shall give some examples illustrating the reasons for an absence of trafficking statistics - and see why so few actually lead to convictions (i.e. when compared to newly opened cases).

According to the Prosecutor General of the Ukraine, prosecutors in the Dnipropetrovsk, Donetsk, Lugansk regions and Sevastopol city have initiated the biggest number of criminal cases. For example, during 9 months of 2005 there were 86 criminal cases initiated by the Anti-trafficking division of the Donetsk region (while in 2004 there were 63 cases in this time period). *"There were 22 cases initiated in relation to persons involved in human trafficking, and 16 cases during last year; a trans-national organized crime group has been discovered, and 2 trafficking channels to Turkey and Israel were closed down"*²⁷,

According to Zolkina 64 crimes against public morality were registered:

- Pimping - 21;
- Ensnaring in prostitution - 7;
- Sale and distribution of pornography - 31;
- Propaganda of cruelty and violence - 5.

60 occasions of fines being imposed on persons engaged in prostitution occurred as a result of the police operation "Night city". And for the first time a criminal case under article 143 (part 3) of the Criminal Code of the Ukraine, concerned with responsibility for the illegal sale of human organs or tissue transplantation, has been initiated in the Donetsk region procuracy based on evidence collected by the Anti-trafficking division.

According to the press service of the Kherson regional prosecutor, Mr. Samojlenko, during 10 months of the year 2005, 14 criminal cases under article 149 of the Criminal Code (human trafficking) were investigated by the procuracy – and a number of people were convicted under this article. For example, Ms. Koval, resident of Kherson - who during the summer of 2004 sold to Turkish bawdy houses 3 female residents of

²⁶ Rothwell, A., *Trafficking in Women from the Ukraine: Criminalisation, Migration and Human Rights*, University of Essex, MA Theory and Practice of Human Rights, 2001

²⁷ From an interview with the Deputy Chief of the Family and Youth Division, Donetsk regional government, Liliya Zolkina

Kahovka - and 2 members of an organized criminal group, which during the same time period trafficked to Turkey 8 female residents of the Kahovka and Velykoaleksandrovsk districts. For all three of them a penalty of 5 years imprisonment and confiscation of assets was imposed. One more member of this organized group is still wanted.

Nonetheless, representatives of law enforcement bodies say that initiated criminal cases form just the visible part of the iceberg. The scale of the problem is far above reported numbers, but it is very difficult to prove the crime and institute criminal proceeding against all guilty persons – and it is difficult as it is extremely difficult to prove the fact of sale.

In 2003, 41 trafficking cases initiated under the “Human trafficking” article in the Ukraine resulted in only 29 court decisions being made, and, out of these, in 19 cases the convicted persons got probation.

According to the Chief of the Anti-corruption division of the MOI in the Kherson region, Aleksey Ber-Tamoev: “Nobody signs a “Deed of purchase” to buy female slave - pimps pay cash to traffickers. And if it’s a bank transaction, then confirmation of this transaction can be received just at the request of the court, with an order to disclose the client’s secret here. Many females go abroad voluntarily to work as prostitutes, and every second one becomes a recruiter herself... For some of our village girls to receive set Turkish gold jewellery and make 300 dollars per month is at the tip of a dream²⁸”.

In the year 2005, investigators of the Ministry of Interior in the Odessa region brought charges against 7 persons (13 criminal cases) and, in these cases, 21 persons were recognized as victims. As a result, though, only 1 person was convicted and imprisoned, while all others received probation.²⁹

According to one expert, there are 30 persons every day deported from Turkey to Odessa, out of which 10% are citizens of the Ukraine, and up to three persons per year are residents of the Odessa region.

Questioned experts pointed to the unreliability of most statistics data “It’s obvious that a number of criminal cases initiated in the Ukraine do not reflect the number of victims and the number of criminals involved in this activity. And these statistics do not even reflect real number of criminal cases initiated... Thus, some cases are closed and

²⁸ From an interview with the Chief of the Anti-corruption division of the MOI in the Kherson region, Aleksey Ber-Tamoev

²⁹ From an interview with the Chief of the Anti-trafficking division of the MOI in the Odessa region, Alexander Petryk.

wiped from the records, which won't provide an opportunity to study the mistakes made – and it prevents the developing of effective practical measures. So it would be useful to analyze the court cases related to human trafficking, yet there is clearly a very limited number of such court cases...³⁰. It is also interesting to see that convictions differ: from probation to up to 8 years of imprisonment for the same sort of crime.

An advisor at one of the Security Service divisions stated that “The investigative department of the Security Services investigates 40 to 50 cases per year under article 75 (i.e. not under article 149). Half of these are cases against young women crossing the border with fake passports³¹”.

Another example came from the Chief of the Regional Department to Combat Trafficking in Kiev. “All prosecutions under article 149 have involved cross-border trafficking for prostitution. No cases have been initiated under article 149 concerning other forms of exploitation, though - although such other forms do occur. For example, in 2000, the Kiev Regional Department to Combat Trafficking gained information about such exploitation, but a formal case was not opened due to a lack of evidence... Such cases may be dealt with by other laws, such as a case involving the trafficking of people to the Czech Republic for economic exploitation, which was prosecuted under article 143 (fraud)³²”.

The requirements of article 149, where trafficking must involve crossing a border, has meant other legislation is used to deal with internal trafficking, such as laws on prostitution. “*Successful prosecutions under article 149 are also difficult due to poor communications between law enforcement bodies in the countries of origin and destination*”. A representative of the Department to Combat Trafficking explained that successful investigation of cases depended upon his own informal, good relations with Turkish law enforcement agencies³³. Trafficking is a trans-national organized criminal activity, and those caught in the Ukraine tend to be the recruiters, who are often the lowest link in the organization.

Thus, law enforcement officers have not been provided with any new “procedures” in relation to trafficking, as is normally the case in connection with the enforcement of new crimes. The overall effect of these inadequacies has been to discourage police

³⁰ From an interview with an expert

³¹ Ibid

³² From an interview with the Chief of the Regional Department to Combat Trafficking in Kiev

³³ Ibid

from investigating allegations of trafficking, and prosecutors have also been reluctant to initiate new cases. Until now, more than one thousand one hundred trafficking cases have been filed, and many other cases are under active investigation. In any case, the number of prosecuted cases is steadily growing, demonstrating the political will of the Ukrainian Government to fight against this phenomenon. However, because it is difficult to prove such cases and owing to the lack of jurisprudential precedents and the lack of experience of law enforcement and judicial agencies as regards trafficking, many cases are only being prosecuted under related crime definitions, and not under “*trafficking*”. Nevertheless, as public awareness is raised and law enforcement bodies and judiciary get training, this trend will diminish - and a great number of cases will be handled under the “*trafficking*” statute.

According to another expert, “the situation causes doubts when there is a goal of gaining better statistical records. A situation arises where tension grows, and there will be the prosecuting of serious criminal cases, instead of creating justice here...”. In such a situation persons will not deal with more complicated cases, such as human trafficking, as the outcome will not justify the use of the energies of law enforcement representatives to push forward such cases. “Human trafficking cases – these are long cases, which require a lot of effort, and can damage not just statistical records but the nervous system of the investigator or prosecutor as well!³⁴”.

Indeed, special attention regarding statistics may lead to a double problem, too, for law enforcement bodies: work on more difficult cases, which require more time and effort, means that during the reported period there will be less cases reported - and if case doesn't lead to a conviction, then the statistical record will be viewed negatively.

This way, the attention of law enforcement agencies is concentrated on providing positive statistics instead of concentrating on ensuring justice – and **this practice reflects a serious problem had by the criminal justice system of the Ukraine**. It is not reasonable to put statistics in first place and to treat the factual side of a case as a secondary issue – so what should be made possible is the adopting of measures to simplify the existing system or replacing simple quantity-based statistics by assessments of cases according to their specifics.

³⁴ Ibid

Thus, to summarize our results here we can say that, today, precise information on the volume and turnover of the crime is not available – and this is for the most part due to the following:

- The absence of comparable statistics on reported crimes, indictments and court cases, as well as on the number of victims involved;
- The characteristics of trafficking (as organized trans-national crime), which results in a high dark figure and makes trafficking hard to control or prevent;
- The poor legal status of victims in Ukrainian legislation, which makes such persons unwilling to report such crimes or to co-operate with the authorities during investigation and court proceedings;
- The heterogeneous/uniform usage of the concept of trafficking in women in both international and national contexts;
- The heterogeneous/uniform criminalisation of the crime of trafficking in women in the national legislations of European countries.

6 Jurisdiction and the Problem of Coordination

6.1 Jurisdiction

Owing to the trans-national character of the trafficking in humans crime, the question of jurisdiction co-ordination between different agencies and law enforcement bodies plays an important role in the processes of crime investigation. A trans-national component is present in most human trafficking cases, and to investigate these cases investigators must contact law enforcement bodies of other countries via the mediation of the General Prosecutor's Office. This means that all cases related to this type of crime are greatly prone to official 'circumlocution', and will be 'bogged down' in bureaucracy. The reasons for delays, causing a closing of cases, are due to the shortcomings of criminal justice proceedings.

Thus, the investigation of adjacent crimes comes in within the competence of different law enforcement agencies, who have different jurisdictions. For example, border guards' armed forces, the regional procuracy, and investigators of the SBU participated in an investigation of one such case in the Zakarpattia region, yet MOI investigators were not brought in, even though formal grounds for this do exist. Furthermore, disregarding the efficient completion of the investigation, there was no court trial, as although the accused person was in court, the victim and witnesses refused to come (N.B. the court trial was set up on more than 20 occasions, but the

witnesses didn't show up). In some cases witnesses do not come to court because of threats of future injury or a fear of publicity.

There is a serious issue here when it comes to jurisdiction. MOI investigators do not have any influence over border transfer processes in connection with victims of trafficking leaving the Ukraine. Instead, the SBU has it, as investigations of crimes related to illegal crossings of the state border and attempting such transfers with the use of fake passports comes under the competence of the SBU. So the lack of coordination is obvious...

6.2 Coordination

Law enforcement bodies dealing with trafficking in humans include different departments of the MOI, the procuracy and the Security Service of the Ukraine. However, in most regions of the Ukraine there is no co-operation between the MOI and Security Services. Firstly, this could be explained by a need to file number of different requests, which degrades the efficiency and active nature of any cooperation. Secondly, illegal border crossings or organization of such a move is primarily to be handled by the Security Service, and the sale element is not taken into account. Here are some examples of the lack of coordination/co-operation existing between law enforcements bodies.

The work of the Security Service on Human Trafficking in most cases consists in preventing the illegal activities of foreigners intending to transfer females abroad. Security Service experts themselves stress the preventive role of their activities in the field. The Security Service cooperates with the Federal Security Service of the Russian Federation. Prohibiting entrance onto the territory of the Ukraine as regards selected foreigners was mentioned as one trafficking preventing measure.

The Procuracy is responsible for general co-ordination of the combating of crime in the state. Regional prosecutors head working meetings of representatives of the judiciary and law enforcement bodies at the regional level, where consolidated action plans for the fight against crime are adopted. Moreover, according to the criminal procedural code, investigations of trafficking cases come under the jurisdiction of the procuracy.

The Border Guard's armed forces of the Ukraine and the State Committee for the protection of the Border of the Ukraine are responsible for preventing illegal crossings of the border by females, traffickers or the members of organized crime groups who

escort such females. Thus, here we can see an important preventive role. However, most victims of trafficking cross the border with *legal* passports and visas - therefore, the possibilities of effective action by border guards are seriously limited.

In response to the question “whether typical divisions as regards combating trafficking exist with different organizations”, experts gave different answers. Such differentiation of opinions confirms the low level of integration of these organizations when it comes to combating human trafficking. According to experts, specialized anti-trafficking divisions exist only in the Ministry of Internal Affairs³⁵. As came across in interviews, there are separate employees at different agencies specialized in prevention or dealing with the prosecution of such crimes. At the same time, this is not the sole specialization or focus of work for such persons, so they concentrate on trafficking on a case by case basis - or not at all. In some other organizations there are no such services or specialized employees, and there are no plans to appoint them.

Human trafficking is not included at the moment in the list of priorities for law enforcement bodies of the Ukraine. Thus, some interviewed representatives of the Security Service said that too much attention is being given to this issue, and that human trafficking in general doesn't differ much from any other aspect of their work. Human trafficking is a priority for the Ministry of Internal Affairs, as representatives explained, and they believe that more attention needs to be given to the issue.

Experts referred to a number of serious obstacles that law enforcement representatives come across while fighting human trafficking, and the following are the most serious: inadequate financial support and legislation, and insufficient qualifications had by staff. For example, almost all interviewed representatives of the Security Service, half the representatives of the Ministry of Internal Affairs and half of the Procuracy representatives claimed that insufficiency of legislation is the most serious obstacle in their work. Among other obstacles, poor cooperation with foreign law enforcement bodies was also mentioned. Thus, these and other factors create obstacles in the way of combating trafficking in humans, and such obstacles should be overcome.

³⁵ By Order of the MOI of the Ukraine № 319, issued on 23.05.2000, specialized anti-trafficking divisions were created at the MOI. These divisions are responsible for the investigation and prevention of prostitution and human trafficking in the Ukraine and abroad. Such divisions are part of The Department of Criminal Investigations at the MOI, and have in them 3 – and perhaps up to 10 - employees.

7 Critical Review of Ukrainian Legislation Concerning the Prevention of Trafficking in Women

7.1 Ukrainian governmental response

The Government of the Ukraine has employed different strategies to address the issue of trafficking in people. The Government does not condone trafficking and has taken a series of concrete measures in order to respond to this severe problem in the Ukraine, and can now said to be in the forefront in the criminalization of this crime in Europe.

The Ukrainian Government has adopted several international instruments in regards to prevention of trafficking in human beings. The latest international instrument – the *Protocol to Prevent, Suppress and Punish trafficking in persons, Especially Women and Children, supplementing the United Nations Conventions Against Trans-national Organize Crime* was signed by the Ukraine on 15 November 2001; and in May 2004, it ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

In 1998, the Ukraine adopted a criminal law against trafficking in people, making it one of the first countries in Europe to formally criminalize this offence by adoption a discrete Trafficking statute. Article 124-1 was added to the then effective Criminal Code of the Ukraine. For the first time in its legal practice the Ukraine had legally binding sanctions dealing with trafficking in people, of course including women. A new Criminal Code of the Ukraine came into force in September 2001.

According to the MOI decree # 319 Special units to combat crimes related to trafficking in persons were created, in May 2000, within the main Criminal Investigation Department of the Ministry of Interior and in the regional Interior Affairs Departments. Their responsibility is to prevent and detect trafficking in human beings. By the Decision of the President and Government of the Ukraine special units for combating trafficking in persons have also been formed at the General Prosecutor's Office and for the Security Service of the Ukraine. In 2001, under the Criminal Procedure Code, responsibility for the investigation of offences was transferred from prosecutors to police investigators.

The Cabinet of Ministers established the Inter-agency Coordination Council for the Prevention of Human Trafficking along with the National Coordination Council against

Human Trafficking at the Ombudsman's Office. In addition to this issue, in June 2002, via the Cabinet of Ministers of the Ukraine, the National Ukrainian Comprehensive Complex Program Concerning the Prevention of Trafficking in Humans, for 2002-2005, was also adopted. Governmental departments that are involved in program implementations have adopted Programs of Activities and Program Implementation. XX OK? For example, the Ministry of Health adopted "Activities on Realization of the Complex Program Concerning the Prevention of Trafficking in Humans for 2002-2005" in July 2002. Finally, the Government of the Ukraine, using the available resources, appropriates funds for prevention campaigns (public education, spreading information) aimed at eradicating trafficking.

The Ukraine has tried a variety of measures, including education, prevention campaigns, and economic programs. Among the strategies employed by the Ukrainian government, significant attention has been given to the legal framework.

When reviewing and considering legal measures to counter a particular societal problem, the legal and social contexts in which these measures are to function are crucial. This is especially important when penal measures are being considered. The criminal law is one of the most intrusive instruments in the hands of state authorities with respect to the citizen. The question is first and foremost whether this actually fits in with the Rule of Law³⁶. In addition, it is important to see a difference between the law in books and the law in action.

7.2 Imperfection of the Juridical Definition and Implementation of the Human Trafficking Definition into Ukrainian Legal Practice

When we try to provide a more detail trafficking definition, we should first of all keep in mind the idea that different countries have different definitions and have different laws defining trafficking and modern-day slavery. In this connection there emerge difficulties in obtaining a consensus on a precise and workable legal definition of the term. Firstly, one has to stress that none of the existing definitions of "*human trafficking*" reflects the true meaning of this phenomenon or illustrates all of its dimensions. These

³⁶ The term "Rule of Law" embodies basic principles of the equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights. A predictable legal system with fair, transparent, and effective judicial institutions is essential for the protection of citizens against the arbitrary use of state authority and lawless acts of both organizations and individuals. Unfortunately, in

definitional problems are made particularly intractable by the fact that “*trafficking in people*” is used as an umbrella term to cover a range of actions and outcomes, rather than a single, unitary act leading to one specific outcome.³⁷ Trafficking in persons is broadly defined as modern-day slavery, as the movement of persons across borders for illicit purposes and in pursuit of profit, though different countries and laws provide variations on the exact definition.

The term “*human trafficking*” is usually translated into Ukrainian as a “trade in people” (*torgivlia liu’me*). However, many experts agree that this not an exact definition because “*trafficking*” includes transportation and relocation, and not only “*trade*”.

Human trafficking may take many forms, having within the term trafficking:

- in the sex industry³⁸;
- into forced labour in factories, restaurants, or agricultural work;
- into domestic servitude as a servant, housekeeper, or nanny;
- as a bride;
- of organs;

One of the problems is that whilst trafficking as a whole and some of its possible elements (such as slavery) may be universally deemed to constitute human rights violations and/or crimes, other actions and outcomes that can fall under the umbrella of trafficking may, in another context, be considered legal and/or unproblematic in terms of human rights. For instance, exploitation within prostitution can be an outcome of trafficking but prostitution is regulated as a legitimate economic sector in many countries, so is not universally criminalized or treated as a human right abuse. Also, cases of trafficking do not always fit within conventionally and legally accepted boundaries between forced and voluntary migration, and between legal and illegal migration. Defining trafficking thus involves making a decision about which particular actions and outcomes, and what particular combinations, should be included under its umbrella.

the Ukraine, where democratic traditions are weak and judicial independence is compromised, individual rights are not truly guaranteed.

³⁷ Trafficking: A Demand Led Problem? Save the Children, Sweden. Bridget Anderson, and Julia O’Connel Davidson, 2004

³⁸ It should be emphasized that the phenomenon of trafficking for prostitution and the sex industry has received much more research attention than trafficking into other sectors. The fact that trafficking so often becomes combined with trafficking for prostitution means that this occupies center stage in terms of policy concerns. This serves to further entrench the idea that prostitution and trafficking are analytically and often empirically conjoined. Of course, though, it may well be the case that trafficking for prostitution

7.2.1 Criminal Code of the Ukraine

On April 5, 2001, the Ukrainian Parliament adopted a new criminal code, which came into force on September 1, 2001. The new criminal code specifically addresses trafficking in Article 149, which is now the governing provision replacing the former Article 124, which also addressed trafficking in persons. There is no doubt that the adoption of Article 149 of the Ukrainian Criminal Code had many advantages - though it is still 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 149 - as with the previous one (124-1) - can be explained by the fact that the draft Law on the prevention of trafficking in people in the Ukraine was never openly discussed by experts or the general public. The law did not arise via the use of sufficient legal expertise, and that is why it has not been able to introduce itself as an effective legal norm.

Article 149, Trafficking in Human Beings and Other Illegal Transfer Deals with Respect to a Human Being

- Sale, other forms of transfer for payment or any other illegal deals with regard to a person, involving legal or illegal movements of that person, with or without his/her consent, across a border of the Ukraine for further sale or other transfer to any person (or persons) for the purpose of sexual exploitation, use in the porno business, engagement in criminal activities, peonage, adoption for commercial purposes, for use in armed conflict, or labour exploitation shall be punishable by imprisonment for a term of 3 to 8 years.
- The same activities committed with respect to a minor, or several persons, or repeated, or committed by a group of persons with prior conspiracy, or through abuse of office, or by a person on whom the victim was financially or otherwise dependent shall be punishable by imprisonment for a term of 5 to 12 years with or without forfeiture of property.
- Any such activities as provided for by paragraphs 1 and 2 of this Article, where committed by an organized group or involving the illegal taking of children abroad or failure to bring them back to the Ukraine, or for the purpose of removal of a victim's organs or tissues for transportation or with forcible donor purposes or where these activities cause any grave consequences shall be punishable by imprisonment for a term of 8 to 15 years with forfeiture of property.

Article 149 of the criminal code establishes human trafficking as a distinct offence, but this article does not address the prevention of human trafficking.

really is a more numerically significant and more serious global problem than trafficking into other sectors.

Definition. The definition of trafficking includes a list of acts and end purposes. The means of carrying out these acts in order to achieve the listed purposes are not incorporated into the general definition; instead, they are treated as aggravating factors that increase the penalty for the crime. The list of acts prohibited by Article 149 are the sale, transfer for payment or "*any other illegal deals with respect to a person*" involving either legal or illegal movements of the person, regardless of whether the person has consented, across the borders of the Ukraine. These acts must be conducted with the purpose of selling or transferring the victim to any other person or persons for sexual exploitation, for use in the porno business, engagement in criminal activities, peonage, adoption for commercial purposes, or use in armed conflicts or for labour exploitation.

Sanctions. The general offence of trafficking as defined in Article 149.1 is punishable by 3 to 8 years in prison. Where the crime is committed against a minor/against several persons, repeatedly, by an organized group or through the abuse of office or by a person on whom the victim was financially or otherwise dependent, the penalty increases to a minimum of 5 years in prison and a maximum of 12 years, with the option of property forfeiture.

Where any crime delineated in Articles 149.1 and 149.2 is committed by an organized group or involves the illegal taking of children abroad or a failure to bring them back to Ukraine with the purpose of forced organ or tissue transplantation or donation, or where these actions have grave consequences, the penalty is a minimum of 8 years in prison and a maximum of 15 years with forfeiture of property. (Article 149.3).

Expansive prosecutions. Other relevant criminal code provisions include: Creating or Running Brothels and Trading in Prostitution (Article 302); Compelling into Prostitution (Article 303); Engaging Minors in Criminal Activities (Article 304); and Illegal Crossing of the State Border (Article 331).

Protection. Nothing in the criminal code provisions refers to the protection of trafficking victims.

Issues of Concern. Ukraine's law points to the legal or illegal movement of the victim across the border of the country as an element of the offence. This precludes any prosecution of trafficking that takes place *within* the borders of the Ukraine.

In a situation where trafficking in human beings has had a serious consequence or is organized by a criminal organization, and in cases of trafficking intended for the transplantation of human organ, the punishment goes up to eight to fifteen years. This

new article is more in accordance with international standards as stipulated in UN-protocol³⁹ than the one found in the old criminal code⁴⁰.

Nevertheless, many criticisms had been levelled at article 149 in that elements of the crime have not been defined, and so police and prosecutors were unclear as to how to apply its provisions in practice. There are several issues of concern when it comes to a definition of trafficking in the criminal code provision.

One needs to stress that some positive changes in legislation have occurred during the writing of this paper. Thus, lawyers have delivered some recommendations to Verkhovna Rada (the Parliament) in order to amend existing articles of the Criminal Code of the Ukraine, and this recommendation has been incorporated into the existing Criminal Code. The Vekhovna Rada passed, at the second reading, amendments to the Criminal and Criminal Procedure Codes of the Ukraine related to responsibility for human trafficking, inveigling into prostitution and pimping. The Law refers to a new edition of Article 149 "Human trafficking or other illegal agreements regarding a person" and article 303 "Prostitution or Compelling a person to engage in prostitution" for Ukraine's Criminal Code. It is recommended that these articles are amended to refer to "Human trafficking" and "Compelling a person to engage in prostitution", respectively.

According to the law, recruitment, transfer, receipt, transportation, the harbouring or receiving of a person committed by means of assault, damage of property, deceit, blackmail, abuse of office or the use of his/her vulnerable condition with the purpose of exploitation is punishable by deprivation of liberty for a term of five to eight years.

In addition, recruitment, transportation, transfer harbouring or receiving a minor with the purpose of exploitation is punishable by deprivation of liberty for a term of seven to eleven years.

According to the draft law, compelling a person to engage in prostitution is punishable by limitation of one's liberty for a term up to five years or deprivation of liberty for the same time period, and compelling a minor to engage in prostitution is punishable by deprivation of liberty for a term of five to seven years.

7.2.2 Terminology Vagueness in Article 149

³⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Conventions Against Trans-nationally Organized Crime

⁴⁰ Art. 124 Criminal Code of the Ukraine (old)

In this paragraph, we will briefly explain the necessity to discuss why the existing article of Criminal Code of the Ukraine does not work in practice, and then seek to develop appropriate recommendations for use by practitioners.

All interviewed experts took a very critical position with the definition of “human trafficking” provided in Article 149 of the Criminal Code. *«It’s better if there is no law at all than, when there is a law, allowing for a double interpretation. This creates an open door for corruption and abuse...»*

Professionals do not agree that it is absolutely required to prove receipt of payment to prosecute a completed crime of trafficking, as it’s almost impossible to prove this fact. Payment is usually made abroad, and there are no witnesses. Thus, most traffickers have a real chance of avoiding responsibility.

Regardless of the shortcomings of the legislation, all persons interviewed agreed that legislation *should* work - yet Article 149 of the Criminal Code should be improved upon.

It is very difficult to prove the intentions of a third person based on existing articles 146 and 149 of the Ukrainian Criminal code. We believe that in such cases, when a human being becomes an article of trade, the bringing of criminal charges should be allowed based on the fact. Along with the imperfections, there are number of things which do not go together. The first issue is that two agencies are responsible for investigations of human trafficking, i.e. at the same time: the MOI and Security Service. Thus, ‘a victim of crime’, according to article 149 of the Criminal Code and other articles, especially Article 331 (illegal crossing of state borders) and Article 332 (Illegal transfer of persons across a state border) becomes ‘an accused person’ when the Security Service is investigating the crime.

The second issue is that the crime usually commences on Ukrainian territory, and continues on the territories of other states. In many cases, though, some are states with which the Ukraine does not have a mutual legal assistance treaty in force, such as Israel, where Ukrainian citizens constitute 25% of all females involved in the sex business and pornography⁴¹.

For this article, a principle upon whose basis one would see the criminalisation of socially dangerous actions was not adhered to - namely, a principle of definiteness and

⁴¹ Chief of criminal law and the criminology department, Odessa Law School, National University of the Interior, law PhD, distinguished lawyer of the Ukraine, police colonel V. A. Merkulova

unified terminology. Thus, in the article's terminology, certain terms have been used that have never appeared in criminal law before - and are not even legal terms: "*sexual exploitation*", "*porno business*", "*debt bondage*", "*labour exploitation*"; so these are terms used with no guidance as to their actual definition. No official guidelines were provided concerning implementation of the law, and although such guidelines are not binding, courts generally rely on them for interpreting the law. What these terms actually *mean* is not clear, neither for practical users nor for academics; they are not used in modern, international documents. For example, 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/quality. However, if the term is understood this way, most Ukrainian employers are exploiters (the minimum salary in the Ukraine is 375 hrivnyas, (about US\$ 75)! Thus, these latter employers are acting in a criminal way according to Article 149. It is clear that the Legislature meant something quite different when adopting the norm here - though it should have been defined more precisely.

As mentioned beforehand, the new article was meant to correspond to international standards and to prevent the commitment of such crimes. Nevertheless, this article is deeply rooted in article 124-1 of the earlier Criminal Code. The same terminology noted above is used without further definition, and it is not clear whether new procedures will be issued to the police for their guidance when investigating trafficking crimes. One aspect of the new law that worsens the position of trafficked women is the requirement that the offence is only committed where a person is trafficked across an international border. But according to international standards⁴² offences here do not necessarily involve the international trafficking of persons, nor do they necessarily imply exploitation of the victims. Many of the women trafficked in the Ukraine are only moved from one region to another, and do not necessarily leave the country. The traffickers of such individuals could not be prosecuted for the crime of trafficking under article 149 of the Criminal Code, therefore.

As for the crime definitions, it is noteworthy that the Ukraine already uses a broad definition of trafficking, including purposes for which human beings are trafficked. However, we can only conclude that, in general, crime definitions are insufficiently clear

⁴² Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children, supplementing the United Nations Conventions Against Trans-nationally Organized Crime

and unequivocal for them to be made use of in practice (for example, criminal elements such as the necessity of “coercion”, a “border crossing”, “consent”⁴³, or “systematic”⁴⁴ and “organized group”).

It is entirely unclear whether or not coercion is a constitutive element also in cases of sexual exploitation. As to the means, we can ask whether *any* facilitation of migration for sex work can be punishable as trafficking in persons - or is it the case only if there is an element of coercion or deception involved? And concerning purpose: does all work in the sex industry constitute sexual exploitation per se, or does only sex work under exploitative and coercive conditions qualify as “sexual exploitation”?

With regard to using term “sexual exploitation” we can note here that many important actors at an international level⁴⁵ see use of the term “sexual exploitation” as inadequate, and propose to abolish the term. “*In order to highlight the commonality between the different purposes for which people are trafficked, the focus should be on the forced, exploitative, or slavery-like conditions of the work or relationship, and whether such conditions were freely and knowingly consented to by the person*”.⁴⁶

An advisor at one of the Security Service divisions in Kiev said “In a country in which the judicial system cannot be said to be entirely incorruptible, equivocal and ambiguous crime definitions allow for corruption, and not only at the level of law enforcement officers and prosecutors, as it gives persons too much discretionary power”.

The prohibited acts are the sale, transfer for payment or “*any other illegal deals with regard to a person.*” The definition provides no guidance as to what qualifies as such an illegal deal. There are no means required in the general definition, but traffickers must, as said above, have transported the person across a Ukrainian border for further sale or for transfer to another person for sexual exploitation, use in the porno business, engagement in criminal activities, peonage, adoption for commercial purposes, use in armed conflicts or for labour exploitation. Servitude, slavery and slavery-like practices, which are included in the Protocol definition, are not included here. “*The criminal code article does not appear to allow for the prosecution of traffickers who take victims across a border for one of the designated exploitative purposes but who carry out that*

⁴³ Art. 149 UCC- new

⁴⁴ Art. 303 UCC- new

⁴⁵ Roelof Haveman, Marjan Wijers Review of the Law on Trafficking in Persons in the Ukraine, OIM, Brussels, 2001

⁴⁶ Ibid. p.9

exploitation themselves, and do not sell or transfer the victim to another person. It is common for victims of trafficking to be sold numerous times, but there is no requirement that a victim be sold at least twice in order for trafficking to have taken place, which is one possible interpretation of the provision”.

The definition lists means and one end purpose, the removal of the trafficking victim's organs or tissues for forcible donor purposes, as aggravating factors. There is confusion in the way these factors are presented, and this confusion directly interprets the penalty a trafficker will face if convicted. For example, the penalty for trafficking under the general definition is a minimum of 3 years in prison. In paragraph two of the article, committing an offence of trafficking a minor is listed as an aggravating factor, and the punishment for this is a minimum of 5 years in prison. In paragraph 3, which lists more severe, exacerbating factors, the "*illegal taking of children abroad or failure to bring them back to the Ukraine*" is included, carrying a minimum penalty of 8 years. Given that crossing a border of the Ukraine is one of the basic elements of the offence, it is not at all clear what penalty a trafficker would face for trafficking a minor. So even if a conviction is achieved, there is a risk that a trafficker would not be given an appropriate sentence.

“The other point is that the principal route of trafficking in women lies through employment agencies, which legalize this activity” said one representative of the police. Article 149 of the Criminal Code does not provide any efficient mechanisms that could make it possible to reveal the criminal activities of such agencies, as the “purpose of further sale” or other criminal purposes defined by article 149 are practically impossible to prove.

7.2.3 *The Vulnerable Status of Victims*

We need to stress another important factor that raises difficulties during any investigation process. Trafficked persons rarely report traffickers or agree to testify because of fear, threats, intimidation and bribery, a lack of willingness to testify in public about what has happened to them, because there is a lack of support during and after proceedings, a lack of compensation possibilities, possible criminalization for prostitution, concerns about police and official corruption and a belief that the traffickers are unlikely to be punished properly anyway.

A special problem when bringing cases of trafficking to court is the reluctance of victims to report to the police and to subsequently testify in court. Though not required

by law, a request by the victim is seen as indispensable. Many reasons can be given to explain this reluctance of victims; one is the absence of witness protection and procedural safeguards for victims or witnesses during criminal proceedings, especially with regard to the protection of the privacy and safety of the victim.

All experts interviewed for this study said that victims' testifying in court was one of the most difficult stages of the process, in particular owing to the need to describe what has happened to them in front of the traffickers and to the public. The slow process of investigating and prosecuting trafficking cases, a lack of proper resources for investigation, and the reliance on witness testimony, rather than other forms of investigation, are the main hindrances to successful prosecutions.

A police representative explained that *"...a case comes to up, yet, in practice, it may be difficult for the police to get a trafficking case opened by the prosecutor. One of the reasons for this reluctance among prosecutors is that the case will be lost owing to there being too little evidence (because the victim or witnesses refuse to testify in court)..."*

This fear of losing can at least partly be explained by the fact that prosecutors may be disciplined for losing a case. This severely affects the independence of prosecutors and their willingness to open trafficking cases, as these are complex and time consuming and do carry this risk of "failure". In addition, there is a lack of interest among prosecutors in this kind of case at all levels of the prosecutor's office.

Both prosecutors and lawyers felt that a lack of training and understanding by the judiciary with regard to comprehending specific issues related to trafficking cases also hindered successful prosecutions.

7.2.4 Victims' Protection

There is a witness protection law providing the right to safety and protection for those who act in criminal proceedings. The law defines a range of safety measures including personal protection, protection of home and property, rapid assistance if in danger, use of surveillance, telephone taps, change of identity and documentation, relocation as well as in-court protection for witnesses giving evidence. An official department exists for witness protection, but officials in this department lack training and understanding of the special needs of trafficking witnesses. A Ministry of the Interior official explained that full-blown witness protection measures are not available to trafficked persons during investigations. Fully comprehensive witness protection is

expensive and mechanisms for witness protection have hardly been developed at all. In addition, police protection and safety measures are more often applied to court officials, not to witnesses or trafficked persons.

Representative of the Regional Department to Combat Trafficking in Kiev note that physical police protection and a safe place to stay during an investigation and trial are used in a few trafficking cases. Although these fall under the witness protection law, shelters are, in practice, overseen by NGOs and are provided in co-operation with the authorities. For example, the Kiev Department to Combat Trafficking initiated a case in May 2004 where three trafficked persons returned from Israel and agreed to testify. They could not stay at home during the investigation and prosecution as they were afraid of threats being made by traffickers. The Department co-ordinated housing in a shelter via non-governmental organization - La Strada (Ukraine) - for the duration of the investigation.

Interviews with law enforcement officials revealed a clear perception on their part that there was no need to give trafficked women protection. Police and prosecutors believe that the women are not in serious danger with regard to the traffickers. However, in practice it seems they underestimate the risk of reprisals because of the relative success of NGO involvement in providing safe and secure shelters.

A representative of the Regional Department to Combat Trafficking in Kiev explained that law enforcement bodies can provide additional physical security during the period of an investigation. For example, this occurred during the trial in December 2004, in Kiev, and these arrangements were for the duration of the trial only. Yet according to experts, this was a rare case of successful protection. There is no legal provision or protocol regarding the provision of long-term protection for trafficked persons following a trial, and NGOs are unable to provide a safe place after a trial⁴⁷.

The witness protection law has provisions regarding confidentiality, anonymity and closed trials for witnesses; however, these are rarely used in trafficking cases. Upon

⁴⁷ The inadequacy of protection measures for trafficking victims in the Ukraine has led to women who are trafficked from the Ukraine being granted refugee status in the United Kingdom and Canada on the grounds that they have a well-founded fear of persecution, seeing that the Ukrainian authorities were unable to provide the women with sufficient protection from organised crime. In a case in the United Kingdom, a trafficked woman who did not report her trafficker was granted asylum on the grounds of fear of being persecuted by the organised criminal gang in her home country. It was held that if she returned to the Ukraine it was likely that the organised gang would kill her and, owing to the climate of corruption, the authorities were unable or unwilling to provide sufficient protection. (Secretary of State for the Home Office v L. D., Immigration Appeals Tribunal, 13 April 2002, United Kingdom.

request from a witness via the prosecution, a judge can order a closed trial in cases involving sex crimes or in the interests of the safety of witnesses, yet witnesses are rarely informed of this opportunity. There have been only three closed trials for trafficking cases. Problems still exist in closed trials because this still does not prevent relatives of a defendant from being present outside the court and abusing or intimidating the victims. NGOs thus assist in an informal way, by accompanying witnesses to court and preparing them for the trial.

8 Ways of improving the legislation

Existing legal framework deficiencies have led to a situation where criminal structures specializing in trafficking in women work practically openly. The number of specialized criminal structures is increasing, and among their members are not only criminals but also former prostitutes.

For a certain amount of pay they recruit women, including minors, for work as prostitutes abroad. Experts from law enforcement bodies consistently note 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 organized group. That is why perfecting legislation on the prevention of people trafficking can also be accomplished via improving legislation on combating organized crime, both within the Ukraine and at an international level.

One can ensure effective 'counteraction' to organized crime in the sphere of trafficking in people only by adopting a special norm that would envisage criminal responsibility for creating a criminal organization and participation in its activity. There was a draft of such a law in the Ukraine, and in November 2005 the Ukrainian Parliament, at a first reading, made an amendment to the Criminal Code of the Ukraine regarding amenability for human trafficking.

Ensuring the impossibility of getting money from criminal activities in the domain of trafficking in people is also an important element for an attack on organized crime. Important for achieving this goal is international collaboration between police structures with different functions and the developing of methods to work against trans-national criminal groups.

Taking into account forecasts for the increase in the number of organized criminal groups of all kinds, one can expect that new kinds of crime will appear. The nature and

felonious character of such crimes will influence the criminal situation in Europe, in particular in the areas of people trading to illegal business structures.

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

- Making the necessary amendments to Article 149 that would allow law enforcement bodies to use it in practical work;
- In order to do away with imperfections in the rules and procedures of issuing licenses to commercial structures that employ Ukrainian citizens abroad:
 - to establish control of law enforcement bodies over license issuing for commercial structures and over their activities;
 - establishing administrative responsibility for the employees of mass media agencies that publish adverts for the employing of Ukrainian citizens abroad without licenses that have been approved by law enforcement bodies.
- So as to overcome the methodology drawbacks and absence of criminology recommendations concerning practical issues in investigations of criminal cases and the collecting of evidence for crimes dealing with trafficking in people:
 - to develop a methodology for investigating such cases on the basis of court analyses and investigation procedures, and then forwarding these materials to investigator bodies in Departments of the Ministry of the Interior.
- To amend the Civil Code by introducing a mechanism of financial compensation to victims of crimes of people trafficking, at the expense of the guilty persons. In addition to amending Article 149 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:
 - “On the legal protection of Ukrainian citizens, their honour and dignity, when abroad”
 - “On basic guarantees of children’s rights in the Ukraine”
 - “On the transplanting of body organs and tissues.”
- 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 within the *Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children, supplementing the United Nations Conventions Against Trans-national Organized Crime*.
- The subjective side of the crime is imperfect, too. In order to make a person responsible according to Article 149 of the Ukrainian Criminal Code, one needs to prove that this person realized the fact of the subsequent exploitation of other persons in prostitution, using them in the porno business, keeping them in debt bondage, etc. Life shows that, in many cases, women are invited abroad on pretexts of working as waitresses, barmaids, dancers, cleaners, etc. They leave the territory of the Ukraine with authentic passports and very often with authentic visas, and only abroad get into a situation of forced labour or slavery. Article 149 does not envisage responsibility for such action, though. In such cases the offenders can only be prosecuted by the laws of another country, if these laws deal with responsibility for trading in people.

Thus, it is practically impossible to prosecute the people who run such a business. These legal shortcomings prevent the legal act from fully performing its punitive

functions so that it can help substantially eradicate this socially dangerous phenomenon.

9 Conclusions and Policy Recommendations

9.1 Conclusions

The general conclusions of this research are as follow: the fight against human trafficking in the Ukraine has a number of difficulties, such as a:

- Lack of sufficient financial support of the law enforcement bodies combating human trafficking;
- Lack of adequate legislation;
- Lack of effective inter-agency cooperation at a national level and an absence of ideas for improving the effectiveness of law enforcement operations.

What is more, the generally negative perception of society towards prostitution, which is directly related to human trafficking, still exists and, as a result, victims refuse to testify and parents refuse to report the disappearance of their daughters. The process is influenced as well by the practice of representatives of law enforcement bodies of creating 'positive statistics', where they wish to display positive quantitative indexes; this does not ensure the good quality of such persons' work; in addition to this, they are afraid to make mistakes (and in many cases this is reasonable because the collapse of a criminal case may lead to the punishing of a law enforcement representative). Thus, the judicial system is to be characterized as being highly secret and closed, and there will be serious delays in transferring cases to the courts.

Let's make some more detail conclusions - and recommendations - based on the research's findings.

Trafficking out of the Ukraine is a consequence of the difficult transition being undergone - away from a centrally controlled and planned economy. Millions have suffered in this transition to a market economy, i.e. where the state no longer assumes responsibility for all of its citizens. Trafficking groups have flourished with the decline of police control. People trafficking, as one of the most lucrative criminal businesses, has spread quickly across the Ukraine, and goes practically unpunished. The main reasons for this are:

The weak activities of law enforcement bodies: owing to the lack of sufficient experience in handling such cases and the absence of a clear crime definition and

clarifications by the Ukrainian Supreme Court. Also, the necessary level of coordination between state executive bodies and non-governmental advocacy organizations has not yet been achieved. Further impediments concern the ways of acting of certain elements within the structure of law enforcement bodies: in an investigation, of local police inspectors, posts and patrols and passport departments.

The composition of the trafficking crime. Trafficking in human beings is a complex crime, and is difficult to prove. It is a specific crime that can take place in several countries at once.

The attitude of trafficked persons as regards collaboration with law enforcement bodies. Women do not want to report offences to the police as they fear moral condemnation from their relations and the community, a lack of understanding by police officers, persecution by the criminals, and because there is a general absence of perspectives in the case itself.

An absence of reliable statistics. The statistics issue related to trafficking in people is one of the main obstacles to defining the scope of the problem - and is one of the obstacles to its being effectively combated. When we take a look at the scale of trafficking we can come to the conclusion that, today, precise information on the volume and turnover of the trafficking crime is not available. This is chiefly due to the following:

- The absence of comparable statistics on reported crimes, indictments and court cases, as well as on the number of victims involved;
- The characteristics of trafficking (as an organized trans-national crime), which results in a high, dark figure that makes trafficking hard to control and prevent;
- The poor legal status of victims in Ukrainian legislation, which makes persons unwilling to report such crimes or co-operate with the authorities in an investigation and court proceedings;
- Whether there is uniform usage of the concept of trafficking in women in both an international and national context.

The attention being given to statistics may cause a double problem for law enforcement bodies: work done on more difficult cases, which require more time and effort, means that during a specific time period there are fewer cases reported; and if a case doesn't lead to a conviction, then the statistical record is viewed negatively.

9.2 Recommendations

What needs to be done in order to effectively combat human trafficking in the Ukraine?

I. An improved statistical approach

- Trafficking statistics in the Ukraine do not reflect the *real* scale of the problem, so a study of human trafficking's spread and its consequences will encounter dead-ends.
- The attention of law enforcement agencies is concentrated on providing positive statistics, instead of being concentrated on ensuring justice. This practice reflects a serious problem for the Ukraine's criminal justice system, as it is not feasible to put statistics in first place and to treat the factual side of a case as a secondary issue. Thus, one should adopt measures to simplify the existing system - or replace simple quantity-based statistics by an assessment of cases according to their specifics.

II. Perfecting the activities of Ukrainian law enforcement bodies and improve legislation

In spite of the shortcomings of the Ukraine's legislation, more trafficking cases are now being investigated and prosecuted. However, there are significant failings in the system. The legislation does not cover all cases of trafficking, and the requirement for trafficking to have involved crossing a border is unnecessarily restrictive. There are difficulties in obtaining testimony from witnesses. Witness protection programs are not specifically aimed at trafficked persons and are rarely available in practice. Trafficked persons returning to the Ukraine in most cases remain unprotected. There is a lack of training in the special needs of trafficked persons at all levels of law enforcement. Cooperation between NGOs and law enforcement agencies is only at an informal level, and there is no formal state provision for victim protection or assistance. Provisions for compensation are ineffective, too. So any activity at a legislative level will be in vain if there are no improvements with Ukrainian law enforcement bodies. Therefore:

- It is necessary to amend Article 149 of the Criminal Code to make trafficking that takes place within the borders of the Ukraine a crime. It is recommended that interpretative guidelines for judges and other officials, as well as comprehensive procedural guidelines for police and immigration officers regarding prevention and the prosecution of trafficking offences, are developed.
- In order to co-ordinate the activities of different bodies and organizations there should be created a special body that will be directly accountable to the Ukrainian President of the Cabinet of Ministers.
- To be able 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 then can tangible results be obtained and relevant experience be gained.
- Taking into account the international nature of the problem, alongside bringing the Ukraine into international Conventions dealing with counteracting

exploitation/prostitution by third parties, the issue of practical interactions between Ukrainian and foreign law enforcement bodies for the prevention of trafficking in women and exploitation/prostitution needs to be dealt with.

- Measures to encourage the victims of trafficking to identify traffickers and act as witnesses in criminal prosecutions should also be explored. These might include witness protection measures and restrictions on the deportation of victims who are prepared to act as witnesses. Victims of trafficking should have access to legal, psychological, and medical assistance. They should be awarded compensation via criminal compensation schemes, which could be financed through the confiscated criminal revenues of traffickers.
- Broad efforts to strengthen training and the public awareness of civil servants dealing with migration, particularly those at embassies and consulates and those in charge of the delivery of visas, should be increased - and the government should train law enforcement officials at all levels with regard to trafficking, violence against women, and recognition of a trafficking situation, including the identification of front companies and groups.

III. An elaboration of comprehensive public and governmental policy

At present, the Ukraine does not have a comprehensive public policy for combating organized crime at different levels. To elaborate such a policy it is necessary to work out a state policy concept against crime in general, and measures against organized crime should be an integral part of such a comprehensive strategy. The policy should be based on the realization that organized crime is a complex social phenomenon, capable of self-determination and reproduction.

Trafficking in human beings cannot be totally prevented by developing only anti-trafficking laws and developing enforcement strategies. A multidisciplinary approach is required, including appropriate social and economic measures that address the root causes of trafficking, such as poverty, economic disparities and unemployment. Collective efforts made by countries of origin, transit, and destination are also necessary.

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