

The Georgian Young Lawyers' Association

Overview of the Georgia's efforts to prosecute perpetrators of trafficking in persons

Prepared by Otar Kakhidze

July 2005

1. Introduction

In 1948, the Universal Declaration of Human Rights proclaimed that "no-one shall be held in slavery and servitude..." More than half a century later, the problems of slavery and slave-labour remain unresolved. Moreover, they have expanded and evolved beyond their historical characterizations as the realities of the movement of, and trade in people changed.

In recent decades trafficking in human beings has become an issue of growing concern worldwide as by its scale and grave consequences it is regarded as the third biggest crime after illicit trafficking in narcotic drugs and in weapons.

The international community has recognized that human trafficking must not be seen primarily or exclusively from the perspective of national security or fighting against organized crime and illegal migration. Human Trafficking is, first of all, a serious violation of fundamental human rights and freedoms, namely the right not to be held in slavery or servitude, the right to liberty and security of person, the right to be free from cruel or inhumane treatment and the freedom of movement. It differs from "smuggling" in significant ways and though placed within a framework of suppression of transnational organized crime, it may occur within countries.

Since early 1990s, trafficking in human beings has emerged as a serious problem also in Georgia. According to the results of a recently conducted survey of various national and international institutions, the number of persons emigrating from Georgia is high reaching nearly 1 million out of the entire 5 million populations. Thousands of many of these are trafficked into forced labor and prostitution abroad. Georgia is a country of origin and transit for trafficking in human beings. It also faces a growing number of domestic trafficking, especially trafficking in children.

On June 2005 the US Department published a report, which stated that Georgia moved to Tier 2 from Tier 3 watch list given its achievements in combating trafficking.¹ The Department places each of the countries into one of the three lists. This placement is based on the extent and effectiveness of a government's actions to combat trafficking. The Department first evaluates whether the government fully complies with the TVPA's (Trafficking Victims Protection Act) minimum standards for the elimination of trafficking. That do are placed in Tier 1. For other governments, the Department considers whether they made significant efforts to bring themselves into compliance. Governments that are making significant efforts to meet the minimum standards are placed in Tier 2. Those countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so are placed in Tier 3. Finally, the Special Watch List criteria are considered and, if applicable, Tier 2 countries are placed on the Tier 2 Watch List.

Governments of countries in Tier 3 may be subject to certain sanctions. The U.S. Government may withhold non-humanitarian, non-trade related assistance. Countries that receive no such assistance would be subject to withholding of funding for participation in educational and cultural exchange programs. Consistent with the TVPA, such governments would also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development- related assistance) from international financial institutions such as the International Monetary Fund and multilateral development banks

¹ Trafficking in Persons Report - released by the Office to Monitor and Combat Trafficking in Persons - June 3 2005, chapter III - Tier placements;

such as the World Bank. The Government of Georgia does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.²

2. Definition/Elements of trafficking

Trafficking in human beings is a complex phenomenon, which can not be easily captured into a legal definition. It is however important to be clear on the definition of trafficking, as the characterization of the issue will determine the legislative strategies to prevent trafficking, to protect the victims and to punish the traffickers.

2.1. International Law

There was no internationally agreed definition of trafficking until December 2000 when the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was opened to signature in Palermo³. This protocol defines trafficking in persons as:

The recruitment, transportation, transfer, harboring or receipt of persons, 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 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced

² Trafficking in Persons Report - released by the USA Office to Monitor and Combat Trafficking in Persons - June 3 2005, chapter III - Tier placements;

³ Regarding the Plan of Action against Trafficking in Human Beings (2005-2006), Ministry of Foreign Affairs of Georgia must elaborate proposals for Georgia's accession to the international agreements and treaties on the problem of human trafficking;

labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

So Trafficking is viewed as a contemporary form of slavery, which involves a variety of acts (recruitment, transportation, transfer, harbouring, receipt of person), actors (several intermediaries are often involved in the trafficking chain), means (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, etc) and exploitative purposes (forced labour or services, slavery or slavery-like conditions, sexual exploitation, servitude, etc)

2.2. Georgian Legislation

Georgia does not have a separate law on trafficking in human beings. Criminal Code of Georgia, as amended on 6 June 2003, includes articles 143¹ and 143² criminalizing trafficking in human beings and trafficking in children.

Pursuant to Article 143¹ of the Criminal Code of Georgia:

“Trafficking in human beings means the selling or buying a human being or making any other unlawful transaction in relation to him/her as well as recruitment, transfer, hiding or harbouring a human being by means of coercion, blackmail or deception for the purpose of his/her exploitation. “

Purpose of the crime, similar to that contained in the Palermo Protocol definition, is exploitation of a human being. However, the term "exploitation" is defined differently. In particular, the Criminal Code of Georgia defines exploitation as

use of a human being for the purpose of forced labour, involvement into criminal or other anti-social activity or prostitution, sexual exploitation or other kind of service, placing into contemporary forms of slavery or for the purpose of transplantation or other use of human organ, part or organ or human tissue.

As is seen, the Georgian definition of exploitation is silent regarding such crimes as slavery-like conditions and servitude. Instead of the classical definition of slavery, it uses the term "contemporary forms of slavery" which implies

deprivation of identification documents, restriction of the freedom of movement, prohibition of communication with the family, including correspondence and telephone conversation, cultural isolation, or forcing to work in conditions degrading human honor and dignity or without any reimbursement or with inadequate reimbursement.

Pursuant to the Criminal Code of Georgia, human trafficking may be committed by use of coercion, blackmail or deception.

Furthermore, the Code envisages other means of committing trafficking too, regarded as aggravating circumstances to the crime of trafficking. This is the case if the crime is committed

- by use of official powers;
- by use of violence dangerous for life and health or by threat of such violence;
- By use of vulnerable position of the human being or his/her material or other dependence on the offender.

The same article prescribes the following additional aggravating circumstances if the crime of trafficking in human beings is committed

- a) repeatedly;
- b) in relation to two or more persons;
- c) knowingly in relation to a pregnant woman;
- d) by taking the victim outside the country;
- e) By an organized group or if it resulted in the death of the victim or other grave result.

Conducts indicated in the Georgian definition such as the selling or buying a human being or making any other unlawful transaction in relation to him/her is not mentioned in the Palermo Protocol definition. Instead, these actions in the Protocol definition are expressed by another formulation "by means of the giving or receiving of payments or

benefits to achieve the consent of a person having control over another person”, which is the same as the selling or buying a human being.

The Georgian definition of trafficking has repeated the shortcomings of the Palermo Protocol definition. In particular, it incorporated such terms as “involvement into prostitution” and “sexual exploitation”, which are defined neither by international law nor by the domestic legislation.

Under the Georgian Criminal Code, perpetration of trafficking in human beings is punishable with deprivation of liberty for 5 to 12 years, if not committed in aggravating circumstances. If committed in aggravating circumstances, traffickers risk imprisonment for 8 to 15 years. Trafficking in human beings committed by an organized group or if it caused the death of the victim or other grave result is punishable with deprivation of liberty for 12 to 20 years.

Though the crime of trafficking in human beings has been criminalized, the Georgian legislation is still far from being perfect in this regard. In order to create an effective legislative base for fight against trafficking, it is necessary to elaborate a single and comprehensive law that would establish the legislative and organizational base for the prevention of and fight against trafficking in human beings, rights and obligations of state bodies, public associations and officials in measures against human trafficking, rules of coordination of their activity, legal status of victims of trafficking and guarantees for their social and legal protection.

Such draft law is already being prepared by the Georgian Young Lawyers’ Association in coordination with the Ministry of Interior, Ministry of Justice, International Organization of Migration and all other state agencies and non-governmental organizations having links with the relevant issues.

The draft law will pay a special attention to the protection of human rights of victims of trafficking and will harmonize the current Georgian legislation with the aforesaid United Nations Protocol and other relevant international legal standards.

2.3. Trafficking in children

There are various categories of child victims or potential victims of trafficking in human beings in Georgia:

- a. orphans, children without parental care, and children from multi-children families or families with a single parent;
- b. children whose parents emigrate to foreign countries for employment purposes and who become victims of trafficking themselves;
- c. children from extremely poor or socially vulnerable families;
- d. Children who have become victims of domestic violence.

According to the data of children's rights defender organizations, these are the children who become victims of increasing trafficking both within and outside the country. They are largely involved in begging, peddling of small items, production of pornographic materials and prostitution, domestic servitude, trafficking in narcotic drugs and other criminal or anti-social activity.

Children are trafficked by various means such as coercion, deception, intimidation, payment to the family or taking from the family under debt bondage, by abuse of their vulnerability or their dependence on others.

Pursuant to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol provisions are applied irrespective of the means used by the perpetrator. Any of the above-mentioned actions must be qualified as trafficking in children.

In determining the rights of victims of trafficking in human beings and their protection mechanisms, the Palermo Protocol places a special emphasis on specific needs of the child and stipulates that these needs shall be taken into account in accordance with standards established by international instruments on the rights of the child. The foremost out of these instruments is the United Nations Convention on the Rights of the Child, which contains provisions, along with other rights, on the protection of children from

human trafficking and exploitation. This Chapter provides a comparative analysis of the protection mechanisms of victims and witnesses of human trafficking on the one hand and of the rights under the Convention on the Rights of the Child on the other.

The Georgian Criminal Code prescribes trafficking in children in a separate article.

According to Article 143²,

“Minor trafficking is the buying or selling a minor or making any other unlawful transaction in relation to him/her as well as well as his/her recruitment, transfer, hiding or harbouring for the purpose of exploitation.”

The purpose of this crime is very important, because there is some relation between two offences - minor trafficking and illegal adoption/child selling.⁴

⁴ Relation between illegal adoption, baby selling and minor trafficking

Legitimate intercountry adoption provides a permanent family placement for a child unable to find one in his or her country of origin, absent any irregularities by the adoptive parents, the birth parents, or any parties involved in facilitating the relationship. Appropriate and legitimate intercountry adoption does not imply baby selling or human trafficking. Unless adoption occurs for the purpose of commercial sexual exploitation or forced labor, adoption does not fall under the scope of the article 143-2 of criminal code. Baby selling, which is sometimes used as a means to circumvent legal adoption requirements, involves coerced or induced removal of a child, or situations where deception or undue compensation is used to induce relinquishment of a child.

Baby selling is not an acceptable route to adoption and can include many attributes in common with human trafficking. Though baby selling is illegal, it would not necessarily constitute human trafficking where it occurs for adoption, based on the Trafficking Victims Protection Act, the UN Protocols on Trafficking in Persons and the Sale of Children, the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, and definitions of adoption established by U.S. jurisdictions. The purposes of baby selling and human trafficking are not necessarily the same. Some individuals assume that baby selling for adoption is a form of human trafficking because trafficking and baby selling both involve making a profit by selling another person. However, illegally selling a child for adoption would not constitute trafficking where the child itself is not to be exploited. Baby selling generally results in a situation that is no exploitative with respect to the child. Trafficking, on the other hand, implies exploitation of the victims. If an adopted child is subjected to coerced labor or sexual exploitation, then it constitutes a case of human trafficking.

The problem for prosecutorial bodies is the relation of two articles in criminal code of Georgia:

Article 143-2 - Minor trafficking

“Buying or selling a minor or making any other unlawful transaction in relation to him/her as well as well as his/her recruitment, transfer, hiding or harbouring for the purpose of exploitation.”

As is clear, the Georgian definition of child trafficking as that of the Palermo Protocol does not include a list of means of committing trafficking and focuses on the objective elements of crime and the purpose of crime, which is exploitation of the child. Unlike the Palermo Protocol definition, the Georgian definition contains a list of child trafficking in the part of aggravating circumstances and establishes stricter measures of punishment for the commission of the crime in such circumstances.

The child trafficking article of the Criminal Code consists of three parts. The first part prescribes trafficking without aggravating circumstances and declares it punishable with deprivation of liberty for 8 to 15 years. The second part concerns the commission of the crime in aggravating circumstances, punishable with deprivation of liberty for 12 to 17 years. Trafficking in children committed by an organized group or if it caused the death of the victim or other grave result is punishable under part three of the article with deprivation of liberty for 15 years or with life imprisonment.

Mechanisms for the protection of the rights of children who have become victims of human trafficking or of other crime as prescribed by the Georgian Criminal Procedure Code are not adequate and fail to meet special needs of children that may arise from specific situations.

A draft law on the prevention and suppression of trafficking in human beings and assistance, protection and rehabilitation of victims of trafficking is now being elaborated in Georgia. In addition to other issues, the draft law will take due account of the specificities of protection of the rights of child victims of human trafficking.

Article 172: - Making unlawful transaction in relation to minor

“Buying of a minor or making any other unlawful transaction in relation to him/her for the purpose of adopting.”

Often prosecutors are changing the qualification of the offense, because there is not absolutely clear the purpose of crime. Beside this, penalty for offence described in article 172, is not cruel (corrective labor for up to one year in length or by restriction of freedom for up to two years in length), so accused persons are trying to escape from high penalty.

3. Responsible Bodies

In December 29 - 2005, the President of Georgia approved Action Plan against Trafficking (2005-2006) and to ensure the efficient implementation of this plan, established *ad hoc* Interagency Commission against Trafficking under the auspices of National Security Council of Georgia. The main goals of the Commission are:

- a) to draft proposals regarding effective anti-trafficking activities and the ways of eliminating the factors stimulating trafficking and to present these proposals to the National Security Council of Georgia;
- b) to submit to the President the proposals regarding amendment of the legislation pursuant to the anti-trafficking Action Plan for 2005-2006 and enforcement of international treaties;
- c) to prepare a full list of international and regional treaties and agreements concerning trafficking for presenting at the session of the National Security Council, to draft proposals on expediency of Georgia's joining these documents;
- d) to prepare analytical reports on the condition of the Georgian migrants seeking employment and human rights for presenting before the session of the National Security Council, to work out proposals on improvement of the migrants' condition;
- e) to discuss the issues related to trafficking in close cooperation with NGO sector, international and local organizations dealing with trafficking in order to work out joint proposals for submitting to the President;
- f) to submit to the President the proposals on illegal labor emigration, also on establishment and strengthening of anti-trafficking institutional mechanisms;
- g) to monitor the situation with regard to illegal labor migration and anti-trafficking activities;
- h) to submit to the National Security Council the information on the activities performed during the year;

i) To study the information prescribed by the action plan and based on this information to prepare respective reports for submitting to the National Security Council.⁵

The Interagency Commission consists of representatives of the following agencies

- a) National Security Council;
- b) Prosecutor General's Office;
- c) Ministry of Internal Affairs;
- d) National Interpol Bureau;
- e) Ministry of Justice;
- f) Ministry of Foreign Affairs;
- g) Ministry of Labor, Health and Social Security;
- h) Ministry of Economic Development;
- i) Ministry of Finance;
- j) Ministry of Education and Sciences;
- k) Special Office of Foreign Intelligence;
- l) Department of Frontier Defense;
- m) Human Rights and Civil Integration Committee - Parliament;
- n) Ombudsmen's Office;
- o) Georgian Young Lawyer's Association;
- p) Open Society Georgia Foundation;
- q) Human Harmonious Development Society;
- r) Human Dimensions Office - OSCE;
- s) International Organization for Migration.

Investigative and Prosecutorial Agencies:

⁵ President's Decree No 50 Issued on February 1, 2005;

1. Ministry of Internal Affairs

a) Special Operative Department's Unit Against Human Trafficking And Illegal Migration;

Until May 2005, Investigation of TIP was undertaken by three agencies - Ministry of Interior, Ministry of State Security and the Prosecutor's Office.⁶

In May 2005, upon amendment in the Criminal Procedure Code⁷, investigative functions have been undertaken by Ministry of Internal Affairs,⁸ where the Special Operative Department's Unit #5 Against Human Trafficking and Illegal Migration have been established.⁹ The Unit consists of 30 persons, out of which there are 4 investigators and 26 operative staff, and among them 17 persons are working in the territorial offices of the Ministry.¹⁰ The main function of this Unit is combating human trafficking and illegal migration and pretrial investigation of these offences.¹¹

At this moment anti-trafficking unit has 19 cases in investigation.¹²

b) National Interpol Bureau in Georgia;

As trafficking is a crime which most frequently contains an international element, functions of the National Interpol Bureau are relevant to effective investigation and

⁶ Criminal Procedure Code, article #62;

⁷ law # 1204, March 25 - 2005;

⁸ Law #1204, March 25 - 2005, article 50, amendment in article #62;

⁹ Decree #685 of Minister of Internal Affairs - 30 December 2004;

¹⁰ Information from Ministry of Internal Affairs - letter # 7/7-2716, 29.07.2005;

¹¹ This unit does not have its own statute, so information is brought from statute of Ministry of Internal Affairs - December 27, President's Decree # 614, article # 17;

¹² Information from Ministry of Internal Affairs - letter # 7/7-2716, 29.07.2005;

prosecution of the crime of trafficking. The National Interpol Bureau in Georgia is a structural unit of Ministry of Internal Affairs¹³ and also is a member of General Interpol Agency¹⁴.

The main functions of the Agency are:

- to support permanent contact with General Interpol Agency and National Bureaus of other countries;
- to collaborate and coordinate Georgian law enforcement agencies and other relevant units with competent offices of other countries to combat crime on international level;
- to compare information about crime on international scale;

National Interpol Bureau's main principles are the rule of law and protection of Human Rights and Freedoms.¹⁵

The National Interpol Bureau's role in case of combating human trafficking is highly important, because mostly this crime has transnational character, so its successful prosecution without coordination between national police agencies is very difficult, even impossible. Less of coordination and collaboration is the most actual problem for investigative bodies and during the sessions of Anti-trafficking Interagency Commission, our attention was focused on this case.

2. General Prosecutor's Office¹⁶

- a) Department of Procedural Supervision on Prosecution in: - Public Security Offices of Ministry of Internal Affairs¹⁷, Special Office of Foreign Intelligence and Ministry of Defence.

¹³ Article 17 Statute of Ministry of Internal Affairs;

¹⁴ Article 4, 32, Statute of General Interpol Agency;

¹⁵ National Interpol Bureau's statute, article 6;

¹⁶ statute of Prosecutor General's Office, April 28, 2005;

The main functions:

- Procedural supervision on operative-detective activities and on pretrial investigation;
- To confirm the state accusation in court on those criminal cases, which have been investigated by abovementioned agencies;

(Until amendment in Criminal Procedure Code¹⁸, First action in criminal procedure was initiation of criminal case, which was essential for beginning of pretrial investigation. Investigation and prosecution of human trafficking was the Prosecutor's prerogative. Ministry of Interior's function was inquiring - which was the "beginning" level of pretrial investigation. Now initiation of criminal case and inquiring are repealed from criminal legislation and first procedural step is pretrial investigation, which became as a main goal of Ministry of Internal Affairs.)

- b) Department of Procedural Supervision on Prosecution in Ministry of Internal Affairs; (Their functions are the same as stated above, but include Agencies, except Public Security Offices(!) and Department of Frontier Defense)
- c) Department of Legal Support's Unit of Human Rights Defence. They compare information about human trafficking and officially represent Prosecutor Generals' office in this case. (statute of this unit is not approved at this time¹⁹, so we can not definitely say which are its official duties)

4. Statistical Data

¹⁷ in statute of Ministry of Internal Affairs we can not find the unit with this name, so government should make amendment in statutes its agencies, or there would be misunderstandings;

¹⁸ law # 1204, March 25 - 2005;

¹⁹ as we said above, its necessary to establish statutes of every state agency, because often it is reason of disagreement about competence between units, beside this, it is important for society - to know, which unit have responsibility on each job;

In order to assess the effectiveness of government's effort to prosecute trafficking, it is important to study the statistical information about the investigation and prosecution of such cases. This statistical information is presented below.

Prosecutor-General's Office 2003-2004					
		women	minors	men	infants
1. number of cases initiated	21				
2. number of people arrested	25	19		6	
3. number of people accused	29	21		8	
4. number of victims	66	62	11	1	3
5. number of persons wanted	8	6		2	
6. victims of sexual exploitation	62				

Average age of accused persons	40
cases in court	8
Cases in prosecution	12
number of people sentenced and imprisoned	3

These offences are committed in following regions	
1. Kakheti	3
2. Kvemo Kartli	1
3. Tbilisi	9
4. Adjara	4
5. Samtskhe-javakheti	1

6. Samegrelo	1
7. Svaneti	1
8. Mtskheta-mtianeti	1

Prosecutor-General's Office				
2005				
		women	men	infant
1. number of cases initiated	8			
2. number of people accused	14	11	3	
3. number of people arrested	8	6	2	
4. under mortgage	1			
5. under police control	4			
6. persons to search	1			
7. number of victims	12	7	4	1

These offences are committed in following regions	
1. Kakheti	1
2. Tbilisi	4
3. Adjara	1
4. Svaneti	1
5. Imereti	1

Ministry of Interior	
2003-2004	
1. number of cases initiated	6

2 .number of people accused	11
-----------------------------	----

Ministry of Interior 2005	
	Cases
1. number of cases initiated	15
a. women's trafficking abroad	9
b. infant trafficking	3
c. minors forced engaging in prostitution	2
d. man's labour exploitation	1
2. number of people accused	20
3. number of people arrested	12

Analyzing this statistical data, we can match some important issues

- 75% of accused persons are women;
- 91% of victims are women engaged in sexual exploitation;
- 45% of crimes are organized in Tbilisi;
- All of accused persons are unemployed
- Abovementioned criminal offences are parts of organized crime.