

Summary

LEGAL STUDY

to identify inconsistencies between Ukraine national legislation and provisions of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child

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«La Strada-Ukraine»*

This publication is produced within the framework of the project “Harmonisation of the Ukraine national legislation with the requirements of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child” with support of the Government of Estonia and the United Nations Children’s Fund (UNICEF).

The views expressed in this document are the views of the author and do not necessarily reflect the views or policies of the UNICEF.

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Introduction

In early June 2007 the UN Committee on the Rights of the Child considered the initial report from Ukraine on implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child (UN CRC OPSC) and adopted respective Concluding Observations. The Observations acknowledged the progress made by Ukraine in implementing the Protocol, but fairly pointed out the most problematic issues, such as the absence of an Ombudsman for Children; insufficient data collection and budget allocations to implement the OPSC in Ukraine; a weak infrastructure for assistance to child victims of trafficking; and an insufficiently developed legal framework for implementing the Protocol. In particular, Recommendation №18 of the Concluding Observations on Ukraine of the UN Committee on the Rights of the Child from 8 June 2007 suggests that ‘the State party take measures to amend the provisions of the Criminal Code with a view to ensuring that, as a minimum, acts and activities listed in Articles 2 and 3 of the Protocol are fully covered under its criminal law, no matter whether these acts are committed domestically, transnationally or on an individual or organized basis. In this regard the Committee recommends that the State party undertake a legal study in order to identify inconsistencies and gaps between the national legal system and the Protocol and seek assistance from UNICEF and other relevant international organizations’.

UNICEF Ukraine initiated a Legal Study to identify inconsistencies between Ukraine’s national legislation and provisions of the Optional Protocol in 2009. The Legal Study was implemented by the International Women Rights Centre La Strada-Ukraine. Its ultimate goal was, on the basis of its findings and recommendations, to introduce an effective legal framework fully compliant with the Protocol. Its main objectives were to identify inconsistencies and gaps between the national legal system and legislation and the Protocol; and to develop recommendations on how to amend the provisions of the Criminal Code and other legal acts where gaps and inconsistencies exist.

The Study was conducted by a specially established group of analysts and lawyers, with expertise and knowledge in the sphere of child rights protection, which was coordinated by **Kateryna Levchenko and Mariana Yevsyukova**:

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The Legal Study focused on the national legislative acts and draft laws in the area of child rights protection that were registered at the Parliament of Ukraine. The Study compared them to the provisions of the Optional Protocol in order to identify gaps, inconsistencies and suggest ways to improve the legislation.

The research analysed the following legislative acts:

- Constitution of Ukraine
- Criminal Code of Ukraine
- Criminal Procedure Code of Ukraine
- Code of Ukraine on Administrative Offences
- Family Code of Ukraine
- Law of Ukraine 'On Protection of Childhood'
- Law of Ukraine 'On Protection of Public Moral'
- Law of Ukraine 'On Bodies and Services for Children and Institutions for Children'
- Law of Ukraine 'On Ensuring Security of the Persons who Participate in Criminal Legal Proceedings'
- Law of Ukraine 'On the National Programme 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016'
- Law of Ukraine 'On Education'
- Law of Ukraine 'On General Secondary Education'

- National Programme against Trafficking in Human Beings for the Period up to 2010
- Resolution of the Plenum of Supreme Court of Ukraine ‘On Court Application of the Legislation on Responsibility for Involvement of Minors in Criminal or Other Anti-social Activity’ implementation by courts of legislation on responsibility for engaging minors in criminal or other antisocial activity’
- Resolution of the Plenum of the Supreme Court of Ukraine ‘On the Practice of Court Application of the Legislation that sets out the rights of victims of crimes’

Several draft laws were also analysed. Among them were the draft of the Criminal Procedure Code, Draft Law № 3271 ‘On Introduction of Changes and Amendments to Several Legislative Acts of Ukraine (regarding Counteraction to Distribution of Child Pornography)’, Draft Law № 1340 ‘On Introduction of Changes and Amendments to the Criminal Code of Ukraine (regarding Protection of Public Moral)’ and the Draft Law ‘On Counteraction to Trafficking in Human Beings’ developed by the Office of the Project Coordinator of the OSCE in Ukraine upon request of the Ministry of Ukraine for Family, Youth and Sport.

Additionally, international standards, such as the Palermo Protocol and the CoE Conventions 185, 197 and 201, as well as other foreign legislation (from Estonia, Finland, Germany, Latvia, Russia and Sweden) were reviewed.

To identify challenges in implementing national legislation, it was decided to interview those representatives of law enforcement agencies, courts, social services and NGOs who apply these laws in their everyday work, to understand the laws work in practice.

The results of the national legislation analysis were discussed during a meeting of a group of experts convened by the Committee of the Verkhovna Rada of Ukraine on Legislative Support to Law Enforcement. The main results were presented on 11 November 2009 during the Roundtable on ‘Improving the legislation on protecting children from trafficking, abuse and exploitation’ that took place at the Rada. Around 80 representatives of different institutions participated in the event – among them Members of Parliament, representatives of the Ministry of Internal Affairs, the Ministry of Family, Youth and Sport, the Ministry of Education and Science, the Ministry of Justice, the National Expert Commission for Public Moral, the Prosecutor’s General Office, international organizations and NGOs.

Among the speakers at the Roundtable were: Vladimir Sykovych, then first deputy Head of the Committee (presently Deputy Prime Minister); Kateryna Levchenko, Advisor to the Minister of Internal Affairs of Ukraine and President

of La Strada-Ukraine, Alexander Bandurka, Chief of the Expert Group of the Committee; Yukie Mokuo, Representative of the UN Children's Fund (UNICEF) to Ukraine; Vladimir Kostytsky, Chairman of the National Expert Commission for Public Moral; Mikhaylo Andrienko, Head of the Department for Cybercrime and Trafficking in Human Beings of the Ministry of Internal Affairs; and Mariana Yevsyukova, Head of the Legal Department of La Strada-Ukraine.

The recommendations of the Roundtable, mainly based on conclusions and recommendations of the Legal Study, were elaborated and adopted by the Committee on Legislative Support to Law Enforcement.

Paragraph 1

Analysis of the legal acts aimed at preventing the sale of children, child prostitution and child pornography in accordance with the Optional Protocol

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child contains provisions that oblige States Parties to prohibit the sale of children, child prostitution and child pornography by undertaking special measures.

Article 1 of the Optional Protocol proclaims that States Parties shall prohibit the sale of children, child prostitution and child pornography. In addition, part **5 of Article 9** obliges States Parties to take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the sale of children, child prostitution and child pornography. These provisions are reflected in the Law of Ukraine 'On Protection of Childhood' (Articles 10, 20, 21) and the Law of Ukraine 'On Protection of Public Moral' (Articles 5, 7). The Ukrainian national legislation is in line with the Optional Protocol and not only prohibits the sale of children, child prostitution and pornography, but the involvement and engagement of children in such activities.

Legislation prohibits the popularisation of violence and cruelty in mass media and the dissemination of pornography and information that humiliates human dignity and harms the morality of a child. It was declared that among the main directions of state regulation of the information flow that influences public morals is a ban on propaganda of violence and cruelty as well as pornography in the electronic and other mass media; providing expert assessment of video, audio, printed and electronic materials and developing methods and mechanisms for qualifying them as harmful to public moral. With the aim of protecting the moral and physical life of children, it is forbidden to disseminate products of sexual or erotic nature or pornographic materials, or to provide services and conduct performances of sexual or erotic nature among children. It is also forbidden to use images of children in any form in products of sexual or erotic nature or during performances of sexual or erotic nature.

In addition, new legal initiatives introduced to the Verkhovna Rada are consistent with Article 1 of the Optional Protocol. Draft Law № 3271 of 25 May 2009 prohibits the use of pornographic products created with the participation of chil-

dren or with the use of child images, which is compliant with the provisions of the Optional Protocol.

Article 9 of the Optional Protocol contains provisions aimed at preventing such violations of child rights as the sale of children, child pornography and child prostitution.

Thus, **part 1 of Article 9** stipulates that 'States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.'

According to the data of the Prosecutor's General Office of Ukraine, the Ukrainian legal framework contains more than 300 legal acts aimed at the protection of children. Among them are laws and programmes more or less aimed at preventing the sale of children, child prostitution and child pornography. They are the Laws of Ukraine 'On Protection of Childhood', 'On Protection of Public Moral', 'On the National Programme 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016'', National Programme against Trafficking in Human Beings for the Period up to 2010 adopted by the Cabinet's of Ministries of Ukraine Decree # 410 of 7 March 2007 and Joint Order № 5/34/24/11 of the State Committee for Family and Youth, the Ministry of Internal Affairs, the Ministry of Education and Science and the Ministry of Health of 16 January 2004 'On Approving the Procedure for Handling Appeals and Reporting on Violence against Children or Real Threat of Such Violence.'

These laws and supportive legal acts contain separate articles and chapters dealing with protection of children deprived of parental care, homeless children, orphans, children with special needs and with mental or physical disabilities, children who suffer from incurable illness and children who have suffered from natural disasters, catastrophes, etc. Such children are vulnerable to the sale of children, child prostitution and pornography. A number of articles enlist preventive measures in relation to such children. For example, one of them provides to 'bring the procedure for adopting children deprived of parental care and orphans by foreigners in compliance with international treaties to ensure effective protection of the rights and interests of children adopted by the foreigners; to ensure functioning of the monitoring system to protect the rights of orphans and children deprived of parental care (Article 4.3 of the National Programme 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016'). Nevertheless, there are no specific measures for protecting such children from prostitution, pornography or trafficking.

The general characteristics of these legal acts show their compliance with part 1 of Article 9, as they contain general provisions aimed at protecting child rights (the Law of Ukraine 'On Protection of Childhood') as well as special measures to protect children from prostitution, pornography and trafficking (the National Programme 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016', 'National Programme against Trafficking in Human Beings for the Period up to 2010).

Part **2 of Article 9** underlines that States Parties shall promote awareness in the public at large, including among children, via information campaigns, education and training, about preventive measures and the harmful effects of the offences to which the Protocol refers. It is important to encourage the participation of the community and, in particular, of children and child victims, in such information, education, and training programmes, including at the international level.

Ukrainian legal acts contain provisions that entirely or partially correspond to part 2 of Article 9 of the Optional Protocol. Nevertheless, it is impossible to characterise the Ukrainian legislation as exhaustive in this sphere, as some provisions are missing from core legal acts.

Among them are so-called educational laws. Thus, Article 2 of the Law of Ukraine 'On Education' regulates public relations in the sphere of education, upbringing, and professional, scientific and cultural training. But this Law contains no specific provisions about introducing into the educational system, particularly at the pre-school and secondary school level, obligatory material about preventing crimes against children, harmful consequences of such crimes and skills for protecting oneself from such crimes. Article 3 of the Law of Ukraine 'On Secondary Education' states that general secondary school aims at ensuring comprehensive development of the student through education based on universal human values and principles. It emphasises multiculturalism, secular character of education, systematic and integrated education, unification of education and upbringing, humanism, democracy, public awareness and respect to the best interests of people, family, society and the state. Article 5 of this Law states that one of the tasks of secondary education is to foster in children respect for the Constitution of Ukraine, for the national symbols of Ukraine and for the rights and freedoms of people and citizens; self-dignity; responsibility for one's actions before the law; and conscientious attitude to the duties of a person and citizen. But there is nothing about child rights, or about how to identify their violation, nor how to protect them and so on, despite the fact that even though secondary education can reach large number of children including those belonging to risk groups.

Article 2 of the Law of Ukraine 'On Bodies and Services for Children and Institutions for Children' in Article 2 states that the activity of such bodies is based on the principles of publicity and systematic dissemination, via open state statistics and mass media, of information about the implementation of activities in the area of child rights protection, countering offences against children, the work of the specialised central executive agencies for family, children and youth, and the specialised body of the Autonomous Republic of Crimea for family, children and youth and other specialised social protection institutions.

The National Programme against Trafficking in Human Beings for the Period up to 2010 stipulates for a number of measures aimed at increasing awareness in society about trafficking in persons, including children. It emphasizes the necessity to publish information and education materials aimed at preventing trafficking (Article 10 of the Action Plan), and increasing awareness about the methods used by traffickers, through preventive initiatives (Article 11), producing thematic TV and radio programmes and creating specialised columns in the electronic and print media. The latter will disseminate information about the professions popular on the Ukrainian labour market and about the consequences of illegal work abroad (Article 19). Nevertheless, these measures focus on preventing trafficking in general and do not contain specific component about trafficking or sale of children.

'The National Programme 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016', unlike the 'National Programme against Trafficking in Human Beings for the Period up to 2010' does not put an accent only on trafficking or sale of children; nor does it embody a comprehensive approach to increasing the awareness of the public and of children specifically about the risks of trafficking in children, of child prostitution and of pornography. Article 4.6. of the National Plan of Action foresees the necessity of informing society about Ukraine's child labour situation via the mass media as well as via awareness raising campaigns in enterprises, institutions, organizations and educational establishments. Article 4.7. mandates to increase effectiveness of prevention and explanatory work among parents to prevent violence against children. The UN Convention on the Rights of the Child and its Optional Protocol express an important principle of child participation. This principle is partially incorporated into the Ukrainian legislation. The *'National Programme 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016'* has a separate chapter dealing with child participation in social life (Article 6). Its goal is to fulfil children's right to express their opinions freely and to develop their skills of making socially motivated decisions. The main objective is the development of skills among children to make decisions affecting their own lives.

For this, the following is needed: to support the production of series of TV programmes with sign language translation or captioning, radio programmes and information publications (including audio carriers) for children with eyesight and hearing problems in all regions of Ukraine. Also, advisory boards representing youth and children's organizations must be established at every rayon and city council.

The Law of Ukraine 'On Protection of Childhood' lacks specific provisions for prevention and explanatory activities concerning trafficking in children, child prostitution and pornography. Article 23 of the Law states that each child shall have the right to unite into independent youth and children's organisations and it shall be the state's obligation to assist them. These youth organizations can carry out activities aimed at prevention of the sale of children and trafficking in children, child prostitution and pornography. The Law doesn't ban the participation of child victims in such activity.

We can therefore state that the Ukrainian legislation is in general in line with the Optional Protocol's provisions for prevention of trafficking in children, child prostitution and child pornography. However, it only partially meets contemporary requirements, as new aspects of the problem and tendencies develop every year. Therefore, to solve these problems new strategies should be developed.

Paragraph 2

Analysis of the legislative provisions aimed at combating the sale of children, child prostitution and child pornography in accordance with the provisions of the Optional Protocol

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child contains provisions that oblige States Parties to combat the sale of children, child prostitution and child pornography by detection, investigation of such crimes, and prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

Article 2 of the Optional Protocol defines what is meant by the sale of children, child prostitution and child pornography. National legislation in this area is not perfect, as it does not contain such terms as «sale of children», «trafficking in children», and «child prostitution» (as of April 2010).

The definition of the term «child pornography» is incorporated into the Law of Ukraine 'On Protection of Public Moral'. This Law also offers general definitions of pornography and products of pornographic character. Due to the adoption of the Law of Ukraine 'On Introduction of Amendments to Several Legislative Acts of Ukraine (regarding Counteraction to Distribution of Child Pornography)' (№ 1819-VI from 20.01.2010) definition of «child pornography» was introduced into the national legislation of Ukraine. According to the Article 1 of the Law of Ukraine 'On Protection of Public Moral' child pornography means representation by whatever means, of a child or a person appearing to be a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child with sexual purposes. Thus, the definition provided in the Law is broader than that of the Optional Protocol, as it describes child pornography as not only 'any representation of a child' but of 'a person appearing to be a child', which corresponds to the Convention of the Council of Europe on Cybercrime ('the term 'child pornography' ... shall include pornographic material that visually depicts a person appearing to be a minor engaged in sexually explicit conduct', Article 9) and the Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse.

The Draft Law 'On Counteraction to Trafficking in Human Beings' (developed by the Ministry of Ukraine for Family, Youth and Sport and the OSCE Project Co-

ordinator in Ukraine) defines trafficking in children. But it only partially corresponds to the Optional Protocol, as in contrast to the Protocol it does not refer to the cases of transferring a child to a third person for remuneration or other award without the purpose of exploiting that child in trafficking. This phenomenon is reflected in the Ukrainian legislation, where the sale of children is seen through the prism of human trafficking defined by the Palermo Protocol.

Despite the absence of relevant definitions in the national legislation, it is the case that, in accordance with Article 9 of the Constitution of Ukraine, 'international treaties that are in force, ratified by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine'. That is why the definitions from the Optional Protocol and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, can be applied in Ukraine.

In order to bring the Ukrainian legislation in line with the Optional Protocol, it is important to include definitions of trafficking in children and the sale of children in the Law of Ukraine 'On Counteraction to Trafficking in Human Beings'. A definition of child prostitution could be included into the Law of Ukraine 'On Protection of Childhood'.

Article 3 of the Optional Protocol states that each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally:

- The offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
- Improperly inducing consent, as an intermediary, for the adoption of the child in violation of applicable international legal instruments on adoption;
- Offering, obtaining, procuring or providing a child for child prostitution;
- Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography.

Analysis of the Ukraine national legislation shows that the majority of socially dangerous acts mentioned in Article 3 of the Optional Protocol are recognised as criminal offences: trafficking in people or any other illegal transaction concerning a person; exploitation of children; violation of the existing legal proce-

dures for transplanting the organs or tissues of the human body; exploitation of children for begging; illegal actions relating to international adoption; trading in prostitution or engaging the child in prostitution; sexual relations with an underage person; lecherous acts towards children; rape; violent sexual acts in an unnatural manner; coercion into sexual relations; import, production, sale and dissemination of pornography; etc.

At the same time, some acts mentioned by the Optional Protocol are beyond the scope of criminalisation. These acts relate to child prostitution. They are partially covered by the *corpus delicti* in Article 156 of the Criminal Code of Ukraine, which foresees responsibility for performing lecherous acts towards individuals under 16 years old, and by Article 155, which foresees responsibility for sexual relations with an underage individual. At the same time, using the sexual services of a child over 16 years old or of a child that has reached the age of puberty is not considered a crime. In our opinion, decreasing the demand for child prostitution by criminalising the actions of suppliers of such services will decrease activity in this sphere and thus decrease the number of children in the sex industry.

Besides, in contrast to international standards according to which responsibility for child prostitution is laid on the persons who engage the children in such activity or use such services, national legislation allows for placing responsibility for child prostitution on the child him/herself.

As was mentioned above in January 2010 Ukrainian legislation in the field of counteraction to child pornography was changed. Among main positive legislative changes is establishing more severe criminal responsibility for producing, disseminating, importing into Ukraine and exporting child pornography, use of computer technologies for creation of pornographic materials as aggravating circumstances, introducing responsibility of providers of telecommunications for blocking resources that contain child pornography etc. However, there still exist unregulated issues relating to other methods of involving a child in child pornography production without the use of force, as Article 301 of the Criminal Code assigns responsibility only for coercing children into producing pornographic images, performances, movie or video products, or computer programs. It is clear that such a gap in the legislation lets a violator off the hook if he or she can prove that the child was paid for the services or was voluntarily involved in production of pornographic materials. That is why it is necessary to introduce appropriate amendments regarding responsibility for involving children in the production of pornographic images, performances, movie or video products, or computer programs. According to the Optional Protocol, storing child pornography with the aim of selling or disseminating, calls for criminalisation. The Ukrainian legislation was recently brought into accordance with

this provision. On 11 June 2009 the Verkhovna Rada adopted Law of Ukraine № 1520–17 ‘On Amendments to Article 301 of the Criminal Code of Ukraine’, which criminalised the storage of pornographic products with the aim of selling or distributing them.

The Explanatory Note to the Draft Law clearly formulated its aim: ‘The Draft Law of Ukraine «On Amendments to Article 301 of the Criminal Code of Ukraine» was developed by the Decree of the Cabinet of the Ministries of Ukraine of 13 May 2008 № 24142/1/1–08 on implementation of the task set by Paragraph 1 of Article 8 of the Decree of the President of Ukraine № 411 of 5 May 2008 «On Measures to Protect the Rights and Interests of the Child». And further: ‘The aim of this Draft Law is to amend the Criminal Code of Ukraine so as to establish criminal responsibility for storing pornographic performances, images or other objects with the aim of sale or distribution, in correspondence with the international obligations undertaken by Ukraine by ratifying the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’.

Nevertheless, neither the Optional Protocol nor the Convention on Cybercrime raises the issue of criminalising the storage of pornographic product, even with the purpose of selling it. They only deal with issues related to child pornography. In our opinion, this Law suffers from substitution of notions. It distorts the provisions of international documents, which do not criminalise pornography in which adults participate.

In other words, Ukrainian legislation had to be adjusted to international norms. But international norms do not call for criminalising storage of pornographic products in general. The adopted Law therefore has not brought Ukraine closer to implementing the provisions of the Optional Protocol.

At the same time producing, importing into Ukraine and exporting child pornography that is not intended for sale or distribution is not criminalised. It is clear that illegal circulation of child pornography is very socially dangerous even if it is not to be sold or disseminated. Committing such acts with the aim of sale or dissemination poses even more social danger than illegally circulating ‘adult’ pornography does. That is why illegal circulation of child pornography should be criminalised in a separate article of the Criminal Code of Ukraine or in a separate paragraph of the Article 301 of the Criminal Code of Ukraine.

Paragraph 2 of Article 3 of the Optional Protocol stipulates responsibility for an attempt to commit any of these acts and for complicity or participation in any of them. The provisions of the Ukrainian criminal legislation meet these requirements.

Paragraph 3 of Article 3 of the Optional Protocol makes such offences punishable by appropriate penalties that take into account their grave nature. Under the Ukrainian legislation such crimes are divided into the following categories: crimes of medium gravity, grave crimes and especially grave crimes. It then establishes levels of responsibility for the crimes based on their categories. In addition, the Supreme Court of Ukraine, in its decisions and particularly in its 'Plenum Resolution № 2 of 27 February 2004 'On the Application by the Courts of Justice of the Legislation on Involvement of Children in Criminal or any other Antisocial Activity' explains the application of the Criminal Code provisions in practice. This resolution, however, does not fully meet the requirements of the Protocol, as it does not explain all the crimes foreseen by the Optional Protocol. Particularly questionable are the explanations regarding the application of the legislation on the sale of children and child pornography. Since the resolution had been adopted before Article 303 of the Criminal Code came into force, 'Trading in or engaging a person in prostitution', it does not take into consideration the legislative innovations. That is why there is a need for a new Resolution of the Supreme Court Plenum to explain the application of the legislation on responsibility for sexual crimes against children.

The Ukrainian legislation does not implement to the full extent **provisions of paragraph 4, Article 3 of the Optional Protocol** on taking measures to establish the liability of legal entities for the offences established in paragraph 1 of the article. . This liability may be criminal, civil or administrative, subject to the legal principles of the State Party.

The Law of Ukraine 'On Protection of Public Moral' authorises the specialised body which issued the respective licence to examine cases of violation of the legal provisions in the sphere of protection of public moral as well as licence conditions. Based on the results of the investigation the body can issue a warning, or use punitive measures, suspend or cancel the licence or send the case to the Prosecutor's General Office and the Court.

In terms of the Ukrainian legislation, certain changes are needed to establish the responsibility of a legal entity for the crimes mentioned in Articles 149 'Trafficking in persons or other illegal agreements regarding a person'; 169 'Illegal action regarding adoption'; and 301 'Import, creation, sale and distribution of pornographic items' of the Criminal Code of Ukraine, where these crimes have been committed by the head, founder or participant of the legal entity or by another authorised person. There are two options: a general law establishing responsibility of legal entities or a specific law dealing with legal entities' responsibility for committing particular crimes, as stipulated by the Law of Ukraine 'On Responsibility of Legal Entities for Committing Corruption Offences'.

Paragraph 5, Article 3 of the Optional Protocol states that States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments. As a whole, the Ukrainian legislation is in line with this provision, in particular, the Family Code of Ukraine contains Chapter 18 on 'Adoption'. Nevertheless, Ukraine is not a party to all the international instruments in this area. It is for 6 years that the Verkhovna Rada of Ukraine has been trying to ratify the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, but it has not yet been ratified so far. The objectives of the Convention is to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law by creating an effective system of cooperation amongst Contracting States to prevent the abduction, the sale of, or trafficking in children, as well as to secure the recognition in Contracting States of adoptions made in accordance with the Convention. It obligates the State of origin (the child's country of origin) and the receiving State to control the adoption process and protect the child's rights after adoption, better prepare foster families for further adoption and promote, observe and speed up the adoption process.

We consider it crucial to ratify this important international document in the nearest future. Once in force, it will encourage intercountry adoption in accordance with the principles of the UN Convention on the Rights of the Child, defining legal field for cooperation among Contracting States, and provide an additional channel of collaboration through central bodies (as additional safeguards for the obligations of the receiving country); reinforce monitoring of the implementation of the rights of Ukrainian children adopted in other countries; and guarantees that Contracting States recognise Ukrainian decisions on adoption according to the Convention, which currently unites 55 participating countries to the Hague Conference on international private law as well as 29 states that were not members to the Hague Conference.

In general, Ukraine's accession to the Convention is in line with the Ukrainian legislation in force and will reinforce the state control over the adoption process. It will solve a number of acute problems that have existed for a long time in the area of international adoption. Besides, it should assist in combating such phenomena as the sale of (trafficking in) children with the purpose of adoption.

Coming back to the comparative analysis of the provisions of the Optional Protocol and the Ukrainian legislation, we should emphasize that, as a whole, the Ukrainian legislation is consistent with Article 4 of the Protocol dealing with extra-territorial jurisdiction. The Protocol's provision on extending jurisdiction of the

country to the crimes mentioned in paragraph 1 of Article 3, in cases when the victim is a Ukrainian citizen, is not, however, fully reflected in the Ukrainian legislation. In particular, in contrast with **part c) of paragraph 2 of the Protocol's Article 4**, Article 8 of the Criminal Code of Ukraine states that the Ukrainian criminal legislation does not cover cases of small or relatively unserious crimes that foreigners or persons without citizenship that do not have permanent residence in Ukraine or outside of Ukraine commit against Ukrainian citizens (for example, the crimes mentioned in paragraphs 1 and 2 of Article 301 of the Criminal Code).

Articles 5 and 6 of the Optional Protocol establish the procedure for extraditing people who have committed the crimes referred to in the Protocol as well as principles of cooperation among States Parties in such cases. These articles along with international and intercountry instruments are analysed in detail in Chapter II, 'Review of the international instruments and foreign legislation'.

The Ukrainian legislation meets the requirements of **Article 7 of the Optional Protocol** providing for seizure and confiscation of materials, assets and other instrumentalities used to commit or facilitate offences under the Protocol. The national confiscation mechanism, however, is imperfect and needs simplification and detailed regulation. First of all, in accordance with Article 59 of the Criminal Code, forfeiture is a type of punishment consisting in 'forceful seizure of all, or a part of, property of a convicted person without compensation in favour of the State'. This type of punishment is stipulated in paragraphs 2 and 3, Article 149 of the Criminal Code of Ukraine. Secondly, over 20 articles in the Special Part of the Criminal Code of Ukraine, provide for so-called 'special' confiscation that is forfeiture of items, instruments and means of their making as stipulated in Article 301 of the CCU, whereas there is no appropriate regulation in the General Part.

Thirdly, Article 81 of the Criminal Procedure Code provides for another sort of 'special' confiscation that is forfeiture of evidence. According to this article, issues concerning forfeiture of evidence shall be considered by the court verdict, writ or ruling, or by the decision of an inquest body, investigator or prosecutor on closing the case. However, Article 301 of the Criminal Code does not set out any forfeiture of proceeds and property acquired by illegal means.

Summarising the comparative analysis of the Ukrainian legislation and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, it is possible to say that, in general, the Ukrainian legislation complies with the requirements of the Optional Protocol. Nevertheless, there are serious gaps that should be filled in the nearest future by introducing amendments to the current legislation, in particular, to the Criminal Code and the Code of Ukraine on Administrative Offences.

Paragraph 3

Analysis of the legislation on protecting and assisting children who have suffered from, or witnessed the sale of children, child prostitution and child pornography, for compliance with the provisions of the Optional Protocol

The Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography contains a number of provisions on protection of and assistance to the children who have suffered from or witnessed the sale of children, child prostitution and child pornography (**Articles 8 and 9**).

Paragraph 1 of the Article 8 stipulates that 'States Parties shall adopt appropriate measures to protect the rights and interests of child victims of practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognising the vulnerability of child victims and establishing procedures to recognise their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their roles and the scope, timing and progress of the proceedings and of the status of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identities of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delays in the disposition of cases and the execution of orders or decrees granting compensation to child victims.'

The human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value, and the main duty of the State is to affirm and ensure human rights and freedoms, as stipulated under Article 3 of the Constitution of Ukraine. According to the principle of publicity and objective truth, the duty to detect elements of offence and to investigate and resolve criminal cases lays with the State authorised bodies such as court, prosecution, and investigation agencies.

Persons who have suffered moral, physical or property damages as a result of a crime are defined as 'victims of crime' in accordance with international legal documents such as the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted by the UN General Assembly on 29 November 1985). By ratifying the UN Convention on the Rights of the Child and the Optional Protocol to the Convention, Ukraine recognises the necessity to ensure the observance of the rights of child victims of crimes, including providing them with support at all stages of the criminal justice process. In Ukrainian criminal procedure they are defined as 'victims'. In the criminal procedure a person obtains the status of victim by the decision of an investigator or a court.

In order to implement universally binding international legal provisions, Ukrainian criminal legislation shall be coordinated with the above-mentioned Declaration aimed at protecting children against criminal encroachment. If a crime has been committed, it should protect the child-victim from criminal consequences and assist him or her at all stages of the criminal justice process.

Rights and interests of child victims are to be ensured by law enforcement agencies, prosecutor's office, court and their legal representatives. Apart from the structures mentioned above, criminal justice process where children are recognised as victims shall involve qualified specialists to render psychological and legal assistance.

Analysis of the current criminal procedure of Ukraine shows that the legislation, while being oriented towards international legal standards, provides for unprecedented protection and range of rights of those who have committed crimes, leaving victims of crime, and child victims in particular, without appropriate state assistance and attention. Current Ukrainian legislation does not take into consideration vulnerability of child victims and it does not describe a procedure to recognise their specific needs, in contrast to the particularities provided for an underage witness or defendant or a person who has committed a socially dangerous act before the age of criminal responsibility. Even such common investigative actions at the pre-court investigation stage as interrogation of an underage victim can be conducted similar to interrogation of an adult as goes from Article 171 of the Criminal Procedure Code of Ukraine. The Law mandates obligatory participation of an educator and, if necessary, a doctor, a

parent or another legal representative according to the Articles 307 and 308 of the Criminal Procedure Code regulating interrogation process at the judicial investigation stage. There is no provision to establish special procedure that would take into account the child age while conducting all investigation and procedural actions, or to establish a timeframe for interrogating a child victim.

There is no mention of the obligatory participation of a child psychologist to provide qualified psychological support or help establish contact with the child victim. Article 168, 'Interrogation of a child witness', of the Criminal Procedure Code states that interrogation of witnesses under 14 and, by the investigator's decision, under 16 shall, in accordance with Article 167 of this Code, be conducted in the presence of an educational employee and if necessary of a doctor, parents or other legal representatives of the child. This brings up two questions. Firstly, since a child is a person under 18, why does the legislation stipulates obligatory presence of a teacher only for children under 14 or 16? Children aged 16–18 years old are deprived of the right to have a teacher, doctor, parents or other legal representatives present as witnesses during interrogation. Secondly, the law provides for involving an educational employee, which is set out in Articles 307 and 308 of the Criminal Procedure Code regulating interrogation process at the judicial inquiry stage. Still, though, the obligatory presence of a child psychologist is not accounted for. In accordance with the Law of Ukraine 'On Education' Article 21, 'Psychological service in the system of education', 'psychological services accompanying educational process in educational institutions shall be provided by practicing psychologists. By their status, practicing psychologists shall belong to educational employees'. In practice, this means that an investigator or a judge can engage a school psychologist, not just any teacher, for interrogation during pre-trial or trial investigation without breaking the law, as school psychologists are, by their status, educational employees.

However, this situation should be considered temporary until amendments are introduced to the current Criminal Procedure Code or until there is a new Code that mandates obligatory participation of a psychologist at all stages of legal proceedings involving children.

The rights of child victims are currently ensured similar to the rights of adult victims, starting from the moment that information about the commission of a dangerous act in relation to a child is received, extending through the moment at which a decision is made about initiating a criminal case, proceeding through pre-trial investigation and lasting until the case is resolved.

In Ukrainian criminal procedure, a child victim cannot be both a witness and a victim in the same criminal case. That is why it is hard to resolve criminal cases in which a child victim is the only witness to the crime.

Article 8 (paragraph 1 (d)) of the Optional Protocol stipulates for providing appropriate support services to child victims throughout the legal process. According to Article 1 (paragraph 3) of the Law of Ukraine 'On Bodies and Services for Children and Institutions for Children', the responsibility of all the bodies and services enlisted in paragraphs 1 and 2 of the Law is to ensure social protection and crime prevention within their competence. At the same time, 'social protection' meant by this Law includes measures of legal nature. According to Article 4, in the cases of violation of the rights and interests of children and in the cases when assistance is necessary, services for children have the right to apply to the appropriate executive bodies, local governments, enterprises, institutions and organisations regardless of their ownership, and to represent the interests of children in courts and in their relations with enterprises, institutions and organisations, regardless of their ownership, when it is necessary. Participation of the Services for Children in the criminal process shall be mandatory by the decision of the person responsible for the criminal case.

According to the Article 3 of the Law of Ukraine 'On Protection of Childhood', the state shall guarantee that all children have equal access to free legal aid necessary to ensure the protection of their rights. But this norm is declarative, because the criminal procedure legislation does not clearly mandate such provision.

The decision of the Constitutional Court № 23-pn/2009 of 30 September 2009 on the constitutional appeal of Igor Volodymyrovych Golovan about the official interpretation of Article 59 of the Constitution (in a case on the right to legal assistance) defined that the state guarantees that any person regardless of her/his legal relationships with state agencies, local governments, unions of citizens, or any legal and physical entities, is entitled to legal assistance to the extent and in the format required. However this does not mean that it is the state's duty to ensure participation, in some cases free of charge, in the criminal process of a person who can provide legal assistance to the child victim.

Draft Law № 4492 of 18 May 2009 takes this into account binding pre-trial investigation agencies and courts to ensure mandatory participation of a child victim's representative in the criminal proceedings.

A legal representative can participate in the process along with a legal expert, but such participation should be possible provided that this representative will not act against the interests of the child victim. It is clear that very young children (under 14) require the participation of a legal representative, and their rights should be protected by representatives without their participation. Child victims aged 14–18 need the assistance of a representative. We consider the participation of social workers, specialists in child pedagogy and psychology, and in some cases doctors, to be obligatory as well. Special training of the law-

yers who work with child victims in the criminal process cannot be considered sufficient if they lack basic knowledge of child pedagogy and psychology.

Article 8 (paragraph 1 (e), (f)) establishes as the duty of the state protection of the privacy and identity of child victims of or child witnesses to the sale of children, child prostitution and pornography, and ensuring safety of child victims and their families.

Article 32 of the Constitution of Ukraine guarantees the right of non-disclosure of confidential information about a person without her/his permission.

Article 10, 'Prohibition to disclose information contained in appeals' of the Law of Ukraine 'On Citizens' Appeals' prohibits to disclose pre-trial investigation data received from appeals. The Criminal Code of Ukraine, in its turn, establishes criminal responsibility for disclosure of such data (Article 387). Article 10 of the Law of Ukraine 'On Protection of Childhood' establishes limits for disseminating information about children.

However, in spite of the existing provisions, the national legislation is not able to properly regulate the issue of disclosure of the confidential information about child victims that can lead to the identification of the child victim.

As far as protection is concerned, the Optional Protocol states the necessity to ensure personal safety (f) and protecting the rights and interests of children (g) (Article 8), which are closely connected with each other and should be considered together.

Currently, Articles 52–1 and 52–3 of the Criminal Procedure Code and the Law of Ukraine 'On Ensuring Security of the Persons who Participate in Criminal Legal Proceedings' stipulates taking appropriate measures to ensure safety of victims, witnesses, their family members and other participants, as well as non-disclosure of information about such persons. But these measures are applicable only when victims and/or witnesses were recognised as such or who, in other words, have procedural status. It is worth mentioning that a person can be considered a victim by a court or investigator's decision – after a decision is made about opening a criminal case it is possible. But for three or, in some cases 10 days, before it opens it is impossible to recognise a child as a victim and thus ensure the safety of children and their family members, even if it is necessary. The same is true for witnesses.

That is why provisions are necessary to oblige pre-trial investigation agencies to detect threats to the safety of a child who is known to be a victim and to ensure his/her protection until he/she gets victim status, regardless from whom the information about the threat came – from the child him/her self or from another person. The Criminal Code of Ukraine (Article 380) should be amended to establish criminal responsibility for the misuse of safety measures in cases

where there is information about threats to a child's safety. Similar amendments should be introduced into the Law of Ukraine 'On Ensuring Security of the Persons who Participate in Criminal Legal Proceedings'

It is necessary to ensure immediate submission of the materials containing information about an offence committed against a child to an investigation unit and to ensure the child's security at the time preceding the initiation of the criminal case.

Ensuring the safety of a child victim cannot be done similar to ensuring safety of adults, as it does not take into consideration their vulnerability, the peculiarities of their age and the need for special knowledge among the people protecting them. The latter have to explain to children their rights and interests and understand them, taking into account their age and health status.

Article 10, 'The right to protection from all forms of violence' of the Law of Ukraine 'On Protection of Childhood' states that disclosure or publication of any information about a child that can be harmful to him/her without the permission of the legal representative or of the child him- or herself is prohibited. The analysis shows that it is necessary to take into account cases where legal representatives act against the interests of child victims. The prohibition to disclose information about a child is established in Articles 182, 381 and 387 of the Criminal Code of Ukraine. These articles, however, mention only the protection of persons towards whom security measures are taken. Special «subjects» bear responsibility – officials and persons with the status of «subjects» in criminal proceedings as a result of the decisions of officials.

A term of three days is given to resolve the issue of opening or rejecting a criminal case if it is in the competence of officials. If necessary the term can be prolonged to 10 days. During this period, the security of the applicant and his/her family members is ensured. But a child victim and his/her legal representative has to apply to law enforcement with a request that appropriate security measures be taken. In the absence of such a request there will be no legal grounds for such measures. The situation is similar when it comes to a witness.

On the basis of the Article 16 of the Law of Ukraine 'On International Treaties of Ukraine' and the Article 4 of the Law of Ukraine 'On Protection of Childhood', it is necessary to bring the national legislation in line with the requirements of the international legal instruments ratified by Ukraine. In this connection it is necessary to develop a separate chapter in the Criminal Procedure Code to regulate procedural issues related to the best interests of a child victim. Here, the term 'the best interests of a child victim denotes immediate submission of materials and information about a child victim to the pre-trial investigation body in order to initiate a criminal case and carry out primary (initial) investi-

gative and procedural actions aimed at protection of the rights, interests and personal security of children. It also denotes procedural issues to make sure that the child victim is aware of the contents of the procedures at pre-trial and trial stages, and of his/her rights and interests

Provisions for security and immunity of legal and physical entities, public organisations involved in the prevention and/or protection and rehabilitation of victims of crimes, as mentioned in the paragraph 5, Article 8 of the Optional Protocol, are partly reflected in the Ukrainian legislation. In particular, Articles 129, 195 and 350 of the Criminal Code establish responsibility for the threat of murder, property destruction or violence towards an official or a citizen in his/her public duty. However, the Law does not provide for security measures for such persons.

Article 8 (paragraph 1(g)) obliges the state to avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims. And according to the **Article 9 (paragraph 4)** States Parties shall ensure that all child victims of offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

The right to compensation for damages resulting from a crime is stipulated in both the Criminal Procedure Code and the Civil Code. Article 28 of the Criminal Procedure Code 'Civil suit in the criminal case' states that 'a person who sustained material damages from the crime may, during criminal proceedings, bring a civil suit against the accused or the persons who are materially responsible for acts committed by the accused. Such civil suits are considered by court together with criminal case'. The judge should review the claim along with the criminal charges and the amount of damages should be based on evidence provided in the course of the trial. The claim should be filed prior to the court investigation. However, if the claim is filed during the trial, the court shall not reject it. «Civil suit may be brought during both pre-trial investigation and inquiry, and trial but before the beginning of court's examination. Denying the suit by way of civil proceedings deprives the plaintiff of the right to bring the same suit in criminal case».

The person who did not bring a civil suit in criminal case as well as the person on whose civil suit any action was taken may bring such a suit by way of civil proceedings.'

Article 29 'Ensuring compensation for the damages caused by a crime, and execution of judgment in terms of asset confiscation' states that if there is sufficient information that a crime has caused material damages or that a health care institution incurred expenses for in-patient treatment of the victim of a

crime, the inquiry agency, investigator, prosecutor, and court are required to file a civil suit.

Articles 22 and 23 of the Civil Code establish the procedure of compensation of material and moral (non-property) damages.

Analysis of the current norms reveals that they are rather generic and do not take into account the best interests of children. They do not automatically provide for compensation to child victims who were subject to trafficking in people, child prostitution and pornography.

In addition, the state shall take all the necessary measures to ensure social reintegration of the victims of such offences, and their full physical and psychological rehabilitation, as set out in **the Article 9 (paragraph 3) of the Optional Protocol**. In order to provide qualified assistance, **Article 8 (paragraph 4) of the Optional Protocol stipulates** measures to ensure appropriate training, in particular legal and psychological training, for people who work with victims of the offences prohibited under the Protocol. Ukrainian legislation does not fully comply with this provision as it contains only a rather general provision (Article 14 of the Law of Ukraine 'On Bodies and Services for Children and Institutions for Children', stating that the state shall ensure special training and re-training for chief staff and specialists (educators, social psychologists, sociologists, lawyers, medical specialists and law enforcement personnel) with the aim to properly organise the work of the bodies and services for children and special establishments and institutions for children. Introduction of a juvenile justice system would bring Ukrainian legislation in line with international standards in the sphere of protection of child rights.

Analysing Ukrainian legislation on its compliance with the provision of the Optional Protocol on social reintegration and full physical and psychological rehabilitation, it should be noted that such activities are legally grounded. The Law of Ukraine 'On Bodies and Services for Children and Institutions for Children stipulates for support and assistance to child victims, Specialised institutions for children, including shelters for children run by the services for children, centres for child social-psychological rehabilitation and social rehabilitation centres that assist children in need of social reintegration and rehabilitation. At the same time, however, the Law does not provide for specialised institutions for children who have suffered from trafficking and sexual violence, including child prostitution and pornography. Placing such children together with children in difficult life situations favours nor the child victims of sale, prostitution or pornography, nor the children in difficult life situation. The Law of Ukraine 'On the National Programme 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016' and the National Programme against Trafficking in Human Beings for the Period up

to 2010 provide for a system of rehabilitation and reintegration of children who are victims of trafficking in people, sexual exploitation and other forms of cruel treatment, as well as development and introduction of a programme of social and psychological rehabilitation for children victims of trafficking. To implement these provisions, it is planned to establish specialised centres for children who are victims of trafficking, sexual violence including child prostitution and pornography along with shelters for children, centres of social and psychological rehabilitation for children and children's towns. But in order to effectively implement these provisions, it is necessary to ensure adequate financing for such institutions and activities aimed at providing assistance to child victims.

Summarising the analysis of Ukrainian legislation for its compliance with the provisions of the Optional Protocol regarding the protection and assistance to children who are victims of or witnesses to human trafficking, child prostitution and pornography, it should be emphasised that for the greater part, Ukrainian legislation does not meet the requirements of the Optional Protocol. Rights of the child to protection and assistance are not properly ensured or implemented in criminal procedure, nor when rendering social assistance to child victims of trafficking, child pornography and prostitution. These significant gaps should be eliminated in the nearest future through introduction of appropriate amendments to the Ukrainian legislation in force, especially to the Criminal Procedure Code of Ukraine, and Laws of Ukraine on 'Protection of Childhood', 'On Ensuring Security of the Persons who Participate in Criminal Legal Proceedings' and 'On Bodies and Services for Children and Special Institutions for Children'.

Conclusions and Recommendations

Having analysed a number of normative and legal acts, and having completed their comparative analysis with the provisions of the Optional Protocol, it is safe to say that Ukrainian legislation does not fully comply with these regulations.

Such phenomena as the sale of children, child prostitution and child pornography are identified by the Optional Protocol as different manifestations of the violation of child rights. However, they are closely interrelated and interlinked, thus being viewed as a comprehensive issue of sexual violence and sexual exploitation of children. Since the issue of the sale of children, child prostitution and child pornography is a comprehensive one, it requires integrated solution, in particular, by means of prevention and combating of these phenomena, as well as through protection and assistance to affected children. So, analysis of compliance of the Ukrainian legislation was based on the same principles.

Key conclusions of the study are as follows:

1. Legislation of Ukraine ***generally complies with the provisions of the Optional Protocol in the area of prevention of the sale of children, child prostitution and child pornography***. In addition, it partially reflects provisions of subsequent international documents, including Council of Europe Conventions No. 185, 197, 201, which take into account new aspects and trends in the area of combating the sale of children, child prostitution and child pornography, and present new instruments of response to these phenomena. Key remarks to the Ukrainian legislation:
 - The absence of specific norms containing special measures to prevent involvement in trafficking, prostitution and pornography of children, particularly vulnerable to such practices, including children deprived of parental care, homeless children, orphaned children, disabled children, children with disorders of mental and physical development, children with incurable diseases, child victims of natural disasters and catastrophes, etc.;
 - The absence of specific regulations in educational legislation – namely, in the laws of Ukraine «On Education» and «On General Secondary

Education» – regarding inclusion of mandatory information on the rights of children and education on prevention of offences against children, their harmful consequences and development of protective skills against these crimes in the system of education (particularly, in preschool and general secondary education);

- The absence of special strategies and measures to prevent the sale of children, including their absence in the State Programme to Fight Trafficking in Humans for the Period up to 2010;
- The absence of comprehensive approach towards awareness raising in the society and among children regarding risks related to the sale of children, child prostitution and child pornography.

2. Legislation of Ukraine *for the most part complies with the provisions of the Optional Protocol in the area of combating of the sale of children, child prostitution and child pornography.* However, there also exist significant gaps that impede effective fight against these shameful phenomena:

- The absence of definitions of the terms «sale of children» and «child prostitution»;
- Criminal legislation, namely Article 149 of the Criminal Code of Ukraine, which establishes criminal responsibility for the trafficking in human beings, including the sale of children, does not consider cases of transfer of children to other persons for remuneration or any other consideration without the purpose of exploitation as facts of human trafficking;
- The absence of differentiation of the terms «sale of children» and «trafficking in persons» (for the purpose of exploitation), as established by the Optional Protocol and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime;
- The absence of criminal responsibility for the use of child prostitution;
- Possibility to hold a child, who reached 16 years of age, administratively liable for prostitution;
- The absence of responsibility for unforced involvement of a child in the creation of products, images or film and video products and computer software of pornographic nature;
- The lack of effective mechanisms to confiscate property and funds, acquired by criminal means.

3. Legislation of Ukraine ***for the most part does not comply with the provisions of the Optional Protocol in the area of protection and assistance to child victims of trafficking and witnesses of the sale of children, child prostitution and child pornography.*** The right of a child to protection and assistance is neither fully established nor fully implemented in the criminal procedures and in the provision of social assistance to children affected by the trafficking in persons, child pornography and child prostitution. Key issues in this area include:
- Non-consideration of vulnerability of child victims (children affected by the offence), and the absence of adapted procedures to recognize their special needs, in contrast to special considerations established for the juvenile witnesses or individuals, who committed socially dangerous acts prior to the age of criminal responsibility;
 - Ensuring the rights of child victims similar to the rights of adult victims, beginning from the time of obtaining information about socially dangerous act against a child, at the stage of considering initiation of criminal case and the procedure of pre-trial inquiry and up to the decision of the case;
 - The absence of time limits for interrogation of a child victim and performance of other procedural actions;
 - The absence of requirement regarding mandatory participation of a child psychologist with relevant professional competence to provide psychological support or to assist in the establishment of psychological contacts with a child victim in the process;
 - Impossibility to recognize an affected child (child victim) as a witness and injured person in one and the same criminal case;
 - The lack of mechanisms of access and provision of free legal assistance to affected children or child witnesses of crimes;
 - The absence of clear regulation of the issues of confidentiality of child victims, that is, prevention of distribution of the information about the private life of such children, which could lead to identification of the child victims (especially prior to the establishment of the status of a victim or a witness);
 - Impossibility to ensure safety of child victims prior to initiation of the criminal case;
 - The lack of effective mechanism to recover compensation for moral and material damages of child victims;

- The absence of specialised facilities for rehabilitation of children, affected by the trafficking in persons, child prostitution and child pornography.

Summarizing the above said, it can be concluded that ***the legislation of Ukraine only partially complies with requirements of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; consequently, it requires relevant modifications and introduction of appropriate amendments.***

Gaps in the Ukrainian legislation should be eliminated in the nearest future through introduction of relevant amendments and additions to the Criminal Code of Ukraine, Code of Criminal Procedure of Ukraine, the laws of Ukraine 'On Protection of Childhood', 'On Ensuring Security of the Persons who Participate in Criminal Legal Proceedings', 'On Bodies and Services for Children and Special Institutions for Children', etc.

Analysis of the normative and legal framework of Ukraine makes it possible to suggest the following recommendations to improve legislation in the area of combating the sale of children, child prostitution and child pornography:

1. Introduce special provisions to the educational legislation – namely, to the laws of Ukraine «On Education» and «On General Secondary Education» – on mandatory information on the rights of children; on education regarding prevention of offences against children and their harmful consequences, on risks of sexual exploitation and sexual abuse, and the ways of age-specific self-protection;
2. Pass the Law of Ukraine «On Combating Trafficking in Human Beings»;
3. Establish legal definition of «human trafficking» in the Law of Ukraine «On Combating Trafficking in Human Beings»;
4. Establish legal definition of «child prostitution» in the Law of Ukraine «On the Protection of Childhood»;
5. Develop amendments and additions to the Criminal Code of Ukraine regarding:
 - introduction of criminal responsibility for buying sex services offered by children (the use of child prostitution);
 - introduction of varying degrees of responsibility for involvement of minor and underage individuals in the production and dissemination of pornographic products;
 - criminalization of production and possession of child pornography for any purpose;

- establishment of responsibility for involvement of a child in the creation of products/works, images or film and video products and computer software of pornographic nature;
 - mandatory confiscation of property and funds, acquired by criminal means;
- 6.** Develop amendments to the Code of Ukraine on Administrative Offences regarding:
- introduction of parental responsibility for allowing child’s involvement in prostitution, production of pornography, etc.;
 - exclusion of administrative liability of a person under 18 years of age for prostitution;
 - establishment of responsibility of mass media representatives for disclosure of personal information about children, affected by the sale of children, child prostitution, child pornography and other forms of sexual exploitation and violence;
- 7.** Develop amendments and additions to the Code of Criminal Procedure of Ukraine regarding:
- establishment of mandatory participation of psychologist at all stages of court proceedings involving a child;
 - ensuring provision of free legal assistance to recognised child victims and child witnesses, necessary to protect their rights;
 - obligation of pre-trial inquiry bodies to reveal information about potential threats to the safety of a child, who is known to be a victim of a crime; to ensure protection of such child up to the moment of his/her official recognition as injured person (regardless the source of the statement or notification about the threat – the child him/herself or other person);
 - immediate submission of materials with information about crime against a child to the investigation unit to consider the issue on initiation of the criminal case; and during the period of verification of such materials – to ensure application of relevant safety measures as appropriate prior to initiation of the criminal case;
 - introduction of separate section in the Code of Criminal Procedure of Ukraine containing regulated procedural issues to ensure observance of the best interests of a child victim.

- 8.** Develop new Decree of the Plenum of the Supreme Court of Ukraine regarding court application of legislation on responsibility for sexual crimes against children;
- 9.** Consider issues and develop the concept establishing responsibility of legal entities for crimes related to the sale of children, child prostitution and child pornography;
- 10.** Introduce efficient mechanism to monitor the government policy in the area of combating the sale of children, child prostitution and child pornography;
- 11.** Establish Government's responsibility regarding implementation of regular information campaigns in the area of combating the sale of children, child prostitution and child pornography;
- 12.** Ratify the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;
- 13.** Approve the concept of introduction of juvenile justice in Ukraine, giving particular attention to the protection of the rights of child victims and child witnesses of offences;
- 14.** Establish several specialised centres for child victims of trafficking in human beings and sexual violence, including prostitution and pornography;
- 15.** Study criminal and procedural criminal law of Estonia regarding protection of a child from sexual violence; consider opportunities for application of this experience to improve the current legislation of Ukraine;
- 16.** Ratify the Council of Europe Conventions on Action against Trafficking in Human Beings and on the Protection of Children against Sexual Exploitation and Sexual Abuse.

