INTERNATIONAL ASSOCIATION OF JUDGES
THIRD STUDY COMMISSION
SENEGAL, NOVEMBER 2010
Answers of the Association of Judges of UKRAINE to the questionnaire

Question 1: Has your country signed and ratified the Palermo Protocol? If yes, on what date?

Question 2: Does your country have special legislation for the criminal prosecution of human trafficking? If yes, please answer Questions 3 to 10. If no, is there any such legislation presently under consideration?
The Criminal Code of Ukraine contains special provisions for the criminal prosecution of human trafficking, namely its Article 149 envisages the criminal responsibility for committing crime of human trafficking.

Question 3: How is human trafficking defined in your country’s legislation?
The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is an integral part of the national legislation of Ukraine (Article 9 of the Constitution of Ukraine) and defines the general notion of “human trafficking” as follows: «“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs». The same definition is provided by the Council of Europe Convention on Action against Trafficking in Human Beings. The Article 149 – Trafficking in human beings and other illegal transfer deals in respect of a human being – of the Criminal Code of Ukraine specifies the notion of “Exploitation of human being”, namely «Withing the meaning of this article exploitation of human being should be understood with reference to all forms of sexual exploitation, use in pornobusiness, forced labour or services, slavery or practices similar to slavery, servitude, peonage, removal of organs, performance of experiments on a human being without his / her consent, adoption for commercial purposes, forced pregnancy, engagement in criminal activities, use in armed conflicts etc».

Question 4: Does the legislation criminalize:
(a) Attempts to commit a trafficking offence?
   – YES.
(b) Participation as an accomplice or party in a trafficking offence?
   – YES.
(c) Organizing or directing others to commit a trafficking offence?
   – YES.
Question 5: Can corporations be charged with human trafficking along with natural persons (i.e. employment agencies, travel agencies, escort services)?

According to the Article 18 – Criminal offender (criminally liable person) – of the Criminal Code of Ukraine: legal citation: “1. A criminal offender shall mean a sane person who has committed a criminal offense at the age of criminal liability may rise under this Code. 2. A special criminal offender shall mean a sane person who has committed a criminal offense at the age of criminal liability may rise, if that offense may only be committed by a certain person”. Meanwhile corporation as legal entities shall bear criminal responsibility if it is found that along with the crime of trafficking in human beings on behalf and in the interests of the legal entity its chief executive officer, founder, participants or other authorized person has committed a corruption offence. In this case punishment in the form of fine, ban on carrying out certain activities, confiscation of property, liquidation of legal entity may be imposed on such legal entity under the Law of Ukraine “On the Responsibility of Legal Entities for committing corruption offences” adopted with respect to Accession of Ukraine to the United Nations Convention against Corruption and Council of Europe Criminal Law Convention on Corruption.

Question 6: Does the legislation contain special provisions regarding the trafficking in children? If yes, please describe.

– Yes. The provision of the Article 149 of the Criminal Code of Ukraine establishes that the punishment should be more severe if the victim of human trafficking is a minor. The Note to the Article 149 of the Criminal Code of Ukraine gives the following explanation: "Within the meaning of this Article the responsibility for recruitment, transportation, harbouring, transfer or receipt of a minor under 14 or a minor under 18 shall occur regardless of whether such actions committed with the use of deception, blackmail or position of vulnerability of the mentioned persons or by means of use of violence or threat of its use, or through abuse of power, or by a person on whom the victim was financially or otherwise dependent.

Question 7: What are the penalties for human trafficking offences? Do they include deportation/extradition? Do they include confiscation of instruments of trafficking and proceeds of trafficking?

The Article 149 – Trafficking in human beings and other illegal transfer deals in respect of a human being – of the Criminal Code of Ukraine provides the following punishments:
1. Trafficking in human beings or any other illegal deals with regard to a person as well as recruitment, transportation, harbouring, transfer or receipt of a person, committed for the purpose of exploitation with the use of deception, blackmail or position of vulnerability of a person, –
shall be punishable by imprisonment for a term of three to eight years.
2. Any such actions as envisaged by the paragraph 1 of this Article committed in respect of a minor under 18 or several persons, or repeated, or committed by a group of persons upon their prior conspiracy, or through abuse of power, or by a person on whom the victim was financially or otherwise dependent, or accompanied with violence that has not been dangerous to the life or health of the victim or his/her close relatives, or by means of threat of use of such violence, – shall be punishable by imprisonment for a term of five to twelve years, with or without the confiscation of property.
3. Any such actions as envisaged by the paragraphs 1 or 2 of this Article committed in respect of a minor under 14 or by an organized group, or accompanied with violence dangerous to the life or health of the victim or his/her close relatives, or by means of threat of use of such violence, or where these actions caused any grave consequences,
shall be punishable by imprisonment for a term of eight to fifteen years with or without the confiscation of property”.

The paragraph 2 of the Article 10 – Extradition of a person accused of a criminal offense and a person convicted of a criminal offense – of the Criminal Code of Ukraine determines that “Foreign nationals, who have committed criminal offenses on the territory of Ukraine and were convicted of these offenses under this Code, may be transferred to serve their sentences for the committed offenses in the state, whose nationals they are, where such transfer is provided for by the international treaties of Ukraine”.

Question 8: Are there statistics available on the number of prosecutions and rates of conviction in your country for human trafficking offences since its antitrafficking legislation was adopted? If yes, please provide.

The Association of Judges of Ukraine has the following statistics available:
- 99 persons were convicted for commission of trafficking in human beings in 2008;
- 110 persons were convicted for commission of trafficking in human beings in 2009.

Question 9: To what extent does your country permit (through legislation or protocols) the pursuit of anti-trafficking investigations in cooperation with foreign intelligence or police services?

According to the Article 31 of the Criminal Procedure Code of Ukraine it is envisaged that “the procedure for the interaction of the courts, prosecutors, investigators and the inquest bodies with the respective competent bodies of foreign states as well as for the execution of mutual inquiries shall be determined by the legislation of Ukraine and international treaties of Ukraine”. The European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 and its Additional Protocol of March 17, 1978 entered into force for Ukraine on June 09, 1998. Provisions of these documents determine the limits of the interaction between law enforcement bodies of Ukraine and foreign states. Ukraine is the party to a number of other multilateral and bilateral treaties on mutual assistance in criminal matters which do not provide any other limits of the interaction between law enforcement bodies different from those established by the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol. The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of November 08, 2001 which regulates for example the procedures of cross-border observations (Article 17) and joint investigation teams (Article 20) et-cetera, has been already signed by Ukraine but has not been ratified by its parliament yet.

Question 10: Are there provisions protecting trafficked persons from being prosecuted or punished for their illegal entry or residence in your country as a result of having been the victims of human trafficking? Are there provisions preventing their deportation where there are grounds to believe that their return to their country of origin presents a significant security risk to them or their family members?

In mentioned cases Ukraine applies the provisions of the articles 6, 7, 8 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.