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**“Improving the institutional capacity of the agencies involved in the prevention of trafficking in human beings in line with the current European standards and best practices”**

# Report on the improvement of the national identification and referral mechanism of victims of trafficking in human beings

Activity C.3

Final Report

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## 1. Introduction

The identification of trafficked persons is a crucial component in each National Referral Mechanism. If identification procedures are not in place or do not reach the target group, trafficked persons have no access to assistance and support structures, and the crime of trafficking will neither be documented nor prosecuted. Therefore, comprehensive identification procedures are recommended to reach out to all presumed trafficked persons and create a network among the stakeholders of a National Referral Mechanism (NRM).

Even though law enforcement agencies play a central role in identifying victims, they are not the only agencies that come across the target group. Activity C.3 and the previous Activity C.2 therefore focused on precise guidelines for the establishment of a comprehensive system that would facilitate identification on a broad level while taking into account principles of data protection. These were elaborated in close consultation with the Romanian experts.

The two activities consisted of three workshops: in Bucharest, Pitesti and Suceava with the respective partners of the referral system in these regions (Activity C.2) and of consultations with experts from ANITP, the organised crime department DCCO, the General Directorate for Social Assistance and Child Protection and with NGOs (Activity C.3). As a result, the STEs in this report give recommendations for the improvement of the existing NRM.

Regarding the important issues of data protection and data collection, the Director of the Boltzmann Institute, Hannes Tretter, consulted with the Head of ANITP, Romulus Ungureanu, and other relevant experts on current topics related to data collection in the area of trafficking in human beings. The results of this meeting are documented in this report, too.

## 2. Structure and aim of the report

During the consultations of the previous activity C.2 the Romanian experts mentioned Order no. 335 of 29 October 2007, published in the Romanian Official Journal no. 849 of 17<sup>th</sup> December 2008<sup>1</sup> as the main instrument regarding the National Referral Mechanism (NRM) in Romania. The STEs for that reason used it in the C.2 Report – which serves as a basis for the C.3 Report at hand – as the main reference and compared it to the OSCE NRM Handbook which is generally considered a best practice model for NRMs and “provides guidance and recommendations on subsequent steps to improve existing referral systems, as well as strategies for how to design a distinct country specific NRM in those countries where one does not yet exist.”<sup>2</sup>

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<sup>1</sup> Order no. 335 of 29 October 2007 to adopt the National Victim Identification and Referral Mechanism. Issuing Organisation: Ministry of Interior and Administration Reform. Published in the Romanian Official Journal no. 849 of 17 December 2008. See Annex.

<sup>2</sup> OSCE/ODIHR: T. Kröger, J. Malkoc, B. H. Uhl: National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook. Warsaw 2004, p. 12

Principles and best practices for the implementation/creation of NRMs according to the OSCE Handbook<sup>3</sup>:

1. "Protecting the rights of trafficked persons should be the first priority of all anti-trafficking measures.
2. An infrastructure to combat trafficking should work on the basis of a broad definition of trafficking in order to have the ability to respond rapidly to different forms of human trafficking.
3. Support and protection services should be accessible for all categories of trafficked persons.
4. A protection mechanism should include a wide range of different specialised services, addressing the specific needs of each individual.
5. Victim protection mechanisms based on human rights can help secure successful prosecution. Professional, legal and psychological support during police questioning and court proceedings, which can last months or years, leads to a stabilisation of the victim-witness.
6. Combating trafficking in human beings requires a multi-disciplinary and cross-sector approach, involving all relevant actors from government and civil society. Measures to combat human trafficking require strategies that cut across numerous fields, including, for example, internal security, economic and social policy, employment policy, migration, human rights and crime prevention policy.
7. A structure to combat trafficking in human beings should assess and build on existing national capacities in order to foster ownership and sustainability. Even if external actors such as international organisations initially facilitate processes, it should be made clear from the outset that the domestic stakeholders will be the owners of the NRM.
8. The guiding principles of an NRM should include transparency and assignment of clear responsibilities and competences according to the different mandates of all actors involved.
9. NRMs are building blocks of effective regional and international cooperation to combat trafficking and assist its victims. International cooperation requires effective structures on a national and local level to forge partnerships in the fight against human trafficking. International cooperation should include coordination among NRMs from various countries.
10. The process of implementing an NRM should be embedded in an overall democratisation process to ensure accountability and legitimacy."

The Romanian Order number 335 is based on the following principles:

**"FUNDAMENTAL PRINCIPLES:**

The anti-trafficking activities developed by institutions with a view of implementing the present norms are performed in compliance with the guidelines contained in the National Strategy against Trafficking in Persons 2006-2010, approved by Government Decision 1645/2006<sup>4</sup>.

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<sup>3</sup> OSCE Handbook, chapter II.2, pp. 23-29

<sup>4</sup> The „2006-2007 National Action Plan for implementing the National Strategy against Trafficking in Persons 2006-2010“ has a specific chapter (D) on „Protection, Assistance and Social Reintegration of Victims of TIP“. See Annex.

## SPECIFIC PRINCIPLES:

The characteristic activities developed according to the present norms are performed having regard to the following specific principles:

**Recognition of victims' right to physical, psychological and social recovery.** In addition to the investigation of the trafficking related offence, the victim identification and referral process should consider the provision of the victim's access to specialized assistance services.

**Equality and non-discrimination.** Access to protection and assistance services should be provided to all victims of trafficking without any limitation due to race, nationality, ethnic origin, language, religion, social origin, opinion, sex or sexual orientation, age, political affiliation, disability, infectious severe disease, AIDS or belonging to an unprivileged category, regardless victim's decision to participate or not in criminal trials.

**Participation.** Victims of trafficking are involved in discussions of all decisions/measures of concern to them, having regard of their right to self-determination.

**Continuity.** The actions and measures undertaken by institutions and organizations engaged in the identification and referral process should be carried out in such a way as to ensure trafficked victims' access to support services or compensations in justice for physical or psychological injuries suffered as a result of their trafficking experiences; referral should be a continuation of the identification stage and carried out by law enforcement structures, service providers or organizations responsible for service provision.”

Based on such principles, there are a number of important fields in the anti-trafficking work where well structured and functioning National Referral Mechanisms are essential. The OSCE Handbook lists five such areas<sup>5</sup>:

1. Identification of presumed trafficked persons
2. Cooperation agreements / Memorandum of Understanding
3. Support and protection services
4. Repatriation and social inclusion
5. Specific legal provisions

The report at hand will be geared to these five categories. It will investigate the current state of the NRM in Romania regarding these areas and try to identify gaps as well as make recommendations for improvements. This will be done based on the information from the workshops of C.2, the consultations of C.3 and:

- the OSCE NRM Handbook,
- the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197),
- Order No 335,
- Law 678 from 2001,
- Law 211 from 2004,
- the “Report on trafficking in persons in Romania 2007” by ANITP and

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<sup>5</sup> OSCE Handbook, p. 7.

- the “2006-2007 NATIONAL ACTION PLAN For implementing the National Strategy against Trafficking in Persons 2006-2010”.

### **3. Recommended areas of National Referral Mechanisms**

This chapter will start with a brief explanation of the five topics (see previous chapter) that should be taken into account regarding NRMs according to the OSCE Handbook. For each of these five points, it will then quote the relevant passages from the Romanian Order 335 on NRMs. Chapter 4 will in a next step describe the current Romanian NRM as was described to the STEs during the activities C.2 and C.3.

The STEs would like to point out that the results of the workshops and consultations /the information given there do not reflect all of the points described in the OSCE Handbook and Order no. 335 to the same extent, since the discussions often focused on specific topics, which were of special importance to the Romanian stakeholders and/or the STEs and therefore demanded particular attention.

#### **3.1 Identification of presumed trafficked persons**

According to the NRM Handbook, “victims of trafficking are only rarely able to extricate themselves independently from their situation. The identification of a trafficked person can be a complex and time-consuming process requiring professional guidance and support structures to create a safe space for the victim.”<sup>6</sup>

The Romanian Order 335 gives the following information on the topic of identification:

#### **Working Definition**

##### **Victim identification**

The process by which a person is to be found as victim of trafficking in persons. Identification can be carried out formally, as a result of the investigation conducted by the judicial authorities or the social inquiries of the social services, and informally by analyzing the indicators that can provide clues as to the existence of a potential trafficking situation.

##### **Victim identification indicators**

The first stage of the identification and referral mechanism is the victim screening in order to determine whether an individual is in fact a victim of trafficking and, if the case may be, to ensure that individual’s access to specialized support and protection services.

The screening and identification process implies the establishment of an initial contact with the presumed trafficked person, the analysis of the indicators which may assist the contacting institution/organization in recognizing a possible trafficking situation and the pre-interview carried out by trained personnel to find out the trafficking in persons specific elements.

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<sup>6</sup> OSCE Handbook, p. 17.

## **Interviewing of victims of trafficking**

Interviewing victims of trafficking is a formal procedure to identify a trafficked victim. Interviewing plays two important and distinct roles depending on the institution or organization conducting the interview of the presumed trafficked victim:

- collection of the necessary evidence to prove a trafficking crime, in which situation the interviewing may result in the victim's statement as injured party or witness in trial;
- Evaluation of trafficked victims' needs for protection and assistance, in which situation the interviewing shall focus on identifying those needs, respectively collecting the information necessary to arrange the support and protection measures to be taken in that case.

## **Concrete identification (...) procedures**

Starting from relevant tasks and responsibilities undertaken by different institutions and analyzing trafficking in persons reports made public, several categories of identification procedures can be distinguished:

### **Identification by law enforcement agencies**

Police actions are considered to be the most important procedure in identifying victims of trafficking.

From the perspective of the law enforcement authorities the identification process takes place in the context of both prosecutorial activities aimed at collecting evidence of the crime of trafficking and specific police actions, such as information and investigative actions.

Following specific actions conducted by law enforcement agencies victims of trafficking can be identified by interviewing and statements given by the person about whom there is information that he/she has been subjected to trafficking; the identified person may institute himself/herself injured party or witness to the trafficking crime.

The identification can also occur at the Romanian national border where Romanian nationals can be deported or returned from other states; in case they do not meet the requirements to entry into a specific state and are detected in violation of certain laws of the host country, they are treated as illegal migrants, though the acts for which they might be held responsible for could be the consequence of their trafficking experience.

Upon their entry into Romania, border police officers shall take statements as there is the possibility that some of these persons may be identified as victims of trafficking.

### **Identification by diplomatic missions and consulates**

In most cases, victims have their identity or travel documents confiscated or destroyed or they lack the necessary resources to return to their country of origin. Upon request, Romanian citizens, victims of trafficking in persons in foreign countries, shall be granted assistance by diplomatic missions and consular offices of Romania<sup>7</sup> to those countries.

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<sup>7</sup> According to art. 28 of law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented and art. 21 of Government Decision 299/2003 to approve the implementation status of the provisions contained in Law 678/2001 on preventing and combating trafficking in persons.

### **Identification by hotlines**

The hotline service receives and refers calls for assistance or information about suspected crimes of trafficking.

In Romania, the hotline service is provided by a toll free number set up within the National Agency against Trafficking in Persons which targets the public at large and particularly victims of trafficking or persons who have knowledge about a possible trafficking situation.

### **Other identification procedures**

There are also situations where victims of trafficking can be identified and referred to service delivery institutions/organizations by citizens, former clients, and inspectors with the territorial agencies for employment, hospital or other healthcare facilities personnel, educational institutions or the community. Under the circumstances, it is very important that the person identified by the above mentioned categories be referred to the institutions/organizations involved in the formal identification and referral mechanism with a view of providing protection and assistance.

## **3.2 Cooperation Agreements / Memorandum of Understanding**

The OSCE Handbook states: “The way to set up co-operation structures among governmental organisations and service providers from civil society is the other central component of an NRM. Cooperation structures can help presumed trafficked persons to gain access to services and to formalise their status.”<sup>8</sup>

The Romanian Order 335 gives the following information on this topic:

### **Assessment and views of other institutions/organizations working in the area of anti-trafficking**

The views and assessments of other institutions/organizations working in the area of anti-trafficking or law enforcement will always be taken into consideration in the screening process in order to ensure the continuity and transparency when making a determination. (...)

Even if the formal screening (the detailed interviewing) can't be accomplished prior or after the initial contact, indicators listed in Annex 1 [of the Order] shall be evaluated. In case this evaluation points out the existence of a possible case of trafficking, the presumed trafficked victim shall be entitled to a maximum of 90 days to recover and reflect.

### **Referral procedures**

All institutions and organizations involved in the referral process have the obligation to co-operate in order to take appropriate support and protection measures once the trafficked victim is identified. Each of them shall appoint at least one representative of the relevant institutions/organizations within NRM and his/her contact details shall be communicated to the institutional partners.

Depending on the institution/organization involved as well as the place and the identification procedure of the trafficked victim, there can be distinguished several ways of victim referral:

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<sup>8</sup> OSCE Handbook, p. 17.



- **Victim is identified by law enforcement authorities**, including specialized police structures working with trafficking in persons related issues, such as: Directorate, Brigades and Services for Combating Organized Crime, criminal investigations departments, border police, offices and services within the Directorate for the Investigation of Organized Crime and Terrorist Offences (DIICOT). The victim is entitled to information about his/her right to legal assistance, criminal proceeding rights and other rights as provided by art.4 of Law 211/2004. Victim's referral to the institution/organization responsible for the co-ordination of assistance and monitoring activities is carried out as follows:
  - Specialized police structures – IGPR through DCCO, BCCO, SCCO and IGBP shall get in contact with ANITP Regional Centre representative to assess the victim's needs for assistance and to maintain contact with the victim.
  - Other national defence and public order structures – the criminal investigation police, transport police, public order police, and the gendarmerie – shall notify the relevant police and DIICOT structures.
  - The ANITP Regional Centre representative shall:
    - Conduct the early evaluation to identify the victim's needs for specialized assistance and with his/her informed consent shall ensure the immediate referral to emergency assistance. A case manager shall be assigned to monitor the assistance provided to the victim and maintain constant contact in order to prepare him/her for the appropriate stages of the criminal proceedings. The name of the case manager shall be communicated to institutional partners.
    - Inform the service provider and, based on the victim's consent, shall send them all the information necessary to plan the case intervention.
    - Ensure appropriate support for the victim to be interviewed by the investigative bodies.
  - Specialized police structures:
    - on request of the ANITP Regional Centre representative, the risk assessment of the case shall be conducted with a view to establish protective measures;
    - Shall provide tactical counselling to ensure the victim's secure transportation based on the support and protection needs established following the case evaluation.

### **Indefinite case of trafficking**

In a case where the presumed trafficked victim refuses to cooperate with the judicial authorities and there are suspicions indicating a possible case of trafficking but the distinct elements of the crime of trafficking have not been detected, the case shall be referred to the ANITP Regional Centre representative or victim support and protection public institution or service provider for re-assessment. When, following the assessment, it is determined that the respective person is in fact a trafficked victim, participation in a specialized program of assistance is initially provided and then, based on the victim's consent, the case shall be referred again to the judicial authorities.

In cases where the person accepts neither to discuss with the ANITP Regional Centre/NGO representative showing no interest in taking part in any assistance programs, nor does he/she want to talk to the police/ judicial authorities, depending on the location where that person was found:

- **the border crossing point, leaving Romania** – the victim shall be provided with prevention materials regarding useful information on illegal migration and trafficking in persons;
- **the border crossing point, entering Romania** – the victim shall be provided with information materials on the ANITP hotline unit.

In a situation where the presumed trafficked victim is a foreign citizen, the competent authorities shall carry out specific activities, such as:

- IGPR and IGBP specialized structures dealing with trafficking in persons shall contact the ANITP Regional Centers representatives to assess the foreign victim's needs for assistance and maintain contact with the victim;
- The DIICOT prosecutors shall:
  - request RIO to allow foreigners about whom there are reliable reasons to believe they are victims of trafficking to remain in Romania benefiting from a period of recovery and reflection;
  - Notify the ANITP Regional Centres representative about the decision regarding the recovery and reflection period and the necessity to take protection measures and monitor the case.
- The ANITP Regional Centres representative shall:
  - report to RIO about a suspected case of trafficking involving a foreign victim
  - Report to IOM Romania Mission with respect to the assessment of the individual's need to be included into the voluntary repatriation program.
- RIO shall:
  - establish the status of foreign victims of trafficking according to legal provisions governing the aliens' regime;
  - Refer the case to assistance in a specialized centre.

In situations where the case is identified through the ANITP Help-line information and advice unit, the request shall be immediately received and until a definite case of trafficking is determined, the individual shall be treated as a presumed trafficked victim. The Help-line operator shall carry out the preliminary evaluation and the risk assessment based on the individual's level of personal safety. If the individual has recently escaped an abusing or exploitive situation, it is required that police intervention units in the community – police, gendarmerie - be soon contacted; consequently the referral process shall be carried out following the other existing procedures.

### **Victim of trafficking without good capacity of judgment or with severe health problems**

When a presumed trafficked victim shows evident signs of severe mental disorders, the contacting institution/organization shall take the necessary measures to arrange a medical examination in order to determine the individual's capacity of judgment. Until then, the individual shall be treated as a trafficked victim, his/her rights and fundamental liberties shall be respected and he/she shall be entitled to specialist medical assistance.

IGPR and IGBP specialized structures, RIO, ANITP, NGOs and local public administration authorities shall report and take the person to the nearest hospital unit for appropriate medical attention. The ANITP Regional Centre representative and the specialized police structure (in case neither of these has initially identified the person)

shall be urgently announced to monitor the case and take protection measures, if necessary.

### **3.3 Support and protection services**

According to the OSCE Handbook “(...) three components are described that form a comprehensive support and protection programme for presumed trafficked persons. They include financial assistance, shelter and specialised services. The process of referring victims to these services is the principle purpose of an NRM.”<sup>9</sup>

Regarding the Romanian NRM, Order 335 states in this respect:

[Law 211/2004] (...) sets up four categories of measures to address directly the victim’s needs (victims of crimes under Law 678/2001 are also included):

- informing victims of crime about their rights
- psychological counselling
- free legal assistance
- State compensations for victims of specific crimes.

The law clearly refers to **psychological counselling** for victims of crimes stipulated by Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented. The institutional mechanism to provide psychological counselling for victims is represented by probation services attached to the courts of justice. These services provide free psychological counselling for a maximum period of 3 months and 6 months in cases involving victims under the age of 18. Services for psychological counselling or other forms of assistance can also be established by NGOs independently or in partnership with public administration authorities. To this end NGOs can benefit, under legal provisions, from government financial assistance.

#### **Free legal assistance**

is granted primarily to direct crime victims but also to indirect victims of serious crimes (husband, children, dependants of direct victims deceased as a result of the crime). Such measures complete the common law provisions stipulating that, on a regular basis, in cases of legal representation where a person has no defender or financial means to pay for qualified legal counselling, the court will appoint a public defender for free legal assistance.

#### **Foreign victims of trafficking**

Foreign victims of trafficking shall be entitled without discrimination to the same support and protection measures as Romanian victims. Therefore, foreign victims should be informed in a language they can understand about their right to a maximum of 90 days to recover and access to specialized support services, including

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<sup>9</sup> OSCE Handbook, p. 69.

accommodation in specially arranged centres, psychological, medical and social assistance.<sup>10</sup>

Language interpreters/translators employed to assist with interviews and support foreign victims during the assistance service delivery shall be trained by ANITP in order to be able to work with trafficked victims so as to ensure the confidentiality of information and personal details and approach the individual in a professional manner.

### **Child victim of trafficking**

When identifying a child victim, irrespective of his/her country of origin, the representative of the Directorate General for Child Social Assistance and Protection (DGCSAP) or the representative of the Service for the child victim of abuse, negligence and trafficking in persons shall be notified to take special measures for his/her protection.

In cases where the victim is a foreign child, he/she shall be entitled without discrimination to the same support and protection measures specific to all children victims of trafficking.

Whether there are several victims of the same nationality, children included, it is recommended that assistance be delivered by the same service provider.

- IGPR and IGBP specialized structures –shall get in contact with the DGSAPC representative dealing with child abuse, negligence and trafficking and the ANITP Regional Centre representative to assess the victim's needs for assistance and to maintain contact with the victim;
- the DGSAPC representative dealing with child abuse, negligence and trafficking shall ensure the case referral to a specialized child assistance centre and maintain contact with the inter-institutional team partners;
- the ANITP Regional Centre representative shall maintain constant contact with the DGSAPC representative in respect of monitoring the case;
- When foreign unaccompanied minors are involved, RIO cooperates with other institutions, as well as national and international organizations responsible for child protection in order to establish the judicial status applicable to children, according to GD 194/2002 provisions regarding the aliens' conditions in Romania, republished.

### **Victim of trafficking without good capacity of judgment or with severe health problems**

When a presumed trafficked victim shows evident signs of severe mental disorders, the contacting institution/organization shall take the necessary measures to arrange a medical examination in order to determine the individual's capacity of judgment. Until then, the individual shall be treated as a trafficked victim, his/her rights and fundamental liberties shall be respected and he/she shall be entitled to specialist medical assistance.

IGPR and IGBP specialized structures, RIO, ANITP, NGOs and local public administration authorities shall report and take the person to the nearest hospital unit for appropriate medical attention. The ANITP Regional Centre representative and the specialized police structure (in case neither of these has initially identified the person)

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<sup>10</sup> According to provisions of art. 38-39(1) of Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented. In accordance with Government Urgent Ordinance 79/2005 to amend and supplement Law 678/2001 on preventing and combating trafficking in persons.

shall be urgently announced to monitor the case and take protection measures, if necessary.

### **3.4 Repatriation and social inclusion**

According to the OSCE Handbook, “NRMs should (...) pay careful attention to policies and procedures for repatriation and social inclusion to ensure that they are in line with best practices for victim protection.”<sup>11</sup>

The Romanian Order 335 gives the following information on this area:

#### **Victim repatriation**

Repatriation of victims of trafficking is carried out in keeping with the provisions laid down in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the UN Convention on Transnational Organized Crime, ratified by Law 565/2002.

The repatriation procedure can be accomplished with the help of the International Organization for Migration and its missions as well as within the voluntary return program with the assistance of non-government organizations, diplomatic missions or consular offices or representatives of both recipient states and states of origin and, particularly, the authorities responsible for the protection of child rights, in case where the victim is a minor.

The personnel of the diplomatic missions and consular offices of Romania shall provide assistance to trafficked victims in issuing travel documents for their repatriation and identifying the appropriate resources and organizations to ensure the victims' return to their country of origin.

#### **Victim is referred and returned by IOM**

The IOM Romanian mission receives the victim at the national border and, providing that the victim consents to be accommodated in a shelter for a shorter or longer period of time and is willing to participate in assistance programs, he/she shall be referred to specialized support services.

The IOM official shall:

- inform the NAATIP Regional Centre representative on the trafficked victim's return;
- Discuss with the victim about his/her possibility to cooperate with the judicial authorities.

In case assistance services are not provided during the transit stage, the NAATIP Regional Centre representative shall be notified to take over the victim and ensure his/her access to other support services in the community of origin.

#### **Victim is identified by an international NGO and repatriated and referred by an NGO in Romania**

In cases where the victim is identified by an NGO in a foreign country, the NGO official in Romania shall meet the victim at the border or at the place agreed upon with the referring partner. On the basis of the victim's consent to whether participate

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<sup>11</sup> OSCE Handbook, p. 80.

or not in support programs delivered by the receiving NGO or another organization and the specific elements of the case, the victim shall be included in a specialized assistance program.

The representative of the NGO or the specialized public service to protect and assist victims of trafficking shall:

- ask the NAATIP Regional Centre representative to coordinate the victim's assistance and monitoring and to register the victim;
- Discuss with the victim about his/her possibility to cooperate with the judicial authorities.

### **Romanian victim is identified by the diplomatic mission or consular office of Romania**

In case where the trafficked victim is not in possession of an identity or travel document to certify his/her Romanian citizenship, the diplomatic or consular mission personnel shall issue, upon request, the travel document to enable the victim's return to Romania<sup>12</sup> and notify, within at least five days in advance, the ANITP and the border police about the return of victim/victims of trafficking having in view their taking over at the national border.

When the trafficked victim needs and applies for pre-return assistance<sup>13</sup>, the Romanian diplomatic or consular mission personnel shall contact and refer him/her to service delivery organizations in the host country.

During this entire period of time, the legal aspects regarding the victim's situation and his/her personal details are bound by the duty of confidentiality.

Romanian victims of trafficking related information shall be transferred to the national competent authorities by the Romanian liaison officer.

In cases where the foreign victim wishes to be repatriated to his/her country of origin, the representative of the Romanian Immigration Office (RIO) shall contact the diplomatic mission or consular office of the respective country to facilitate the issuance of the travel documents necessary for his/her return and shall fulfil all the necessary formalities to arrange the victim's stay on the Romanian territory under the provisions of legislation on aliens' regime.

- IGPR and IGBP territorial structures dealing with trafficking in persons shall contact the ANITP Regional Centres representatives to assess the foreign victim's needs for assistance and stay in contact with the victim;
- Representatives of ANITP Regional Centres shall report to RIO in connection with the foreign victim and the provision of some form of protection;

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<sup>12</sup> According to provisions of art. 29 of Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented, corroborated with provisions of art. 41-42 of Government Decision 299/2003 to approve the implementation status of Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented.

<sup>13</sup> Victim assistance is provided in accordance with art. 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime, ratified by law 565/2002, art. 12 of the Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Law 300/2006 and art.43 of Government decision 299/2003.

- IGPR and IGBP specialized structures shall provide tactical counselling regarding the victim's safe and secure transfer to foreign victims of trafficking shelters.
- the Romanian Immigration Office (RIO):
  - regulates the status of foreign victims of trafficking in accordance with the provisions of legislation on aliens' conditions of stay on the Romanian territory;
  - jointly with ANITP, coordinates the activities of public institutions, local public administration authorities and NGOs dealing with the integration of foreign victims benefiting by some form of protection in Romania or the right to stay in Romania;<sup>14</sup>

on request of the ANITP Regional Centre representative, IGPR and IGBP specialized structures shall undertake the risk assessment in order to establish protective measures within 72 hours since the case referral.

### 3.5 Specific legal provisions

The OSCE Handbook gives four different areas where specific legal provisions are important: Compensation / seizure of Criminal Gains or assets, residence status of trafficked persons, fundamental principles on data protection as well as witness protection and witness support.<sup>15</sup>

Order 335 lists the following points of relevance:

#### **Financial compensation.**

The law establishes several categories of terms/ conditions for granting financial compensations to direct or indirect victims of the given crimes, including also information to the prosecution authorities about the crime committed, within a specified period of time, taking into account the fact that for objective reasons victims who make a minimum contribution to the detection of crime in due time are entitled to compensation ( victims under the age of 18 and those under interdiction have no obligation to notify the investigative bodies about the crimes they committed). The law also regulates the possibility to pay some of the compensation money in advance to crime victims in difficult financial situations.

Law 211/2004 stipulates that, through the Ministry of Justice, victims of crime (including trafficking related crimes) are entitled to request financial compensation and sets up the modalities by which the victim can obtain this compensation in cases where the crime was committed on an EU Member State territory, other than the state of his/her legal residence.

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<sup>14</sup> In accordance with Government Decision 44/2004 regarding the social integration of foreign victims benefiting by some form of protection in Romania or the right to stay in Romania and citizens of EU and EEA Member States, approved with amendments by law 185/2004, subsequently amended and supplemented.

<sup>15</sup> OSCE Handbook, pp. 83-103.

#### **4. Information of the Romanian stakeholders on the existing NRM in Romania**

After looking into the provisions regarding the Romanian NRM in Order 335 this chapter wants to give an overview on how these are translated into the practical anti-trafficking work by the relevant actors working and cooperating in this field. It has to be pointed out though that at the time of C.2 in May 2009 and C.3 in July 2009, Order 335 had only been in force for about half a year (since December 2008). As a result, some of the stakeholders were not yet aware of it or had only been for a rather short time.

All of the information given in this chapter are based on the workshops of C.2 and the consultations of C.3. In some cases, the STEs heard contradicting accounts of referral procedures and the practical situation in Romania. This may be due to regional differences regarding putting the NRM into praxis. It is also possible that stakeholders had different levels of knowledge/expertise on specific anti-trafficking regulations. Still, in some cases the contradictions remain and could not be entirely clarified.

##### **4.1 Identification**

It is important for a functioning identification process to clarify the relations between different agencies considering e.g. informal contacts and/or formalised structures. Naturally, the identification process is vital for all anti-trafficking efforts.

The STEs came to the conclusion that there are two ways of identification of presumed trafficked persons in Romania: the informal identification, carried out by e.g. NGOs, and the formal identification by the police/ law enforcement, based on indicators. According to the Romanian law, presumed trafficked persons should have full access to all existing assistance services regardless of their willingness to cooperate with the law enforcement and the way of identification. In practice, the STEs were not able to confirm that this is always the case, some NGOs have given the information that full access to all services requires the formal identification through the police.

As far as the general structure of the police is concerned, the STEs were informed that the ANITP and the Regional Centres, that are a part of the agency, have a preventive role and are supposed to provide assistance to victims/ refer them to assistance services, whereas the DCCO (Department for Countering Organised Crime) focuses on the investigation and combating the crime. Within the police structure in the regions there are 15 special Brigades for combating organized crime – trafficking in human beings and they cooperate closely with the ANITP Regional Centres.

According to the meetings, these Special Organised Crime Brigades are the main agency in identifying presumed trafficked persons. They collect information, directly gathered by them or provided by third persons, e.g. family or other known victims. Identification also happens during regular police business. Identification of minors that are repatriated to the area often takes place through social assistance centres.



Specialised police brigade officers are trained in order to be able to identify trafficked persons. Also, the police rely on information from third parties in order to detect trafficking. Other police officers, especially in rural areas, according to the participants, should be trained about suspicious situations and asked to in such cases inform the specialised units.

In practice, after the first contact, usually the police interview the presumed victim (often in the presence of the social worker of the Regional Centre) and makes a first estimation if there are indicators pointing to a trafficking case.

There is a standardised interview form for the identification of presumed trafficked person that is used by the police.

After the identification the person should be informed on her/ his situation and rights according to law 211/2004, art. 4. This is done with a document informing the presumed trafficked person about his /her rights that needs to be signed. Most identifications are made by investigative bodies (anti-trafficking brigade), only few by NGOs. After the formal identification the person will be transferred to the respective Regional Centre that will in fact coordinate the future assistance provided to the victim.

In case of an informal identification e.g. a first contact with an NGO, the victim can decide if she/ he wants to contact with the police. If the victim decides to give a testimony and the NGO informs the police about this, it is considered a formal identification as well.

Some of the stakeholders stated that the identification process through NGOs and communities could be improved. They were of the opinion that there still is a broad understanding that prostitutes cannot be trafficked persons. Awareness raising and information campaigns were recommended.

It was notified that in many cases where the victims asked for assistance through an NGO and were then asked to cooperate with the police to investigate against the perpetrators, the persons refused to report to the authorities because of missing trust.

According to the yearly THB-Report of Romania from 2007, of about 1.800 identified victims just about 200 victims were identified as victims of internal trafficking. In comparison with other European countries the overall figure of identified victims in Romania seems very high. This is due to the fact that it includes also the figures of repatriated victims, which have been identified abroad. In those cases the identification process is done by the relevant services abroad. In case the first contact agency after the return is an NGO shelter, the NGO is asked to inform the ANITP and provide information on the case, including personal data.

The personal data is stored in a ANITP database for victims of trafficking. It is only a database for victims, no information about perpetrators or organised crime structures are in it. The access to this database is strictly regulated, only ANITP, DCCO and the border police have access.

The police will introduce the data known about the person into the database. The person has to be informed about this procedure. If the person disagrees, only basic, anonymous data will be fed into the database. In the database, each person will be assigned a number, no names are given. The collected data will in theory be deleted when the person is successfully reintegrated<sup>16</sup>, in praxis that does not happen. There are no comparable databases on other crimes in Romania. The STEs were informed that any victim is entitled to receive assistance even if she/he is not in the database, ie. that this does not affect the access to services. It was also described to the STEs by other stakeholders, that the person will in such a case only be entitled to limited services.

The forms of trafficking may vary depending on the region, the main groups of people affected by trafficking are: Romanian citizens, victims of internal trafficking for labour exploitation (men from rural areas), begging or sexual exploitation, children from shelters, handicapped persons or victims of trafficking returning from abroad. In one of the C.2 workshops the STEs heard that there is a problem about mainly concentrating on returnees, not paying enough attention to internal trafficking regarding the identification process. Also, labour exploitation of non-citizens was mentioned as one area where more efforts should be made regarding identifying presumed trafficked persons. On the other hand, in another C.2 workshop the participants stated that there are no foreign victims because of frequent controls in clubs and additionally, because the law about foreign citizens has strict provisions and restrictions for third country nationals. Only very few presumed foreign trafficked persons directly contact the police, according to one C.2 workshop. The measures taken are focused on victims of Romanian origin.

The STEs were also told that some trafficked persons do not view themselves as victims (often the case of forced prostitution) or do not want to identify themselves because they are ashamed (men, labour exploitation). These persons often go back to their home communities and are at risk of being re-trafficked.

The STEs were told that the majority of victims of trafficking come from rural areas. The Romanian experts recommended awareness raising activities in these regions. The participants also said that minors returning from abroad are generally under suspicion of being victims of trafficking.

## **4.2 Cooperation Agreements / Memorandum of Understanding**

Laws 211/2004 and 678/2001 provide rules for cooperation and the legal framework and include the obligation to cooperate. There are standardized cooperation contracts that can be altered according to regional needs.

The Order 335 from December 2008 adopts the Romanian NRM, but is not widely known yet.

Regarding the cooperation structure, there is an inter-ministerial working group with representatives of all relevant ministries in it, working on a strategic level and taking

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<sup>16</sup> The state of reintegration is generally understood to be reached once a person's problems directly linked to having been trafficked have been addressed and the person is able to independently support her-/himself and lead a self-determined life.

decisions. The next level is a focus working group, operating on a more practical level, also with all relevant ministries as members. Finally, there are inter-institutional working groups in each of the 41 Romanian counties with members of all relevant stakeholders in it, working praxis-oriented. This structure is set in the National Plan.

The regional inter-institutional working groups do not meet regularly, but when the members decide it is necessary, and even discuss cases. In addition, it was reported to have established sub-working groups, specialising on certain groups or topics, e.g. children.

There are 15 Regional Centres for the 41 counties of Romania. They are responsible for monitoring the anti-trafficking work and the individual measures carried out for each trafficked person within the support structure. The Regional Centres consist of three staff members, a police officer as head of the centre, a social worker and a psychologist. The Regional Centre accompanies the victim's case and aims to improve cooperation and referral processes. The staff monitor the cases of trafficking and accompany victims to court.

The STEs were told that the Regional Centres are the first referral points after the formal identification of a presumed trafficked person through the police. Usually, persons who are informally identified through another stakeholder are first referred to the police who then refer them to the Regional Centre. The Regional Centre will refer the person to other service providers and monitor the ongoing process. If a person (non-Romanian) wants to be repatriated through IOM or an NGO, the Regional Centre will be informed and – upon agreement of the person – there will be an interview before leaving. In principle, the Regional Centres are not service providers, it is not their responsibility to approach victims. Their main task is to act as service mediators and to inform and refer.

The Suceava Regional Centre has some 60 protocols with state and civil society institutions about cooperation. With these partners, prevention campaigns, trainings of border police officers and other activities are carried out. There is also a cooperation structure in the local field (information and research centres) in so far 10 communities/towns in the area.

There seem to exist different levels of involvement of the Regional Centre in the assistance process. While in some regions the Regional Centres mainly focus on the referral and monitoring task, in others they keep a close contact to the trafficked person and are directly part of the assistance structure.

Altogether, it was stated that the cooperation between stakeholders is functioning. Still, some recommended more awareness building and training, so that each institution is perfectly aware of its responsibilities. They also recommended to carry out joint programs and trainings (train the trainers), exchange information and materials as well as support activities and prevention campaigns. The cooperation between police and NGOs could still be improved.

The cooperation patterns often greatly depend on personal commitment, networking and knowledge. This implies the risk of losing good working structures when members of stakeholders leave.

Also the majority of the involved stakeholders would like to go public with examples of successfully handling cases in order to increase the trust in the Romanian anti-trafficking measures and the cooperation process of national and international agencies.

It was also mentioned that the inter-institutional cooperation is especially essential, since the monitoring ANITP Regional Centres, that are in the centre of the referral system, only have few personnel.

#### **4.3 Support and protection services / Repatriation and social inclusion**

The two topics “Support and protection services” and “Repatriation and social inclusion” are separate chapters in the OSCE Handbook. This separation does not seem appropriate for this chapter of the report at hand, due to the fact that currently the services in Romania are mainly centred around Romanian citizens. Therefore the support and protection services are usually closely linked to and happen at the same time as the repatriation and social inclusion efforts. For this reason both topics will be dealt with in a single chapter.

Law 678/2001 asks for in total eight specific centres for victim assistance in all of Romania. The STEs were informed by the members of the ANITP about a proposal for changing the Law 678/2001 so that every County Council will have to implement a ‘Safe House’ for victims of trafficking.

There are also City Council Centres of the General Directorate for Social Assistance and Child Protection, in most of the regions, that in fact are governmental institutions which function under the umbrella of the local authorities.

One of the most important issues repeatedly mentioned was the funding of the existing governmental and non-governmental services that are competent for the provision of assistance to the victims of trafficking in persons in Romania.

According to the information given to the STEs the state money for anti-trafficking policies (National Interest Plan) is part of the budget of ANITP and is administrated by a commission whose members are from ANITP. This means in praxis that the state money is controlled by the agency, and the NGOs can make an application to get funded every year. Some NGOs claimed to not receive state money when the victims deny to cooperate with the police or the NGO do not pass on data, and therefore do not have the financial means to get involved in the anti-trafficking work. They recommended this should be changed and more and further NGOs should be included in the structures.

It was mentioned that the NGOs in the destination countries have better financial means. Due to this, the trafficked persons are used to a high standard of support that in the opinion of some experts cannot be provided by all Romanian stakeholders.

Regarding the employment of trafficked persons, one of the C.2 workshops said, most of the time the employment centres in cooperation with the Regional Centres were successful in finding a job for the person, without revealing the trafficking

background. The county agencies for employment also provide career counselling and vocational training.

Regarding the repatriation of children, the range of services is broad: provision of shelter, reintegration, social assistance, financial support, counselling for parents, therapy for victims, awareness raising activities about children that are forced to beg, assistance at court hearings.

The STEs were informed that in some regions the situation regarding the provision of shelters (governmental or non-governmental) for all possible target groups is problematic and that this should be changed.

In general, the funds for assistance are not high enough to provide sufficient and appropriate support for all victims. For example there are no means to cover transportation costs if a person wants to participate in a vocational training and has to commute from her/his home town. Also, the funding of medical treatment was repeatedly mentioned as difficult or even impossible.

Some Romanian stakeholders were concerned about the high bureaucracy within the assistance structure and recommended to assess the situation and cut out unnecessary steps.

The Regional Centres informed that after the first contact, the presumed trafficked person will need to agree on the offered services. After that agreement, the Regional Centres take them over immediately and draft a service plan. If the person refuses, she/he has an official reflection period of 60 days, although according to the Regional Centre in praxis they can re-establish contact also after this period of time.

According to one Regional Centre, quite a few persons do not want to use the offered assistance through the Regional Centres. This may be due to structural facts as well as the personal situation.

It remained unclear to the STEs whether a presumed trafficked person not willing to cooperate with law enforcement can still receive (full) services.

#### **4.4 Comments on Specific Legal Provisions**

Support and protection during legal proceedings:

Participants said that the assistance structure needs to be developed further and needs more funding to appropriately support victims of trafficking during criminal proceedings. About the current situation one Romanian expert said: "We have not been successful in finding a way with the prosecutor without putting a lot of pressure on the victim."

Victim protection:

Some of the Romanian stakeholders stated that at the moment the trafficked person has fewer rights than the accused: The accused is for example entitled to free legal support, while the victim is not. In some cases NGOs have paid for legal support for the victim.

#### Data protection:

In the past, the agreement of the trafficked person about entering her/his data into the specialised database was not asked for, according to the participants this was explained with the fact that only a very limited number of persons can access the database. This has been changed, now the person's data will only be included into the database after a written agreement. The database also used to have the names of the presumed trafficked persons in it, in the future it will be anonymous, and each person will be assigned a number. The data will in theory be deleted once the person is successfully reintegrated, in praxis that does not happen according to the component participants. There are no databases on other crimes in Romania, this is the only existing one. The STEs were informed in one C.2 workshop that even if a person does not want contact with police, the police will upon information from third parties look for that person. This was explained with the view that a number of trafficked persons hesitate to contact the authorities due to a lack of knowledge or trust or do not see themselves as victims, and therefore should be actively approached.

## 5. Recommendations

Some of the following recommendations will be discussed in detail after the table.

1. **Ensure data collection standards and data protection mechanisms** according to European regulations in all anti-trafficking measures. In particular, the ANITP database for victims should be further discussed.
2. **Unconditionality of access to assistance services and informed agreement.** Providing personal data of victims, the formal identification and/or the willingness to cooperate with law enforcement cannot not be conditions for accessing services or have consequences regarding the scale of services.
3. **Transparency and clear information about existing services, responsibilities and tasks of partners.** Avoiding of duplication of tasks and creation of workflows.
4. **Harmonised structures.** Ensure equal assistance services for victims of trafficking in all regions of Romania.
5. **Further assessment of tasks, structure and role of the ANITP, the Regional Centres and the regional Inter-institutional Working Groups.**
6. **Create and ensure sustainable quality of services.** Promotion of further cooperation between the Romanian stakeholders and training on the NRM. Equal engagement of governmental and non-governmental actors.
7. **Giving equal importance to prosecution/criminal proceedings and victims rights/protection.**
8. **Improving the situation of groups at risk of being trafficked** through tackling the root causes and creating support projects.
9. **Further prevention and awareness raising activities, trainings** (also train-the-trainer trainings).
10. **Provision of appropriate and secure shelter possibilities** for all victims of trafficking from all target groups.
11. **Ensure appropriate and neutral funding for all partners of the NRM.**
12. **Strengthening of cooperation with law enforcement in other countries.** Establish direct contact with local police from other countries to jointly develop projects and exchange experiences.
13. **Assessment of amount/necessity of bureaucracy** in order to provide fast access to services and set free resources.
14. **Distribution of this report to all involved stakeholders.**

1. **Ensure data collection standards and data protection mechanisms according to European regulations in all anti-trafficking measures. In particular, the ANITP database for victims should be further discussed.**

The participants have informed the STEs about some important changes regarding the database on victims of trafficking: The person has to give a written agreement prior to her/his data being included into the database (in case of no permission, only anonymous basic information will be fed into the database), and the use of numbers instead of the full names.

The STEs welcome this development. Still, it is recommended to discuss the overall purpose and use of such a database. It does not store data of perpetrators, but data of victims of a crime, which has to be assessed under the question of data protection. Also, there is no comparable database on any other crime in Romania, raising the question why a database could be useful regarding preventing/fighting trafficking in human beings, when it is not considered of use in other fields of crime.

In any case private life and identity of victims should be protected. Personal data regarding them shall be stored and used in conformity of the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

(see also Annex on data collection and data protection)

2. **Unconditionality of access to assistance services and informed agreement.** *Providing personal data of victims, the formal identification and/or the willingness to cooperate with law enforcement cannot not be conditions for accessing services or have consequences regarding the scale of services.*

According to the European Convention on Action Against Trafficking in Human Beings, assistance to the victims should not be made conditional on his/ her willingness to act as a witness.

It has not been made entirely clear to the STEs whether and in what form a formal identification through the police and/or the provision of data for the database is a prerequisite for a presumed trafficked person to enter assistance services.

Handing over personal data to governmental institutions (personally or through an initially contacted NGO) cannot be a condition for entering services. Firstly, this would restrict the access to the assistance services of presumed trafficked persons, secondly, in a number of cases this will lead to the person turning down the assistance. The STEs recommend to clarify this aspect and make sure that the access to assistance does not depend on the provision of personal data.

Order 335 states: “The present mechanism aims to adopt a unitary and coordinated response of all anti-trafficking institutions and organizations which shall lead to the improvement of the capacity to identify and provide protection of and assistance to victims of trafficking, regardless of the institution or organization the victim initially gets in contact with.” (chapter A. Preamble).



This should imply that the identification of a presumed trafficked person needs to be and can be carried out by any of the involved institutions that the person may initially contact. In “E.3. Victim identification indicators”, Order 335 in addition points to the annexed indicators checklist that can be used for a first identification.

As mentioned earlier in this report, the STEs were told that there is a so-called formal identification, through the police, and an informal identification through other cooperation partners that in some cases needs to be formally confirmed by the police. The STEs recommend to treat these identification paths equally, based on a mutual discussion between all stakeholders and an agreement on the most important indicators pointing to a presumed case of trafficking in persons. The STEs would like to, in this regard, point out, that in many EU member states in the beginning of the anti-trafficking work NGOs were to a greater extent involved in the identification of presumed trafficked persons. Nowadays, based on cooperation agreements, the NGOs are trusted with and entitled to make a first identification upon which the presumed trafficked person can enter the assistance structure.

The Romanian stakeholders also wished to discuss identification means and indicators for further target groups that have not been in the focus so far, in order to enable the existing structures to reach out for all groups of trafficked persons.

Finally, the STEs are concerned that in some cases persons, if there is a suspicion that they might be victims of trafficking but have declined assistance or have not tried to get in touch with service providers (e.g. returnees), will actively be contacted by the police. This may lead to problems for these persons, e.g. if their family or the community gain knowledge of that procedure, or even violate their personal rights and therefore may cause unwanted harm. If deemed absolutely necessary, these contacts should be carried out as inconspicuous as possible, on a voluntary basis, and preferably by NGOs.

(see also Annex on data collection and data protection)

### ***3. Transparency and clear information about existing services, responsibilities and tasks of partners. Avoiding of duplication of tasks and creation of workflows.***

During the activities C.2 and C.3 it became apparent to the STEs that the responsibilities, tasks and services of each partner in the NRM were not entirely clear to every institution involved. This can result in a limited cooperation or unwanted parallel structures.

In order to avoid this, the STEs recommend e.g. joint trainings on the NRM and on the practical work for the stakeholders in the centre of the NRM, who can pass on their knowledge to the others (as is planned during Activity C.4), and train-the-trainer seminars. Another important point concerning transparency and clear responsibilities is the creation of workflows.

It also has to be taken into account that at the time of the activities the Order 335 on the Romanian NRM was only in force for about half a year, which is too short for a

comprehensive evaluation. The STEs therefore recommend to establish regular long-term evaluation structures to monitor, assess and optimise the NRM.

**4. *Harmonised structures. Ensure equal assistance services for victims of trafficking in all regions of Romania.***

The activities have shown that there seem to be differences in the available services and referral structures in the different regions of Romania. The STEs recommend to identify and assess these differences and in a further step take efforts in order to harmonise the provided assistance services.

**5. *Further assessment of tasks, structure and role of the ANITP, the Regional Centres and the regional Inter-institutional Working Groups.***

All of the Romanian experts told the STEs during the activities, that they welcomed and in most parts promoted the establishment of an agency such as the ANITP that is responsible to act as a focal point, gets the relevant actors together and monitors the anti-trafficking work. Still, there are some points that need further discussion in the opinion of the STEs: The ANITP is part of the Romanian police. In the view of the STEs, ideally an agency with such tasks as the ANITP's should be attached to the social sector, e.g. the Ministry for Social Affairs. In any case it is important to have an independent monitoring structure for an agency with the responsibilities of the ANITP in order to ensure internal and external transparency and objectivity. Also, the STEs believe that the commission on the distribution of the National Interest Fund needs members from outside the ANITP as well in order to avoid a possible situation of a conflict of interest.

Regarding the Regional Centres, their role in praxis seems to vary, depending on the region, the cooperation partners and the self-concept of the respective Centre. While this is normal in an operative field of work, still the main principles and tasks should be clear and equal, e.g. to what extent the Regional Centre should be involved in the actual case work on a more operational level or rather focus on its referral and monitoring tasks.

In addition, the STEs recommend to clarify the overall role of the Regional Centres. It was explained that the Centres are the main coordinating bodies within the Romanian NRM, and also assess, monitor and control other service providers. The STEs encourage to discuss why this important role is carried out by only one cooperation partner and not together. Also, the STEs see the need to establish an independent control mechanism for the Regional Centres themselves.

Finally, the STEs would like to point out that In most EU member states, the majority of tasks of the Regional Centres is assigned to inter-disciplinary working groups quite similar to the regional working groups existing in Romania, where all relevant stakeholders regularly meet. The STEs recommend to follow that structure but want to stress that it has to be ensured that the working groups are functional, work in an inter-disciplinary way, meet regularly and that its members are authorised to take decisions.

**6. Create and ensure sustainable quality of services.** *Promotion of further cooperation between the Romanian stakeholders and training on the NRM. Equal engagement of governmental and non-governmental actors.*

During the workshops of C.2 the STEs were told that although there is already a wide and good cooperation and referral structure in place, the participants are also open for further partners, especially NGOs. The STEs share this recommendation, seeing that there was only one NGO invited/present in each of the workshops.

Non-governmental support is of great importance, because trafficked persons often find it easier to establish anonymous and non-binding first contact with non-governmental service providers than with governmental agencies. These NGOs do not necessarily have to be specialised counselling centres for trafficked persons, they can be existing organisations from the social welfare sector and are often very experienced in offering a number of support services that the target group needs. Cooperating with such organisations also helps to prevent labeling clients as trafficked persons, in making them part of the normal social welfare system.

In order to ensure a functioning network and equal expertise on the specific needs of trafficked persons, regular trainings on the NRM and other topics should be carried out.

The STEs would also like to emphasise again that in all cases the “Access to protection and assistance services should be provided to all victims of trafficking without any limitation (...) regardless the victim’s decision to participate or not in criminal trials”<sup>17</sup>.

**7. Giving equal importance to prosecution/criminal proceedings and victims rights/protection.**

The STEs were told that currently the aim of prosecuting the crime of trafficking in persons sometimes is more in the focus than the rights and needs of the affected persons. Still, both approaches should have the same weight and complement each other. The participation of a wide variety of stakeholders with different focuses can help in making sure that both sides are treated equally.

**8. Improving the situation of groups at risk of being trafficked through tackling the root causes and creating support projects.**

It was repeatedly expressed that members of groups at risk of being trafficked often are vulnerable through their weak economic, social and educational status. Therefore combating trafficking in persons should also research the root causes and strive to improve the situation of persons at risk of being trafficked.

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<sup>17</sup> Order 335, chapter B. Principles.

**9. Further prevention and awareness raising activities, trainings (also train-the-trainer trainings).**

Such activities are recommended regularly and both on the NRM as well as on other relevant topics.

One such topic of special importance to the STEs is the training on different forms of trafficking in order to ensure awareness of all existing forms of trafficking. Another point is the distinction between prostitution and trafficking in persons. The STEs have been told that often trafficked persons are viewed as prostitutes (and therefore criminals) who try to abuse the support system or do not have the right to access it altogether.

**10. Provision of appropriate and secure shelter possibilities for all victims of trafficking from all target groups.**

The STEs were informed about insufficient shelter possibilities in some regions for certain groups of trafficked persons and the Romanian experts expressed the need to create a solution for this problem.

Usually, trafficked persons needing shelter are accommodated in three types of accommodation: centralised (meaning specialised shelters for trafficked persons), de-centralised (rented apartments that can be closed and re-opened in another place quite easily) and mixed shelters (using existing accommodation/shelters such as shelters for victims of domestic violence).

The experience in a number of EU member states has shown, that the third mentioned type of accommodation, i.e using existing shelter possibilities, is a good and cost effective alternative/addition to specialised shelters, and also very flexible (can be referred to in times of need, but is independant of accommodating persons from this target group). Concerns, that trafficked persons should not be accommodated together with other persons in need, have not proved true, provided all involved stakeholders have a good cooperation structure and discuss best practices.

The STEs recommend assessing the possibilities of cooperating with further existing shelters that are not specialised for trafficked persons, where necessary and appropriate.

**11. Ensure appropriate and neutral funding for all partners of the NRM.**

In order to provide a functioning and comprehensive support system a variety of different actors with different backgrounds have to be involved in the NRM. All of these stakeholders need sufficient funding to be able to perform their duties well. In this regard it has to be made sure that application mechanisms and funding possibilities are in general free to all who can prove to work according to appropriate quality standards. The distribution mechanisms also have to be transparent and neutral, making sure that no conflicts of interest arise.

**12. Strengthening of cooperation with law enforcement in other countries.**  
*Establish direct contact with local police from other countries to jointly develop projects and exchange experiences.*

This was repeatedly wished for by members of the Romanian police forces. It includes the wish to be able to directly contact the police in other countries concerning case investigations without having to go through additional channels, as well as the wish to in general establish close cooperation structures with the police in other countries (especially countries of destination for Romanian trafficked persons).

**13. Assessment of amount/necessity of bureaucracy in order to provide fast access to services and set free resources.**

Some Romanian experts wished to reduce the necessary amount of paperwork and bureaucracy involved when giving services to trafficked persons, while at the same time making sure that the assistance is in compliance with the relevant regulations and laws. Others expressed the wish for more trainings and awareness raising campaigns in order to further motivate their cooperation partners and make it clear why a timely support is important for trafficked persons, presuming that not the amount of bureaucracy is too high but that people have to be motivated to cooperate faster.

**14. Distribution of this report to all involved stakeholders.**

The STEs would like to promote the distribution of this report on the Romanian NRM to all stakeholders involved in the anti-trafficking work in Romania. This would serve two purposes: the further information on the NRM and the existing structures in Romania and also the possibility to get involved in the discussion.

## **6. Annex**

The Annex of this report contains a number of important documents:

- 6.1 The National Action Plan 2006-2010
- 6.2 The lists of participants of the C.2 workshops
- 6.3 Order 335
- 6.4 Prof. Tretter's conclusions on the topics of data protection and data collection
- 6.5 ANITP's statement on its data base
- 6.6 Comments of different stakeholders on the report C.2. This is due to the fact that they had not seen the C.2 report prior to the consultations of C.3. The STEs encouraged them to comment in written form and to attach those contributions to the finalised C.3 Report.

## Annex 6.1

### 2006-2007 NATIONAL ACTION PLAN For implementing the National Strategy against Trafficking in Persons 2006-2010

(...)

#### D. PROTECTION, ASSISTANCE AND SOCIAL REINTEGRATION OF VICTIMS OF TIP

1. Implementing in 2007 a national integrated system for the identification and referral of the victims to effective assistance services for their social reintegration.

Specific Objectives	Activities	Responsible	Partners	Deadline	Assessment indicators
D1. Creating a national integrated system for the identification and referral of the TIP victims	1. drawing up various identification and referral norms of the victims	MAI NAATIP	- MAI, PM, MLSSF, MJ, NAPCR, MER, MPH, MFA, NGOs, IOs	March 2007	The approval of the norms through a joint order of the respective ministers; Number of victims internally identified, formally and informally, Romanian and foreign citizens, on types of TIP.
	2. drawing up a budgetary line for the free transportation from one county to another of TIP victims, referred for assistance in other county than the residence one.	MLSSF	County Councils, NGOs	March 2007	Approval through a decision of the county councils; Number of TIP victims referred for assistance in other county than the residence one; Number of victims referred for assistance in other counties, who benefited from the free transportation.
D2. Improving the early identification capacity of the TIP.	1. training the proximity police officers and those from the rural areas for identifying the phenomenon at the community level.	GIRP	MAI - NAATIP, local and county councils	December 2007	Number of villages included in the policemen training program; Number of trained policemen.
	2. drawing up various guides for the identification and signalling of aspects related to TIP and their dissemination at the local community level.	MAI NAATIP	- local and county councils	December 2007	The existence of the guide; Number of local communities which received such guides.
	3. organizing meetings and drawing up information materials regarding the way in which the TIP victims can be identified	MAI NAATIP	- local and county councils	December 2007	Number of meetings; Number of informational materials drawn up and disseminated.

## **Annex 6.2**

### **List of participants from the workshop Bucharest (5<sup>th</sup> May 2009)**

Mihaela Vasilescu, Institution of the Prefect of Bucharest
Marian Cioltan, Institution of the Prefect of Bucharest
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## **Annex 6.3**

### **Order no. 335 of 29 October 2007**

To adopt the National Victim Identification and Referral Mechanism  
ISSUING ORGANIZATION: MINISTRY OF INTERIOR AND ADMINISTRATION REFORM

PUBLISHED: in the Romanian Official Journal no.849 of 17 December 2008

Having regard to the Specific Objectif D.1.1, action a) contained in the Government Decision no. 1720/2006 regarding the adoption of the National Action Plan 2006-2007 for the implementation of the National Strategy against Trafficking in Persons 2006-2010,

Pursuant to provisions under article 7, paragraph (4) in Government Urgent Ordinance no.30/2007 on the organization and operation of Ministry of the Interior and Administration Reform; article 11, paragraph (5) in Government Decision no.366/2007 regarding the organization and operation of Ministry of Education, Research and Youth, amended and supplemented; article 7, paragraph (4) in Government Decision no. 862/2006 regarding the organization and operation of Ministry of Public Health, amended and supplemented; article 14 of Government Decision no.381/2007 regarding the organization and operation of Ministry of Labor, Family and Equal Opportunities; article 5, paragraph (5) in Government Decision no. 1432/2004 regarding the responsibilities, organization and operation of National Authority for the Protection of Child Rights, amended and supplemented; article 4, paragraph (5) in Government Decision no. 100/2004 regarding the organization and operation of Ministry of Foreign Affaires, amended and supplemented; article 76 of Law 304/2004 regarding the judicial organization, republished, amended and supplemented and article 6, paragraph (4) in Government Decision no. 83/2005 regarding the organization and operation of Ministry of Justice, amended and supplemented,

Minister of the interior and administration reform, Minister of Education, Research and Youth, Minister of Public Health, Minister of Labor, Family and Equal Opportunities, President of the National Authority for the Protection of Child Rights, Minister of Foreign Affaires, Prosecutor General of Public Prosecutions Department attached to the High Court of Cassation and Justice and the Minister of Justice put forward the following order:

**Article 1.** The National Victim Identification and Referral Mechanism, as component part of the present order, has been adopted.

**Article 2.** The present order shall be published in the Romanian Official Journal, Part I.

Minister of the Interior and Administration Reform  
Cristian DAVID

Minister of Education, Research and Youth

Cristian Mihai ADOMNITEI

Minister of Public Health  
Eugen NICOLAESCU

Minister of Labour, Family and Equal Opportunities  
Paul PACURARU

President of the National Authority for the Protection of Child Rights  
Mariela NEAGU

Minister of Foreign Affairs  
Lazar COMANESCU

Prosecutor General  
Laura CODRUT KOVESI

For Minister of Justice  
Gabriel TANASESCU, Secretary of State

## **ANNEX 1**

### **NATIONAL IDENTIFICATION AND REFFERAL MECHANISM for VICTIMS OF TRAFFICKING**

#### **A. Preamble**

Trafficking in persons constitutes a violation of human rights and a crime to the dignity and integrity of the person as provided by all relevant international instruments, including the recent paper of the Council of Europe Convention signed in Warsaw, on 16 May, 2005, Romania along side other countries in the world, particularly the EU Member States, adopted a body of legislative measures aimed at building and further consolidating and increasing the effectiveness of the national mechanism in the context of enhanced international co-operation to fight and prevent trafficking in persons.

All nations of the third millennium view the person as the most important social asset of modern society. The EU considers human rights protection a prerequisite for accession. It was not by accident that among Romania's accession criteria to EU, set up in Copenhagen, in 1993, the first in importance established that the candidate state should have stable institutions to safeguard democracy, the rule of law and human rights. Therefore, article 1 of the Romanian Constitution guarantees human dignity, human rights and freedoms, free development of personality, justice and political pluralism as inalienable values.

As yet, trafficked victims' identification was carried out on an individual case by case basis by various institutions or organizations in the absence of a formal systematic mechanism by which institutions and organizations involved could ensure a continued intervention in identifying and referring victims of trafficking.

The present mechanism aims to adopt a unitary and coordinated response of all anti-trafficking institutions and organizations which shall lead to the improvement of the

capacity to identify and provide protection of and assistance to victims of trafficking, regardless of the institution or organization the victim initially gets in contact with. The mechanism represents a set of norms (measures and actions) designed to identify and refer victims of trafficking to serve the purpose of victims' needs for protection and assistance.

The present document is subject to changes depending on the situation and dynamics of the trafficking in persons phenomenon in Romania and the direct involvement of recent institutions/organizations in anti-trafficking and victim assistance activities.

## **B. Principles**

**FUNDAMENTAL PRINCIPLES.** The anti-trafficking activities developed by institutions with a view of implementing the present norms are performed in compliance with the guidelines contained in the National Strategy against Trafficking in Persons 2006-2010, approved by Government Decision 1645/2006.

**SPECIFIC PRINCIPLES.** The characteristic activities developed according to the present norms are performed having regard to the following specific principles:

- **Recognition** of victims' right to physical, psychological and social recovery. In addition to the investigation of the trafficking related offence, the victim identification and referral process should consider the provision of the victim's access to specialized assistance services.
- **Equality and non-discrimination.** Access to protection and assistance services should be provided to all victims of trafficking without any limitation due to race, nationality, ethnic origin, language, religion, social origin, opinion, sex or sexual orientation, age, political affiliation, disability, infectious severe disease, AIDS or belonging to an unprivileged category, regardless victim's decision to participate or not in criminal trials.
- **Participation.** Victims of trafficking are involved in discussions of all decisions/measures of concern to them, having regard of their right to self-determination.
- **Continuity.** The actions and measures undertaken by institutions and organizations engaged in the identification and referral process should be carried out in such a way as to ensure trafficked victims' access to support services or compensations in justice for physical or psychological injuries suffered as a result of their trafficking experiences; referral should be a continuation of the identification stage and carried out by law enforcement structures, service providers or organizations responsible for service provision.

## **C. Legal framework**

The legal instruments on combating trafficking in persons set forth specific provisions in the field of prevention and combat of trafficking and victim protection and assistance.

### **Main national legal instruments on trafficking in persons**

1. Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented;  
This law criminalizes the various forms of trafficking and sets up the legal framework for specialist agencies to use modern investigative techniques in detecting such crimes. Measures to protect and assist trafficked victims and their families, as well as witnesses, were introduced.
2. Government Decision no. 299/2003 to approve Standard Rules for Application of Law 678/2001 on 2001 on preventing and combating trafficking in human beings;
3. Law 39/2003 on preventing and combating organized crime;
4. Law 211/2004 concerning measures to ensure protection to victims of crime; The law transposes the requirements contained in the following European instruments:
  - Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA) – based on Title VI of the Treaty on European Union, the decision provides that victims of criminal acts are entitled to obtain a compensation by the offender in the course of criminal proceedings;
  - Council Directive 2004/80/EC of 20 April 2004 relating to compensation to crime victims;
  - European Convention on the compensation of victims of violent crimes (Strasbourg, November, 1983);
  - Recommendation No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure;
  - Commission Communication on “Crime victims in the European Union- standards and action”, (14 July 1999);
  - European Commission - “Compensation to crime victims”, green paper.

The law sets up four categories of measures to address directly the victim’s needs (victims of crimes under Law 678/2001 are also included):

- informing victims of crime about their rights
- psychological counseling
- free legal assistance
- state compensations for victims of specific crimes.

The law clearly refers to **psychological counseling** for victims of crimes stipulated by Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented. The institutional mechanism to provide psychological counseling for victims is represented by probation services attached to the courts of justice. These services provide free psychological counseling for a maximum period of 3 months and 6 months in cases involving victims under the age of 18. Services for psychological counseling or other forms of assistance can also be established by NGOs independently or in partnership with public administration authorities. To this end NGOs can benefit, under legal provisions, from government financial assistance.

**Free legal assistance** is granted primarily to direct crime victims but also to indirect victims of serious crimes (husband, children, dependants of direct victims deceased as a result of the crime). Such measures complete the common law provisions stipulating that, on a regular basis, in cases of legal representation where a person

has no defender or financial means to pay for qualified legal counseling, the court will appoint a public defender for free legal assistance.

**Financial compensation.** The law establishes several categories of terms/ conditions for granting financial compensations to direct or indirect victims of the given crimes, including also information to the prosecution authorities about the crime committed, within a specified period of time, taking into account the fact that for objective reasons victims who make a minimum contribution to the detection of crime in due time are entitled to compensation ( victims under the age of 18 and those under interdiction have no obligation to notify the investigative bodies about the crimes they committed). The law also regulates the possibility to pay some of the compensation money in advance to crime victims in difficult financial situations. Law 211/2004 stipulates that, through the Ministry of Justice, victims of crime (including trafficking related crimes) are entitled to request financial compensation and sets up the modalities by which the victim can obtain this compensation in cases where the crime was committed on a EU Member State territory, other than the state of his/her legal residence.

5. Government Decision no. 1295/2004 to approve the National Action Plan on preventing and combating trafficking in children;

6. Government Decision no. 1584/2005 concerning the establishment, organization and operation of the National Agency against Trafficking in Persons, subsequently amended and supplemented;

7. Government Decision no. 1654/2006 to approve the National Strategy against trafficking in persons 2006-2010;

8. Government Decision no. 1720/2006 to approve the National Action Plan 2006 – 2007 for the implementation of the National Strategy against Trafficking in Persons 2006 – 2010.

### **Main relevant international legal instruments on trafficking in persons**

1. UN Convention against transnational organized crime adopted on November 15, 2000, in New York, ratified by Law 565/2002;  
On 14 December 2000, in Palermo, Romania signed the UN Convention against transnational organized crime and its two protocols adopted on November 15 2000, in New York:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime,
- UN Protocol on Smuggling of Migrants on Land, Air and Sea, supplementing the UN Convention against Transnational Organized Crime.

2. Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Law 300/2006.

Romania signed the Council of Europe Convention on Action against Trafficking in Human Beings, agreed upon by Member States of the Council of Europe on May 16, 2005, in Warsaw.

The main objectives of this Convention are:

- to prevent and combat trafficking in human beings, while guaranteeing gender equality;
- to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, as well as to ensure effective investigation and prosecution;
- to enhance international cooperation on action against trafficking in human beings.

3. EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (Official Journal of 9.12.2005).

#### D. Working definitions

**Trafficking in persons**<sup>18</sup> is the recruitment, transportation, transfer, harboring or receipt of a person by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will, or by giving, offering or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

**Trafficked victim** – for the purpose of the present Mechanism, the victim of trafficking in persons is defined as any natural person about whom there is information that he/she has suffered physical or psychological harm, emotional abuse, economic loss or a serious violation of his/her fundamental rights by actions or inactions which infringe criminal legislation in the field of combating and preventing trafficking in persons.

**Assisted trafficked victim:** a person that has suffered harm as a result of the commission of a crime of trafficking in persons as provided by Law 678/2001, subsequently amended and supplemented, and who is entitled to assistance services.

**Victim identification:** the process by which a person is to be found as victim of trafficking in persons. Identification can be carried out formally, as a result of the investigation conducted by the judicial authorities or the social inquiries of the social services, and informally by analyzing the indicators that can provide clues as to the existence of a potential trafficking situation.

**Victim referral:** in the context of the present mechanism, the concept of victim of trafficking referral means that the victim is entrusted/delivered to support and protection service providers.

**Transit/emergency assistance:** a set of measures and actions taken by an institution/organization from the moment the victim is identified till the moment his/her situation is clarified and the victim enters the assistance and protection program.

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<sup>18</sup> Article 12, paragraph (1) of Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented;



**Assistance and protection services for trafficked victims:** the amount of specialized support services provided to victims of trafficking in keeping with the law in force. Service providers can supply social services of specialized assistance which may or may not include housing, as provided by Law 47/2006 regarding the national welfare system.

**National victim identification and referral mechanism:** the set of coordinated measures and actions undertaken by state institutions and various non-government agencies aimed at the protection of victims' fundamental rights and the provision of services to meet their needs of protection and assistance.<sup>19</sup>

## **E. Victim identification procedures**

Two major perspectives should be taken into consideration when identifying victims of trafficking :

- the legal context
- the victim.

### **E.1. The legal context**

In Romania, articles 12 and 13 of Law 678/2001 contain the definition of the trafficking in persons offence. Thus, it is an offence for anyone who recruits, transports, transfers, harbors or receives a person, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will, or by giving, offering or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation; article 13 provides that "the recruitment, transportation, transfer, harboring or receipt of a person aged between 15 and 18 for the purpose of exploitation shall be considered an offence of trafficking in children".

An additional relevant instrument is Law 565/2002 to ratify the UN Convention against transnational organized crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime, as well as the UN Protocol on Smuggling of Migrants on Land, Air and Sea, supplementing the UN Convention against Transnational Organized Crime, adopted on November 15, 2000, in New York.

Thus, article 3 of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized crime, provides:

"Article 3. - For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

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<sup>19</sup> "National Referral Mechanism – Joining efforts to protect the rights of trafficked persons. A practical handbook", OSCE – ODIHR, 2004

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person less than eighteen years of age."

The following issues should be the key elements in analyzing the trafficking in persons phenomenon:

**Actions :**

- *Recruitment* can be materialized in the proposal offered to victim during the initial stage of the trafficking process. Generally, the proposal proves to be a false promise related to the object or the nature of the victim's job, final destination of his/her journey, the conditions under which he/she shall live or work or the place of work. Recruitment is carried out by one or more natural or legal persons, directly or through advertising in the media or on the internet, making use of one or several of the means below mentioned.
- *Transportation* implies the victim's movement by traffickers (agents or transporters) from the place of origin or recruitment to the place of destination where the exploitation occurs. It is not compulsory that the transportation be outside the borders.
- *Transfer or sale* may occur when the victim is delivered by the agent to the transporter and/or further on to natural or legal person for the purpose of exploitation. The transfer may accompanied by the payment of a sum of money or assets, material or others. There are also cases when the transfer and/or sale is carried out by the natural or legal person who initially exploited the victim with the latter being transferred and/or sold to other persons/groups who shall continue the exploitation.
- *Harboring or housing* may be carried out by the recruiter, agents or the natural or legal person exploiting the victim who shall be held in a house, hotel, improvised premises, etc.
- *Receipt* of the person or persons intended for exploitation takes place during the transfer or sale.

There are cases where all the above situations are carried out by one and the same person.

**Means :** the threat or use of force or other forms of coercion, kidnapping, fraud or deceit, abuse of power or taking advantage of that person's inability to defend him-/herself or to express his/her will, or giving, offering or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

**Purpose :** the person is subjected to the following forms of exploitation: forced labor or services with the violation of legal norms regarding working conditions, payment, health and security, slavery or practices similar to deprivation of liberty or servitude, using the victim in the commission of crimes, forced prostitution and pornography

with a view of producing and distributing pornographic materials or other forms of sexual exploitation; removal of organs.<sup>20</sup>

The aspects previously mentioned can be considered as constitutive elements of other types of crimes, in which case the following should be taken into account:

**Activities:** both traffickers and smugglers conduct transportation, transfer and harboring of persons related activities;

**Means:** smugglers do not normally use coercive or manipulative means or deceptions which constitute a trafficking in persons offence. At the same time, taken separately the means can be constitutive elements of other offences, such as: use of threats, bodily harm, deprivation of liberty, deception.

**Purpose:** exploitation or intent on subjecting a person to any form of exploitation is a key element in identifying victims of trafficking in persons.<sup>21</sup>

Regarding the highlighted aspects, there is a difference in the case of a trafficking in children offence, to the effect that only **2** of these aspects are needed in such a case, respectively **activities** for recruitment, transportation, transfer, harboring or receipt of a minor for the **purpose** of exploitation.

## **E.2. The victim context**

Specific circumstances and available information in each case should be taken into account. Unlike victims of trafficking in migrants, trafficked victims can be subjected to physical or sexual violence; their rights and liberties are violated; victims are subjected to exploitation over a short or long period of time and compelled to engage in prostitution, illegal labor, and criminal activities or removal of organs, tissues or cells.

All these characteristics and consequences on the socio-psychological level emerged as a result of traumatized experiences is common to victims of trafficking in persons and the specific information in each case shall provide the necessary indicators for an informal identification of a possible trafficking situation.

## **E.3. Victim identification indicators**

The first stage of the identification and referral mechanism is the victim screening in order to determine whether an individual is in fact a victim of trafficking and, if the case may be, to ensure that individual's access to specialized support and protection services.

The screening and identification process implies the establishment of an initial contact with the presumed trafficked person, the analysis of the indicators which may assist the contacting institution/organization in recognizing a possible trafficking situation and the pre-interview carried out by trained personnel to find out the trafficking in persons specific elements.

Annex 1a, as part of this document, lays out the indicators checklist to be used in the initial assessment of a possible trafficking situation and the screening of a presumed trafficked person. The indicators do not serve as substitutes for the definition of the trafficking in persons; they are signs which can allow the initiation of the mechanism. Regardless the location of identification and the initial contacting institution or organization, the following indicators should be considered in identifying a possible victim of trafficking<sup>22</sup>:

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<sup>20</sup> In accordance to art.2, paragraph 2 of Law 678/2001 subsequently amended and supplemented.

<sup>21</sup> "Guide to the new UN Trafficking Protocol" by Janice G, Raymond, Coalition against Trafficking in Women, USA, 2001.

<sup>22</sup> IOM Handbook on Direct Assistance for Victims of Trafficking", IOM, Geneva, 2007

## **1. Sex**

Trafficking for sexual exploitation is the largest and most profitable form of trafficking in persons which predominantly affects female victims, women and girls. However, there are also male victims trafficked for the purpose of prostitution, particularly teenage boys. Therefore, age and sex indicators should be assessed jointly or interdependently in order to better identify victims of trafficking or the forms of exploitation victims have been subjected to.

## **2. Age**

The older the individual, the less likely the case is to involve trafficking into sexual exploitation which continues to be regarded as the main exploitive form. For example, traffickers are more likely to focus on younger or less than 30 year old victims as the demand for this age group is higher. The same rule applies to trafficking for labor or slavery, as the older the victim, the less efficient he/she is. Victims aged 18 to 25 are to be found in all categories of trafficking.

## **3. Social conditions**

Identification of certain factors which caused or contributed to the victim's entry of the trafficking process, is equally important in the victim identification stage. Traffickers rely on manipulating factors such as: poverty, discrimination, and lack of employment and educational opportunities, social marginalization, family negligence and abuse, lack of knowledge of rights, obligations and policies in the field of migration and access to free movement.

## **4. Documentation**

The lack of identity documents or documents found among the victim's possessions, as well as a temporary travel document upon the victim's return can be an indicator of a possible victim of trafficking.

At the same time, the victim's use of other names or alias and altered or false ID and travel documents can additionally indicate a possible trafficking situation.

## **5. Last location**

The victim's last exploitative location or the location where the victim was picked up immediately prior to identification by an institution or organization will always be a strong indicator of trafficking, for instance: certain suburban or urban areas where sexual services can be bought, night clubs or hotels, railway stations or border crossing points.

## **6. Identification circumstances**

The circumstances under which the person/victim was identified will always serve as key assessment indicators of a trafficking situation.

For instance: border crossing procedures, rescue of women following police raids on apartments owned by persons about whom there is information they are involved in pimping activities, persons without valid identity documents unfamiliar with the place where they reside in and identified as a result of police raids, companions or persons living in misery or without money, though according to their statements they were there for work but did not know the town/place of residence, can constitute relevant indicators of trafficking in persons cases.

## **7. Signs of abuse**

Any signs of physical injury can be a positive indicator of trafficking.

Characteristically, victims of trafficking are subjected to different forms of abuse and coercion that are not found in cases involving smuggled people and whose consequences can be documented and often used even as evidence of trafficking crime. The identified victim may show bruises or wounding indicating some possible physical abuse or can complain of sexual abuse. At the same time, the victim can be indifferent and lost, giving the impression that he/she doesn't clearly understand what is asked of or explained to her, or starts crying every time he/she is approached or has difficulties in remembering exactly what happened to him/her.

There can also be cases where the identified/presumed trafficked victim reacts distrustfully and angrily at those who intervened for removal from his/her environment or even deny the abusing situation.

Once removed from trafficking, most of the victims, particularly those of labor exploitation, are marked by the lack of sleep, malnutrition and exhaustion they have been subjected to.

## **8. Assessment and views of other institutions/organizations working in the area of anti-trafficking**

The views and assessments of other institutions/organizations working in the area of anti-trafficking or law enforcement will always be taken into consideration in the screening process in order to ensure the continuity and transparency when making a determination. Each of these indicators whether evaluated cumulatively or independently can lead to the identification of other categories of victims or cases.

At the same time, the indicators shall be used to point out any suspected situation of trafficking and initiate the referral mechanism; the indicators shall not be substituted to the investigative techniques into trafficking related offences.

Even if the formal screening (the detailed interviewing) can't be accomplished prior or after the initial contact, indicators listed in Annex 1 shall be evaluated. In case this evaluation points out the existence of a possible case of trafficking, the presumed trafficked victim shall be entitled to a maximum of 90 days to recover and reflect.

### **E.4. Interviewing of victims of trafficking**

Interviewing victims of trafficking is a formal procedure to identify a trafficked victim.

Interviewing plays two important and distinct roles depending on the institution or organization conducting the interview of the presumed trafficked victim:

- Collection of the necessary evidence to prove a trafficking crime, in which situation the interviewing may result in the victim's statement as injured party or witness in trial;
- Evaluation of trafficked victims' needs for protection and assistance, in which situation the interviewing shall focus on identifying those needs, respectively collecting the information necessary to arrange the support and protection measures to be taken in that case.

Any representative of the institution or organization involved in the victim screening process that aims to undertake an interview shall follow the World Health Organization<sup>23</sup> recommendations outlined below and shall request the victim's consent for the interview:

---

<sup>23</sup>

**1. Do no harm**

Treat each victim of trafficking and the situation as if the potential for harm is extreme. Do not undertake any interview that will make a victim's situation worse in the short term or longer term.

**2. Know your subject and assess the risks**

Learn the risks associated with trafficking and each victim's case before undertaking an interview.

**3. Prepare information necessary for victim's referral**

Do not make promises that you cannot fulfill. Be prepared to provide information in the victim's native language or the local language about appropriate legal, health, shelter, social support and security services, and to help with referral, if requested.

**4. Adequately select and prepare interpreters and co-workers**

Weigh the risks and benefits associated with employing interpreters, co-workers or others, and develop adequate methods for their training in undertaking an interview.

**5. Ensure anonymity and confidentiality**

Protect the interviewed person's identity and confidentiality throughout the entire interview process – from the moment she is contacted through the time that details of her case are made public.

**6. Get informed consent**

Make certain that each interviewed person clearly understands the content and purpose of the interview, the intended use of the information, his/her right not to answer questions, his/her right to terminate the interview at any time, and his/her right to put restrictions on how the information is used.

**7. Listen to and respect each person's assessment of his/her situation and risks to his/her safety**

Recognize that each interviewed person will have different concerns, and that the way he/she views these concerns may be different from how others might assess or consider them.

**8. Do not re-traumatize a woman**

Do not ask questions intended to provoke an emotional discomfort. Be prepared to respond to the person's distress and highlight his/her strengths.

**9. Be prepared for emergency intervention**

Be prepared to respond if the person says he/she is in imminent danger.

**10. Put information collected to good use**

Use information in a way that benefits an individual so that advances the development of good policies and interventions for trafficked victims generally.

The interview aimed at identifying the distinct elements of the trafficking in persons process and planning the necessary assistance in an individual case, shall be undertaken by trained staff only or by institutions/organizations with direct anti-trafficking and assistance responsibilities.

As far as the information obtained during the interview is necessary for the partner institution/organization to carry out other responsibilities, an exchange of information shall be developed in order to avoid re-interviewing of the victim when similar categories of information are requested.

### **E.5. Concrete identification and repatriation procedures**

Starting from relevant tasks and responsibilities undertaken by different institutions and analyzing trafficking in persons reports made public, several categories of identification procedures can be distinguished:

#### **Identification by law enforcement agencies**

Police actions are considered to be the most important procedure in identifying victims of trafficking.

From the perspective of the law enforcement authorities the identification process takes place in the context of both prosecutorial activities aimed at collecting evidence of the crime of trafficking and specific police actions, such as information and investigative actions.

Following specific actions conducted by law enforcement agencies victims of trafficking can be identified by interviewing and statements given by the person about whom there is information that he/she has been subjected to trafficking; the identified person may institute himself/herself injured party or witness to the trafficking crime. The identification can also occur at the Romanian national border where Romanian nationals can be deported or returned from other states; in case they do not meet the requirements to entry into a specific state and are detected in violation of certain laws of the host country, they are treated as illegal migrants, though the acts for which they might be held responsible for could be the consequence of their trafficking experience.

Upon their entry into Romania, border police officers shall take statements as there is the possibility that some of these persons may be identified as victims of trafficking.

#### **Identification by diplomatic missions and consulates**

In most cases, victims have their identity or travel documents confiscated or destroyed or they lack the necessary resources to return to their country of origin. Upon request, Romanian citizens, victims of trafficking in persons in foreign countries, shall be granted assistance by diplomatic missions and consular offices of Romania<sup>24</sup> to those countries.

#### **Identification by hotlines**

The hotline service receives and refers calls for assistance or information about suspected crimes of trafficking.

In Romania, the hotline service is provided by a toll free number set up within the National Agency against Trafficking in Persons which targets the public at large and particularly victims of trafficking or persons who have knowledge about a possible trafficking situation.

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<sup>24</sup> According to art.28 of law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented and art.21 of Government Decision 299/2003 to approve the Implementation status of the provisions contained in Law 678/2001 on preventing and combating trafficking in persons.

### **Other identification procedures**

There are also situations where victims of trafficking can be identified and referred to service delivery institutions/organizations by citizens, former clients, and inspectors with the territorial agencies for employment, hospital or other healthcare facilities personnel, educational institutions or the community. Under the circumstances, it is very important that the person identified by the above mentioned categories be referred to the institutions/organizations involved in the formal identification and referral mechanism with a view of providing protection and assistance.

### **Victim repatriation**

Repatriation of victims of trafficking is carried out in keeping with the provisions laid down in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the UN Convention on Transnational Organized Crime, ratified by Law 565/2002.

The repatriation procedure can be accomplished with the help of the International Organization for Migration and its missions as well as within the voluntary return program with the assistance of non-government organizations, diplomatic missions or consular offices or representatives of both recipient states and states of origin and, particularly, the authorities responsible for the protection of child rights, in case where the victim is a minor.

The personnel of the diplomatic missions and consular offices of Romania shall provide assistance to trafficked victims in issuing travel documents for their repatriation and identifying the appropriate resources and organizations to ensure the victims' return to their country of origin.

### **F. Referral procedures**

All institutions and organizations involved in the referral process have the obligation to co-operate in order to take appropriate support and protection measures once the trafficked victim is identified. Each of them shall appoint at least one representative of the relevant institutions/organizations within NRM and his/her contact details shall be communicated to the institutional partners.

Depending on the institution/organization involved as well as the place and the identification procedure of the trafficked victim, there can be distinguished several ways of victim referral:

**1. Victim is identified by law enforcement authorities**, including specialized police structures working with trafficking in persons related issues, such as: Directorate, Brigades and Services for Combating Organized Crime, criminal investigations departments, border police, offices and services within the Directorate for the Investigation of Organized Crime and Terrorist Offences (DIICOT).

The victim is entitled to information about his/her right to legal assistance, criminal proceeding rights and other rights as provided by art.4 of Law 211/2004.

Victim's referral to the institution/organization responsible for the co-ordination of assistance and monitoring activities is carried out as follows:

Specialized police structures – IGPR through DCCO, BCCO, SCCO and IGBP shall get in contact with ANITP Regional Centre representative to assess the victim's needs for assistance and to maintain contact with the victim.

Other national defense and public order structures – the criminal investigation police, transport police, public order police, and the gendarmerie – shall notify the relevant police and DIICOT structures.



The ANITP Regional Centre representative shall:

- conduct the early evaluation to identify the victim's needs for specialized assistance and with his/her informed consent shall ensure the immediate referral to emergency assistance . A case manager shall be assigned to monitor the assistance provided to the victim and maintain constant contact in order to prepare him/her for the appropriate stages of the criminal proceedings. The name of the case manager shall be communicated to institutional partners.
- Inform the service provider and, based on the victim's consent, shall send them all the information necessary to plan the case intervention.
- Ensure appropriate support for the victim to be interviewed by the investigative bodies.

Specialized police structures:

- on request of the ANITP Regional Centre representative, the risk assessment of the case shall be conducted with a view to establish protective measures;
- shall provide tactical counseling to ensure the victim's secure transportation based on the support and protection needs established following the case evaluation.

## **2. Victim is referred and returned by IOM**

The IOM Romanian mission receives the victim at the national border and, providing that the victim consents to be accommodated in a shelter for a shorter or longer period of time and is willing to participate in assistance programs, he/she shall be referred to specialized support services.

The IOM official shall:

- inform the NAATIP Regional Centre representative on the trafficked victim's return;
- discuss with the victim about his/her possibility to cooperate with the judicial authorities.

In case assistance services are not provided during the transit stage, the NAATIP Regional Centre representative shall be notified to take over the victim and ensure his/her access to other support services in the community of origin.

## **3. Victim is identified by an international NGO and repatriated and referred by an NGO in Romania**

In cases where the victim is identified by an NGO in a foreign country, the NGO official in Romania shall meet the victim at the border or at the place agreed upon with the referring partner. On the basis of the victim's consent to whether participate or not in support programs delivered by the receiving NGO or another organization and the specific elements of the case, the victim shall be included in a specialized assistance program.

The representative of the NGO or the specialized public service to protect and assist victims of trafficking shall:

- ask the NAATIP Regional Centre representative to coordinate the victim's assistance and monitoring and to register the victim;
- discuss with the victim about his/her possibility to cooperate with the judicial authorities.

## **4. Romanian victim is identified by the diplomatic mission or consular office of Romania – in case where the trafficked victim is not in possession of an identity or**

travel document to certify his/her Romanian citizenship, the diplomatic or consular mission personnel shall issue, upon request, the travel document to enable the victim's return to Romania<sup>25</sup> and notify, within at least five days in advance, the ANITP and the border police about the return of victim/victims of trafficking having in view their taking over at the national border.

When the trafficked victim needs and applies for pre-return assistance<sup>26</sup>, the Romanian diplomatic or consular mission personnel shall contact and refer him/her to service delivery organizations in the host country.

During this entire period of time, the legal aspects regarding the victim's situation and his/her personal details are bound by the duty of confidentiality.

Romanian victims of trafficking related information shall be transferred to the national competent authorities by the Romanian liaison officer.

## **5. Foreign victims of trafficking**

Foreign victims of trafficking shall be entitled without discrimination to the same support and protection measures as Romanian victims. Therefore, foreign victims should be informed in a language they can understand about their right to a maximum of 90 days to recover and access to specialized support services, including accommodation in specially arranged centers, psychological, medical and social assistance.<sup>27</sup>

Language interpreters/translators employed to assist with interviews and support foreign victims during the assistance service delivery shall be trained by ANITP in order to be able to work with trafficked victims so as to ensure the confidentiality of information and personal details and approach the individual in a professional manner.

In cases where the foreign victim wishes to be repatriated to his/her country of origin, the representative of the Romanian Immigration Office (RIO) shall contact the diplomatic mission or consular office of the respective country to facilitate the issuance of the travel documents necessary for his/her return and shall fulfill all the necessary formalities to arrange the victim's stay on the Romanian territory under the provisions of legislation on aliens' regime.

IGPR and IGBP territorial structures dealing with trafficking in persons shall contact the ANITP Regional Centers representatives to assess the foreign victim's needs for assistance and stay in contact with the victim;

Representatives of ANITP Regional Centers shall report to RIO in connection with the foreign victim and the provision of some form of protection;

IGPR and IGBP specialized structures shall provide tactical counseling regarding the victim's safe and secure transfer to foreign victims of trafficking shelters.

the Romanian Immigration Office (RIO):

- regulates the status of foreign victims of trafficking in accordance with the provisions of legislation on aliens' conditions of stay on the Romanian territory;

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<sup>25</sup> According to provisions of art.29 of Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented, corroborated with provisions of art.41-42 of Government Decision 299/2003 to approve the implementation status of Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented.

<sup>26</sup> Victim assistance is provided in accordance with art.6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime, ratified by law 565/2002, art. 12 of the Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Law 300/2006 and art.43 of Government decision 299/2003.

<sup>27</sup> According to provisions of art.38-39(1) of Law 678/2001 on preventing and combating trafficking in persons, subsequently amended and supplemented In accordance with Government Urgent Ordinance 79/2005 to amend and supplement Law 678/2001 on preventing and combating trafficking in persons

- jointly with ANITP, coordinates the activities of public institutions, local public administration authorities and NGOs dealing with the integration of foreign victims benefiting by some form of protection in Romania or the right to stay in Romania;<sup>28</sup>
- on request of the ANITP Regional Center representative, IGPR and IGBP specialized structures shall undertake the risk assessment in order to establish protective measures within 72 hours since the case referral.

## **6. Child victim of trafficking**

When identifying a child victim, irrespective of his/her country of origin, the representative of the Directorate General for Child Social Assistance and Protection (DGCSAP) or the representative of the Service for the child victim of abuse, negligence and trafficking in persons shall be notified to take special measures for his/her protection.

In cases where the victim is a foreign child, he/she shall be entitled without discrimination to the same support and protection measures specific to all children victims of trafficking.

Whether there are several victims of the same nationality, children included, it is recommended that assistance be delivered by the same service provider.

- IGPR and IGBP specialized structures –shall get in contact with the DGSAPC representative dealing with child abuse, negligence and trafficking and the ANITP Regional Centre representative to assess the victim’s needs for assistance and to maintain contact with the victim;
- the DGSAPC representative dealing with child abuse, negligence and trafficking shall ensure the case referral to a specialized child assistance center and maintain contact with the inter-institutional team partners;
- the ANITP Regional Centre representative shall maintain constant contact with the DGSAPC representative in respect of monitoring the case;
- when foreign unaccompanied minors are involved, RIO cooperates with other institutions, as well as national and international organizations responsible for child protection in order to establish the judicial status applicable to children, according to GD 194/2002 provisions regarding the aliens’ conditions in Romania, republished.

## **7. Indefinite case of trafficking**

**a.** In a case where the presumed trafficked victim refuses to cooperate with the judicial authorities and there are suspicions indicating a possible case of trafficking but the distinct elements of the crime of trafficking have not been detected, the case shall be referred to the ANITP Regional Centre representative or victim support and protection public institution or service provider for re-assessment.

When, following the assessment, it is determined that the respective person is in fact a trafficked victim, participation in a specialized program of assistance is initially provided and then, based on the victim’s consent, the case shall be referred again to the judicial authorities.

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<sup>28</sup> In accordance with Government Decision 44/2004 regarding the social integration of foreign victims benefiting by some form of protection in Romania or the right to stay in Romania and citizens of EU and EEA Member States, approved with amendments by law 185/2004, subsequently amended and supplemented.

**b.** In cases where the person accepts neither to discuss with the ANITP Regional Centre/NGO representative showing no interest in taking part in any assistance programs, nor does he/she want to talk to the police/ judicial authorities, depending on the location where that person was found :

- the **border crossing point , leaving Romania** – the victim shall be provided with prevention materials regarding useful information on illegal migration and trafficking in persons;
- the **border crossing point , entering Romania** - the victim shall be provided with information materials on the ANITP hotline unit.

**c.** In a situation where the presumed trafficked victim is a foreign citizen, the competent authorities shall carry out specific activities, such as:

- IGPR and IGBP specialized structures dealing with trafficking in persons shall contact the ANITP Regional Centers representatives to assess the foreign victim's needs for assistance and maintain contact with the victim;
- The DIICOT prosecutors shall:
  - request RIO to allow foreigners about whom there are reliable reasons to believe they are victims of trafficking to remain in Romania benefiting from a period of recovery and reflection;
  - notify the ANITP Regional Centers representative about the decision regarding the recovery and reflection period and the necessity to take protection measures and monitor the case.
- The ANITP Regional Centers representative shall:
  - report to RIO about a suspected case of trafficking involving a foreign victim
  - report to IOM Romania Mission with respect to the assessment of the individual's need to be included into the voluntary repatriation program.
- RIO shall:
  - establish the status of foreign victims of trafficking according to legal provisions governing the aliens' regime;
  - refer the case to assistance in a specialized centre.

**d.** In situations where the case is identified through the ANITP Help-line information and advice unit, the request shall be immediately received and until a definite case of trafficking is determined, the individual shall be treated as a presumed trafficked victim. The Help-line operator shall carry out the preliminary evaluation and the risk assessment based on the individual's level of personal safety. If the individual has recently escaped an abusing or exploitive situation, it is required that police intervention units in the community – police, gendarmerie - be soon contacted; consequently the referral process shall be carried out following the other existing procedures.

**e. Victim of trafficking without good capacity of judgment or with severe health problems**

When a presumed trafficked victim shows evident signs of severe mental disorders, the contacting institution/organization shall take the necessary measures to arrange a medical examination in order to determine the individual's capacity of judgment. Until then, the individual shall be treated as a trafficked victim, his/her rights and

fundamental liberties shall be respected and he/she shall be entitled to specialist medical assistance.

IGPR and IGBP specialized structures, RIO, ANITP, NGOs and local public administration authorities shall report and take the person to the nearest hospital unit for appropriate medical attention. The ANITP Regional Center representative and the specialized police structure (in case neither of these has initially identified the person) shall be urgently announced to monitor the case and take protection measures, if necessary.

ANNEX to the National Referral Mechanism

### **List of indicators to identify possible cases of trafficking or presumed victims of trafficking**

**\*T\***

**Area of activity: General indicators Town/area or social group**

**Agriculture Sexual exploitation Child prostitution  
Constructions Exploitation in other areas National/international framework**

**\*ST\***

#### ***Dependence and freedom of movement and expression***

##### **Dependence**

01. Employer arranges housing, clothes, and transport for the victim
02. Victim does not have his/her own place to live in Romania or the country of exploitation;
03. Victim works in different locations without his/her knowledge about these arrangements;
04. Victim spends the night on the worksite;
05. Victim runs up debts with employer or third parties;
06. Victim is not financially remunerated;
07. Victim is in a weak economic or dependent position;

##### **Vulnerability to blackmail and /or pressure exerted upon by others**

08. Victim's passport is kept by somebody else and used to blackmail the victim;
09. Victim's earnings are taken and used to blackmail the victim;
10. Victim stays/stayed or works/worked in Romania/ the country of exploitation illegally;
11. Employer or third parties paid transfer money;
12. Relatives are blackmailed or threatened;
13. Victim is blackmailed that his/her identity will be revealed and threatened that the activity he/she is engaged in will be made public (e.g. prostitution work);
14. Victim is threatened with or subjected to physical violence;
15. Victim is blamed for his/her involvement in criminal activities;

##### **Basic rights**

16. Victim's freedom of movement and expression is curtailed;

17. Victim is not allowed to contact others in the outside world or is restricted in his/her movements;
18. Victim does not have access to his/her identity papers;
19. Victim does not have access to his/her earnings;
20. Victim does not have access to medical assistance;

### **Fraud or Deception**

21. Victim was misled/lured by false promises of marriage or relationships;
22. Victim was misled/ lured by false promises regarding earnings or debt
23. Victim was misled/lured by false promises regarding the nature of work/activity;
24. Victim was misled/lured by false promises regarding conditions of work;

### **Lack of victim's knowledge about his/her own position**

25. Victim is unfamiliar with his/her own address;
26. Others for victim's isolation from others;
27. Lack of victim's relevant knowledge of his/her rights;

### **Limited capacity to act and vulnerability**

28. Victim has a limited capacity to act (e.g. due to mental and/or physical disability)
29. Victim has not made arrangements him/herself for trip, visa and residence or work permit;
30. Victim fears violence and threats of others;
31. Victim is obedient/ servile towards his/her exploiter or pimp;

### ***Behavioural and personality traits as risk factors for the victim or the group he/she belongs to***

32. Victim protects or defends employer or third parties involved;
33. Victim has many new acquaintances;
34. Victim has many new possessions (clothes, mobile phone);
35. Victim is often absent from school or has dropped out;
36. Victim suffers from pains or blood in the bladder, abdomen, anus, and vagina and/or on body parts, eating disorder, pregnancy;
37. Victim shows signs of deviant behaviour or sudden changes in behaviour;
38. Signs have been noticed by the victim's social environment (e.g. parents, other relatives, friends, neighbours);
39. Victim uses alcohol and psychotropic medication or drugs;
40. Victim shows little or no attachment to home; he/she has become isolated;
41. Victim has a tendency to run away from home;

### ***Exploitation***

#### **Circumstances and earnings**

42. Victim works or renders services under miserable circumstances;
43. Victim's income is considerably lower than the average rate on labour market;
44. Victim has to part with a considerable sum of his/her earnings;
45. Victim works under hazardous conditions;
46. Victim works under abusive labour standards (long daily or weekly hours);  
Victim is obliged to quotas for amount of money that must be earned each day;
47. Victim is subjected to exploitation not just incidentally but in a structural and organized manner;

### **Physical and mental integrity**

- 48. Victim's physical integrity is infringed upon;
- 49. Victim is forced to have organs removed;
- 50. Victim is threatened or subjected to sexual assault;
- 51. Victim is forced to engage in acts of prostitution;
- 52. Victim works as a prostitute against his/her will;

### **Other indicators**

- 53. Victim has been smuggled into the country;
- 54. Victim is in possession of a forged passport
- 55. A combination of the following: non-EU national, married or staying with a partner and recently working as a prostitute;
- 56. Victim is closely watched;
- 57. Victim has links with individuals or locations associated with human trafficking;
- 58. Victim's nationality: one of the mostly used source countries;
- 59. Victim has marks that are indicative of his/her dependence on third parties (e.g. tattoos);
- 60. Victim shows marks or injuries which may indicate sexual abuse;
- 61. Information received from reliable source that has led to the victim;
- 62. Victim's surroundings are characterized by special measures: presence of bodyguards, surveillance cameras, hiding places;
- 63. Several victims reside at the same address and rents are exceptionally high;
- 64. Passport indicates a too many trips made to and from poor countries;

### **Group indicators**

- 65. Unknown third parties are found at a certain location, or in the vicinity of a certain group;
- 66. Age group varies;
- 67. Potential victims are shielded;
- 68. Victims avoid contact with police and authorities;

### **Organized crime related facts**

- 69. There are transfers of money, debts or documents;
- 70. Other crimes are committed: trafficking in drugs and weapons, financial crimes, deception.

## **ABBREVIATION LIST**

ANITP	National Agency against Trafficking in Persons
BCCO	Organized Crime Counter Brigade
DCCO	Directorate for Combating Organized Crime
DGSAPC	Directorate General for Social Assistance and Child Protection
DGCCO	Directorate General for Combating Organized Crime
DIICOT	Directorate for the Investigation of Organized Crime and Terrorist Offences
GD	Government Decision
IGPF	Inspectorate General of Border Police
IGPR	Inspectorate General of the Romanian Police
RIO	Romanian Immigration Office
SCCO	Organized Crime Counter Service

## Annex 6.4



Twinning Project RO2006/IB/JH 08

“Supporting the Institutional capacity to prevent trafficking in human beings in Romania”

### Activity C.3

Drawing-up a report on the improvement of the national identification and referral mechanism; drawing-up, by the Romanian and MS experts of a final version of the improved mechanism of identification and referral and possible amendments

## ANNEX

### **EU Data Protection Standards for Authorities**

**by Prof. Dr. Hannes Tretter  
(Ludwig Boltzmann Institute of Human Rights, Austria)**



# 1 Introductory remarks

*This paper sums up the most relevant CoE and EU data protection provisions binding State's authorities, particularly of the*

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) with Amendments thereto (1999),
- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and the
- Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

## 2 General rules of collection and processing of personal data

### ***Purposes of collection and processing***

Personal data must be collected for *specified, explicit and legitimate purposes* (for business activity, e.g. billing) and further *processed only in a way compatible* with those purposes (inclusive historical, statistical or scientific purposes). Thereby, data must be *adequate, relevant and not excessive* in relation to these purposes.

→ Art. 6 para. 1 lit. b-c Directive 95/46/EC, Art. 5 lit. b-c Convention 1981

☞ **The processing of personal data does mean**

*any operation or set of operations which is performed upon personal data*, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

→ Art. 2 lit. b Directive 95/46/EC

### **Who may process and access?**

The personal data may be collected and processed by the controller (who determines the purposes and means of the processing of personal data) or/and processor (who processes

personal data on behalf of the controller). Thereby the data may be only processed *on instructions from the controller*, by any person acting under the authority of the controller or of the processor, including the processor himself (→ **Art. 16 Directive 95/46/EC**). It means that *the person processing the personal data must be authorised* to process, and the State authority as the facilitator of the processing shall implement measures to control the access to the personal data for purposes of their processing (e.g. documentation and making notes of cases of access).

## Legitimate purposes

Personal data – according to the case law of the European Court of Human Rights – constitute an aspect of private life protected by Art. 8 of the European Convention on Human Rights (ECHR). It shall be treated carefully and shall only be processed under special conditions (see point 2.4 below) and for legitimate purposes. Collection and processing for legitimate purposes prescribed by law must respond to requirements of *necessity* in a democratic society (in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others) and *proportionality*. Therefore, processing of personal data without consent of the data subject concerned and, consequently, the interference with the right to private life must serve specified, explicit and legitimate purposes which are in accordance with Art 8 para 2 ECHR. In addition it has to be exercised in a manner which is adequate, relevant and not excessive in relation to the purposes of the interference.

## Fair and lawful processing

Personal data must be processed *fairly* and *lawfully*. The lawful processing means that it may be only carried out in accordance with the law applicable. The conditions under which the processing of personal data is lawful shall be precisely determined by the State (i.e. by national legislation).

→ **Art. 6 para. 1 lit. a and Art. 5 Directive 95/46/EC, Art. 5 lit. a Convention 1981**

### ☞ What means “fairly”?

To process fairly (in German – “nach Treu und Glauben”) shall mean rather “*to act in good faith*”. “Fairly” also means that processing should not only be in accordance with the applicable law but should also *take into account the legitimate interests of the data subject* whenever the law provides a possibility to apply and interpret it in this sense. In terms of the EC-directives the fair processing may be interpreted in relation with transparency and provision the data subject with all relevant information (→ see point 4).

### 2.2.1 *Documentation of processing*

In order to control whether the personal data have been processed lawfully and particularly accessed by a person authorised for processing, the processor may document / make note of each case of access to the personal data (→ see points 2.1 as well as 2.8).

### ***Accuracy of the data***

Personal data, collected or processed, must be *accurate and kept up to date*. Inaccurate and incomplete data must be erased or rectified.

→ **Art. 6 para. 1 lit. d Directive 95/46/EC, Art. 5 lit. d Convention 1981**

### ***Conditions of data processing legitimating it***

Personal data may be processed only if

- the data subject has unambiguously and freely given his (*“informed”*) *consent* verbally and in writing (this presupposes that the processor shall previously inform the data subject about processing)

→ **Art. 2 lit. h, Art. 7 lit. a Directive 95/46/EC, and Art. 5 para. 3 Directive 2002/58/EC;**

- or processing is necessary *for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject* prior to entering into a contract; or
- processing is necessary *for compliance with a legal obligation* of the controller; or
- processing is necessary for the purposes of the *legitimate interests pursued by the controller* or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject; or
- processing is necessary in order to *protect the vital interests of the data subject*; or
- processing is necessary for the *performance of a task carried out in the public interest or in the exercise of official authority* vested in the controller or in a third party to whom the data are disclosed.

→ **Art. 7 lit. b-f Directive 95/46/EC**

### ***Duration of collection and processing***

Non-anonymized personal data, kept in a form which permits identification of data subjects, shall be collected / processed only *as long as it is necessary for the purposes* for which the data were collected or for which they are further processed. However, the processor may and shall process the personal data as long as it is prescribed by national law, in pursuance of its legal obligation.

→ Art. 6 para. 1 lit. e Directive 95/46/EC, Art. 5 lit. e Convention 1981

☞ **What does this mean?**

That means that such data, except those that have been accessed and preserved, shall be *deleted or anonymized after the objectives of the storage are fulfilled*. However, personal data may be stored for longer periods for historical, statistical or scientific use, if prescribed by the law. In this case appropriate safeguards for personal data must be laid down by the State.

### ***Processing of traffic data***

Traffic data *must be erased or made anonymous* when it is no longer needed for the purpose of the transmission of a communication. However, the processor may and shall process the traffic data as long as it is prescribed by national law, in pursuance of its legal obligation.

→ Art. 6 Directive 2002/58/EC

### ***Legislative measures to restrict the scope of rights and obligations***

The State may adopt legislative *measures to restrict the scope of the rights and obligations* (inter alia, legislative measures providing for the retention of data for a limited period), when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system. All the measures shall be in accordance with the general principles of Community law.

→ Art. 15 Directive 2002/58/EC, Art. 13 Directive 95/46/EC, Art. 9 para. 2 Convention 1981

### ***Confidentiality of communications***

#### **Access to communications**

Unauthorised access to communications shall be prevented in order to protect the confidentiality of communications and any data (the traffic data) related to such communications. In particular, *listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data* by persons other than users, without the consent of the users concerned, *shall be prohibited*, except when legally authorised to do so. Legally authorised recording of communications and the related traffic data is not prohibited when carried out in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

→ Art. 5 para. 1-2 Directive 2002/58/EC, point 21 Preamble Directive 2002/58/EC

☞ **Important information**

Authorisation to restrict the confidentiality of communication may be given only by law and if such *restriction constitutes a necessary, appropriate and proportionate measure* within a democratic society to safeguard

- national security (i.e. State security),
- defence,
- public security,
- the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system,
- an important economic or financial interest of the Member State or of the European Union (including monetary, budgetary and taxation matters),
- a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority,
- the protection of the data subject or of the rights and freedoms of others.

→ Art. 9 para. 2 Convention 1981

### **Obligations of secrecy or confidentiality with regard to information transferred to or from another State**

*In case of transfer of personal data between the Contracting Parties the State shall see to it that the persons belonging to or acting on behalf of the designated authority shall be bound by appropriate obligations of secrecy or confidentiality with regard to that information (see also point 2.11).*

→ Art. 15 para. 2 Convention 1981

### **Notification in case of automatic processing operation**

The controller or his representative, if any, *must notify the supervisory public authority*, which is responsible for monitoring the application of the provisions of the EC-Directive and acts with complete independence (see point 7), *before carrying out any wholly or partly automatic processing operation* or set of such operations intended to serve a single purpose or several related purposes. The simplification of or exemption from notification can be provided for only in the certain cases and under the certain conditions

□ Art. 18 Directive 95/46/EC

☞ **The contents of notification shall include at least:**

- the name and address of the controller and of his representative, if any;
- the purpose or purposes of the processing;
- a description of the category or categories of data subject and of the data or categories of data relating to them;
- the recipients or categories of recipient to whom the data might be disclosed;
- proposed transfers of data to third countries;
- a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to Article 17 to ensure security of processing.

→ **Art. 19 Directive 95/46/EC**

### ***Prior examination***

*Processing operations which are likely to present specific risks to the rights and freedoms of data subjects shall be examined prior to the start thereof*, by the supervisory authority (if such authority does exist) following receipt of a notification from the controller or by the data protection official, who, in cases of doubt, must consult the supervisory authority.

→ **Art. 20 Directive 95/46/EC**

### ***Transfer of personal data to a third country***

The transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place *only if*, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, *the third country in question ensures an adequate level of protection*.

→ **Art. 25 Directive 95/46/EC, cp. Art. 12 para. 3 Convention 1981**

☞ **To take into account**

Although the EU-Directives on data protection and the Convention 1981 settle the same rules on the trans-border flow of personal data, it shall be taken into account that the EU-Directive specifies the transfer to “*a third country*” which is to distinguish from the “Contracting Parties” within the meaning of the Convention 1981.

## Exceptions and special rules

A transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection may take place *on one of the following conditions*:

- the data subject has given his or her *consent* unambiguously to the proposed transfer; or
- the transfer is necessary for the *performance of a contract between the data subject and the controller* or the implementation of precontractual measures taken in response to the data subject's request; or
- the transfer is necessary for the *conclusion or performance of a contract concluded in the interest of the data subject* between the controller and a third party; or
- the transfer is necessary or legally *required on important public interest grounds*, or for the *establishment, exercise or defence of legal claims*; or
- the transfer is necessary in order *to protect the vital interests of the data subject*; or
- the *transfer is made from a register* which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in law for consultation are fulfilled in the particular case.

→ **Art. 26 para. 1 Directive 95/46/EC**

☞ **Without prejudice to these conditions**

the controller shall adduce adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

→ **Art. 26 para. 2, Directive 95/46/EC**

## Use of information

*An authority* of a State which received information from an authority of another Contracting Party – either accompanying a request for assistance in order to implement the international data protection provision or in reply to its own request for assistance – **shall not use that information for purposes other than those specified in the request** for assistance.

→ Art. 15 para. 1 Convention 1981

## 3 Special provisions for sensitive personal data

### ***Prohibition to collect and process sensitive personal data***

It is strictly forbidden to collect and process (i.e. recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination) ***of sensitive personal data***, revealing information on i.e.

- *racial or ethnic origin,*
- *political opinions,*
- *religious or philosophical beliefs,*
- *trade-union membership,*
- *health or sex life.*

→ Art. 8 para. 1 and Art. 2 lit. b Directive 95/46/EC

#### **To take into account**

Processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority, or if suitable specific safeguards are provided under national law, subject to derogations which may be granted under national provisions providing suitable specific safeguards. A complete register of criminal convictions may be kept only under the control of official authority.

→ Art. 8 para. 2 subpara. 5



**There are exceptions from this prohibition, inter alia if**

- the data subject has given his/her **explicit consent** to the processing of those data, except where the national laws provide that the prohibition may not be lifted by the data subject's giving his/her consent; or
- the processing relates to **data which are manifestly made public** by the data subject **or is necessary for the establishment, exercise or defence of legal claims**; or
- processing is necessary **for the purposes of carrying out the obligations and specific rights of the controller** in the field of employment law in so far as it is authorized by national law providing for adequate safeguards; or
- processing is necessary to protect the **vital interests of the data subject or of another person** where the data subject is physically or legally incapable of giving his consent; or
- processing of the data may be required for the purposes of **preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services**, and where those data are processed by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

□ **Art. 8 para. 2 Directive 95/46/EC, cp. Art. 6 Convention 1981**

## **4 Information to be given to the data subject**

### ***Information to be provided by the authority***

Information which must be provided to the data subject by the authority depends on: whether data are collected from the data subject or the data have not been obtained from the data subject.

□ **Art. 10 and 11 Directive 95/46/EC, cp. Art. 8 lit. a Convention 1981**

### **Data obtained from data subject**

In cases of collection of data from the data subject, the controller or his representative (i.e. public authority, agency or any other body which determines the purposes and means of the processing of personal data), must **provide a data subject with at least the following information from whom data relating to himself/herself are collected**, except where he/she already has it:

- the **identity of the controller** (the company) and of his representative;
- the **purposes of the processing** for which the data are intended;
- **any further information** such as

- the recipients or categories of recipients of the data,
- whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply,
- the existence of the right of access to and the right to rectify the data concerning him/her

in so far as such further information is necessary, having regard to the specific circumstances in which the data are collected, **to guarantee fair processing** in respect of the data subject (→ see point 2.2).

## Data obtained from other sources

Where the data have not been obtained from the data subject (e.g. from a bank or another financial institution), the controller or his representative must at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed provide the data subject with the information, indicated in point 4.1.1 above, including information on the categories of data concerned.

### ☞ Exception in this case

The controller is not obliged to supply information, ***if the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by law*** (in the event of provision of appropriate safeguards by the State).

## 5 The data subject's rights

The state authorities shall respect for following rights of the data subjects and establish ***appropriate and easily functioning procedures*** in order to guarantee these rights – but of course in compliance with its own legal obligations. The state authorities shall assist any person resident abroad to exercise his/her rights (→ **Art. 14 para. 1 Convention 1981**).

### ***Rectification, erasure, withdrawal of personal data***

The data subject has the ***right to obtain from the controller*** as appropriate – at his request and in particular at the time of exercising his right of access – the ***rectification, erasure, withdrawal or blocking of data*** which are incomplete, inaccurate or stored in a way incompatible with the legitimate purposes pursued by the controller.

→ **Art. 12 lit. b, Art. 32 para. 2 Directive 95/46/EC; Art. 12 para. 2 Directive 2002/58/EC, Art. 8 lit. c Convention 1981**

## ***Right to obtain information***

Every data subject has the right to obtain from the controller, without constraint at reasonable intervals and without excessive delay or expense

- ***confirmation*** as to whether or not data are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed,
- ***communication of the data undergoing processing and of any available information as to their source,***
- ***knowledge of the logic involved in any automatic processing of data*** concerning him/her at least in the case of the automated decisions.

→ Art. 12 Directive 95/46/EC, cp. Art. 8 lit. b Convention 1981

### **☞ To take into account**

***This right can be restricted by a legislative measure,*** where there is clearly no risk of breaching the privacy of the data subject, and when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of creating statistics.

→ Art. 13 para. 2 Directive 95/46/EC

## ***Right to object***

The data subject has the right to object at any time on compelling legitimate grounds relating to his/her particular situation ***to the processing of data*** relating to him/her, save where otherwise provided by national legislation. This right may be exercised at least ***in cases related to:***

- processing which is necessary for the performance of a task carried out in the ***public interest*** or in the ***exercise of official authority*** vested in the controller or in a third party to whom the data are disclosed; or
- processing which is necessary for the purposes of the ***legitimate interests pursued by the controller*** or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject.

Where there is a justified objection, the processing instigated by the controller may no longer involve those data.

→ Art. 7 lit. e and f, Art. 14 lit. a Directive 95/46/EC

## ***Right to a judicial remedy***

Everyone has the right to a judicial remedy ***for any breach of the rights guaranteed*** him/her by the national law applicable to the processing in question

→ **Art. 22 Directive 95/46/EC, art. 15 Directive 2002/58/EC, Art. 8 lit. d Convention 1981**

☞ **To take into account**

The State shall establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection.

→ **Art. 10 Convention 1981**

### ***Entitlement to damages***

Any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to the EC-Directives is entitled to receive ***compensation from the controller for the damage suffered***. The controller may be exempted from this liability, in whole or in part, if he proves that he is not responsible for the event giving rise to the damage.

Thereby, the state authority should find way to compensate damages on own initiative by friendly settlement without referring the data subject to courts.

→ **Art. 23 Directive 95/46/EC**

### ***Exclusion from an automated decision***

Every person has the ***right not to be subject to a (an automated individual) decision*** which produces legal effects concerning him/her or significantly affects him/her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him/her, such as his/her performance at work, creditworthiness, reliability, conduct, etc.

→ **Art. 15 para. 1 Directive 95/46/EC**

### ☞ Exceptions

A person may be subjected to a decision of such kind, if that decision

- is taken *in the course of the entering into or performance of a contract*, provided the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or that there are suitable measures to safeguard his legitimate interests, such as arrangements allowing him to put his point of view; or
- is *authorized by a law* which also lays down measures to safeguard the data subject's legitimate interests.

→ Art. 15 para. 2 Directive 95/46/EC

## 6 Appropriate technical and organisational measures

### ***Protection of personal data***

The controller must implement appropriate technical and organizational measures to protect personal data *against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access*, in particular where the processing involves the transmission of data over a network, and *against all other unlawful forms of processing*.

→ Art. 17 Directive 95/46/EC, Art. 7 Convention 1981

### ***Safeguard security of provider's services***

The provider of a publicly available electronic communications service must take appropriate technical and organisational measures to safeguard security of its (provider's) services, if necessary in conjunction with the provider of the public communications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these *measures shall ensure a level of security appropriate to the risk presented*.

→ Art. 4 Directive 2002/58/EC

## 7 Control mechanism

In elaboration of the States obligation to establish “appropriate sanctions and remedies” in order to monitor the effective application of the data protection principles (Art. 10 Convention 1981) the State shall set up one or more **supervisory authorities**. These authorities shall act with **complete independence** in exercising their functions.

**Art. 28 Directive 95/46/EC, Art. 1 Additional Protocol to the Convention (1981) 2001** (see also points 2.9 and 2.10 above)

### 7.1 Powers of the supervisory authorities

The supervisory authorities shall have following powers:

- **investigative powers**, such as powers of access to data forming the subject-matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties;
- **effective powers of intervention**, such as e.g. that of delivering opinions before processing operations are carried out and ensuring appropriate publication of such opinions, of ordering the blocking, erasure or destruction of data, of imposing a temporary or definitive ban on processing, of warning or admonishing the controller, or that of referring the matter to national parliaments or other political institutions;
- the **power to engage in legal proceedings** where the national provisions adopted pursuant to this Directive have been violated or to bring these violations to the attention of the judicial authorities.

→ **Art. 28 para. 3 Directive 95/46/EC, Art. 1 para. 2 Additional Protocol to the Convention (1981) 2001**

☞ **State’s duty to consult:**

The State shall consult the supervisory authorities when drawing up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data.

→ **Art. 28 para. 2 Directive 95/46/EC**

### 7.2 Functions of the supervisory authorities

The supervisory authorities shall:

- **hear claims** lodged by any person, or by an association representing that person, concerning the protection of his rights and freedoms in regard to the processing of personal data (in particular, hear claims for checks on the lawfulness of data processing). The person concerned shall be informed of the outcome of the claim;
- **draw up a report on its activities** at regular intervals which shall be made public;
- cooperate with one another authority to the extent necessary for the performance of their duties, in particular by exchanging all useful information.

→ **Art. 28 paras. 4-6 Directive 95/46/EC**

☞ **Duty of professional secrecy:**

The members and staff of the supervisory authority, even after their employment has ended, shall be subject to a duty of professional secrecy with regard to confidential information to which they have access.

→ **Art. Art. 28 para. 7 Directive 95/46/EC**

### **7.3 Decisions of the supervisory authorities**

Decisions by the supervisory authority which give rise to complaints *may be appealed against through the courts.*

→ **Art. 28 para. 3 Directive 95/46/EC**



## Twinning Project RO2006/IB/JH 08

“Supporting the Institutional capacity to prevent trafficking in human beings in Romania”

### Annex 6.5 Statements from ANITP regarding data collection

#### **I. Questions to ANITP regarding the data base on victims of THB raised during the meeting with Twinning MS Project Team on 22 July 2009**

##### **1) What is the legal base of the data base?**

According to the Law 678/2001 regarding combating trafficking in persons, the specialized structures of the Ministry of Administration and Interior develop and update the databases regarding the phenomenon, taking into account the traffickers and the victims.

One of the objectives of National Action Plan for 2006-2007 was creating a national centralized system regarding the victims of trafficking in persons.

##### **2) What are the aims of the data collection? Are there already any concrete legal or administrative measures of ANITP which have been taken based on information gained from the data base?**

Aims of data collection are to understand the size and dynamics of the crime, to monitor the assistance and integration process, and also to monitor the activities related to the victim-witness coordination programme. The personal data is needed to avoid duplication and is necessary for keeping track of the victim as she/he is referred from one service provider to another.

Regional centers, based on the data collected, develop prevention campaigns focused on the target groups in the region.

ANITP initiated a new form of the law against trafficking in persons, and the argumentation is partially based on the data collected.

##### **3) Who needs the data and for which aims? Who has access to the data base ?**

The data is the basis for all the reports about human traffic, including the annual report. Also the system allows for monitoring the assistance provided to the victims and also the activities related to the coordination of the victims during the legal process.

Only the personnel directly involved in activities related to human traffic has access to the database – the personnel from the Regional Centers of NAATP and the personnel from Directorate for Countering Organized Crime. The Border Police previously had access rights, but now those are revoked, because of a change of responsibilities. The users have access only to data that they know already from other sources (legal investigation, case assessment), and they all have certification to access classified data.

##### **4) Is the readiness of victims to testify before the police, the prosecutor and/or the court a prerequisite to get full assistance by ANITP? How is the legal situation and how is the practice?**

The readiness of victims to testify before the police, the prosecutor and/or the court is not a prerequisite to get full assistance by ANITP, but only the prosecutor has the legal authority to classify a case as a human trafficking case. In practice, all the persons are considered



“presumed victims” until a prosecutor confirms the case. The victims receive full support from the start.

**5) Are victims of THB (whose personal data are stored) informed about the data processing (do they give an “informed consent” ?) and do they have any right to contest (deletion or rectification of their personal data) ?**

All the data is collected with the written consent of the victims, obtained during the first hearing by the officers of Directorate for Countering Organized Crime. In case of a refusal, they are given a generic name (ANONIM) and a fake (non-valid) personal identification number.

The law regarding personal data protection allows them to inquire about the use of data, and also to demand modification or deletion of that data.

**6) How (in which form) and how long are the personal data of victims stored. Is there any anonymisation of the names of the victims? When are the data deleted?**

The personal data stored consist in personal identification number, name, and date of birth and place of residence. The data is kept in written form at the regional centers, and in electronic form in the database at the central headquarters. The written data is kept in metal lockers, and the database only allows direct access from the administrator.

Because the ANITP must monitor all the assistance process (not only social reintegration, but also obtaining new identification papers, finding a new job and legal assistance) across many providers, and also the progress of the trial, the people responsible for each case must know the real identification data.

The data is kept for 5 years and then is transformed into anonymous data, which is kept for statistical purposes. The data is deleted in case of an erroneous entry.

**7) Is there any independent control of the processing of personal data of victims, for example a data protection commission/commissioner or a data protection officer ?**

There is a National Authority for protection of personal data, and specific departments for personal data protection at the Ministry of Administration and Interior level, and also at General Inspectorate of Romanian Police level.

**8) Is there a permanent consultation and cooperation between the police, prosecutors, ANITP and NGOs on procedures combating THB and supporting victims of THB? Is there any formal structure for communication and cooperation?**

At the county level there are inter-institutional teams focused on trafficking in persons, and at the national level there is an inter-ministerial action group.

The legal framework for the cooperation is set by the national identification and referral mechanism for victims of trafficking in persons.

**9) Are there THB related trainings for the police, prosecutors, and judges?**

Yes, there is periodical training provided by various on-going projects, with support from Romanian and foreign experts.

**10) Is there also a data base on personal data of suspects of THB?**

ANITP only has legal responsibilities related to the victims. The data regarding the traffickers is kept by the Directorate for Countering Organized Crime.

## **II. Template for the database**

Although we refer to it as “database”, actually ANITP has a whole complex software system, including database and application server software. Because of the internal restrictions and taking into account the complex operations required to install the system, is impossible for us to provide you with a blank database.

We can provide you with the list of the fields used to uniquely identify a case:

- personal identification number
- name
- date of birth
- sex
- age at the time of trafficking
- country of residence
- county of residence (if the victim is from Romania)
- destination country
- means of exploitation
- period of traffic
- date of identification



## Feedback of the BC’s anti-trafficking experts to the recommendations of the C.2 report

The STEs’ report was sent to ANITP regional centers. They discussed the recommendations of the experts within the inter-institutional working groups (WG) of each county. These WG include experts of anti-trafficking.

The regional centers sent back reports reflecting the specialists’ feed-back to the material written by the STEs on the national identification and referral mechanism for victims of human trafficking.

The reports from the regional centers were collected by the C component leader, and proposals, suggestions and completions of the Romanian experts can be found below:

### *1. Ensure data collection standards and data protection mechanisms*

- The database (DB) is used for statistic purpose to monitor the dynamics/ evolution of the human trafficking phenomenon in Romania.
- The stakeholders confirmed that institutions have specific databases that are accessed only by the authorized personnel within that specific institution.
- Certain stakeholders proposed to enter the identification data of the traffickers in the database on victims of human trafficking. The purpose would be to ensure a trial as the identification data of the traffickers can be more useful if in a database.
- Certain specialists suggested access to/right of entering of data into the database to be given to other stakeholders as well, not only Police or ANITP.
- Alba TWI (Territorial Work Inspectorate) representative proposed a unique database that should be accessed by all stakeholders involved in the fight against trafficking in persons, especially to allow identification of perpetrators of human trafficking, like persons who facilitate labor exploitation (a trafficker may hide under the cover of an employment agency), for the purposes of the criminal trial.
- Since there has been suggested that the database should no longer contain the full name of the victim, even though the victim agrees to have his/her data entered, the specialists raised the problem of the victim’s access to assistance, of the monitoring of the victim and of his/her coordination during the criminal trial.
- Certain specialists stated the need for a database for the current ongoing professional activities.

- Providing assistance is not conditioned by entering in the database of the person's data and his /her access to services is not restricted either. Providing services is not conditioned by the victim's taking part in the criminal trial.

## ***2. Unconditionality of access to assistance services and informed agreement***

- A minimum set of data on the victim is needed in order to provide him/her with specialized assistance.

- Certain assistance services (social assistance, medical assistance) can be provided without imposing on the victim the request to testify in court; other services are conditioned by the victim's taking part in the criminal trial (psychological counseling, free legal assistance, financial compensations granted by the state).

- The legal framework should be improved to acquire the status of a victim of human trafficking; when a person can be considered a victim (presumed victim, confirmed victim/ plaintiff or witness) in order to have access to assistance services.

- The victim is re-traumatized because of repeated hearings during the criminal trial (police-prosecutor- judge), and moreover because of the postponement and duration of the trial in court (speeding up of the trials in cases of human trafficking).

- There are conditions imposed also when the victims are referred for assistance services, because social assistance institutions cannot take over the case without knowing the victim's personal data, and from the point of view of the police, if the person is not a victim of human trafficking in a file, even though there is evidence that he/she is a victim, in practice it is very difficult to have the person referred further on to be provided assistance.

- The Probation Service Representative mentioned certain delimitations under law no.211/2004 between a victim of human trafficking as plaintiff and as witness. If the plaintiff signs the official report regarding the rights of the victims of human trafficking under the law above mentioned, his/her personal data are put down in that official report; this doesn't happen with the victim-witness, for which the law does not stipulate that it is mandatory to inform her about the assistance services available to victims.

- Certain specialists proposed that the victim who refuses to cooperate with the legal bodies, after the reflection period, (while he/she is provided unconditioned assistance), should be deprived of this right.

- All persons identified as victims should be provided assistance services and protection, without being conditioned by the existence of a criminal file.

- Victims of human trafficking who do not have the status of victims as defined by DIICOT, and are suspect of being victims of human trafficking are not provided assistance by DGASPC. NGOs consider that assistance must be provided to presumed victims as well. Unfortunately these NGOs provide assistance to assumed victims only over the duration of their ongoing projects. In addition, there are only few NGOs providing assistance to victims. Most NGOs deal with prevention of human trafficking. To have access to ANITP Personal Identification Number (PIN) would be a necessary source to assist presumed victims. Usually, the reflection period is not accessible for victims as they must cooperate with the prosecution authorities in order to be provided protection; otherwise they have to dial the emergency number 112 when they are liable to be threatened or abused by traffickers. Also, the prosecution authorities and investigation authorities think that traffickers can no longer be apprehended or arrested if victims do not agree to provide information at the right time.

- There were also cases when an assumed victim of human trafficking was informally identified and first referred to ANITP that further on referred the victim to the investigation and prosecution authorities.

### ***3. Transparency and clear information about existing services, responsibilities and tasks of partners***

– Specialists asserted that parallelisms cannot be avoided currently because of the laws in force and of the functioning rules of duty bearers in the human trafficking field. It is recommended a unique referral standard form to fill in, the same for all structures, to avoid the victim's reduplicated questioning.

### ***4. Harmonized structures***

- Although providing equal assistance services for all victims in Romania is desirable, we cannot neglect the different degrees of involvement in this phenomenon of various governmental and non-governmental stakeholders as well as local features.
- Some regional centers cooperate very well with partner institutions providing assistance services. There is clear information on the services available. The tasks and responsibilities of the involved stakeholders are also known.
- Specialists want unitary work procedures in order to avoid discrepancies among regions, areas and institutions.

### ***5. Further assessment of tasks, structure and role of the ANITP, the Regional Centres and the regional Inter-institutional Working Groups***

- The participants appreciated the role of ANITP experts. ANITP is the specialized institution for the coordination and assessment of prevention in human trafficking and monitoring of the assistance provided to victims.
- Participants underlined that there is an inter-disciplinary cooperation, the anti-trafficking teams meet on a regular basis, quarterly, and they cooperate successfully, both on prevention and countering of human trafficking as well as on assistance provided to victims; but there is no efficient legislation.
- There are other working groups that take decisions for social cases, similar to the county anti-trafficking groups, except that they are volunteers.
- Regarding the decisions taken by the anti-trafficking inter institutional teams, where the members are not leaders of the partner institutions, but mere representatives of those institutions, they can be taken only after further consultations.
- Implication of more local institutions, associations and NGOs in anti-trafficking, along the three components – prevention, protection and assistance, as well as countering – would be a positive aspect that would result into the diminution of the phenomenon.
- M.I.R.A.'s Order no. 335/2007, does not state clearly the responsibilities of each institution involved in anti-trafficking and there are no penalties stipulated for cases of non-fulfillment of professional duties.
- Regarding the restructuring of the Agency within other ministries, the participants thought that as a result of this restructuring, the importance of anti-trafficking diminishes significantly.
- The participants mentioned also cases where specialists working with victims of THB became witnesses in files regarding these victims which lead to exposure to threats from traffickers.

### ***6. Create and ensure sustainable quality of services***

- The stakeholders appreciate the recommendation made by the STEs; they are open to new local partners. There are no specialized NGOs on human trafficking at local level.

### ***7. Giving equal importance to prosecution/criminal proceedings and to victims' rights/protection***

- Participants asserted that certain progress was made since the legislation in force grants the victim the right to an ex officio lawyer.
- More importance to be given to victims' rights / protection, by finalizing criminal trials faster.
- In court, the victim's ex officio lawyer is changed; the ex officio lawyer in court is different from the one during the prosecution stage. It was recommended to stipulate in the law that ex officio lawyers should be the same during the first stage of the criminal trial, which is prosecution, until the legal investigation stage.
- Changing of the legislation was considered necessary, in the sense that ANITP role regarding coordination of the criminal trial should increase.
- Participants discussed potential legislative amendments to the Criminal Code on pimping, provisioned for in article 329, paragraph 2 of the Criminal Code, in order to ensure a correct definition of the crime of human trafficking, stipulated in the special law.

### ***8. Improving the situation of groups at risk of being trafficked***

- Participants agreed that people at risk to be trafficked are often vulnerable because of their material, social and educational status. That is why countering trafficking must identify first the roots of the causes and improve the situation of persons liable to be trafficked.
- The recommendations made by the STEs in the report were highly appreciated; however, given the current economic situation (mass laying-off) it is difficult to improve the situation of persons liable to trafficked and to initiate support projects.
- Certain specialists asserted that the figures reflecting the trafficked persons are higher. A national survey would be necessary to reflect the situation of people liable to be trafficked.

### ***9. Further prevention and awareness raising activities, trainings (also train-the-trainer trainings).***

- The importance of ANITP prevention campaigns in cooperation with all the stakeholders was emphasized; activities meant to inform the population shall continue locally, supported by the local authorities.
- Recommendations regarding the improvement of the situation of people at risk to be trafficked and new prevention activities as well as awareness-raising and training were seen as strongly correlated. Poverty was pointed out as the main cause, which triggers prevention and training activities especially in economically disadvantaged rural areas.
- There is a great need of specialists to work with THB victims, to be trained by more experienced specialists and to share experience with different specialized foreign institutions and organizations.
- Continuous professional training for those providing assistance to victims of THB by:
  - a) Meetings with representatives of foreign organizations working in this field, in order to find common action means.
  - b) Attending international conferences on this subject.
  - c) Specialized psychology courses to ensure proper management of the situation and psychological support for the victims in order to avoid re-trafficking;
- Specialists expressed their wish to continue the awareness raising campaigns.
- More diversified ways to present the anti-trafficking messages, especially on electronic support, leads to a better understanding of the phenomenon under all its aspects, and generates efficient action means.

- Strategies in the field must depend on the particular case, on the needs and on local resources available.
- Learning from other states' experience in the field of THB fight and adjusting it to our realities would result in a higher efficiency of national strategies to fight against human trafficking.
- During the prevention campaigns, depending also on the local features, availability of informative materials is needed; the materials should include information in languages less used in Romania – Arabic, Chinese, Indian, etc.
- The need to introduce in the school curricula of more hours of prevention in the field of human trafficking.
- Increased role of prevention activities and awareness-raising regarding the effects of the human trafficking.
- NGOs representatives and authorities involved in this problem should carry out informative activities in schools during tutorial classes.
- Distribution of informative leaflets, posters in schools and public institutions, etc.

### ***10. Provision of appropriate and secure shelter possibilities***

- As for minors/ victims of human trafficking, it would be better to provide shelter to them in special centers (abused minors separately from/ delinquents)
- In the case of adult victims, they can be sheltered in mixed centers (other traumas).
- Some participants mentioned that mixed centers are not advisable, considering the psychology of the victims of human trafficking, the assistance services they need and the protection needs of those centers.
- Increased protection of victims by clearly defining the activities that must be carried out and the institution/ institutions to put them into practice.

### ***11. Ensure appropriate and neutral funding for all partners of the NRM***

- Participants proposed a joint protocol signed by all stakeholders to define the steps to be followed and implication of each social player, to cover the incurred costs, depending on the identified activities/ needs (ex: transportation costs, accommodation, medical recovery expenses, etc).
- Specialists think that all the parties involved need adequate financing to fulfill their tasks successfully. The funding requests and the financing mechanisms should be open for all those who can prove they can work at high quality standards.
- Need to get funds from the state budget, through ANITP and not only (County Councils – DGASPC, Local Councils – SPAS) on prevention activities, specialized assistance or protection.
- The availability of an emergency expenditures fund, that would cover transportation, accommodation, clothing, food, medicines, etc), should be managed by regional centers. It would lead to a better cooperation with the victims. It would raise their confidence and implicitly determine them to cooperate with the judicial bodies (police, prosecution department, court).
- There are insufficient funds allocated for NGOs and for governmental structures to support services to victims.
- The specialists agreed that funds allocated for assistance are not enough to ensure proper support to all the victims. For example, there is no modality to cover transportation costs for a victim that wants to attend a qualification course, taking place in another town. Also, financing of medical treatments is very difficult or even impossible.

### ***12. Strengthening of cooperation with law enforcement in other countries***

- The specialists agree on the recommendations made; however, in order to make use of information in the trafficking cases, it is compulsory to go through official channels.
- Participants underlined the existence of a tight relationship between the Romanian police and the similar foreign law enforcement institutions, which resulted in dismantling of many important human trafficking networks.

### ***13. Assessment of amount/necessity of bureaucracy***

- Increased importance given to services provided at the right time; bureaucracy is not a problem; nor is the people's motivation to cooperate faster.
- All institutions providing support must get rapidly involved upon request from the ANITP inspectors, in order to ensure an efficient intervention.

### ***14. Distribution of the current report to all stakeholders involved.***

- The report was distributed to all the stakeholders involved.

### ***Other proposals, comments:***

- The recommendations of the STEs must be adapted to the realities and possibilities in our country at this moment.
- The need of a legislative initiative to impose one or two laws the most to regulate the phenomenon, including: prevention, identification, providing of specialized services to the victims, protection of the victims, countering of the phenomenon, the duty-bearers, responsibilities, etc.
- Quarterly joint national meetings with all the inter - institutional stakeholders, in order to better understand the phenomenon, the victims' specific needs, the special rights and services to be provided, to know all institutions involved at national level and, for the purpose of training and authorizing specialists in the field; thus, positive experience would be taken over, new financing resources would be identified, cooperation would be improved, and last but not least, the phenomenon would diminish.
- The hearing procedure for victims with protected identity is not always put into practice. The victim's interest is not a priority usually; the perpetrator's rights are safeguarded; as a matter of fact the perpetrator's rights are better emphasized in the Criminal Codes than the victim's interests.
- Enhanced and diversified social and professional reintegration for victims of THB by increasing the role of the county employment agencies (professional training courses can be initiated).
- Increased role of voluntaries;
- Strict monitoring of the employment agencies providing employment opportunities abroad.
- Trafficked persons who do not consider themselves victims or do not want to identify as such because of shame expose themselves to a re-trafficking risk, when they return home. The specialists consider that many of these people do not identify as such because they are afraid not to be accused of various offences committed during the trafficking process (as the trafficker threatened them) or are not aware that they were victims of this crime because they lack the legal information and knowledge thereto.
- Given the Romanian incomplete and inefficient legislation regarding the real legal protection of the victim during the criminal trial and the turning to good accounts of the victim's civil rights during the ongoing criminal trial, as well as regarding the opinion of the



courts according to which the victim is not a party in the trial according to the Criminal Procedure Code, we propose the following:

a) To amend art. 4, paragraph 1 in Law 211/2004, in the sense of adding, after "victims of crime", the following specifications: **witnesses, plaintiff or injured parties in the criminal trial**. Otherwise, according to the current laws, as they are interpreted by courts, victims can be provided protection of identity only if they testify as witnesses in the trial, thus giving up their right of injured party or plaintiff, according to the criminal procedures; however, any person that suffered an injury as a result of a crime can denounce the action and the perpetrator to the judiciary bodies and he/she can become a plaintiff claiming damages in the criminal trial. In the current legislative framework, the victim unfairly, either chooses to be a witness with protected identity, or he/she gives up the right to protected identity protection and he/she shall be a plaintiff in the trial claiming damages.

b) As a result, we must also regulate the modality by which a person with protected identity and who got moral damages given by court decision, can turn to good account his/her civil claim by enforcement of court decision. The current Romanian legislation does not provide for the executor the right to have access to the victim's real identity while handling the files and he has no obligation to keep the secret of the identity attributed to the civil party, former victim of the human trafficking.

c) We also appreciate that certain amendments should be made to law 21/2004 or to the Criminal Procedure Code; by these amendments, it becomes compulsory to enter in the file, as evidence, starting with the prosecution stage, the psychological and social evaluation reports of the victim of THB, written by ANITP experts, as these reports can provide a complete picture of the circumstances in which the victim was recruited, his/her vulnerability, factors that made possible the offence (the victim's low level of education, the family or the inevitably vicious environment, the poor community he/she comes from, etc) but also the situation the victim finds himself/herself after committing the offence, in the criminal investigation stage or the criminal trial (posttraumatic stress syndrome, Stockholm syndrome); all this would lead to best measures for an efficient protection of victims provided by judiciary bodies and to an objective assessment of victim's depositions during the criminal trial and last but not least, to commensurate sentences given to traffickers.