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# REPORT

## LEGAL FRAMEWORK FOR COMBATING TRAFFICKING IN PEOPLE

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## I. INTRODUCTION

1. According to the decision adopted at the Twelfth Meeting of the Legal and Political Affairs Committee held in Athens on 20 October 1998 and upon the proposal made by the Ukrainian PABSEC Delegation, "Legal Framework for Combating Trafficking in People" was put on the agenda of the Thirteenth Meeting in Chisinau on 20-21 April 1999 as the main item.
2. Given the importance to the issue, the PABSEC International Secretariat circulated a letter to the national delegations (Ref.: LC 6074/98 of 9 November 1998) asking for relevant information, documentation and suggestions on the report and recommendation to be submitted to the Committee and later to the PABSEC General Assembly.
3. The present Report aims to consider particular problems encountered in regard to the general phenomenon of trafficking in people, to explore its nature, scope and extent; to identify possible areas of assistance to potential victims of trafficking as well as to those who have already been trafficked to the border area; to assess the possible measures to improve the situation, to prevent trade in people and to outline legislative mechanisms for further bilateral and multilateral interstate cooperation in integrating efforts for combating trafficking in people in the BSEC countries.
4. Among the National Delegations only Greece, Russian Federation, Turkey and Ukraine responded and forwarded their contributions. The information contained in these replies has been incorporated into various sections of the present Report and relevant Recommendation. The Turkish Office of the International Organisation for Migration showed its keen interest and provided materials on the issue. In addition, the PABSEC International Secretariat obtained information from various Internet sources to complement the Report.
5. The Rapporteur with the assistance of the International Secretariat has drafted the Report based on the information received from the above mentioned sources but, unfortunately, lack of statistical data from the member countries do not permit to draw comprehensive analyses on the situation in the Black Sea region.

## II. NATURE AND SCOPE OF THE PROBLEM AND RECENT DEVELOPMENTS

### *General overview*

6. Trafficking in people is a subject of world-wide concern and continues to grow despite the efforts of the world community to fight it. This is a phenomenon which is expanding and constantly changing in form and level of complexity, and due to high profits and little risk, criminal groups become increasingly involved in these actions. Being essential component of the organised crime, trafficking in people

constitutes a real danger to the society getting logistical support and security protection from the well-established crime syndicates.

7. Trafficking in people with its various manifestations – migrant trafficking, trade in children, child labour, inter-country adoption, trafficking in women, human trafficking for the purpose of trade in human organs, etc. - acquire more general character in the world, including the BSEC countries and becomes dangerous factor for the development processes.
8. Grave socio-economic conditions caused by transformation of the economy from central planned to a market economy with the development of the private sector and commercial structures left most of the population in the BSEC countries effectively jobless. Despair, increase in inequality, wide-spread unemployment, rapid inflation and overall poverty were aggravated by unstable political climate, lax government control and inadequate legislative framework.
9. On the other extreme, globalisation of the world economy, opening of the borders and reveries on easy life in the countries with developed economies triggered waves of migration to European free-market democracies. Difficult domestic economic condition forced people to search for new job opportunities and sources of better income out of their home countries.
10. The recipient countries were not ready for these massive waves of migration and imposed limitations and restrictions to the access to the formal and regulated labour market. Thus, measures have been taken to tighten procedures, reinforce border controls and reduce labour permits for foreign workers. So, while the number of people wishing to migrate from poorer countries increased, opportunities for legal migration to developed countries decreased and the people who wished to flee abroad and materialise their dreams on better life were left frustrated.
11. This situation created favourable conditions for illicit activities of the criminal groups specialised in trafficking in people primarily working in developing countries. Their interest was attracted to the new space and within a few years the focus of their activities was shifted to the countries of Central and Eastern Europe including the newly independent states. Thus, the Black Sea region became part of the global network for trafficking in people.
12. Statistics prove that in most cases trafficked persons make a conscious decision to migrate or seek temporary employment abroad, although these decisions are based on incomplete or incorrect information. The people, motivated to seek better conditions choose legal or even illegal migration as an option and became vulnerable to be victims of trafficking by criminal groups.
13. Among the cases of trafficking in people in the BSEC countries, the most alarming nature has trafficking in women (for the purpose of forced prostitution, false marriage, domestic labour, clandestine employment or other profit-making forms) all living and working in slave-like circumstances.

*Situation in the BSEC countries*

14. As mentioned in the previous chapter the socio-economic situation in most of the BSEC countries has suffered a serious decline, unemployment continues to grow, even for those who have a full-time job, average monthly salaries are comparatively low and wage arrears continue to be the most serious problem. This pushed people to look for better paid jobs in developed countries in order to send back remittances to their families left behind in their home countries.
15. According to the study<sup>1</sup> conducted by the International Organisation for Migration in Ukraine, the years since the country regained its independence have also been the years of disappointment, of decline and unrealised potential. According to the majority of them (62%) the socio-economic situation became worse during the past year; 33% of the respondents did not see any change; only 5% of them noted some improvement. In addition, more than half of the respondents believed that the situation will remain unchanged or become worse. Only a little over quarter of them predicted an eventual amelioration, but only in a long term (six years or more). As for the deterioration of the nation's socio-economic condition, 46,5% specified substantial decline in their living standards compared to previous year, and 43,1% noted some decline. Only 1.3% of the respondents noted substantial improvement and 9% noted some improvement in their living standards.
16. Although Ukraine is brought as an example, the situation is more or less similar in other BSEC countries in transitional with ongoing economic reforms.
17. On the other hand, the liberalisation measures on the way of building democratic society such as economic liberalisation, relaxation of border controls, increasing ease of international travel serve as pushing factors giving hand to expansion of trafficking in people and sets the favourable scene for the growth in transnational lucrative criminal actions.
18. The motives of a women for following the trafficker are often based on false promises of well paid jobs and higher income, and often traffickers take good care of their victims before signing the contracts and crossing the border, but it turns in violence and abuse after a woman leaves her home country. As a rule, traffickers promise to arrange necessary travel documentation and visa formalities. Moreover, cost of transportation can be advance and repaid after the woman starts to generate income. Many women are deprived of their travel and identity documents and the threat is used to control their activities.
19. The Ukrainian Ministry of Interior estimated that 400 000 Ukrainian women have been trafficked during the last decades alone<sup>2</sup>. There are a few estimates concerning the number of women trafficked to and from the BSEC countries. It should be noted that given the clandestine nature of trafficking in people, the cases

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<sup>1</sup> The Research Report "Information Campaign against Trafficking in Women from Ukraine" by the International Organisation for Migration – July 1998.

<sup>2</sup> USAID. An Integrated Strategy to Address the Trafficking of Ukrainian Women. Kiev, 1998

known to the law enforcement agencies represent only the tip of the iceberg of the problem.

20. The trade in women varies according to several factors. Most of the women and girls are attracted by promises by traffickers that they will be able to earn a great deal of money in a short period of time. Some of these women believe that they are recruited for legitimate jobs and then find themselves forced into prostitution. Some are aware that they are recruited for sex industry, but they do not expect that they be deprived of their passports, work without pay and sold like merchandise from one owner to another. Traffickers adapt quickly to the situations and find all possible ways and means to camouflage their illicit activities, e.g. they arrange work permits for “artists”, “dancers”, “entertainers”, in the clubs or use false documents for trafficked people to travel.
21. In order to look into the core of human trafficking, the factors should be identified how the traffic networks operate. Once these factors are studied, the possible measures to prevent and eradicate trafficking in people may be considered and outlined.
22. According to the paper<sup>1</sup> drawn up by the IOM, three types of traffickers are differentiated: (1) *occasional traffickers* doing minor trafficking business in border regions providing internal or international transportation on short distances for individuals or small groups over the poorly secured border; (2) *Small, well-organised trafficking rings* specialised in trafficking nationals from one country to another over and over again; (3) *Organised international trafficking networks* using sophisticated connections and are capable to produce falsified documents acting in more expanded regional bases. These networks are most difficult to fight with and are most successful in trafficking in people.
23. As for the types of network, trafficking in women is also divided into three groups: (1) *the large-scale network* – based on the structure of the international contacts at different political and economic levels in the countries of origin and destination; (2) *Medium scale network* – having much modest abilities to trade in women, and (3) *small-scale network* working in a very restricted numbers.
24. Evidences prove that trafficking victims who attempt to escape the trafficking rings or who are deported by authorities by irregular migrants are in most cases forced back, e.g. in Turkey, the women are arrested by the Aliens’ Police and are treated as irregular migrants, they are taken to aliens’ detention centres and are subsequently subject of deportation. Deportation of Romanians and Moldovans are done by bus across Bulgaria and the traffickers are positioned in the small towns across the border, persuading returnees to rejoin the trafficking cycle. These women are either returned to Turkey again, or are relocated to more lucrative markets in Europe.<sup>2</sup>

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<sup>1</sup> Trafficking of women to countries of the European Union: characteristics, trends and policy issues – Conference Paper submitted by the International Organisation for Migration – Conference on Trafficking in Women for Sexual Exploitation. Vienna, June 1996

<sup>2</sup> IOM project on Return and Reintegration of Trafficked Romanian and Moldovan Women from Turkey, Ankara 1999

### III. NATIONAL AND INTERNATIONAL LEGAL NORMS REGARDING TRAFFICKING

#### *National legal norms*

25. Most of the national laws penalise trafficking. From the replies received from the national delegations of Greece, Turkey and Ukraine, trafficking in people is variously covered by provisions of the national legislation and penal code.
26. The existing legal framework in Hellenic Republic on combating organised trafficking in people is embodied in the Law No 1975/91 providing severe penal and administrative sanctions.
27. The existing penal code of the Russian Federation envisages punishment for crime against family and infants. It includes an article on "Trade in Infants", which determines punitive measures against trade in infants and any case of making deals with the purpose of transfer to the ownership. More strict punishments are envisaged for the repeated acts of trade in infants as well as their trans-border trafficking. Any person involved in similar actions is a subject of detention and punishment.
28. The aliens bearing illegal status or those illegally entering or exiting from the Republic of Turkey is regulated by the provisions of the Passport Law No 5682, The Law of Penalties No 765, The Law on Labour No 1475, Regulation regarding the transport of people and goods by road, The Law regarding the stay and travel of aliens in Turkey No 5683, the Law regarding the art and services reserved for the Turkish citizens No 2007, The Law of Syndicates No 2821 and Law of Social Securities No 506.
29. There are also bilateral agreements on cooperation between the Ministries of Interior regarding coordinated action against trafficking in persons, e.g. bilateral agreements between the Ministry of Internal Affairs of Ukraine and the Ministry of Internal Affairs of Bulgaria and the Ministry of Internal Affairs of Ukraine and the Ministry of Internal Affairs of Romania.

#### *International legal norms*

30. There are a number of international instruments dealing with the problem of trafficking in people:
  - *The Black Sea Economic Cooperation* - the Third Meeting of the Ministers of Internal Affairs in Corfu, Greece on 1-2 October 1998 adopted the Agreement on Cooperation among the Governments of the BSEC Participating States in Combating Crime, in particular, in its Organised Forms. Within the framework of this agreement the decision was taken to set up a Working Group on cooperation in combating organised crime in order to examine the ways of implementation of the Agreement.

- *The United Nations* – the major conventions within the UN framework: The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; The Slavery Convention; Convention of the Elimination of Discrimination against Women; The Convention for Suppression of Traffic in Women and Children; Convention of the Rights of a Child; Declaration on the Elimination of Violence against Women, address the problem of human trafficking for the purpose of profit making and imply measures for combating this illicit practice. It should be noted that only a few number of the PABSEC member countries are parties to these conventions.
- *The Council of Europe* has given attention to human trafficking by holding a number seminars and conferences with participation of non-governmental organisations. These gatherings discussed several aspects of trafficking in people, particularly women, summarising that new strategies should be elaborated aiming to empower women rather than control and suppress abuse and violence, since efforts at control and suppression may lead to negative consequences for trafficked women. In its turn, the Council of Europe adopted the Recommendation 1325 on Traffic in women and forced prostitution in Council of Europe member states in 1997.
- *The International Labour Organisation* has conducted some work concerning the global problem of human trafficking and assessed that in the short term, economic development is likely to increase migration, both legal and illegal rather than to reduce it. Among the Important Documents within the framework of ILO addressing the problem of trafficking in people is the Forced Labour Convention, and its International Programme on the Elimination of Child Labour, which is designed to develop a comprehensive programme to tackle trafficking in children including action-oriented research and investigation of practices, setting up of a common inter-country mechanisms and to increase the capacity of governmental and non-governmental organisations to stop cross-border trafficking.
- *International Organisation for Migration* expanded dramatically its activities towards combating traffic in persons. The IOM has organised research studies on trafficked persons, arranged conferences on migrant trafficking discussing nature of migrant trafficking and existing and new policies to combat those illicit activities and linkages to organised crime. The IOM is also active in information dissemination compiling and spreading news, trends and policies regarding migrant trafficking. Through the local offices in different regions of the world, IMO provides overall analyses and outlines projects and programmes for rehabilitation of trafficked persons. The IMO centre in Ankara has developed the Project on return and reintegration of Trafficked Romanian and Moldovan Women from Turkey.

#### IV. APPROACHES AND MEASURES TO COMBAT TRAFFICKING

31. Trafficking in human beings is a very complex problem which touches upon several areas of government policy, including those on criminal, judicial, migration and

social spheres. It is also complex in the sense that many countries are involved in trafficking network either as source, destination or transit states. Moreover, some of the countries may play all three roles at a time.

32. Aware of the complexity of the issue, and taking into consideration that trafficking in people continues to be an under-reported crime in most of the BSEC countries, an explicit or coherent policy have to be elaborated by the countries individually and collectively to deal with this problem.
33. On the other hand, development of an effective strategy to combat trafficking may pose a number of problems for national governments, since it has to be built upon the comprehensive analyses of the causes of trafficking and its operational mechanisms.
34. In this respect, the respective governmental agencies and non-governmental organisations have to cooperation in a very coordinated manner to prevent and stop cross-border trafficking. At the same time an effective strategy must be elaborated to involve greater international cooperation.
35. Trafficking is a problem which can not be dealt with adequately at the national level alone since the trafficking networks often involve persons of different nationalities who are able to shift their activities from one country to another, and policy measures taken in one country combating trafficking may not be enough, pushing traffickers to a neighbouring country to do the “business” more freely.
36. Improvement of economic and social conditions in the countries in transition may be one of the most effective factors against the development of trafficking. It could discourage people from seeking the jobs abroad and look for services of traffickers. Taking into account the tempo of economic reforms, and huge gap between the rich and poor, it could be considered the long-term measure in the process of combating human trafficking.
37. At the same time, the assistance projects, similar to those, conducted by the International Organisation for Migration should be supported and promoted, especially those that are specifically targeted against the most urgent situations.
38. The authorities at local, national and international levels should promote information campaigns to alert general public and to protect potential victims from traffickers.
39. The police have to play a critical role in tracing and revealing trafficking operations. At the same time, the prevention efforts by police forces could be improved by setting up of special units that will coordinate efforts of different government departments and agencies locally and at the regional level.
40. Given the international dimension of the problem, there must be a greater exchange of information at national and international levels between the national police forces and within the Interpol framework

41. Since in the most BSEC countries the legislative and judicial systems were restructures to be more democratic with more liberal punitive measures, the necessity raises to introduce new laws with heavier penalties and more precise definition of the crime of trafficking in persons and their interrelation with the organised criminal networks.
42. In this respect, the Hellenic PABSEC delegation suggests to deal with the issue in the framework of the Multilateral Agreement among the Governments of the BSEC Participating States on Cooperation in Combating Crime, in particular in its Organised Forms.

#### IV. CONCLUSIONS

43. The Report has highlighted the aspects of trafficking in people in general and its cases in the Black Sea region. As seen, the phenomenon of the human trafficking so far remains poorly understood and a coordinated strategy to combat this illicit trade has yet to be developed.
44. The Report suggests that the countries use existing multilateral instruments for fighting trafficking in people and, especially, the trafficking in women, which is most common type in the BSEC countries. Also it is recommended that bilateral agreements be strengthened and coordinated policy be developed both at national and international levels in order to combat the activities of human traffickers.
45. The parliamentarians have to use their authority and make a strong stand against human trafficking in order to prevent occurrences of these evil in the countries of the Black Sea region, and, thus, contributing to the common world-wide effort to combat the human trafficking and protect possible victims.