



POLICY BRIEF

Countering Human Trafficking: Identifying, Returning and Assisting Victims from Ukraine

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February 2020

SUMMARY

The emergence of atypical human trafficking schemes poses new challenges to Ukraine's authorities in terms of identifying, returning and assisting the trafficking victims. The most problematic cases feature the involvement of trafficking victims into criminal activities abroad. As the public authorities often fail in making a coordinated effort and in gaining the trust of the trafficking victims, the successful response to human trafficking continues to depend considerably on the active engagement of non-governmental and international organisations, as well as private persons. The state, however, has already accumulated sufficient experience in order to proactively assume its responsibility for the victims. In order to raise the level of trust towards the competent institutions and ensure an improved response to human trafficking, the state must address the remaining legislative gaps, improve the coordination between the responsible agencies and ensure that their personnel is properly trained and adheres to the principle of confidentiality towards the trafficking victims.



The main countries of destination for trafficking victims from Ukraine include the Russian Federation, Poland, Turkey and the United Arab Emirates.

CONTEXT

Ukrainian nationals trafficked abroad: Scale and main trends

Ukraine is a source, transit and destination country for victims of human trafficking and other forms of exploitation. The main countries of destination for trafficking victims from Ukraine include the Russian Federation, Poland, Turkey and the United Arab Emirates. These countries feature the most court decisions and reports of trafficking cases, as well as assistance claims to governmental and non-governmental organisations on behalf of trafficking victims.

According to official statistics, the number of victims identified in criminal investigations related to human trafficking in Ukraine amounted to 231 in 2018, 309 in 2017, and 86 in 2016¹. The official number of persons who received the status of a trafficking victim has been similar: 221 in 2018 and 198 in 2017². However, due to the latent nature of human trafficking, these figures do not reflect the actual reality. This is manifested by the number of THB victims who were assisted by international and non-governmental organisations: in 2018, 1,265 victims were assisted in Ukraine as compared to 1,256 victims in 2017 and 1,015 in 2016³.

In recent years, the work on detecting and preventing the trafficking of Ukrainian nationals abroad has been intensified. The State Border Guard Service plays a significant role in this process. In 2017, it prevented trafficking of 151 potential victims, including 82 children⁴.

The largest share among the trafficking victims ends up in the Russian Federation, which also shares the longest border with Ukraine. Most often, the victims are trafficked to the city of Moscow (or wider Moscow Region) and forced into providing sexual services in brothels, nightclubs, or otherwise exploited in construction, in the illegal production of alcohol and other economic sectors. There are also cases of Ukrainian victims subjected to forced begging in the public space.

Ukrainians residing in the occupied Crimean peninsula and parts of the Donetsk and the Lugansk Regions – the territories, which Ukraine cannot effectively control today - find themselves in a particularly vulnerable position. The migration flows originating from these regions lack control by the official structures of the state. According to unofficial reports, the recruitment of child soldiers has become common in these districts.⁵

Within the European Union, the main countries of destination for Ukrainian labour migrants are Poland, Germany, Italy, Spain and the Czech Republic. Once there, these migrant workers often become victims of labour and sexual exploitation. Most victims are young women forced into sexual services in nightclubs and into the production of porn videos, including online broadcasting. The exploitation of men is less widespread across the EU, mainly occurring in the form of irregular employment in the construction and manufacturing sectors.

¹ Statistics of the Prosecutor General's Office of Ukraine: https://www.gp.gov.ua/ua/stst2011.html?dir_id=113656&libid=100820# Access date June 20, 2019

² Ministry of Social Policy of Ukraine website: <https://www.msp.gov.ua/timeline/?t=165&from=&till=&m=19#tagpanel> Access date June 20, 2019

³ 2018 Department of State Trafficking in Persons Report: https://ua.usembassy.gov/wp-content/uploads/sites/151/UKRAINE-2018_TIPReport_FINAL_Ukr.pdf Access date June 18, 2019

⁴ Report on Implementation of the State Social Program on Countering Human Trafficking until 2020: <https://www.msp.gov.ua/timeline/?t=165&from=&till=&m=19#tagpanel> Access date June 28, 2019

⁵ 2019 Trafficking in Persons Report: https://ua.usembassy.gov/wp-content/uploads/sites/151/Ukraine-2019-TIP_-_Country-Narrative-FINAL_Ukr-new.pdf Access date June 25, 2019

In Turkey and the United Arab Emirates, Ukrainian victims are also mostly subjected to sex trafficking. These victims are almost invariably young women who faced financial difficulties back home and left to work abroad.

There are also individual cases of recruitment and trafficking of Ukrainian nationals for illegal organ removal. For example, Ukraine convicted a recruiter who brought two Ukrainian nationals to the Republic of Sri Lanka, where their kidneys were removed in the clinics of Colombo⁶.

In general, sexual exploitation remains the most common form of trafficking among Ukrainian victims. However, the number of identified trafficking cases for labour exploitation purposes and cases of children trafficking have been increasing lately.

NEW TRAFFICKING SCHEMES

The most dangerous trafficking schemes of the recent past have made use of legislative gaps for trafficking of newborns, as well as trafficking of Ukrainian nationals abroad for engagement into criminal activities related to the distribution and smuggling of drugs and smuggling of irregular migrants on sea vessels.

In terms of drug smuggling, one of the best known cases, attracting a lot of public attention in Ukraine, has been the case of the “drug couriers”. A transnational criminal group, which was also active in Ukraine in 2016-2017, recruited Ukrainians to work in the delivery services in the Russian Federation. The recruits were promised a high salary, reimbursed for their travel to be interviewed in Kiev, as well as for their train tickets to Russia, and provided with a mobile phone. Upon their arrival, instead of the promised work, the victims were forced to distribute drugs under the guise of couriers. Those refusing to distribute the packages of suspicious substances were immediately handed to the Russian police and subsequently prosecuted for possession or distribution of drugs. According to the Ministry of Social Policy of Ukraine⁷, over 300 Ukrainians became victims to this trafficking scheme and ended up criminally prosecuted or even convicted in the Russian Federation.

In addition, there are cases of Ukrainian citizens recruited and trafficked to Brazil. In 2014-2016, under the pretext of a well-paid job, eight Ukrainians were brought to Brazil, where they were threatened or deceived in order to transport cocaine to Thailand, Ecuador or Laos. Those detained with drugs while crossing the borders have been under threat of a death penalty or long prison terms.

Another scheme concerns the involvement of Ukrainian sailors into the smuggling of irregular migrants. According to the Ministry of Foreign Affairs, ever more Ukrainians have recently found jobs as sailors in Greece and Italy. Forcibly or by deceit, they ended up smuggling irregular migrants to these countries. As a result, 186 Ukrainian sailors were detained in Greece, with another 150 sailors prosecuted in Italy⁸.

⁶ Case No. 760/9149/14-k // Sentence of the Solomyansky District Court of Kiev dated 17.06.2015: <http://reyestr.court.gov.ua/Review/45836432> Access date June 25, 2019.

⁷ Ministry of Social Policy of Ukraine website: <https://www.msp.gov.ua/news/17068.html> Access date June 18, 2019

⁸ In Italy, more than 150 Ukrainian sailors were detained, arrested or sentenced, in Greece – 186, as reported by the Ministry of Foreign Affairs Ukraine: <https://interfax.com.ua/news/general/569269.html> Access date June 18, 2019

The trafficking of Ukrainian nationals abroad for engagement into criminal activities is one of the most dangerous trafficking schemes.



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The attempts of the state authorities to return the trafficking victims to Ukraine have shown little success. In the case of the drug couriers, only 15 nationals convicted in Russia for distribution of drugs have returned to Ukraine to continue serving their sentences⁹. In cooperation with the Brazilian authorities, one Ukrainian victim was released and returned home, while another was awaiting the court decision, with two more serving their sentences of 25 years' imprisonment¹⁰. In 2018, only 64 Ukrainian sailors were released and returned home¹¹.

Criminal schemes serving the trafficking of newborns have represented a particular challenge among the cases of child trafficking. Aiming for profit, criminals search for Ukrainian women with unwanted pregnancies, as well as for foreigners from the EU willing to “acquire” a child. Such illegal actions are often disguised as a surrogacy procedure, which is allowed in Ukraine. The traffickers use private medical clinics to issue fake documents confirming an alleged artificial insemination and arrange the fulfillment of all other formalities required by the surrogacy procedure. Once the child is born, the interested foreign clients come to Ukraine for the first time to record their parental rights and collect the child. In this way, the foreigners manage to smuggle Ukrainian children, who are biologically alien to them.

The trafficking of newborns from Ukraine is also possible due to legislative provisions, which allow to legally register any male indicated by the biological mother of the child as its father. To this end, it is sufficient to submit the necessary documentation on behalf of the mother and the “father” indicated by her, as well as the child's birth certificate. This legal loophole allows foreign men to come to Ukraine and attempt to smuggle Ukrainian children abroad. The state lacks the resources and instruments to control the fate of the children adopted by foreigners. To date, Ukraine has not ratified the 1993 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which could help facilitate an efficient control.

EXISTING CHALLENGES TO COMBATING HUMAN TRAFFICKING

Lack of coordination

Over a dozen state agencies¹² of Ukraine are responsible for the issues related to the identification and return of victims of human trafficking, with the Ministry of Social Policy performing the general coordination role among these various bodies. Meanwhile, the diplomatic missions and consular services of Ukraine carry out the key operational actions. These institutions supply Ukrainian nationals with the required travel documents, provide counseling and legal assistance, and facilitate the return of victims with no financial means. They are also required to observe the compliance with the rights of adopted children and respond to any violations in this regard.

⁹ Ministry of Social Policy of Ukraine website: <https://www.msp.gov.ua/news/17068.html> Access date June 18, 2019

¹⁰ Report GRETA (2018) November 2018. Published November 22, 2018: <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82> Access date June 15, 2019

¹¹ In Italy, more than 150 Ukrainian sailors were detained, arrested or sentenced, in Greece – 186, as reported by the Ministry of Foreign Affairs Ukraine: <https://interfax.com.ua/news/general/569269.html> Access date June 18, 2019

¹² National Police, Ministry of Foreign Affairs, Ministry of Social Policy, State Border Guard Service, Ministry of Internal Affairs, Security Service of Ukraine, General Prosecutor's Office, Verkhovna Rada Commissioner for Human Rights, regional and municipal state administrations, etc.

In reality, the state authorities do not always properly understand the division of roles and responsibilities of each stakeholder when facing a concrete case. The procedure which is regulating their interaction¹³ mainly aims at assisting those victims who apply for such assistance individually in Ukraine. It refers them to the competent agency authorized to address the specific query. Meanwhile, the actual identification of victims abroad and the provision of the necessary assistance to them remain unaddressed, both at the regulatory and operational level.

The lack of a proactive and coordinated effort on behalf of the competent state authorities became evident in cases involving Ukrainians recruited to perform criminal activities in other countries¹⁴. These cases concerned a large number of Ukrainian nationals criminally prosecuted abroad. Most of them were not granted a victim status within the Ukrainian criminal proceedings and did not know about the possibility and necessity of obtaining it. The communication with these victims was further complicated by their detention.

Instead of the state authorities, it was the relatives, friends, non-governmental and international organizations who took the most active role in such cases¹⁵. They arranged the lawyers for the prosecuted victims, found previously unidentified victims, facilitated the recognition of those detained abroad as victims, and supplied foreign law enforcement and judicial authorities with the information required for exemption from liability. The same international organizations¹⁶ maintain several “hotlines” in Ukraine, providing telephone counseling and informing on anti-trafficking measures. Between 2006 and 2018, the IOM Ukraine “hotline” alone consulted 253,450 persons¹⁷.

Distrust of the authorities

The reluctance of the victims to reach out to the government authorities and apply for a victim status seriously hampers assisting them. The all-Ukrainian NGO ‘Coalition for Combating Trafficking in Human Beings’ has identified a number of underlying reasons, including the fear of confidentiality breaches; lack of understanding of the benefits of the victim status; formalistic approach of the government authorities to victims; incompetence of the officials authorized to interview the victims. Moreover, the victims may fear the possible revenge of the traffickers or try to overcome the memories of their suffering, as well as question the ability of the law enforcement authorities to protect them and hold their perpetrators accountable.

When deciding on whether to approach the government authorities, the victims tend to consider their own, frequently unfavorable previous experience in communicating with the state representatives, as well as the experiences shared by other victims. Since the victim status determination procedure¹⁸ does not provide for any confidentiality measures, the victims often believe

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¹³ Procedure for Interaction of the Entities Operating in the Field of Combating Human Trafficking, 2012: <https://zakon.rada.gov.ua/laws/show/783-2012-%D0%BF> Access Date June 25, 2019

¹⁴ Press conference on the issue: “The Ukrainian couriers case”. Main Committee Press Center. December 5, 2017: <https://www.youtube.com/watch?v=Wqe3dyzBzz4> Access date June 25, 2019

¹⁵ The current situation prompts significant logistical and financial participation of international and non-governmental organizations, such as the International Organization for Migration, Ukrainian Helsinki Committee for Human Rights, National Council of Women of Ukraine, NGO La Strada-Ukraine, Caritas-Ukraine, and many others implementing victim assistance programs in return procedures.

¹⁶ International Organization for Migration (IOM) Office in Ukraine. OSCE Project Coordinator in Ukraine, NGO “La Strada – Ukraine”.

¹⁷ National Hotline to Combat Human Trafficking: <http://www.527.org.ua/index.php/527/> Access date June 28, 2019

¹⁸ Procedure for Determining the Status of a Human Trafficking Victim, 2012: <https://zakon.rada.gov.ua/laws/show/417-2012-%D0%BF> Access date June 25, 2019



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that the authorities may disclose the details of their exploitation to their relatives or the public. Moreover, the victims may be unaware of the free psychological, material and legal assistance available to them or doubt its quality.

Finally, the victims can only count on a small financial assistance by the state. The compensation for the damages suffered by them does not represent a priority for the law enforcement officials investigating these crimes. Without sufficient knowledge of the possibility to obtain material assistance or to file a civil lawsuit, the victims rarely approach the authorities.

It is important to note that the law enforcement authorities are not focusing on protecting the victims from repeated victimization. The victims instead are repeatedly questioned on the details of their story during the pre-trial investigation. Furthermore, they are required to testify in court so that the court can refer to them for its sentencing. There are no security guarantees in criminal proceedings, since an effective victim and witness protection system remains yet to be established.

The ineffective provision of assistance by the Ukrainian government authorities with regard to trafficking victims under the jurisdiction of other states is a separate issue. The actual implementation of the relevant recommendation, specified in Art. 26 of the Council of Europe 2005 Convention on Action against Trafficking in Human Beings, faces a number of challenges in Ukraine. The recommendation suggests not to impose penalties on the victims for their involvement in unlawful activities if they have been forced to commit them. To achieve this, Ukraine would first need to recognize the persons as trafficking victims. In reality, however, the investigation and collection of data confirming the victim status may start after the prosecution of the Ukrainian national abroad has taken place. Moreover, the victims often end up in situations of deceit or exploitation of their vulnerable position, rather than coercion, as provided for in the Convention. On this basis, the respective states often refuse to exempt them from punishment or criminal persecution. There are ways to ensure a mitigation of the punishment, pardon or transfer individuals for serving their sentence in Ukraine, but even such solutions depend on the laws applicable in the state of prosecution. Lastly, these processes lack clear and elaborated inter-state and intra-state regulations and involve a broad range of stakeholders, whose individual actions may block the entire undertaking.

The State has the opportunity to mitigate many of these deficits by increasing the level of trust in the government authorities, as well as by raising the public awareness of the real possibility to obtain help and support.

RECOMMENDATIONS

In the regulatory sphere, the competent agencies of Ukraine should develop and implement **clear standards for interaction between the government authorities** in the field of identification and return of victims of trafficking. Such standards should include detailed operation modalities for each agency involved, the concrete forms and procedures for interaction between the competent bodies, as well as towards partner agencies in other countries, but also citizens, non-governmental and international organizations. These standards could be ensured by updating and further elaborating the current *Procedure for Interaction of the Entities Operating in the Field of Combating Human Trafficking*.

To avoid delays in the exchange of information and decisions among the responsible authorities, **the processes of their interaction and coordination should be simplified**. In particular, it is worth maximizing the use of the Internet for communication, as well as electronic systems for planning and organization of the work. The implementation of modern technical solutions should ensure the possibility for different agencies to work simultaneously, thereby reducing the response and decision-making period.

When addressing concrete cases, there is a necessity to **identify the concrete areas in which each government agency should take the lead** and thereby actively manage the process, involving other government agencies, as well as non-governmental and international organizations in addressing specific issues.

To **help address the issue of trafficking in children**, it is necessary to **ratify the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption**, as well as to create, on its basis, efficient procedures for monitoring the fate of children adopted from Ukraine. Such mechanisms should also be reflected in the *Procedure for Interaction of the Entities Operating in the Field of Combating Human Trafficking*. It is necessary to continue **improving the monitoring of surrogacy procedures for foreigners**. This should allow to prevent and promptly identify falsified documents and other actions applied for smuggling of children.

To **increase the trust of trafficking victims** in the state authorities, it is important to **ensure the principle of confidentiality** towards the victims and to embed this principle in the *Procedure for Determining the Status of a Human Trafficking Victim*. Upon approaching the government authorities, all victims should learn about the full confidentiality granted to them. Moreover, the personnel shall be selected well and trained in a way to first and foremost ensure and restore the rights of the trafficking victim.

The state should also establish the appropriate legislative framework for the functioning of the **witness protection program** for criminal proceedings inside Ukraine. Based on the experience of other countries (e.g. Italy, Germany, Slovakia etc.), Ukraine could also apply this program to victims of trafficking.

The information on the existing free psychological, material and legal assistance available to victims of trafficking has to be disseminated more efficiently, especially among potential victims. This can be achieved through social advertising and printed informational materials. The good practices of informing the victims about the state bodies authorized to issue the status of a trafficking victim and the benefits of such a status should remain in place. The access of the victims to the status determination procedures and all necessary assistance shall be continuously simplified and improved.

Given that the successful implementation of the proposed measures largely depends on the work of government officials, special attention should be paid to their **systematic training**, which should focus on the following key aspects: 1) assisting victims in preparation and filing of a claim for compensation of damages within criminal proceedings; 2) minimizing re-victimization factors during pre-trial investigation and judicial review; 3) ensuring the safety of victims should their life and health come under threat. When organizing staff training and work, personnel shall be encouraged to ensure confidentiality of information pertaining to the nature of the victims' exploitation. Meanwhile, each stakeholder shall ensure proper specialization of its anti-trafficking personnel.



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This publication was produced in the framework of the 'Prague Process: Dialogue, Analyses and Training in Action' initiative, a component of the Mobility Partnership Facility II project, with the assistance of the European Union.

The contents of this publication are the sole responsibility of the author and the "Prague Process: Dialogue, Analyses and Training in Action" initiative, and can in no way represent the views of the European Union.

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Funded by the European Union



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