

## Distinguishing features of preliminary prosecution of crimes of human trafficking

In recent years a sustainable increase of trafficking of humans has been noted, to, through and from South-East European states. That fact draws the attention of global society to the issue of human rights protection and is simultaneously a challenge to law enforcement bodies, and law providing bodies. The necessity of taking of ever more effective measures to fight this phenomenon becomes increasingly felt. These measures require a multidisciplinary approach at national, regional and international level. As a member-state to the European Union the Republic of Bulgaria also contributes to human trafficking fighting especially because our territory appears to belong among the most preferred by traffickers source and transit points on the territory of the continent.

In recent years, both globally and in our country in particular, a significant progress has been noted in passing of national laws relating to human trafficking, which laws are in compliance with the Protocol of UN aimed to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. As an essential step towards adopting and establishing of good European States practices applied in fighting of human trafficking, could be viewed the Interpretative Decision No. 2 of the Supreme Court of Cassation of R. Bulgaria from 16.07.2009 on penal case No. 2/2009, by which solution has been provided to a number of practical issues related to interpretation and enforcement of the Bulgarian Penal Code provisions related to human trafficking, distinguishing between trafficking and other forms of smuggling of persons, solicitation of prostitution, kidnapping and unlawful imprisonment, competent bodies entitled to investigate such cases, and also issues relating to protection of trafficking victims within the penal procedures applicable in R. Bulgaria, through investigation of such crimes. In that regard should be pointed out the last amendments to the Penal Code of R. Bulgaria, relating to the use of special investigation means applicable especially for investigation of human trafficking cases.

Good knowledge of European and international standards for counteraction in that regard is of great importance to the successful fighting of human trafficking crime, and the requirements of their enforcement in the relevant states, especially where an investigation goes beyond the borders of a certain state, and accent should be placed on inter-state cooperation within United Europe. It should be noted in that regard that there are differences existing between legal concepts and approaches in the fight against

trafficking, which are specific for each EU member-state, and these are especially evident in newly joined states such as Bulgaria. That fact, along with differences in understandings about the role of judges in society, which are based on the political, historic and cultural development of the relevant state, are an additional impediment to good communication at international level between competent bodies assigned with fighting of crime functions.

The crime of human trafficking is a typical example of crimes characteristic of the 21<sup>st</sup> century – the era of globalization. In the last 10 years, human trafficking victims amounted to hundreds of thousands, especially in the area of South-East Europe. As a negative phenomenon accompanying human trafficking should be mentioned money laundering as a result of which billions of euros are globally accumulated annually, and this is comparable only to illegal profits gained from global drug trafficking. The forms of exploitation from which huge profits emerge are different but they are all related to violence and human rights abuses. They vary from sexual and labor exploitation, to domestic slavery, perpetration of crime, live human organs extraction, forced military service, and fraud.

Once organized and operating at state-wide or regional level, trafficking develops fast and spreads outside the state and places strategic risks about the stability and future of the state, expressed in destabilization of existing labor markets and sex service markets, growth and diversification of organized crime, economic destabilization through money laundering, demographic destabilization, growth of corruption in the public sector, corruption in politics and purchase of political power, destabilization in internal funding of economy.

The circumstances shown above have found adequate reflection in the legislation of our country, which marks a trend of attempts to have it harmonized with European requirements in that field, and achieve balance between home politics and international interests.

Issues originating from human trafficking find adequate understanding on the part of law enforcement and law providing bodies of R. Bulgaria, the state being a preferred source and transit point of traffickers. Proof of that understanding is the adoption of a number of measures for strengthening of control at the internal and external borders of our country considering the circumstance that transportation across state borders is a particularly important aspect of international human trafficking.

Prior starting to develop an adequate policy of counteraction to human trafficking it is necessary to clarify the painful effects of the crime on the victim, and its human rights. On that basis alone one can develop a policy of fighting human trafficking, oriented mainly to human rights protection. Of utmost importance to police officers, prosecutors and judges is to understand why violence victims would not at first be able to recall what has happened to them, and any attempt to make them recall would thus be fruitless to investigation, and would rather create potential for having the victims yet again traumatized. All institutions which come in contact with human trafficking victims should bear in mind their specific needs and rights, and also the fact that they can be made victims again.

Attempts to achieve international consent on issues relating to fighting of human trafficking have been made via various conventions, protocols, decisions and recommendations, addressing human trafficking directly. Among them is the UN Convention against organized crime, the UN Protocol aiming to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which complements the UN Convention against organized crime and which can be considered as one of the most important documents on the issue of human trafficking; the UN Protocol against smuggling of persons by land, sea and air, which complements the UN Convention against organized crime; the Committee under the UN High Commissioner for Human Rights – Recommended principles and directives on human rights and human trafficking; the declaration of South-East Europe on fighting human trafficking; the Europol Convention; Recommendations of the Council of Europe; the Brussels declaration on prevention and fighting human trafficking. The documents listed so far are an expression of the development of policy of fighting human trafficking where central role is attributed to human rights observance. That concerns primarily the UN Protocol against human trafficking, the corner stone of which are the human rights of trafficked victim. All these documents have in one form or another been adopted in Bulgarian internal legislation which is complied with our traditions in the fields of penal law and proceedings, the specifics of our justice system, and the level of political and economic development of our state. It has been thus proven that we believe that harmonization of the national legislations and policy on that issue of each single EU member-state, will be of great benefit to international cooperation. As basis of that harmonization have been also taken the Convention against international organized crime and the Protocol against human

trafficking, which complements it, both adopted in Palermo, and also other documents. The ambition to unify the procedures of counteraction to trafficking in the fields of penal law, has been incorporated also while developing national policy and strategy about human trafficking in R. Bulgaria, which underlines the role of the State in enforcing of an effective program of prevention, and support and protection to victims, an amendment to law, and investigation and penal proceedings against traffickers.

On the basis of bilateral and multilateral cooperation, effort has been made in our country to make researches, organize multimedia campaigns, and implement social and economic initiatives aimed at prevention of human trafficking. All these measures should be complied with the recommended principles and directives about human rights and human trafficking, transmitted by the High UN Commissioner for human rights, which always contains the principle: “Strategies, which are aimed at prevention of human trafficking, should define demand as its prime reason”.

Another type of prevention, which was taken into consideration for our legislation, is expressed in measures aiming to put an end to criminal behavior or prevention of crime which might be perpetrated, including the possibility to make the victim a victim again (revictimization). The main pillar of that prevention is following a strict policy as regards prosecution and conviction of traffickers. In that regard a number of recommendations have been approved in Bulgaria, in accordance with which a normative basis should be developed for effective and corresponding sanctions to that crime (including measures of detention leading to extradition, where these concern foreign persons).

Parallel to development of adequate judicial practice, representatives of the Bulgarian state bodies engaged with prevention and fighting human trafficking, take part annually in special training programs for increasing their competence and learning from the experience of other countries, which is also a way to facilitate international cooperation on such cases.

In recent years, providing of protection to victims is becoming one of the main priorities of the strategy for fighting human trafficking, incorporated in Bulgarian legislation. For instance, prior to releasing a defendant on whatever grounds, a thorough assessment is made whether such defendant could endanger the security of other persons who had taken part in the penal prosecution. In that aspect, it has to be assessed to what extent the defendant may be given access to the documentation under the penal

prosecution, in view of the defendant's being able to collect information about the victim's personal data. Such considerations make good grounds to deny the defendant access to such files until the pre-court stage of the proceedings have been completed, lest it hampers the investigation process, and also in view of securing personal safety of the victims.

Counteraction to organized crime does not consist only of individual acts against certain persons but rather involves weakening and destruction of the means, which are used for criminal activities. Taking these circumstances into account, penal measures have been provided in our national legislation, of confiscation and taking away of property of traffickers, which is in accordance with Art. 12 of the UN Convention for fighting of organized crime. Taking away is enforced regardless of the conviction, and concerns the entire property of the persons.

Under Art. 9 of the UN Convention against international organized crime, in Bulgarian legislation have been adopted legal and administrative measures of prevention, establishing and punishing of corruption among state employees. Anticorruption measures are necessary and obligatory provisions for prevention of law enforcement bodies from the influence of criminal organizations, the latter being particularly necessary for the effective fighting of international trafficking.

An important factor for the success of a penal prosecution of human trafficking, is the immigration policy of our country. In that regard, the operation of a number of organizations specialized in providing assistance to trafficking victims, is of great importance. Nevertheless, no solution has been provided yet to the issue of granting residence to trafficked persons based only on the grounds that they have been the object of violence and of grave exploitation, and that they are still endangered.

In accordance with Art. 6 par. 6 of the Protocol against trafficking, there is a law in effect in our country, for providing of compensation to victims of crime, including persons who had been the object of trafficking. Under the provisions of that law and by availability of circumstances provided in it, the victim is entitled to receive compensation for damages suffered, by means of temporary indemnification, claimed damages or compensation for damages incurred on the part of the traffickers, by way of filing of civil claim.

Art. 10 from the Protocol against trafficking obligates the countries and their law-providing bodies to exchange information so as to define whether the persons illegally

crossing the borders are criminals or trafficked victims. That information is used mainly to uncover the methods and manner applied by organized criminal groups for human trafficking, including methods and manner of recruiting and transporting of victims, routes and communications between persons and groups dealing in trafficking, and the possibilities for their exposure. The UN Convention against international organized crime contains a broad specter of formulations relating to international cooperation in the judicial system. In that regard, our competent state and judicial bodies have also taken a number of measures. It has been recognized that effective cooperation should be achieved at two levels. On the first place, cooperation is needed at operative level – an operating network for counteraction to trafficking; participation in workshops, trainings and practical cooperation; and acquisition of knowledge on the spot about the legal and organizational frameworks in the relative countries helps to understand the opportunities for action, and the difficulties, which law enforcement bodies are faced with.

Of utmost importance to fighting of human trafficking is EU member-states cooperation in the judicial area, which has been improving in recent years. In that regard, active cooperation is developed at the points of contact established in the European countries, and also between workgroups created during the years, whose principle objectives involve mediation aimed at facilitating cooperation among EU member-states, and providing of legal practical information of mutual interest, i.e. improvement to coordination among judicial bodies in the member-states.

It is not possible to achieve such a close cooperation in all EU member-states affected by human trafficking, which is due to differences in the legal framework. That is where international legal standards become useful as means of providing communication opportunities based on generally recognized, standardized and formalized procedures. The UN Convention on organized crime and its accompanying Protocols significantly contribute to the development of effective means of international cooperation in the fields of the judicial systems of the states.

Nevertheless, human rights remain the starting point in fighting human trafficking. The human rights of trafficked victims are in the center of all attempts of prevention and fighting of human trafficking, and support and recovery of victims. Cases of so called “good practices” have been opened and successfully closed thanks to the fact that real understanding and compassion regarding the victims’ needs and problems has been shown, and goodwill for their solution on the part of the authorities. The Bulgarian

Code of Penal Procedure (CPP), art. 75, regulates the rights of crime victims in unison with the UN Declaration on the main principles of justice for victims, which also defines the major criteria of justice for victims. Nevertheless, it is necessary to implement new and effective mechanisms for victims' protection in order to enable them to have access and actively participate in the penal proceedings.

The long and full of amendments history of international documents treating human trafficking reflects the difficulties encountered by international society in their attempts to achieve consent on a generally valid understanding and enforcement of these documents. That history was started with the International Agreement for the Suppression of the White Slaves Trade, dating back to 1904. Among the documents of importance should be listed also the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union, which contain clarifications of the main concepts about slavery, servitude and forced or compulsory labor. The international documents provide basis for good practices directed at fighting human trafficking, which obligate the individual states to adopt legislative amendments in order to bring their own legislations in accordance, and achieve unified means of fighting that global phenomenon. In that regard R. Bulgaria also fulfils the international duties undertaken by it, by developing various new laws and amending already existing ones within the framework of the Penal Code and the Code of Penal Procedure, in accordance with the international requirements. Attempts have been made to cover as fully as possible all possible forms of human trafficking manifestation, where punishability varies in accordance with the various qualified elements. Various forms of joint criminal activities have also been covered. Special attention has been paid to organized criminal groups where the mere participation in such has been proclaimed a crime. Thus, in Bulgarian legislation has been incorporated the provision of art. 2 of the UN Convention on fighting of international organized crime, which introduces the term "organized criminal group" whose definition given under the Bulgarian legislation, is maximally close to the one provided under that international act.

The concept of violence as means used by traffickers is developed in detail in our legislation. Violence may be present at any stage of the process of trafficking. Fraud as a means, especially in trafficking for the purpose of sexual exploitation, has also been covered in Bulgarian legislation, especially because it is most frequently applied in the traffickers' business. Even though, no legal definition has been provided yet about the

concept of “misuse of situation of dependency (vulnerability)”, which method is often applied in trafficking, treating the concept as a case where the person, who is the object of trafficking, has no other choice but to remain in that position, e.g. a form of binding via indebtedness, dire poverty, or subordinate position of a woman in patriarchal and family groups (in gypsy ethnic groups, for instance).

In the definition of trafficking given under Bulgarian law, various prohibited objectives based on the concept of exploitation have been encompassed. Apart from sexual exploitation, the definition covers also compulsory labor and slavery.

In fulfilling international obligations under the Convention, Bulgarian legislation has incriminated also money laundering of funds originating from the perpetrated crime of trafficking. In that regard have been developed and enforced a number of preventive measures, as control regimes of banks and financial institutions, bilateral and international cooperation, financial intelligence teams, measures of detection and monitoring of movement of cash and other papers which have crossed the border.

As another measure of prevention of organized crime, priority is given to prosecution of corruption in public and state sectors.

Considering the dangerous potential capacity that criminal groups may interfere in the investigation of penal cases via threatening, and bribing of witnesses and officers in accordance with Art. 23 of the Convention, the Penal Code has provided clauses which aim to protect public relations arising in the process of realization of the penal prosecution, namely: using of physical force, threats or intimidation, promises, giving or taking of benefits to or by civil officers and/or investigation bodies; instigation to perjury or interference at giving of witness testimony or fabricating of evidence. The Code of Penal Procedure (CPP) has provided also for a number of measures to stimulate giving of truthful witness testimonies, among which the opportunity provided under art. 123 of the CPP, namely protection measures for witnesses. In that regard should also be noted the most recent amendments to CPP related to the aggregate of evidence sufficient to substantiate an indictment or conviction, so currently it is possible to have that aggregate composed only by evidence collected via Special Investigation Means (SIMs) supported by the testimony of a protected witness.

The legislative measures listed above have been adopted within the process of harmonizing of the local legislation, to European standards. In the past years, Bulgarian legislation has come substantially closer to matching definitions and procedures provided

under, or incorporated in European laws on human trafficking. That contributes to more clear identification of human rights abuses, total uncovering and investigation of the phenomenon, formulation and coordination of effective programs for fighting of trafficking, and cross-border cooperation. A large step in that direction was made by the adoption of the statement contained in the exposition of Explanatory Decision No. 2 from 16 July 2009 of the Supreme Court of Cassation (SCC), regarding human trafficking. It provides clarity about the various executive actions in trafficking, and the objectives of that crime. Solution has been given to some difficult practical issues on making distinction between trafficking and other similar or related to it forms of criminal activity, like kidnapping, smuggling of persons, and placing in situation of dependence. Various hypotheses have been discussed, of assimilation and real aggregation between trafficking and other criminal acts. Listing and analysis have been provided about various penal-procedural means used widely in investigation of trafficking, namely using of protected witnesses, and also clarity about the bodies competent to do the investigation depending on the place of perpetration of the crime, especially in the hypotheses of external trafficking.

The recent amendments to the Code of Penal Procedure provides also for more effective application of the Special Investigation Means (SIMs).

Our legislation though, still lacks special provisions for releasing from liability persons, who have perpetrated crimes in the process of their being victimized, which is often the case in human trafficking. In that regard, one has to rely on already established rules in the Penal Code, like rules concerning dire necessity and inevitable self-defense but they can cover only a small portion of the possible hypotheses, and thus proves to be absolutely unsatisfactory.

International standards have also been adopted in the context of fair trial not only regarding defendants, but also regarding victims, and their access to justice, fair treatment, compensation and support. Under CPP, victims of crime are entitled to be informed about the development of the penal proceedings and receive protection regarding their personal safety. In that regard, opportunities have been provided to pre-court bodies to undertake preliminary detention of the defendant. The provisions of the European Arrest Warrant and trial transfer are ever more widely applied. In relation to the increasing need of international cooperation on cases of external trafficking investigated by Bulgarian competent bodies it is necessary to develop effective legal mechanisms

aimed at removal of currently existing obstacles, some of which involve untimely and incomplete feeding of information on arrested Bulgarian citizens – either perpetrators or victims of human trafficking, in view of taking adequate measures. As an additional guarantee to enable Bulgarian courts to convict their citizens and take timely measures in that regard, a mechanism should be provided, by which data could be provided by request even though no pre-court proceedings have been opened. These are cases where court and executive bodies perform a special form of out-of proceedings activity, called checking. It is regulated under the Judicial System Act and within its framework the competent bodies should assess whether sufficient data is available of perpetrated crime of general nature, which is a necessary prerequisite to open pre-court proceedings.

The stated above is a review of the most significant aspects of the policy on prevention and fighting human trafficking, by using the instruments of penal law and procedure in R. Bulgaria, in compliance with the European and international legislation in that area. In view of more detailed clarification of the peculiarities and opportunities provided by our national laws in the field of international cooperation in fighting human trafficking, it is necessary to present a brief summary about penal procedure mechanisms applicable in the processes of the two principle stages of Bulgarian penal trials – court and pre-court stage, and also out-of-procedure activities implemented at the stage of checking.

Investigating crimes under article 159a-159g of the Bulgarian Criminal Code shows regularities and reoccurring distinguishing features, which allow us to better analyze the stages of the process of disclosing the crime and placing guilt.

#### I. Preliminary check

The Bulgarian Code of Criminal Procedures requires the existence of two premises in order for penal prosecution under article 207 to begin – “legal grounds” and “sufficient evidence”. According to article 208 there are four legal grounds for initiating an investigation – signaling the preliminary prosecution bodies of a crime potentially committed, reports by the mass media of a crime potentially committed, confession of the person who has committed a crime to preliminary prosecution bodies or first hand uncovering of signs of crime potentially committed by the preliminary prosecution bodies. The majority of cases investigated in Bulgaria point out to first hand uncovering of signs of crime potentially committed as the most often used premise for initiating an investigation. The general practice is for officials of the Chief Directorate of the Border

Police or the Chief Directorate of the department of Combating Organized Crime to be the first to identify victims of human trafficking. In cases of transnational trafficking a signal can be received through lines of international cooperation. In a considerably less number of cases signaling the preliminary prosecution bodies of a crime potentially committed is used as the legal ground for preliminary prosecution. Such a signal is most often given by the direct victim of trafficking and once the trafficking has ceased and/or the victim at some stage in trafficking did not voluntarily participate in their exploitation. In some cases a signal can be made by the victim's relatives. On rare occasions, legal prosecution is initiated on grounds of a signal made by the mass media. There is no precedent up to date for the perpetrator of trafficking to make a confession to the authorities.

In most cases of a signal directed at the preliminary prosecution bodies of a crime potentially committed or first hand uncovering of signs of crime potentially committed by them, a so-called "preliminary check" is performed in order to gather sufficient evidence. Such a preliminary check is grounded in the Bulgarian Judicial Power Law and in almost all cases precedes initiating official judicial prosecution. Preliminary checks into crimes of human trafficking tend to run into two potential problems. The first problem is that it is in the investigation's best interest not to give away any clues that the perpetrator is under suspicion of trafficking. In legal terms, this means that he or she cannot be questioned in terms of the crimes he/she is suspected of and neither can any potential accomplices or persons close to him/her. This technically means that the scope of the preliminary check is sufficiently limited as the data acquired during questioning of the above mentioned is often key to uncovering and later on proving a crime has been committed.

The second problem that can hinder the preliminary check's effectiveness is related to international judicial cooperation. When looking at past cases of human trafficking where international cooperation was deemed necessary, it can be noticed that not all countries agree to cooperate and even those who do are not always willing to provide information when asked to do by a prosecutor in charge of the investigation in Bulgaria. A reason often stated by foreign authorities for denying access to information is the fact that preliminary checks done in Bulgaria are not legally considered advanced enough stages of prosecution to validate the release of sometime sensitive information. This situation may be caused by foreign authorities' uneasiness when it comes to releasing information about their own citizens to other countries' legal bodies or fear that

their own investigation may be jeopardized by the release of such information to outside sources. Based on results of the preliminary check a decision is made whether or not to initiate an official penal prosecution. Therefore, often when it comes to investigating international human trafficking by a certain county, information about the potential perpetrator(s)'s criminal record in other counties and/or about victims in other countries and cases of exploitation existing outside the investigating state is crucial. Lack of such information can result in insufficient legal grounds for initiating legal action as the Bulgarian persecutor in charge of the investigation has only the signal made by a victim or her relatives as evidence. The above-motined problems lead us to the conclusion that regulation and standardization of the proceedings for international legal cooperation in terms of human trafficking are much needed. Such deepening of cooperation will widen the scope for the Bulgarian authorities to initiate preliminary prosecution. In addition, evidence and data gathered during the preliminary check will automatically be used during the official proceedings.

## II. Investigation and Prosecution

When enough evidence has been gathered to prove that a crime has been committed under article 159a-159g of the Bulgarian Criminal code, the corresponding District Prosecutor's Office initiates the official legal action. In all cases of suspicion of human trafficking, information is gathered to establish whether the isolated case belongs to a network of organized human trafficking, in which case the case is referred to a higher-standing Prosecutor's Office. Investigation of cases of suspected human trafficking are conducted by district authorities but by the decision of the Supreme Prosecutor's Office can be supervised by a member of this office. This means that the investigation is also directed by the highest prosecution authority in Bulgaria.

1. Immediate legal actions on behalf of the prosecution. Such actions are predominantly directed at gathering and preservation of evidence and are crucial for saving the so-called 'ideal evidence'. Such actions include eyewitness reports, detaining suspects, retaining all related books, documents and papers. Such immediate actions are the main source of evidence later on used in the proceedings of law. Crime scene investigation, which is normally one of the main immediate actions conducted by the legal authority, is often deemed irrelevant due to the nature of human trafficking. The main source of evidence for the prosecution in such cases is eyewitness and victim reports.

2. Questioning of victim(s) of trafficking. According to Bulgarian Human Trafficking Law, victims of human trafficking are provided with government protection which extends to allowing temporary residence in the territory of Bulgaria, state cooperation in issuing victims identity cards, placing victims in special shelters, compulsory legal representation for underage victims, making provisions for professional training and education of victims etc. The above mentioned legal measures have been adopted by Bulgaria in accordance with Chapter 2 of the Council of Europe Convention on Action against Trafficking in Human Beings. According to the same law and the Convention, victims of human trafficking are also given special government protection under the condition that they cooperate in providing evidence against human traffickers. This type of protection is not offered in Bulgaria to victims of other crime categories and extends to allowing victims to reside in the territory of Bulgaria and/or continue their stay in special shelters for the duration of the legal activities.

According to article 26, paragraph 1 of the Bulgarian Human Trafficking Law, once the authorities executing the preliminary prosecution identify victims of human trafficking, such victims are immediately notified of their right to the above mentioned special government protection. Special protection is extended only under conditions of agreement to cooperate with authorities given within a month of the victims being notified. In the event of the victims(s) being under the age of 18, according to the Bulgarian Child Protection Agency, the time period is extended to two month. Explicit written agreement to cooperate is not required, as long as such an agreement has been noted in the prosecution protocol. The Prosecutor in charge makes the decision to place the victim under special protection within three days of the victim making an official request. Such special protection ceased to exist: 1. once the legal activities have ended; 2. if the victim who has been provided with protection resumes contact with the person(s) the prosecution suspects of trafficking and has the intention to use the victim's testimony against; 3. if the prosecutor deems the victim's agreement to cooperate to be fictitious; 4. if providing such special measures is deemed to threaten public peace and national safety.

In addition, apart from potential special protection, the victim must also be notified by the same authorities of his/her right to aid and financial assistance along with other victims of crime as stated in article 3, paragraph 3 of the Bulgarian Law for Relief and Financial Aid to Victims of Crime.

**3.** Questioning of other witnesses. Identifying other person(s) capable of confirming reports made by the victim during the preliminary investigation is of crucial importance for the legal action conducted at the later stage. This is due to the fact that some cases require the identity of the victim to be kept a secret, in which case testimonies by other witnesses are necessary as a case cannot be sustained simply by the testimony by one or more anonymous witnesses.

There are different types of witnesses. One category is comprised of persons related to crimes of human trafficking by means of receiving sums of money or giving permission for their names to be used in money transfers. Evidence gathered from questioning of witnesses other than the victims can be valuable source of information. Nonetheless, witnesses are rarely willing to cooperate as their testimonies can incriminate them in actions sustaining human trafficking such as money laundering and tax fraud. Another category of witnesses is comprised of victim's relatives who are influenced by their personal interest in punishing potential perpetrators and are therefore a valuable source of information concerning the relationship of the victims and the traffickers and collaborators, inner workings of trafficking networks, the duration of the victims stay abroad, any threats or violence against the victim etc.

A third category of witnesses are persons who have involuntarily or through their line of work are aware of facts and circumstances of importance to the ongoing investigation. Examples are accidental witnesses of violence against victims of trafficking are police, bank or border control officials.

**4.** Other actions taken during official investigation. In order to establish the movement of traffickers and the victims of human traffic and the route of money acquired through trafficking, certain verifications are made during the investigation: 1. inquiries into existing documents of identification (i.e. passports) of traffickers and victims of trafficking, inquiries into trips made abroad, including those made together by trafficker and victims, inquiries into money transfers made to and from relatives or acquaintances of both traffickers, victims of traffic or suspected accomplices, inquiries into existing bank accounts in the name of the traffickers or their relatives. During this process additional investigation is carried out in order to gather further information to prove a crime of human trafficking has been committed and the responsible perpetrators found. Considering the scale of the crime in question and the degree of complexity in proving a

crime has taken place, Special Intelligence gathering methods can be adopted. Such methods are for example undercover work, controlled delivery etc.

5. Preparing a claim for international legal assistance. Such a claim is always placed when international human trafficking is concerned in order to question suspects and gather documents etc. from other countries. The process of carrying out such a claim is considerably complicated in Bulgaria and it includes The Prosecutor in charge sending an official request to Supreme Prosecutor's Office, sending out materials to the Ministry of Justice, translation work etc. which contradicts the short investigation time framework set forth in Bulgarian Code of criminal procedures. Therefore, when there is no need for direct involvement in investigation but only gathering of information and documents, Interpol is asked to assist as long as the state asked for help is a member. In terms of human trafficking, investigation assistance is mainly comprised of gathering data, circumstances and information concerning the crime and those involved. Such circumstances are for example: if the respective authorities in the state asked for assistance have taken up legal proceedings against suspects of human trafficking and if there is evidence of potential accomplices or other victims of trafficking.

6. Parallel financial investigation. Such an investigation is always required when human trafficking is suspected of taking place as it is interlinked with movement of funds. Financial investigation is important for two main reasons: 1. it helps gather indirect evidence supporting the main investigation; 2. it helps gather evidence pointing out to other crimes being committed hand in hand with trafficking (i.e. money laundering, tax fraud). Hence, when initiating prosecution against suspects of human trafficking the Prosecutor in charge notifies a specialized commission which then initiates financial proceedings aimed at establishing any property belonging to the suspect(s). A second notification is given to the same commission once the prosecutor in charge charges the suspect(s) with trafficking and hands them over to the court. In some cases of financial investigation, the international legal cooperation is required in order to 'secure' any property the suspect may have in another country.

### III. Final Remarks

Human trafficking investigation in Bulgaria point out to two main areas where there is room for improvement. First, the prosecution is often solely based on witness reports, mainly those made by the direct victims of trafficking. In a large number of these cases, the victims are unwilling to testify due to fear for their life and well-being from

their traffickers. In order to avoid this, a far more integrated method of investigation and evidence gathering is required. Such a method can include gathering initial, supplementary evidence concerning the very early stages of the trafficking process. For example, information about people most likely to be involved in trafficking such as high risk groups in society as well as investigating potential weaknesses in the trafficking network. Secondly, in terms of human trafficking successful and efficient investigation is directly linked with the respective authorities being able to gather information from other countries' authorities. Cooperation in all aspects of investigation between two or more countries is key to putting an end to human trafficking.

International legal assistance in cases "Traffic of people" in the European Union, realized in the court procedures

International legal assistance in criminal matters from Republic of Bulgaria to another state shall be rendered on the following terms:

- concluded international treaty to which the Republic of Bulgaria is a party
- on the principle of mutuality.
- to an international court of justice whose jurisdiction has been recognized by the Republic of Bulgaria.

International legal assistance shall be rendered after sending an order, which contains defined data: the authority addressing it; the subject and motive of the request; the names and citizenship of the person to whom the request refers; the name and address of the person to whom the papers are to be handed over; if necessary – the indictment and a brief statement of the its facts. The ways of sending and receiving orders in the court procedures of the penalty cases are two:

- with the Ministry of Justice
- directly between the courts of the states

The international legal assistance in criminal matters may be refused if the granting of the request could endanger the sovereignty, national security, public order or other interests protected by law.

In the court procedures of the criminal cases, the international legal assistance can include one of the following actions, which are necessary to the defined case:

1. submission of documents;
2. investigation actions;

3. collection of evidence;
4. providing information;
5. other forms of legal assistance if they are stipulated in an international treaty to which the Republic of Bulgaria is a party, or are imposed on the terms of mutuality.

There are special rules for some kinds of legal assistance:

- Appearance of a witness and an expert before a foreign court - it shall only be allowed if assurance is given that the summoned persons, irrespective of their citizenship, would not bear criminal liability for acts committed prior to summoning them. In the event of a refusal to appear, no coercive measures may be applied to them. Turning over persons detained in custody, in order to be interrogated as witnesses or experts, shall only be allowed in exceptional cases at the discretion of the respective district court on the grounds of papers submitted by the other state or the international court of justice, provided that the person gives his/her consent for being turned over and provided that his/her stay in the other state will not extend the term of his/her detention in custody.

- Interrogation of persons through video conference or telephone conference - for the needs of a court procedure, a request for interrogation through telephone conference shall be executed by a court of equal degree at the place of residence of the person, and for interrogation through video conference— by the court of appeal at the place of residence of the person. The competent Bulgarian authority may require the requesting state to ensure the technical means of interrogation. The interrogation shall be held directly by the court authority of the requesting state or under its direction in accordance with its legislation.

A person who is abroad may be interrogated by a competent Bulgarian authority or under its direction through video conference or telephone conference, when the legislation of the other state allows this. The interrogation shall be carried out in accordance with the Bulgarian legislation and the provisions of the international treaties to which the Republic of Bulgaria is a party, regulating the said means of interrogation. The interrogation in the court procedure shall be carried out by the court.

Execution of order from another state or an international court of justice:

The order for international legal assistance shall be executed under the procedure stipulated in the Bulgarian laws, or under a procedure stipulated in an international treaty to which the Republic of Bulgaria is a party. The order may also be executed under the procedure stipulated in the law of the other state or the statutes of the international court

of justice, provided that this has been requested and does not contradict the Bulgarian laws. The other state or the international court of justice shall be informed about the time and place of execution of the order, if this is requested.

The expenses for the execution of the order shall be distributed between the countries in accordance with the international treaties to which the Republic of Bulgaria is a party, or on the principle of mutuality.

Cases “Traffic of people” are related with the crimes, which include person who gathers, transports, hides or receives individuals or groups of people in order to be used for vicious practice, involuntary servitude, seizure of body organs or to be kept under compulsory submission regardless of their consent. For counteracting, revealing and proving of this kind of crimes the international legal assistance is very important. The main actions from this assistance are searching the suspects and the crime victims. The nature of the crimes is related with the fact, that these categories of people are located in different states and particularly the victims, which are very important witnesses in the trial. Related with this, during the court procedure, the international legal assistance shall include the actions - submission of documents – summons for the accused, the victims or other witnesses, making interrogation of persons through video or telephone conference, searching of crime-related proceeds, instrumentalities and property and its confiscation.

In these kind of crimes very important notice is that the cases often are hard for proving, because there are too many actions that must be done. Related with this the international legal assistance, which was mentioned that is very important, also shall be very fast. This is the biggest problem for the moment, that at some times the results of the international orders are received too slowly and that results in the speed of the court procedures. An idea for improving the way of executing the orders is to be a special units which only function is to administrate the orders and which has direct connection with the other states same units and on the other side with the authority, which is executing the order in its home state.

In order to increase the speed of executing the orders, coordinating the actions and discussing the existing problems in the field of the international legal assistance in criminal matters and also during the work in the cases, very often our court uses the help of the Bulgarian member in Eurojust – Hague and his assistants. As it was mentioned, related with the high importance of the international assistance, particularly in the cases “Traffic of people”, which is recognized very seriously in our country, the Bulgarian

court always assists assiduously to the other states authorities. Also in order to improve the international legal assistance, the Supreme court of cassation of the Republic of Bulgaria has adopted an interpretative judgment concerning the “Traffic of people”, which is compulsory for the courts and prosecution, removes contradictory, and in which is mentioned the possibility for international assistance with the other states.

Directly related with the cases “Traffic of people” are also the following forms of international legal assistance in criminal matters between the states from the EU:

- European arrest warrant
- freezing property or evidence
- confiscation of crime-related proceeds, instrumentalities and property

In Bulgaria there are special legal acts, concerning these three topics, which are based on the framework decisions of the Council of the European Union. By the moment these options for international assistance are used in each case, when it is necessary.