

# MON-EU-TRAF II.

## A Study for Monitoring the International Trafficking of Human Beings for the Purpose of Sexual Exploitation in the EU Member States



*With financial support from  
European Commission*

Edited by  
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 **TRANSCRIME**

IN CO-OPERATION WITH:  
**THE EUROPEAN INSTITUTE FOR CRIME PREVENTION AND  
CONTROL AFFILIATED WITH THE UNITED NATIONS,  
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UNIVERSITÀ DEGLI STUDI  
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UNIVERSITÀ CATTOLICA  
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# MON-EU-TRAF II

*A STUDY FOR MONITORING THE INTERNATIONAL TRAFFICKING OF HUMAN BEINGS FOR THE PURPOSE  
OF SEXUAL EXPLOITATION IN THE EU MEMBER STATES*

## FINAL REPORT

EXECUTED BY

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IN COOPERATION WITH

HEUNI – THE EUROPEAN INSTITUTE FOR CRIME PREVENTION AND CONTROL AFFILIATED WITH THE UNITED NATIONS  
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AND

RESEARCH CENTRE ON CRIMINOLOGY UNIVERSITY OF CASTILLA-LA MANCHA  
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FOR THE

EUROPEAN COMMISSION

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## 1

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The research project has been directed by Ernesto U. Savona, Professor of Criminology at the *Università Cattolica del Sacro Cuore*, Milan and Director of Transcrime, and co-ordinated by Andrea Di Nicola, researcher at the *Università degli Studi di Trento* and research coordinator at Transcrime (Trento office), with the collaboration of Andrea Cauduro and Vanessa Bopp, both interns at Transcrime. Other researchers at Transcrime contributed to various steps of the Study (in alphabetical order): Paola Bettio, Cinzia Birolini, Stefano Caneppele, Velvet De Santa, Elisa Martini, and Marco Serafini. Daniele Spizzichino provided statistics support, while Paul Murphy and Shawna Gibson took care of the language editing. Furthermore, Sabrina Adamoli took care of management duties.

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## 2

## EXECUTIVE SUMMARY

This report provides the final results of the research project *MON-EU-TRAF II: A study for monitoring the international trafficking of human beings for the purpose of sexual exploitation in the EU Member States*. This project was awarded by the European Commission under the EU 2002 Stop II Programme and carried out by Transcrime, Joint Research Centre on Transnational Crime, Università degli Studi di Trento/Università Cattolica del Sacro Cuore (Italy), together with HEUNI (Finland) and Research Centre on Criminology University of Castilla-La Mancha (Spain).

The research described in this report is a follow-up to *MON-EU-TRAF – A Pilot Study on three European Union immigration points for monitoring the international trafficking of human beings for the purpose of sexual exploitation across the European Union*, developed by Transcrime–University of Trento under the 2000 Stop Programme (contract 2000/STOP/137). During this pilot study, a framework (three Model Spreadsheets) was designed in order to collect several types of information. The first Model Spreadsheet focused on information related to criminal legislation on trafficking in human beings, especially for the purpose of sexual exploitation. Model Spreadsheet 2 was dedicated to information on the availability and adequacy of existing statistical data on human trafficking. Once the organisation of the sources of information was ascertained, figures on the phenomenon could be recorded. Model spreadsheet 3 collected the relevant quantitative and qualitative information on trafficking in human beings for the purpose of sexual exploitation from investigative and judicial cases, and from NGO records. The framework was tested in Spain, Italy and Finland making it possible to acquire relevant quantitative and qualitative information. This information was used to estimate the phenomenon, to devise recommendations to eliminate the problems identified as hampering effective data collection procedures and enabled the exchange of information on trafficking and exploitation.

This research, *MON-EU-TRAF II*, utilised the framework developed in the above-mentioned pilot study in the ‘original’ fifteen EU Member States. The implementation of the same model framework in these countries allowed the results of the pilot study to be extended, thereby providing greater homogeneity to the data collected.

This project addressed some of the needs identified in the books, articles and reports produced by national and international institutions, namely:

1. Statistics (quantitative information) related to trafficking in human beings, especially for the purpose of sexual exploitation and sexual exploitation of children, in the fifteen EU Member States must be improved. Little is known, not only about numbers and characteristics of trafficked persons (especially women and children), but also about individuals working for criminal groups involved in these criminal activities;
2. Qualitative information on the chain of trafficking in human beings especially with regards to trafficking for the purpose of sexual exploitation and sexual



exploitation of children (recruitment, transportation, exploitation, organisations, clients etc.) in the EU must be up-to-date and comparable across countries.

3. Reliable estimates of the scale and nature of trafficking in human beings, especially with the purpose of sexual exploitation in the EU must be created.

Consequently, the aims of the research were:

1. To improve statistical data and various qualitative sources of information – in terms of quality and cross-country comparability – on trafficking of human beings for the main purpose of sexual exploitation (especially women and children) in the fifteen EU Member States;
2. To quantify trafficking in human beings for the purpose of sexual exploitation and the sexual exploitation of trafficked children (number of victims involved, turnover of traffickers, etc.) in the fifteen EU Member States;
3. To suggest areas of intervention in order to prevent trafficking in human beings for the purpose of sexual exploitation throughout the EU.

The research project was developed through the following stages:

- STAGE 1 – Definition of the methodological tool (the framework) to be used to gather quantitative and qualitative information during the Study;
- STAGE 2 – Application of the framework to gather quantitative and qualitative information in the twelve ‘original’ EU Member States not covered by MON-EU-TRAF I and the presentation of the results of this exercise;
- STAGE 3 – Cross-comparison of the national situations and drafting of preliminary recommendations;
- STAGE 4 – Achievement of the aims of the Study and dissemination of its results;
- STAGE 5 – Evaluation of the results of the Study.

During the execution of the research, twelve experts in the field of trafficking in human beings for the purpose of sexual exploitation (one for each of the ‘original’ Member States, apart from the three countries represented by the three research partners: Finland, Italy, Spain) were selected. The twelve experts completed the framework (the three Model Spreadsheets) and compiled a national report for their country. The three research partners (Finland, Italy, and Spain) revised the reports already drafted for MON-EU-TRAF.

The quantitative and qualitative information gathered by the three Model Spreadsheets was summarised in national reports (see chapters 10–25 of this Report). The main results arising from the Model Spreadsheets in the fifteen Member States considered have been synthesised in this Final Report and a cross-analysis of the national situations was conducted which yielded the following main findings (see chapter 8 of this Final Report for details):

- problems related to criminal offences which may hamper effective data collection and the exchange of information on trafficking;

- problems related to the organisation of the existing databases which may hamper effective data collection and the exchange of information on trafficking and best practices in the field of data collection;
- qualitative information which may yield better understanding of the trafficking chain.

Based on the data gathered through the model spreadsheets, especially on official information recording the number of trafficking victims who came into contact with NGOs or with the police/judicial authorities, in some of the countries but not in all, it would have also been possible to achieve estimates of the annual number of victims and of the monetary turnover of traffickers based on the method already used in MON-EU-TRAF I. During the meeting of the research team with the national experts, the idea expressed by the majority of the national experts was that of not calculating these estimates and instead stressing the importance of having good and official comparable qualitative and quantitative information as a basis for producing better estimates in the future. The experts acknowledged that the reasons for this choice were: the general scarcity of official data on victims; the heterogeneity of official sources (Ministries, Police, Judicial Authorities, NGOs) and the different criteria in data collection on victims; the absence of specific anti-trafficking legislation in some countries; the difference in the level of law enforcement efforts from country to country which may impact on the level of recorded victims by police, judicial authorities and NGOs; and the need for boosting the culture of official data. All the national experts acknowledged the quality of the proposed method of estimate, but they agreed that it would be better to use it if official statistics were more reliable and that these statistics and the national law enforcement efforts put towards anti-trafficking were more homogeneous. Regarding the need to refine and improve a method of estimating levels of trafficking in human beings across the European Union and beyond, it is possible to add that, besides the actual number of victims (as an input to produce reliable estimates), other factors could also be considered as inputs of a more complex model of estimate. Among these factors (to be measured at the national level) include: the nature and diffusion of the demand for sex services; the level of anti-trafficking control measures (law, both in theory and practice); the level of closure/openness of migratory regulations; the level of competence and spread of organised criminal groups; the level of corruption in various sectors (law enforcement, judicial, political, etc). This is a path for future research and for future data collection.

The main findings of the Study now follow.

#### PROBLEMS RELATED TO CRIMINAL OFFENCES WHICH MAY HAMPER EFFECTIVE DATA COLLECTION AND THE EXCHANGE OF INFORMATION ON TRAFFICKING

1. There is still some minor work to do in order to homogenise national criminal offences in the field of trafficking in human beings for sexual exploitation.
2. Many criminal systems in line with international standards provide for an all-inclusive model (i.e. the criminal system only provides a general offence of trafficking in human beings and the trafficking for sexual exploitation is a part or an aggravating circumstance of such an offence). From a merely statistical point of view, this may hamper the collection and the exchange of information

and data. In fact, it would be impossible, once data has been collected on this general offence to separate the information related to trafficking for labour or for other purposes from the information on trafficking for sexual exploitation.

3. In some countries with specific offences of trafficking in human beings, there are still some minor, separate offences, which the criminal court can rely on to punish such behaviour.
4. In the near future criminal legislation on trafficking in human beings across the European Union could be harmonised. Even if this were to occur, minor differences among criminal systems that may taint the collection of data are to be expected. This means that harmonising criminal offences is just one way of producing better statistics on criminal phenomena. It is not, however, the only one.

PROBLEMS RELATED TO THE ORGANISATION OF EXISTING DATABASES WHICH MAY HAMPER EFFECTIVE DATA COLLECTION AND THE EXCHANGE OF INFORMATION ON TRAFFICKING AND BEST PRACTICES IN THE FIELD OF DATA COLLECTION

1. There are many diverse authorities collecting data.
2. The data stored in databases are not immediately comparable across countries because the relevant criminal offences are sometimes different.
3. Statistics are not always clear and useful.
4. The criteria for storing data differ from country to country.
5. The types of data collected may differ.
6. Different variables are used to collect information on offences, perpetrators and victims.
7. Insufficient attention is paid to gathering information on victims.
8. Some countries only maintain confidential databases and occasionally these are the only ones available for information on trafficking in human beings.
9. Information from NGOs is under-utilised.
10. The activity of the Spanish Guardia Civil provides a good example of pro-active police activity and the gathering of data.
11. A good example of data collection in the field of police information is the national general police database in Belgium.
12. The activity of the Italian Direzione Nazionale Antimafia presents a good example of a judicial monitoring system.
13. The activity of the Dutch Central registration of victims of trafficking by the Foundation against Trafficking in Women (STV), a non-governmental organization, maintains an excellent database.

## QUALITATIVE INFORMATION WHICH MAY YIELD BETTER UNDERSTANDING OF THE TRAFFICKING CHAIN

1. Analysis of the origins of people trafficked/exploited, highlights that the main points of recruitment always coincide with less- or under-developed countries, usually from Eastern European countries, or in the case of Portugal and Spain, from South American countries, whose inhabitants still live in very poor social and economic circumstances.
2. Trafficking routes differ according to the place from which they start, but there is always a reason for the choice of a specific path: loopholes. These can be geographical (i.e. the topography), institutional (i.e. colluding authorities, lack of domestic control, etc.) and/or bureaucratic (i.e. visa requirements and immigration policy).
3. The *modi operandi* of both traffickers and exploiters show that the crime of trafficking in human beings for the purpose of sexual exploitation is never committed on its own. Related crimes, such as corruption, counterfeiting documents, etc., are invariably committed in order to facilitate trafficking operations.
4. Most of the actors involved are not individuals but rather criminal organisations and/or networks, often working on a transnational basis in the country of origin, the intermediary points, and the final destination (exploitation) points.
5. The duration of the exploitation depends on the ethnic group involved.
6. The involvement of 'legal actors' exist who facilitate the exploitation of prostitution, such as letting agencies, taxi drivers, and hotel owners.
7. The information available on the places of exploitation indicates different situations in each of the countries analysed (street prostitution, prostitution in clubs and hotels, prostitution in apartments, etc.) but it is obvious that the demand for prostitution services and prostitution policies/practices play a fundamental role in the localisation of the activity (e.g. areas of the country in which prostitution takes place and whether it does so indoors or outdoors, or in private or public).
8. Organised crime uses expedients in order to disguise the exploitation (for example, stay permits for 'posted workers', deduction from the dancer/hostess's wages of the hours spent with clients).
9. There are frequent cases of bribery of foreign public officials.
10. Street prostitutes are exploited in places different from those where they live, the purpose being to conceal the exploiters. It is a sort of not unlike commuting.
11. Money is often transferred in cash to the countries of origin by emissaries or via money transfer agencies.

Bearing the main findings of the study in mind, the Final Report proposes ten recommendations for better quantitative and qualitative data collection and for the more effective prevention of trafficking in human beings for the purpose of sexual exploitation. For each of these recommendations, the Final Report describes its background and rationale, and the way in which it might be implemented.

## **THE TEN RECOMMENDATIONS BY THE MON-EU-TRAF II PROJECT**

### **RECOMMENDATIONS FOR BETTER QUANTITATIVE AND QUALITATIVE DATA COLLECTION**

#### **RECOMMENDATION 1 – HARMONISATION OF LEGISLATION**

Action should be taken to induce the EU Member States to introduce into their criminal law systems, clear and distinct offences of alien smuggling, trafficking in human beings for sexual exploitation, and trafficking in human beings for other purposes. These offences should be defined according to the internationally agreed standards.

#### **RECOMMENDATION 2 – BETTER DEFINITION OF OFFENCES/BETTER SYSTEMS FOR ACQUIRING COMPARABLE DATA ON TRAFFICKING/SMUGGLING**

Action should be taken to establish common systems of data collection aimed at gathering separately information on the various forms of trafficking in human beings (sexual exploitation, labour exploitation, etc.) and smuggling of human beings.

#### **RECOMMENDATION 3 – AUTHORITY COLLECTING DATA AND UNIQUE REFERENT**

Action should be taken to establish, in each Member State, a single national agency (unique referent) which acts as the focal point for the collection, collation or harmonisation of statistics on trafficking in human beings/trafficking in human beings for the purpose of sexual exploitation. This national agency should share such statistics with the agencies of other Member States. At a central EU level, action should be taken to establish also a central EU agency with a view to improve the co-operation among national agencies, to collect data at the EU level, and to propose policy guidelines to the EU institutions.

#### **RECOMMENDATION 4 – ORGANISATION OF DATABASES**

Action should be taken to induce EU Member States, through the national agencies (unique referents), to collect data on the same offences and to harmonise the criteria for collection and storage of data on trafficking in human beings.

#### **RECOMMENDATION 5 – INFORMATION ON VICTIMS**

Action should be taken so that investigative and judicial statistics in EU Member States comprise data on the victims of trafficking in human beings/trafficking in human beings for sexual exploitation. The variables on which data are collected should reflect the specific characteristics of these offences.

#### **RECOMMENDATION 6 – INFORMATION FROM NGOS**

Action should be taken to establish systems within NGOs for the collection and collation of statistics, and for the maintenance of databases, with reference to the victims of trafficking with whom they have contact (in compliance with the international and national rules on the protection of privacy). Within this framework, contacts between NGOs and national and central EU authorities should be fostered.

### **RECOMMENDATIONS FOR MORE EFFECTIVE PREVENTION OF THE PHENOMENON**

#### **RECOMMENDATION 7 – A METHOD FOR PREVENTION**

Action should be taken to foster the development of “methods for prevention” comprising the “rapid” acquisition of qualitative, cross-country comparable information on the trafficking chain, analysis of this information, and the devising of intervention policies grounded on the knowledge thus acquired. The method should be based on “rough and ready” research in each of the European Union Member States. In particular, ethnographic rough and ready” research on the demand side should be fostered at the EU level.

#### **RECOMMENDATION 8 – IMPROVING ECONOMIES AND AWARENESS**

Action should be taken to improve the economies, the level of women’s employment, and the awareness of women and children with respect to the trafficking in human beings in the Eastern European countries, as well as those which are already Member States of the European Union.

#### **RECOMMENDATION 9 – INVOLVEMENT OF LEGAL ACTORS**

Action should be taken at the Member State level in order to devise non criminal systems to more effectively supervise letting and travel agencies, taxi drivers, and owners of hotels, apartments and clubs.

#### **RECOMMENDATION 10 – APPROACHES TO PROSTITUTION**

The European institutions and the European Union Member States might consider the possibility of exploring the link between prostitution policies/practices and the trafficking of human beings for sexual exploitation in the light of taking an EU approach to prostitution capable of minimizing the social and human costs of this activity, especially when exercised under criminal control.



## 3

## INTRODUCTION

This report provides the final results of the research project MON-EU-TRAF II: A study for monitoring the international trafficking of human beings for the purpose of sexual exploitation in the EU Member States. This project was awarded by the European Commission under the EU 2002 Stop II Programme and carried out by Transcrime, Joint Research Centre on Transnational Crime, *Università degli Studi di Trento/Università Cattolica del Sacro Cuore* (Italy), together with HEUNI (Finland) and Research Centre on Criminology University of Castilla-La Mancha (Spain).

In the European Union there is the need for a definition of minimum common standards for the collection of comparable statistics and qualitative information in the field of trafficking for the purpose of sexual exploitation and sexual exploitation of children. These standards, if implemented in the Member States, would allow for a better quantitative and qualitative knowledge to be developed on trafficking for the purpose of sexual exploitation of children and subsequently reliable estimates on the phenomena could be produced. This project and this report want to contribute to this process.

The report is organised as follows:

- Acknowledgements (chapter 1);
- Executive summary (chapter 2);
- Introduction (chapter 3);
- Rationale framing this research project in the context of actions by the European Union against trafficking in human beings (chapter 4);
- The problem of the research: the need for better, comparable cross-country, quantitative and qualitative knowledge (chapter 5);
- The research and its aims (chapter 6);
- Methodology and data collection procedures (chapter 7);
- The main results from the three Model Spreadsheets applied to the original fifteen EU Member States (chapter 8);
- A possible method to estimate the scale of trafficking and the monetary turnover of traffickers (chapter 9);
- Recommendations for better quantitative and qualitative data collection procedures and more effective prevention of the phenomenon (chapter 10);
- National reports for the original fifteen EU Member States (chapters 11–25).





## 4

## TRAFFICKING IN HUMAN BEINGS ON THE EUROPEAN UNION AGENDA

The prevention and suppression of trafficking in persons is a priority for the European Union as it concerns the protection of human rights, immigration policies, the security of its citizens, and the enlargement of the Union to the candidate Member States.<sup>1</sup>

On 28 February 2002, the Council of the European Union adopted a *Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*.<sup>2</sup> The plan outlined a number of priorities for the prevention of illegal immigration and trafficking and emphasises the intention of the Union to tackle the problem with a view to establishing an area of freedom, security and justice. The plan deals with various aspects of the problem such as visa policy, information exchange on illegal immigration, measures relating to the crossing of the borders as well as readmission and return policies. Furthermore it outlines ways to strengthen the role played by Europol and the provision of adequate penalties for the criminal offences of *trafficking in persons* and *smuggling of migrants* in accordance with the definitions proposed by the protocols supplementing the Palermo Convention of 2000.<sup>3</sup> Finally it seeks to harmonise the criminal laws of the Member States. This Action Plan is the most recent in a number of initiatives in this field, which include:

- the Conclusions of the European Council Meeting in Laeken, held on 14 and 15 December 2001, which reaffirmed the commitment of the European Council to the policy guidelines and objectives defined in Tampere (15 and 16 October 1999) regarding the creation of an area of freedom, security and justice. Among its various recommendations, the European Council of Laeken emphasised the need to harmonise regulations on the trafficking in human beings (Conclusion 45);
- the Conclusions of the European Council Meeting in Tampere held on 15 and 16 October 1999 (the so-called ‘Tampere Milestones’) affirmed the importance of creating an area of freedom, security and justice within the Union through full application of the possibilities offered by the Treaty of Amsterdam. One of the priorities specified in addressing the problems connected to illegal migration is the development of measures for the management of migration flows (Conclusion 22). The conclusions of the Presidency of the Council also affirmed the commitment “to tackle illegal immigration at its source, especially

<sup>1</sup> See E. Camilletti, “La problematica della tratta degli esseri umani: politiche e strategie dell'Unione europea” [The Question of Trafficking in Human Beings: the Policies and Strategies of the European Union], in *Diritto & Diritti*, November 2002, available at <http://www.diritto.it/materiali/europa/camilletti.html>.

<sup>2</sup> Council of the European Communities, *Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*, Doc. no. 6621/1/02 JAI 30 FRONT 19 MIGR 10 VISA 29N REV 1, Brussels, 28 February 2002.

<sup>3</sup> The choice of conforming to the distinction and definitions of the United Nations was reaffirmed in the *Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*, recommendation no. 22.

by combating those who engage in trafficking in human beings and economic exploitation of migrants". This requires the Member States to adopt legislation that imposes severe penalties on those who commit these crimes. The Member States should also "direct their efforts to detecting and dismantling the criminal networks involved", while at the same time ensuring appropriate protection of the rights of the victims, taking the problems of women and children into due consideration (Conclusion 23). Moreover, the Presidency conclusions suggested a series of measures to "derive the maximum benefit from co-operation between Member States' authorities when investigating cross-border crime in any Member State". These were particularly applicable to the fight against trafficking in human beings, as well as to the strengthening of judicial cooperation (Conclusions 43–48);

- the Action Plan of the Council and of the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, adopted by the Council of Justice and Internal Affairs on 3 December 1998 (Doc. no. 13844/98) affirms the high priority of action against illegal immigration. In particular, point 46 of the Action Plan provides that, among the measures to be adopted within two years of entry into force of the Treaty, priority should be given to the suppression of trafficking in human beings and of exploitation of children.

It is now important to define the Union's actions and strategies with regard to the suppression and prevention of trafficking and the protection of victims.

#### 4.1 THE EUROPEAN UNION'S POLICIES ON CRIME CONTROL

The first concrete action dates to February 1997<sup>4</sup> with the Council of the European Union adoption of the *Joint Action to combat trafficking in human beings and sexual exploitation of children*,<sup>5</sup> the main objectives of were:

- to agree on legal definitions of trafficking in human beings and sexual exploitation of children so that they might be included among the criminal offences punished by domestic laws;
- to improve judicial cooperation in combating these offences.

Each State was invited to review its national laws so that trafficking in human beings and the sexual exploitation of children and adults were punishable as crimes that carried "effective, proportionate and dissuasive" criminal penalties. In order to achieve those objectives, the Joint Action defined each phenomena mentioned

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<sup>4</sup> Intervention by the European institution started before the 1997 Joint Action. In 1996, the European Commission set up the STOP Programme with Joint Action 96/700/JHA. This was a programme intended to create a system of training, information, study and exchange programmes for persons responsible for combating the trade in human beings and the sexual exploitation of children based on a "coordinated and multidisciplinary" approach. The intent was aimed at prevention rather than the suppression of the criminal phenomena.

<sup>5</sup> Joint Action 97/154/JHA.

above and were meant to provide the legal framework to which the Member States should refer.<sup>6</sup>

This Joint Action was ineffective, however, because it was too general and did not set minimum thresholds for punishment.<sup>7</sup> Nevertheless, it helped to stress some of the essential aspects of effective suppression at a European level, such as the need for common legal definitions.

This first Action has been followed by a Council framework decision on combating trafficking in human beings adopted on 19 July 2002 following a Commission Proposal.<sup>8</sup>

#### *4.1.1 The Council framework decision on combating trafficking in human beings<sup>9</sup>*

The Council framework decision on combating trafficking in human beings seeks to:

- introduce, at the European level, common provisions in order to define and regulate certain issues such as criminalisation, penalties, aggravating circumstances, jurisdiction and extradition;
- harmonise the laws and regulations of the Member States in the area of police and judicial cooperation.

Article 1 contains the definition of trafficking and states that the purpose of exploitation is an essential component. The criminal offence consists of “the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person”, where:

- coercion, force or threat, including abduction is used, or
- use is made of deceit or fraud, or
- there is an abuse of authority, or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse, or
- payments or benefits are given or received to attain the consent of a person having control over another person.

Once the conduct and the means to perform it have been clarified, the purposes of the crime are specified. The trafficking must be undertaken:

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<sup>6</sup> According to these guidelines, trafficking in human beings was defined as “any conduct that may facilitate the entry, transit and residence or exit in the territory of a Member State, for the purpose of gaining money or exploitation or sexual abuses”. Sexual exploitation is defined based on the person being exploited. If a child is involved, the definition is rather broad and encompasses various economic activities such as prostitution and other forms of paedophile-pornography. The exploitation of adults is limited to prostitution.

<sup>7</sup> In this regard, see Commission of the European Communities, *Proposal for a Council Framework Decision on Combating Trafficking in Human Beings*, COM (2000) 854 final, Brussels, December 21<sup>st</sup>, 2000, p. 4.

<sup>8</sup> Commission of the European Communities, *op. cit.*

<sup>9</sup> Notably, this Framework Decision is the result of adoption of the principles contained in the United Nations Protocol against trafficking in persons.

- for the purpose of exploiting the person’s labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
- for the purpose of exploiting the prostitution of others or other forms of sexual exploitation, including pornography.

Article 1 paragraph 2 specifies the irrelevance of consent even if it may have been given by the victim. Paragraph 3 contains specific provisions should the conduct involve a child. In this event, a punishable trafficking offence still exists even if none of the means set forth in Article 1 has been used.

Article 3 states that the penalties Member States must institute for trafficking offences must be “effective, proportionate and dissuasive criminal penalties”, which may entail extradition. This article also established a minimum punishment imprisonment of not less than eight years if one of the following aggravating circumstances is present:

- the offence has deliberately or by gross negligence endangered the life of the victim;
- the offence has been committed against a victim who was particularly vulnerable,<sup>10</sup> and the offence has been committed for the purpose of the prostitution of others or other forms of sexual exploitation, including pornography;
- the offence has been committed with the use of severe violence or has caused particularly grave harm to the victim;
- the offence has been committed within the framework of a criminal organisation.

Turning to the procedural aspects, the preliminary considerations of the decision stress that it is necessary to introduce penalties of sufficient severity that trafficking is included within the scope of instruments adopted for the purpose of combating organised crime. The *Joint Action, adopted by the Council on the identification, tracing, freezing, seizing and confiscation of the instrumentalities and proceeds from crime*,<sup>11</sup> and the *Joint Action adopted by the Council on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union*<sup>12</sup> were referenced for these penalties.

#### 4.2 THE POLICIES OF THE EUROPEAN UNION FOR THE PREVENTION OF THE OFFENCES AND ASSISTANCE TO VICTIMS

Trafficking in persons for the purpose of exploitation and the smuggling of migrants are serious forms of transnational organised crime. They are illicit activities that threaten the space of freedom, security and justice that the European Union has guaranteed to its citizens with the Treaty of Amsterdam. The repression of these crimes is just one of the responses of the Union. The European institutions

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<sup>10</sup> Pursuant to this provision, a victim shall be considered to be particularly vulnerable when s/he “was under the age of sexual majority according to national law”.

<sup>11</sup> Joint Action 98/699/JHA of 3 December 1998.

<sup>12</sup> Joint Action 98/733/JHA of 21 December 1998.

– as well as the international community and many states – are aware of the need for an approach based on three pillars that encompasses, besides repression, measures for the prevention of trafficking and smuggling and for the protection and assistance of victims.<sup>13</sup>

This chapter illustrates the Unions' intervention in this sector by analysing: 1) the policy developed within the Union for the prevention of organised crime; 2) the preventive measures contained in the Global Plan for the fight against illegal immigration and the trafficking of human beings within the European Union; and 3) the Union's strategy regarding prevention of trafficking in women and support for victims.

#### 4.2.1 The prevention of organised crime

Since 1997, the European Union has developed a policy for the prevention of organised crime. In 1997 the Action Plan adopted by the Amsterdam European Council called for an evaluation of the preventive instruments used to support law enforcement.<sup>14</sup> Article 29 of the Treaty of Amsterdam introduced the prevention of crime as one of the policies of the Union contributing to the creation of a "space of freedom, security and justice".

On 21 December 1998, the Council adopted a Resolution on the prevention of organised crime.<sup>15</sup> The objective was to establish measures for the prevention of this type of crime at an international level. The most significant for the purposes of this analysis were:

- the implementation of prevention programmes and the undertaking of educational actions;
- the adoption of instruments, such as codes of conduct, by professions that may be subject to corruption;
- awareness-raising campaigns on the causes, risks and consequences of crime;
- the creation, at regional and local levels, of structures able to study the problems related to crime;
- the exchange of new information obtained from scientific investigation or from experiences and practical evaluations among the Member States; moreover, the Council foresaw that such exchange could be institutionalised by the designation of national contact points;
- the designation of common methods of prevention to be done in collaboration with the Commission and Europol.

The resolution articulates the actions to be taken in three sections: 'strategy', 'knowledge and experiences' and 'implementation'. In the 'strategy' section the Member States were invited to develop national programmes to combat organised

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<sup>13</sup> Commission of the European Communities, *Common Policy on Illegal Immigration, Communication of the Commission to the Council and to the European Parliament*, COM (2001) 672, Brussels, 15 November 2001, p. 10. See A.A. Aronowitz, "Smuggling and Trafficking in Human Beings: the Phenomenon, the Markets that Drive it and the Organizations that Promote it", in *European Journal of Criminal Policy and Research*, vol. 9, no. 2, pp. 185–190.

<sup>14</sup> Action Plan adopted by the Amsterdam European Council on June 1997.

<sup>15</sup> Official Journal C 408, 29 December 1998.

crime, drawing attention to prevention and exchange of information on the subject. In the section on 'knowledge and experiences' the Member States were required to set up research programmes on the subject or to use community programmes. The section on 'implementation' recommends that Member States prioritise the rapid implementation of effective prevention measures.

On 27 March 2000, as a final follow-up to the Amsterdam Action Plan, the Council adopted the Strategy of the European Union for the beginning of the new millennium on the prevention and control of organised crime.<sup>16</sup> This document envisaged various forms of prevention, in particular affirming the need to:

- develop and/or improve systems for the gathering and analysis of data on organised crime (rec. 1);
- create systems able to prevent penetration of organised crime into the public and legitimate private sectors (recs. 2, 3, 4 and 5);
- establish partnerships with the private sector and create system of legislative crime proofing (rec. 6). This involves the creation of mechanisms that anticipate the possible consequence of the provisions being drafted. This is necessary because provisions may sometimes unintentionally create criminal opportunities, making the commission of an offence more lucrative or less risky. Accordingly, it is necessary to insert instruments which test law bills against the crime during the legislative process, in order to ensure that they do not unintentionally provide incentives for commission;
- improve cooperation with applicant countries and third states (recs. 32, 33 and 36).

In November 2000, the Commission presented a Communication on the prevention of crime in the European Union to the Council and the European Parliament<sup>17</sup> that set out a global strategy to be pursued against both common and organised crime. Prevention was defined as "all activities which contribute to halting or reducing crime as a social phenomenon, both quantitatively and qualitatively, either through permanent and structured cooperation measures or through ad hoc initiatives". Actions aiming at preventing crime should:

- reduce the opportunities for crime;
- reduce the social and economic factors which foster the growth of crime;
- provide information and protection for victims and prevent victimisation.

The strategy of the Union was articulated in three points:

- improve understanding of crime through the sharing of national experiences and practices;
- develop cooperation and networking by those involved in prevention at all levels;
- promote a multi-disciplinary approach.

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<sup>16</sup> Council of the European Communities, *The Prevention and Control of Organised Crime: a European Union Strategy for the Beginning of the New Millennium* (2000/C 124/01), Brussels, 2000.

<sup>17</sup> Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament – The Prevention of Crime in the European Union – Reflection on Common Guidelines and Proposals for Community Financial Support*, COM (2000) 786 final, Brussels, 29 November 2000.

A key element in the strategy proposed by the Commission is the establishment of a European Forum on the prevention of organised crime which pays particular attention to the prevention of trafficking in women for the purpose of both labour and sexual exploitation. The general task of the Forum is to promote forms of collaboration among the diverse actors concerned with prevention (law enforcement agencies, social workers, judicial authorities, immigration agencies, NGOs, international organisations).

On 13 March 2001 the European Commission and Europol published a joint report entitled *Towards a European Strategy to Prevent Organised Crime* which defines “organised crime prevention” as “any means other than the enforcement of criminal law that reduces the opportunities for, damage caused by, profit from and fear of what has been defined as organised crime”.<sup>18</sup>

#### *4.2.2 The comprehensive Plan for combating illegal immigration and the trafficking in human beings*

Some preventive measures against trafficking and smuggling are set out in the already mentioned Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union.<sup>19</sup> In order to define a common and integrated approach, the plan identifies the actions and instruments to be developed and implemented for the prevention and combating of illegal immigration in seven sectors. Those that are not criminal in nature are:

##### *1. Visa policy*

The plan envisages a uniform format for visa and related security rules (nos. 26–27) and increased cooperation among the Member States’ diplomatic and consular representations in the countries generating migratory flows. The final goal is to establish joint visa offices or infrastructures in those countries (nos. 28–33).

##### *2. Information exchange and analysis*

It is necessary to provide the Member States with “statistical data reliable enough to analyse at regular intervals both legal and migratory flows and illegal immigration” (no. 43). It will also be essential to “[develop] a European system for exchanging implications in the countries of destination” (no. 46).

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<sup>18</sup> Commission of the European Communities, *Towards a European Strategy to Prevent Organised Crime. Joint Report from Commission Services and Europol*, SEC (2001) 433, Brussels, 13 March 2001, p. 7.

<sup>19</sup> Council of the European Communities, *Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*, Brussels, 27 February 2002.



### *3. Pre-frontier measures*

The utmost support should be given to liaison immigration and airline officers in countries of transit and origin (nos. 50–52). Moreover, it is necessary to support targeted measures in countries of origin and transit (no. 53). This entails giving appropriate technical and financial support to actions in those countries, with targeted projects in the following sectors:

- support to asylum-seeker infrastructures;
- establishment of reception centres for illegal immigrants in transit countries;
- awareness-raising campaigns;
- improvement of document security;
- fight against corruption;
- deployment of liaison officers;
- expert meetings, trainings and seminars;
- supporting the return of irregular migrants;
- improvement of border control management and equipment (no. 54).

Awareness-raising campaigns should be carried out within the framework of pre-frontier measures. “The concept of information campaigns as such should be interpreted in a broad sense. Initiatives aimed at raising awareness among the public at large of the problems and risks related to illegal migration could be considered, as well as concentrated initiatives targeted at specific groups such as the unemployed, women or students” (no. 56). “Given that the preparation of information campaigns, both by the European Union and by Member States, requires a tailor-made solution for each country of origin or even region, and furthermore, since the cultural dimension is a fundamental element of such campaigns, their elaboration has to be conducted carefully in a way which ensures that the campaign has the desired effect on the target region and audience” (no. 57).

### *4. Measures relating to the management of borders*

According to the plan, “high-standard external border controls” must be set up (no. 58), together with “appropriate legislative and/or operational initiatives at the European level aimed at improving sea border controls” (no. 63). Moreover, an effort should be made to harmonise the training of border guards (no. 65). Finally, “measures should be adopted to develop and intensify practical cooperation and coordination of border checks and surveillance and to analyse the need for and the viability of a common external border unit” (no. 68).

### *5. Readmission and return policy*

The objective is to establish a joint approach/cooperation among the Member States of the European Union for the implementation of return measures (nos. 71–74). Identification must be made of “the third countries with which new readmission

agreements need to be negotiated and concluded [...], and common measures adopted aimed at ensuring that such countries fulfil their measures obligation to readmit their own nationals in accordance with the rules already established under international law. These agreements should also include an obligation to readmit third-country nationals and stateless persons coming from or having resided in the country concerned” (no. 77). Also recommended is the establishment of common standards for return procedures in all the Member States (no. 81).

#### 4.2.3 The prevention of trafficking and support for victims

In regards to the trafficking of women, the European Union has adopted both specific and general preventive actions. It has also addressed the problem of providing support for victims. This section deals with: a) the results of the European Forum on the prevention of organised crime in regards to the prevention of trafficking in women; b) the campaigns for prevention, and support of NGOs; c) the measures adopted to tackle the problem of sexual discrimination and the promotion of equality between men and women in the Union and the countries of origin; d) the measures adopted to tackle the unemployment and poverty that contribute to the trafficking of human beings in the applicant States; e) the measures adopted to support and protect victims.<sup>20</sup>

#### A) THE RESULTS OF THE EUROPEAN FORUM ON THE PREVENTION OF ORGANISED CRIME AND THE PREVENTION OF TRAFFICKING IN WOMEN

The European Forum, whose creation was proposed by the Commission in its Communication from the Commission to the Council, the European Parliament – The prevention of Crime in the European Union, has already been mentioned. Some of the Forum’s activities focus on the prevention of trafficking in women for the purpose of labour and sexual exploitation.

On 17 and 18 May 2001, the Forum held a *Workshop on Application of the Concept of Prevention to Trafficking in Human Beings*,<sup>21</sup> the conclusions reaffirmed the need to:

1. improve understanding of the phenomenon, particularly in regard to its recent trends. Developing efficient measures to prevent trafficking requires improved data and research on the character and scale of trafficking. Evaluation should be made on the economic impact of this illicit activity, taking into consideration

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<sup>20</sup> The following information is official and is available at the website of the European Commission. In this regard, see Commission of the European Communities, *Trafficking in Women. The Misery Behind the Fantasy: from Poverty to Sex Slavery. A Comprehensive European Strategy*, available at [http://www.europa.eu.int/comm/justice\\_home/news/8mars\\_en.htm](http://www.europa.eu.int/comm/justice_home/news/8mars_en.htm).

<sup>21</sup> Commission of the European Communities, Directorate-General Justice and Home Affairs, European Forum on Prevention of Organised Crime, Workshop on Application of the Concept of Prevention to Trafficking in Human Beings, *Minutes and Summary Conclusions of the Chairperson*, Brussels, 17–18 May 2001.

the profits made by the traffickers and the role trafficking plays in the underground economy;

2. develop a multi-disciplinary approach;
3. develop assistance policies in favour of victims. Re-establishing the human dignity of a victim is a long process that includes different aspects and concerns authorities in a number of countries. It is necessary to ensure that victims have the security, psychological support and training necessary to lead a different life. A significant role in this respect is played by the exchange of experiences with social workers and other professionals in both the countries of origin and transit.

On 30 October 2001, the Forum held an additional *Workshop on Application of the Concept of Prevention to Trafficking in Human Beings*.<sup>22</sup> The conclusions of this workshop affirmed the importance of:

1. promoting the participation of NGOs in the prevention strategies of the phenomenon and the social reintegration of victims. Non-governmental Organisations are privileged observers and possess both local and international information, essential to developing preventive strategies and for socially rehabilitating victims;
2. promoting cooperation among NGOs, law enforcement agencies, national immigration and visa offices, as well as other social services in order to develop early warning systems. These systems should help detect conditions that may signal situations prone to trafficking. Early warning systems should also be developed in the legislative field, in order to identify provisions that may create opportunities for the commission of trafficking offences;
3. providing regular trainings to the various professions concerned;
4. creating methodologies/protocols at the EU level for the gathering of qualitative and quantitative information on trafficking as well as developing databases that contain useful data that are comparable among Member States.

#### **B) PREVENTION CAMPAIGNS AND SUPPORT FOR NGOS**

The European Union supports the creation and development of NGOs engaged in the fight against trafficking in human beings. The objective is to sustain agencies able to complement the role of the public authorities. An example is the funding in 1996 of the NGO "La Strada" that encouraged the prevention of trafficking of women in Central and Eastern Europe.

The Union also supports information campaigns intended to bring the problem to the attention of the public and the authorities, as well as initiatives that furnish legal and medical support to victims and warn women of the perils of trafficking.

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<sup>22</sup> Commission of the European Communities, Directorate-General Justice and Home Affairs, European Forum on Prevention of Organised Crime, II Workshop on Application of the Concept of Prevention to Trafficking in Human Beings, *Minutes and Summary Conclusions of the Chairperson*, Brussels, 30 October 2001.

The Union directly finances programmes for the protection of victims in transit and origin countries.

**C) MEASURES ADDRESSING DISCRIMINATION AND GENDER EQUALITY IN THE EUROPEAN UNION AND IN THE COUNTRIES OF ORIGIN**

The Commission has included the promotion of gender equality in civil life in its framework strategy for the period 2001–2005. The goal is to guarantee the full enjoyment of human rights and fundamental freedoms, with the Commission paying particular attention to women who are subject to discrimination or violence and/or sexual exploitation.

In this regard, the Commission supports various initiatives, such as:

- training in equality legislation for the legal professions, labour inspectorates, social partners and NGOs in the EU and candidate countries;
- research and data collection on the gender dimension of health and safety in the work place.

One of the cornerstones of the European strategy is the development of structures to promote the implementation of gender equality policies in the candidate countries.

**D) MEASURES ADDRESSING THE UNEMPLOYMENT AND POVERTY THAT FUEL TRAFFICKING IN THE CANDIDATE COUNTRIES**

The Commission is preparing the candidate countries for the progressive implementation of the European Employment Strategy and the various social provisions currently applicable at EU level. The intention is to enhance the prevention of trafficking in human beings by reducing socio-economic differences with respect to the original fifteen Member States of the Union.

The process is divided into two phases:

1. review of employment policies in the candidate countries and the characteristics of their labour markets. The candidate countries must devise measures that enable their employment policies to address structural problems in their labour markets. Particular attention is paid to female labour-force participation;
2. in co-operation with the Commission, national strategies for employment and human resources development, including policy responses to many of the challenges identified in the first phase, will be created.

The European Social Fund, which financially supports the European strategies for employment and social inclusion, will be available to the candidate countries on the day of their accession. In the meantime, a Special Preparatory Programme is being

run by the European Training Foundation (ETF) to prepare the candidate countries on how to use the fund.

**E) MEASURES TO SUPPORT AND PROTECT VICTIMS**

NGOs as well as health and social services play an important role in assisting victims to gradually resume a normal life. The assistance must consist of not only safe reception and rehabilitation centres that protect victims from their exploiters, but also confidential medical, social and psychological care as well as legal assistance. Further support is also often required for social reintegration, job training and the repatriation of victims.

These objectives have been and will be supported by the European programmes, which over time have:

- provided assistance to victims through NGOs;
- supported a number of innovative transnational projects for the rehabilitation and social reintegration of victims;
- developed NGO networks and mutual cooperation between NGOs and public authorities.

On March 2000, the Lisbon European Council invited the Member States to use the Structural Funds to combat poverty and social exclusion and to develop actions targeted at specific groups. Italy, for example, within the scope of the PON Security Programme, is using the European Social Fund to combat trafficking and to provide support for victims.

## 5

## THE NEED FOR A BETTER, COMPARABLE-ACROSS-COUNTRIES, QUANTITATIVE AND QUALITATIVE KNOWLEDGE

The trafficking and subsequent exploitation of human beings throughout the European Union is likely to become a serious problem; this is because there is substantial difficulty related to the development of a comprehensive counter-strategy due to the scarcity, unreliability and non-comparability of existing data in the various countries. There is an urgent need for a structured monitoring system of crime in this sector, which assesses and quantifies such illegal activity and provides the same set of quantitative and qualitative data for different countries in the European Union. These data should be collected using standardised procedures and processed using the same methods so that they are as reliable as possible, and can be effectively compared between countries. A body of information of this kind would yield profound information on the problems and circumstances of people involved in the trade. This data could then be analysed with the overall goal of devising new solutions at both the national and European Union levels.

Despite certain improvements in recent years, the statistics on illegal immigration and trafficking are still highly unsatisfactory in the European Union and elsewhere. Very little is known about the numbers of illegal migrants who may have used the services of traffickers as well as the numbers of individuals working for criminal groups involved in these trafficking activities. The problem becomes even more serious when one seeks to obtain statistics on the numbers and characteristics of the various categories of trafficked migrants, such as women and children, asylum seekers and others. The most detailed information on the characteristics of trafficked persons can be found in a series of IOM surveys on the phenomenon, especially in some Eastern European countries. Even so, as the literature stresses,<sup>23</sup> there is also a lack of reliable estimates on the scale and nature of trafficking.<sup>24</sup> *“It is almost axiomatic for papers reviewing trafficking to lament the huge lack of statistics and to call for research to fill the many lacunae. Often the statistics that are produced by countries experiencing trafficking are held by numerous services and organizations there, collected in different ways at different times, use diverse terminologies and so are not comparable within the country let alone from one country to another. Not surprisingly, a common cry is for an international, centralized database for the exchange of information”.*<sup>25</sup>

<sup>23</sup> B. De Ruyver, W. Van Eeckhoutte, J. Meese, K. Van Impe, and S. Vanheste, *Multidisciplinary Research on the Phenomenon of Trafficking in Human Beings from an International and a National Perspective: a Pilot Study with Poland and Hungary*, Research Group Drug Policy, Criminal Policy and International Crime, Ghent University, Ghent, 1998.

<sup>24</sup> IOM, *Migrant Trafficking in Europe: A Review of the Evidence with Case Studies from Hungary, Poland and Ukraine*, International Organisation for Migration, Geneva, 2000; IOM, *Victims of Trafficking in the Balkans. A Study of Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region*, International Organisation for Migration, Geneva, 2001, pp. 1–8.

<sup>25</sup> IOM, *Migrant Trafficking in Europe: A Review of the Evidence with Case Studies from Hungary, Poland and Ukraine*, cit.

In 1998, as part of the EU Stop Programme, IOM conducted a study on the "availability and adequacy of statistical and other data on human trafficking".<sup>26</sup> The geographical scope of this study was Central and Eastern European countries, and the fifteen EU countries together with Norway and Switzerland. The focus was on the nature of the data collected, rather than on the scale of trafficking. Hence, the results shed light on how countries organise the collection of statistics, rather than on the numbers per se. Information was collected using a questionnaire (345 sent out, 188 returned) sent to government bodies in each country, IGOs, NGOs, academics and others. The main source of data was found to be the police, followed by the migration authorities (including border guards), which suggests that trafficking is very much seen to be a criminal issue and that statistics are collected accordingly. The results once again highlighted the lack of current data on trafficking: 18 countries had no data at all on trafficking in children, 13 had none on trafficking in women, and 11 had no information on trafficking in general. If data did exist, the numbers were low: in 1996, the total of all recorded cases of trafficking in humans for all EU states was only 973. Only 11 out of the 25 countries that responded had statistics on the number of convictions for trafficking, and even these reported very low numbers. In countries with data on trafficking, there was evidence of significant increases in the numbers of arrests and convictions for, or investigations into, trafficking since 1994.

The problem, however, concerns not only the organisation of statistics, quantitative data and estimates but also the qualitative data and information collected using standardised procedures. As long as the qualitative information on trafficking in human beings for the purpose of sexual exploitation is scarce, unreliable and non-comparable, it will be difficult to develop an effective and efficient counter-strategy among the Member States of the European Union and applicant countries. For instance, the need for readily accessible, up-to-date, comparable qualitative information on the trafficking chain (recruitment, transportation, exploitation, organisations, clients, etc.) is obvious when one considers that the emphasis in the fight against all forms of organised crime has recently been on its prevention. This can be done by reducing the (legal and illegal) opportunities available for illegal activities – what has been called 'situational crime prevention applied to organised crime'. Profound knowledge of the way in which illegal activities develop<sup>27</sup> is essential to the development of strategies used to reduce the opportunities for crime.

There is an urgent need for homogeneous qualitative information collected using standardised protocols. For instance, the results of the *Workshop on Application of the Concept of Prevention to Trafficking in Human Beings*, held in Brussels on 17–18 May 2001, reiterated this exigency, stressing the need, within the EU and elsewhere, for:

- "concrete measures [...] to counter trafficking [...] [I]t is necessary to continue the study, research and monitoring of trafficking. Traffickers rapidly change

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<sup>26</sup> IOM, *Analysis of Data and Statistical Resources Available in the EU Members States on Trafficking in Humans, Particularly in Women and Children for Purposes of Sexual Exploitation*. A Project of the International Organization for Migration (IOM) for the European Commission's STOP Programme, Final Report, Geneva, 1998.

<sup>27</sup> European Commission, *Communication from the Commission to the European Parliament. The prevention of crime in the European Union. Reflection on a common guidelines and proposals for Community financial support* (COM(2000) 786 final), Brussels, 29 November 2000.

their methods. An effort should be made to establish a monitoring system that can provide immediate analyses. This system should include the creation of databases which would facilitate rapid reaction from policy makers;

- “cooperation among countries of origin, transit and destination needs to be increased” (p. 2);
- “a methodology for prevention” (p. 4);
- “reliable data on all aspects of trafficking to be able to take efficient action to prevent trafficking” (p. 5);
- “more systematic research” (p. 6);
- “a methodological framework” to better understand the phenomenon (p. 6).<sup>28</sup>

The recent *Workshop II on Application of the Concept of Prevention to Trafficking in Human Beings* held in Brussels on 30 October 2001 stressed that the “*development of a common methodology to improve the understanding of the phenomenon is necessary*”.

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<sup>28</sup> European Commission, Directorate-General Justice and Home Affairs, *Minutes of the Workshop on Application of the Concept of Prevention to Trafficking in Human Beings*, Brussels, 17–18 May 2001.





## 6

## THE RESEARCH AND ITS AIMS

The research described in this report is a follow-up to MON-EU-TRAF – *A Pilot Study on three European Union immigration points for monitoring the international trafficking of human beings for the purpose of sexual exploitation across the European Union*, developed by Transcrime–University of Trento under the 2000 Stop Programme (contract 2000/STOP/137). During this pilot study, a framework (three Model Spreadsheets) was designed in order to collect several types of information. The first Model Spreadsheet focused on information related to criminal legislation on trafficking in human beings, especially for the purpose of sexual exploitation. Model Spreadsheet 2 was dedicated to information on the availability and adequacy of existing statistical data on human trafficking. Once the organisation of the sources of information was ascertained, figures on the phenomenon could be recorded. Relevant quantitative and qualitative information on trafficking in human beings for the purpose of sexual exploitation from investigative and judicial cases, and from NGO records could be gathered using Model Spreadsheet 3. The framework was tested in Spain, Italy and Finland making it possible to acquire relevant quantitative and qualitative information. This information was used to estimate the phenomenon, to devise recommendations to eliminate the problems identified as hampering effective data collection procedures and enabled the exchange of information on trafficking and exploitation.

This research, entitled *MON-EU-TRAF II: A study for monitoring the international trafficking of human beings for the purpose of sexual exploitation in the EU Member States*, utilised the model framework developed in the above-mentioned pilot study in the ‘original’ fifteen EU Member States. The implementation of the same model framework in these countries allowed the results of the pilot study to be extended, thereby providing greater homogeneity to the data collected. Furthermore, EU institutions could be assisted in the construction of a common means of collecting, collating and sharing information on trafficking in human beings for the purpose of sexual exploitation.

This project addressed the some of needs identified in the books, articles and reports produced by national and international institutions. Correspondingly, many of the same needs were highlighted by the results of the Pilot Study MON-EU-TRAF in relation to Spain, Italy and Finland. Hence, the following were identified and addressed:

1. Statistics (quantitative information) related to trafficking in human beings, especially for the purpose of sexual exploitation and sexual exploitation of children, in the fifteen EU Member States must be improved. Little is known, not only about numbers and characteristics of trafficked persons (especially women and children), but also about individuals working for criminal groups involved in these criminal activities;
2. Qualitative information on the chain of trafficking in human beings especially with regards trafficking for the purpose of sexual exploitation and sexual exploitation of children (recruitment, transportation, exploitation,

organisations, clients, etc.) in the EU must be up-to-date and comparable across countries.

3. Reliable estimates of the scale and nature of trafficking in human beings, especially with the purpose of sexual exploitation in the EU must be created.

Consequently, the aims of the research were:

1. To improve statistical data and various qualitative sources of information – in terms of quality and cross-country comparability – on trafficking of human beings for the main purpose of sexual exploitation (especially women and children) in the fifteen EU Member States;
2. To quantify trafficking in human beings for the purpose of sexual exploitation and the sexual exploitation of trafficked children (number of victims involved, turnover of traffickers, etc.) in the fifteen EU Member States;
3. To suggest areas of intervention in order to prevent trafficking in human beings for the purpose of sexual exploitation throughout the EU.

## 7

**METHODOLOGY AND DATA COLLECTION PROCEDURES**

This chapter presents the actions undertaken for the completion of the research project. Particular attention is paid to the aim and organisation of the three Model Spreadsheets, and to the methodology used to complete them (paragraph 7.1). The working definitions agreed upon by the three centres in order to obtain a common research protocol are explained in paragraph 7.2.

**7.1 STAGES OF THE RESEARCH**

The research project was developed through the following stages:

- STAGE 1 – Definition of the methodological tool (the framework) to be used to gather quantitative and qualitative information during the Study;
- STAGE 2 – Application of the framework to gather quantitative and qualitative information in the twelve ‘original’ EU Member States not covered by MON-EU-TRAF I and the presentation of the results of this exercise;
- STAGE 3 – Cross-comparison of the national situations and drafting of preliminary recommendations;
- STAGE 4 – Achievement of the aims of the Study and dissemination of its results;
- STAGE 5 – Evaluation of the results of the Study.

*STAGE 1. Definition of the methodological tool (the framework)*

The framework is composed of three Model Spreadsheets designed to retrieve quantitative and qualitative information on the trafficking of human beings for the purpose of sexual exploitation in different countries. This framework was first used in Spain, Italy and Finland during the pilot study MON-EU-TRAF. It was simplified and re-organised based on the results of the pilot study. The changes were instituted in order to eliminate the frameworks shortcomings, to improve coherence and ease its implementation in the ‘original’ fifteen EU Member States. An initial meeting of the three partners was organised in Trento to define the framework and to plan the research activity.

The following paragraphs describe the aim and organisation of each of the Model Spreadsheets as well as the uniform methodology used by each of the national experts to implement the Spreadsheets in their respective countries. In order to homogenise the results, some common working definitions were agreed upon and used. These are outlined in paragraph 7.2 and should be kept in mind while reading the results of this study.

#### A) MODEL SPREADSHEET 1

- *Aim:* To monitor and analyse criminal responses in the EU Member States in order to determine the distinctive features of the national criminal law system. This spreadsheet was propaedeutic the two that followed, since proper understanding of data and improving the collection of information on the criminal phenomenon would have been impossible without criminal definitions. Criminal definitions and criminal procedure may radically influence the way in which a phenomenon is perceived and data are stored in a given country.
- *Organisation of the spreadsheet:* The spreadsheet required that the national expert provide information on the specific offence of trafficking in human beings/trafficking of human beings for the purpose of sexual exploitation. The spreadsheet, however was not limited to this area as information on other offences that the courts could use to punish trafficking of human beings for the purpose of sexual exploitation was also gathered. Other issues related to the criminal justice system and the trafficking in human beings/trafficking of human beings for the purpose of sexual exploitation were also addressed.
- *Methodology for compilation of Spreadsheet 1:* The information used in this spreadsheet could be obtained directly from the Criminal Code/criminal legislation of the country and/or from interviews with public prosecutors, magistrates or law enforcement officials. In all cases, it was essential to specify the sources of the information and how it was obtained.

#### B) MODEL SPREADSHEET 2

- *Aim:* The spreadsheet had a dual aim. The first was the determination of how statistical information is collected and stored. In other words, to appraise the availability and adequacy of existing statistical data on human trafficking for the purpose of sexual exploitation. The second built upon the first. Once the organisation of the sources of information had been understood, figures on the phenomenon, with special regard to victims could be acquired. The national experts were asked to provide detailed information about the existence, availability, typology of (official and confidential) secondary sources. They were also asked to characterise the ways in which these are organised and, only then, to furnish relevant data.
- *Organisation of the spreadsheet:* The first section focused on secondary data sources related to the offences the courts could use to punish trafficking of human beings for the purpose of sexual exploitation. The second and third section, respectively, asked questions on secondary data sources on offenders and victims of such crimes;
- *Methodology for compilation of spreadsheet 2:* The information requested could be obtained in various ways such as identifying secondary sources on trafficking in human beings for the purpose of sexual exploitation by means of interviews with public prosecutors, police officers, ministry officials, statisticians, social workers; consulting the available databases directly; studying the literature, etc.

**C) MODEL SPREADSHEET 3**

- *Aim:* To monitor and analyse the trafficking process for sexual exploitation to each EU Member State. This was done by gathering information on all stages of the trafficking process from the recruitment phase to the exploitation phase. The information included relevant quantitative (number of traffickers and exploiters, numbers of victims involved, prices paid, revenue for criminal organisations) and qualitative (*modi operandi*, characteristics of perpetrators and victims, etc...) information on the trafficking in human beings for the purpose of sexual exploitation. A further aim behind the collection of qualitative data was to highlight opportunities in both the under-world and upper-world that may facilitate organised crime networks in their illicit activities.
- *Organisation of the spreadsheet:* Spreadsheet 3 asked the national expert to provide information on the criminal activities themselves, the traffickers and the victims. The purpose was to acquire knowledge about the features of trafficking in human beings for the purpose of sexual exploitation and to collect relevant and comparable information.
- *Methodology for compilation of spreadsheet 3:* In reference to his/her own country, each national expert had to answer a series of questions based on his/her personal experience, information from recent investigative/judicial cases, recent literature, informal contacts with investigators, prosecutors, and other key figures in the field in his/her country. Information from press reports (newspaper and magazines) should not be included. Each expert was asked to identify and describe the most common and recent situation and trends.

**STAGE 2. Application of the framework**

Twelve experts in the field of trafficking in human beings for the purpose of sexual exploitation (one for each of the 'original' Member States, apart from the three countries represented by the three research partners: Finland, Italy, Spain) were selected.

The twelve experts completed the framework (the three Model Spreadsheets) and compiled a national report for their country. The three research partners (Finland, Italy, and Spain) revised the reports already written for MON-EU-TRAF.

The national reports were drafted using a homogeneous structure and a common list of contents. The reports were divided into five sections that replicated the structure of the spreadsheets:

- an introduction (section 1);
- section 2 summarised and provided comments on the information acquired from application of Model Spreadsheet 1. This section synthesised the main features of the national criminal law on trafficking in human beings and assessed the criminal law responses at national level to pressures applied by the international community;
- section 3 summarised and analysed the information acquired from the application of Model Spreadsheet 2. This section identified databases on trafficking in human beings for the purpose of sexual exploitation (offences,

- offenders, victims) the variables on which these databases collected data, the availability of data. Where databases were in existence, data was presented with particular regard to the specific features of national systems;
- section 4 was dedicated to the results obtained from the application of Model Spreadsheet 3. This section systematised quantitative and qualitative information on the trafficking and exploitation process;
  - the final section (section 5) provides commentary on previously completed national studies and research that may be useful for further research. Additionally, recommendations for the improvement of data collection systems – at the national and the EU levels – on the trafficking of human beings for the purpose of sexual exploitation are made. Finally, suggestions that may prove useful in estimating the phenomena based on data available in the country are also put forth.

Once all the national reports were collected, an intermediate report summarising the various national situations was compiled and written by Transcrime.

The research centres and the national experts relied on primary and secondary sources to obtain the information in order to complete the three spreadsheets. The primary sources were national legislation on trafficking in human beings and related offences as well as investigative and judicial cases regarding the trafficking and/or exploitation of human beings. The secondary sources were official and confidential databases on trafficking, interviews with experts (public prosecutors, judges, law enforcement officials, public officials, representatives of NGOs), as well as a variety of documents, both published and unpublished, on the phenomenon under investigation.

#### *STAGE 3. Cross-checking of the national situations and drafting of preliminary recommendations*

A two-day working-seminar was organised and held in Trento with the experts and the three research partners (Finland, Italy and Spain). The seminar was based upon the intermediate report. The results of the seminar were: a) an assessment of existing qualitative and quantitative data by experts; b) a cross-country analysis of the organisation of existing databases; c) some suggestions on methods for quantifying the phenomena; d) solutions for improving qualitative and quantitative data collection procedures (preliminary recommendations); e) suggestions related to areas of intervention to prevent trafficking in human beings for the purpose of sexual exploitation throughout the EU.

#### *STAGE 4. Achievement of the aims of the Study and dissemination of its results*

The results of the seminar were summarised in this Final Report, which also contains a description of the situation in the 'original' 15 EU Member States. Also included in this report are estimates of the phenomena in the EU, reflections on how to produce more reliable estimates and recommendations for improving qualitative and quantitative data collection procedures on the phenomenon of trafficking in human beings for the purpose of sexual exploitation and sexual

exploitation of children within the EU. Recommendations on areas of intervention for policies to prevent trafficking in human beings for the purpose of sexual exploitation throughout Europe have also been made.

This report was published on the Transcrime web site and a copy of it was sent via e-mail to members of the target groups: public authorities responsible for maintaining criminal statistics (i.e. Ministries of Justice and of Interior), law enforcement authorities, public prosecutors, persons responsible for preventive strategies against trafficking in EU Member States, and NGOs. Each of the 12 experts and the three research partners (for their country of responsibility) selected the members of the target groups to whom the final report will be sent.

#### *STAGE 5. Evaluation of the results of the study*

At the end of the research, an “evaluation sheet” was drafted by the partners and submitted to the twelve experts. This was sent with a copy of the Final Report and the Project Proposal. The aim of the evaluation sheet was to review the achievements of the project compared to the planned expectations.

### **7.2 WORKING DEFINITIONS**

A number of key concepts have been used in the three spreadsheets, during the development of the research, and in this report. From the outset, the researchers adopted a common protocol on the definitions of these concepts. The following working definitions were employed.

*Working definition of “trafficking of human beings for the purpose of sexual exploitation”:* “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of a person, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to attain the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs [...]”<sup>29</sup> Trafficking in persons can also include “the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where: (a) use is made of coercion, force or threat, including abduction, or (b) use is made of deceit or fraud, or (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or (d) payments or benefits are given or received to achieve the consent of a person having control over another person [...] for the purpose of the exploitation of the

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<sup>29</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime*, 2000, Article 3.



prostitution of others or other forms of sexual exploitation, including in pornography”.<sup>30</sup>

Working definition of “organised crime group”: “a structured group of three or more people, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit”.<sup>31</sup> “*Serious crime*” is defined as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.<sup>32</sup>

*Working definition of “database”*: source of information collecting data in a standardised manner.

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<sup>30</sup> Council of the European Union, *Council Framework Decision on Combating Trafficking in Human Beings* (2002/629/JHA), Brussels, 19 July 2002.

<sup>31</sup> United Nations, *2000 United Nations Convention against Transnational Organised Crime*, Article 2.

<sup>32</sup> Ibid.

## 8

## MAIN RESULTS FROM APPLICATION OF THE THREE MODEL SPREADSHEETS

This chapter provides the main results of the MON-EU-TRAF II research project. These findings are derived from the application of the three Model Spreadsheets in the countries under consideration. The information is synthesised in order to permit cross-referenced analysis among countries.<sup>33</sup> Paragraph 8.1 explores the criminal law provisions used to combat the trafficking in human beings/trafficking in human beings for sexual exploitation, with particular attention paid to problems that may hamper effective data collection and the exchange of information on trafficking. Paragraph 8.2 examines the organisation of existing sources of information in the countries considered and emphasises the problems that may hamper effective data collection and the exchange of information on trafficking, and best practices. This paragraph also highlights the main quantitative information on perpetrators and victims contained in both official and confidential databases and collected by means of Model Spreadsheet 3. Paragraph 8.3 analyses the quantitative and qualitative information gathered homogeneously in the fifteen 'original' EU Member States from investigative and judicial cases and NGO records on the trafficking and exploitation chain.

These findings have been used to quantify, when possible, the phenomenon in the countries considered (see chapter 9) and to provide EU and Member States with guidelines to improve quantitative and qualitative data collection. Based on knowledge acquired, suggestions for areas of intervention for preventive strategies are made (see chapter 10).

### 8.1 RESULTS FROM MODEL SPREADSHEET 1: CRIMINAL OFFENCES AND IMPLICATIONS FOR DATA COLLECTION

#### 8.1.1 Cross comparative analysis

In **Austria** the provisions on trafficking in human beings in general and for the purpose of sexual exploitation are straightforward and in line with the international standards.

Since 1997, Austria has had the offence of trafficking in human beings for the purpose of exploitation. Beginning on May 1st 2004, a more general one on trafficking in human beings, similar to the definition of the UN Protocol on trafficking, was instituted. Consequently, there are now two articles in the Penal Code for trafficking in human beings – one of them addresses transborder trafficking into prostitution, the other one focuses on the more general criminal

<sup>33</sup> A complete picture of the situation of the countries investigated is provided by the national reports in this Final Report (from section 11 to section 25).

activity of trafficking in human beings. Until recently there has been no experience with this latter, new, provision.

In **Belgium** Immigration Law explicitly criminalizes a behaviour which is similar but not exactly the same as the international definition of trafficking in human beings. Article 77bis of this Law describes trafficking in human beings as “the situation in which a person, in any way whatsoever, directly or through an intermediary contributes to the entrance, transit or residence of a foreigner in Belgian territory wherein the perpetrator directly or indirectly uses tricks, violence, threats or any other form of coercion with regard to that foreigner or abuses the victim’s vulnerable position in which he/she finds him or herself due to an unlawful or insecure administrative situation, or the fact that the victim is a minor, pregnant, sick or has a physical or mental disability or insufficiency”. This is similar to the international definition as far as the “tricks, violence, threats or any other form of coercion” are concerned, but not for the exploitation of the deceived person which is not outlined.

In comparison, the Belgian Penal Code provides for the specific offence of trafficking in human beings for the purpose of sexual exploitation (Article 380). It was introduced into the criminal code in 1995. In Belgium, judges can also punish the traffickers of a further offence which criminalises those who run a house of vice or prostitution. This is also applicable to those who sell, rent or provide a room or any other place with a view to prostitution in order to obtain an abnormal profit, and those who, in any way whatsoever, exploit the vice or prostitution of another person.

In **Denmark** Act 380 introduced the offence of trafficking in human beings into the Penal Code in 2002. This was done in order to ensure that Denmark fulfilled the obligations of the UN Convention on Transnational Crime and the Palermo Protocol as well as the EU Framework Agreement on Trafficking in Human Beings. The definition of the crime is closely modelled after the definition found in Article 3 of The Palermo Protocol. Consequently, in Denmark there is a general article on trafficking in human beings, which also addresses the purpose of sexual exploitation. In the Danish criminal system, there is also a series of other offences that can be used to punish trafficking for sexual exploitation.

Currently **Finland** does not outline either the offence of trafficking in human beings or the offence trafficking in human beings for the purpose of sexual exploitation. An amendment to this end is in the process of being drafted and should come into force later in late 2004. It will criminalise trafficking in human beings as acts whereby one entity 1) exploits another person’s dependence or defenceless situation or 2) misleads another person or 3) pays compensation to someone who is holding a person under his/her power or 4) receives such a compensation, takes a person into his/her power, recruits him/her, or delivers, transports, receives or accommodates him/her in order to make him/her the object of sexual exploitation or forced labour. These action are carried out in order to bring him/her into circumstances which violate his/her human rights and dignity; or in order to remove his/her organs or tissues with the purpose of economic profit. The punishment will be from four months to six years of imprisonment. At present, the offences that the courts may rely on to punish this behaviour diverge considerably from internationally agreed upon definitions.

In **France**, the offence of trafficking in human beings was introduced into the penal code with Law n° 2003-239 on March 18th, 2003 to meet the international requirements. This law defines the trafficking of human beings as the recruitment, transportation, or lodging of a person in order to make him/her available to a third person for the purpose of committing the offences of procuring, sexual aggression, exploitation by forcing him/her to beg, providing work or living conditions that violate his/her dignity, or forcing this person to commit a crime or an offence, in exchange for remuneration (Article 225-4-1). According to the new law, the offence of trafficking in human beings for the purpose of sexual exploitation is included in the more general offence of trafficking in human beings.

Other offences can also be invoked in France to punish the behaviours related to trafficking in human beings for the purpose of sexual exploitation, such as procuring, recourse to prostitution by minors as well as working and living conditions that violate the dignity of a person.

In **Germany**, the Penal Code only addresses those offences of “trafficking in human beings” in general (not restricted to sexual exploitation) with reference to the trafficking in children (section 236 StGB).

More specifically, Germany has penal provisions against trafficking in human beings for the purpose of prostitution. The provisions on trafficking distinguish between “Trafficking in Human Beings” pursuant to section 180b StGB (*Menschenhandel*) and “Serious Trafficking in Human Beings” pursuant to section 181 StGB (*Schwerer Menschenhandel*). Even though the sections addressing trafficking for the purpose of sexual exploitation date back to 1992, they are in line with international requirements. The other provision to which courts can refer when punishing “trafficking in human beings for the purpose of sexual exploitation” is section 234 StGB, which covers kidnapping, slavery, and bondage (*Menschenraub*).

In October 2002, **Greece** instituted both the offence of trafficking in human beings in general and the offence of trafficking in human beings for the purpose of sexual exploitation. They are dealt with by Article 1 and Article 8 of the new Law 3064 of October 2002 respectively. These offences are in line with international standards. Greece also has other offences that the judge can use to punish the criminal activities under consideration.

In **Ireland** there is no specific offence of trafficking in human beings in general. The offence of trafficking in human beings for sexual exploitation is only applicable to cases that involve children. Due to a lack of specific provisions against trafficking, many laws containing criminal provisions are used to fight the phenomenon such as the “Illegal Immigrants (Trafficking) Act” (2000), “Child Trafficking and Pornography Act” (1998), “Non Fatal Offences Against the Person Act” (1997), “Childcare Act” (1991), “Children Act” (2001), “Child Abduction and Enforcement of Custody Orders Act” (1991) and the “Immigration Act (1999)”.

In August 2003, Law 228 on trafficking in human beings was approved by the **Italian** Parliament. The text complies with the Palermo Convention and represents a great advancement for the Italian criminal system. The Italian legislation now outlines a specific offence for trafficking in human beings (Article 601 Penal Code) with the exploitation of the victim in the sex market as an aggravating circumstance.

The consolidated text on immigration also states that any person who facilitates the illegal entry of aliens into the country, against the disposition of Italian immigration law, so that they may be sexually exploited shall be punished. Other offences have been and are applied by the Italian public prosecutors and judges to punish trafficking in human beings for sexual exploitation.

In **Luxembourg** there is no general provision for trafficking in human beings in the Criminal Code. The Law of 31 May 1999 introduced, inter alia, provisions regarding trafficking in human beings into the Criminal Code. It was to be included in a chapter regarding "Prostitution, exploitation of and trafficking in human beings". The relevant provisions – Articles 379 and 379bis of the Criminal Code – distinguish between trafficking in children and trafficking in human beings, both for the purpose of sexual exploitation. Other criminal law responses could also apply.

There is no offence of trafficking in human beings in general in **Portugal**. In the Portuguese Penal Code two articles are directly related with trafficking of human beings for the purpose of sexual exploitation: Article 169 (Trafficking of human beings related solely to prostitution activities) and Article 176 (Pandering and Trafficking of Children). These offences meet the international requirements.

In **Spain**, criminal responses to the phenomena of trafficking in human beings for the purpose of sexual exploitation have changed in recent years. In 2000, the Penal Code included a general offence of trafficking in human beings (Article 318bis) and a specific offence for trafficking of human beings for the purpose of sexual exploitation (Article 188.2). A recent reform enacted on 29th September 2003 integrated the two offences under the same Article (318 bis). Article 318bis furnishes an accurate response to the need set by the international community. Other offences are also applicable to criminalise these behaviours.

On 1 July 2002, a new legislation on human trafficking came into force in **Sweden** that broadened the scope of criminal prosecution and introduced a new, specific, offence of trafficking in human beings for sexual purposes. The Ministry of Justice is currently engaged in preparing the legislative measures needed for Sweden to comply with the terms of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The same process is under way in connection to the EU Framework Decision on Human Trafficking. The object of these efforts is to criminalise all forms of human trafficking including forced labour as well as those instances that do not involve cross-border operations. Other offences can also be used to punish the trafficking in human beings for sexual exploitation.

In **The Netherlands** only specific offences of trafficking in human beings for sexual exploitation are addressed by the criminal system. Therefore, international standards are met using these provisions but not with the offence of trafficking in human beings in general. The Dutch Penal Code does not yet contain a provision criminalising labour or other forms of exploitation or the removal of human organs. An amendment of the Penal Code addressing these topics is currently pending in Parliament.

In the **United Kingdom**, the criminal system only contains the specific offence of trafficking in human beings for sexual exploitation. This offence is labelled

'trafficking' but in reality its scope is narrower than the international protocol definition and fails to include trafficking for other forms of exploitation such as domestic slavery, forced labour and removal of organs, etcetera. Regardless, in response to increasing concern about trafficking for forced labour, slavery and removal of organs a new offence has been introduced in the Asylum and Immigration Bill 2003 (Treatment of Claimants, etc.), which is likely to be converted into law in 2004.

#### 8.1.2 Comments

From the above analysis, some comments may be made. First, there is a *general trend towards the introduction of specific offences for trafficking of human beings/trafficking of human beings for sexual exploitation* among the 'original' EU Member States. This trend bodes well for the effectiveness of international instruments in the field of trafficking in human being as they are having a positive impact on the legislation of their State Parties. Second, as a general observation, at least *three criminal law models* seem to exist within the 'original' EU Member States:

1. *Separate offence model.* The criminal system provides both a general offence of trafficking in human beings and a specific and separate offence of trafficking in human beings for sexual exploitation;
2. *All inclusive model.* The criminal system only provides a general offence for trafficking in human beings. The trafficking for sexual exploitation is part of or an aggravating circumstances of such an offence;
3. *Only trafficking for sexual exploitation model.* The criminal system only addresses the offence of trafficking in human beings for sexual exploitation.

Notwithstanding the fact that among the 'original' EU Member States the trend is towards the introduction of specific offences for trafficking in human beings/trafficking in human beings for the purpose of sexual exploitation, in several countries, where there are specific offences, there is also a plethora of offences with which criminal courts can sanction these behaviours.

TABLE 1: CRIMINAL LAW MODELS CONCERNING THB

Country	General Offence of THB, including sexual exploitation	Specific, separate, offence of THB for sexual exploitation	Other offences that courts can rely on to punish THB for sexual exploitation	Models 1. Separate offence 2. All inclusive 3. Only THB for sexual exploitation
Austria	x	x	x	1
Belgium	X (even if not exactly in line with int. standards)	x	x	1
Denmark	x		x	2
Finland			x	–
France	x		x	2
Germany	x (only for children)	X	x	3
Greece	x	x	x	1
Ireland		x (only for children)	x	–
Italy	x	X (even if not exactly in line with int. standards)	x	2
Luxembourg		x	x	3
Portugal		x	x	3
Spain	x		x	2
Sweden		x	x	3
The Netherlands		x	x	3
United Kingdom	x (forthcoming)	x	x	3

Source: MON–EU–TRAF II National experts' country reports

### 8.1.3 Conclusions: problems related to criminal offences which may hamper effective data collection and the exchange of information on trafficking

Cross-analysis of the results from the implementation of Model Spreadsheet 1 point to the following conclusions related to the links between criminal offences and data collection procedures as well as the exchange of information on trafficking in human beings for the purpose of sexual exploitation.

#### PROBLEMS RELATED TO CRIMINAL OFFENCES WHICH MAY HAMPER EFFECTIVE DATA COLLECTION AND THE EXCHANGE OF INFORMATION ON TRAFFICKING

1. *There is still some minor work to do in order to homogenise national criminal offences in the field of trafficking in human beings for sexual exploitation.* The efforts of the European Union and other international organisations to approximate or harmonise national legislation on the matter are producing results, however, there is still some work to do. Minor divergences in the field of criminal offences may impair the collection and comparability of data on trafficking for sexual exploitation. Efforts should be made to close all existing gaps.

2. *Many criminal systems in line with international standards provide for an all-inclusive model (i.e. the criminal system only provides a general offence of trafficking in human beings and the trafficking for sexual exploitation is a part or an aggravating circumstance of such an offence). From a merely statistical point of view, this may hamper the collection and the exchange of information of data. In fact, it would be impossible, once data has been collected on this general offence to separate the information related to trafficking for labour or for other purposes from the information on trafficking for sexual exploitation. Collection mechanisms to reduce such a side effect should be developed and implemented.*
3. *In some countries with specific offences of trafficking in human beings, there are still some minor, separate, offences that the criminal court can rely on to punish such behaviour. This may also hamper the collection of information on this type of criminal phenomena.*
4. *In the near future criminal legislation on trafficking in human beings across the European Union could be harmonised. Even if this were to occur, minor differences among criminal systems that may taint the collection of data are to be expected. This means that harmonising criminal offences is just one way of producing better statistics on criminal phenomena. It is not, however, the only one.*

## 8.2 RESULTS FROM MODEL SPREADSHEETS 2: EXISTING SOURCES OF DATA AND AVAILABLE QUANTITATIVE DATA ON TRAFFICKERS AND VICTIMS

### 8.2.1 Cross comparative analysis

In **Austria**, three main databases may be useful for obtaining information on trafficking in human beings/trafficking in human beings for sexual exploitation. The first database is on crime reported by the police to the prosecutor's office (Crime Statistics of the federal Ministry of Interior). The second database contains information on convictions (held by the Ministry of Interior on behalf of the Ministry of Justice), while the third is the "red -light database" which is accessible only to police.

In reference to the first database, the Crime Statistics of the Federal Ministry of Interior, every police officer in the field is obliged to enter data on such offences in this computerized programme. Data held in this database are, by law, non-personal data. The police report this offence information to the prosecutor's office. The corresponding paragraph of the Penal Code has to be noted as well as data related to the offence (time and place), the offender (gender, age, nationality) and the victim (gender, age and if there was a special relation between the offender and the victim, i.e. family relation, working relation). It is therefore possible to have the number of victims of trafficking, their gender and their age, but not their nationality. This database is useful for informative purposes beyond the investigation stage.



The convictions database is held by Police upon request by the Ministry of Justice (judicial, conviction data). It contains the personal data of convicted perpetrators and the length of the sentence they have to serve. No victim information is recorded.

Another important source is the so called “red-light database” which is accessible by *Bundeskriminalamt* (local and regional Police forces may obtain information by request). Information kept in this intelligence database cannot be disclosed to the public. This database contains personal data on both offenders and victims of trafficking for the purpose of sexual exploitation. Data held in this database must be deleted when the purpose for their collection/storage is completed (i.e. after finishing an operation).

In **Belgium** there are different types of databases or data collection systems which may give information on trafficking in human beings:

1. The national general police database. At the level of the police services, there is a national criminal database. It contains police data that are collected by several police services, for which the Minister of the Interior is responsible. The quality of the data derived from the national criminal database is mainly dependent on the recording level of the local police services and can be expected to dramatically improve as a result of a uniform registration method and standard collection form that has been recently developed and introduced by a circular letter issued by the prosecutors-general. This national general police database came into force in recent years and has been structured on a modular basis, following the same classifications and legal qualifications found in the Belgian Criminal Code. As such, it contains information on all possible offences as well as those related to trafficking in human beings. Given that human trafficking currently viewed as a criminal “phenomenon”, implying that offences other than specific ‘trafficking’ crimes or legal qualifications may constitute trafficking or be related to it, the police database allows one to specify the so-called trafficking in human beings-related ‘context’ of alleged offences contained in the database (i.e., from a list of sub-classifications for offences allegedly committed in the ‘context’ of trafficking in human beings). In order to facilitate and streamline police decisions in labelling non-specific trafficking offences as committed in the context of trafficking, a standardized set of ‘indicators’ was developed. This national general police database can be used for tactical analysis within the framework of pending investigations as well as for strategic analysis. The system can also be used for drafting depersonalised statistics. The database is official, confidential and electronic. The counting unit for this database is offences, counted separately.

In this database, the set of variables stored for each offence is quite extensive; thus, impossible to list here. For trafficking in human beings, reference should be made to the list of sub-classifications used to indicate the ‘trafficking’ context in which non-specific trafficking offences have been committed, as well as to the newly developed standard registration form for specific trafficking offences. Some of the indicators in addition to the type of offences include the following:

- general information;
- *modus operandi*;

- information regarding the person;
- liaisons;
- address;
- professional status;
- profession;
- in possession of documents;
- place of control;
- sector;
- financial information;
- means of transport;
- firm/commercial business.

For the national general police database, many of the variables listed above can relate to suspects of trafficking. The variables listed above of for the general police database can also be recorded for potential victims of trafficking.

2. The annual statistics of the public prosecutor's offices. At the level of the Public Prosecutor's Offices, the files containing prosecution data are classified with the help of special codes and sub-codes, following the various types of offences under Belgian criminal law, making it possible to identify the various trafficking offences in the electronic and confidential data systems of the distinct Public Prosecutor's Offices. In addition, similar to the practice described above for the national general police database, there is the possibility to label files dealing with non-specific 'trafficking' offences as related to a trafficking in human beings 'context'. Recently, based on information retrieved from these data systems, the first annual statistical analysis was produced for the year 2002. This was completed by statistical analysts working under the supervision of the Board of Prosecutor's General. These annual statistics have been made available to the public but are not sufficiently detailed to allow identification of trafficking offences under investigation or prosecution at the level of the Public Prosecutor's Offices. Upon request, however, it is technically possible to have figures broken down for the various trafficking offences. The counting unit for this database is cases. The variables stored for each case are (sub)codes and file numbers and may encompass various offences. The annual statistics of the public prosecutor's offices contains no variables on offenders or victims.
3. The annual statistics on conviction data. Conviction data relating to offences (including the various trafficking offences) are collected and held electronically by the Service of Criminal Policy of the Ministry of Justice, and are based on data retrieved from the central criminal record, using the same codes used in the Public Prosecutor's Offices' data systems. Conviction data, divided into larger categories of offences (not sufficiently detailed to allow for identification of conviction data for the various trafficking offences) are available to the public. Detailed data can be produced on request. The counting unit for this database is convictions. The convictions are recorded per type of offence or category of offences, and may encompass various offences. The annual statistics of the public prosecutor's offices contains no variables on offenders or victims.
4. *The database of the Centre for Equal Opportunities and Combating Racism.* This computerized information network has recently been set up with the aim of producing permanent, integrated strategic statistical analysis on the smuggling of and trafficking in human beings. Given the recent establishment

of the Centre, no data collection template for the envisaged strategic analyses have been designed or made available to the public. There is no doubt, however, that strategic analyses produced by the Centre will cover offences of trafficking in human beings for the purpose of sexual exploitation. The activities of the Centre are official and confidential. To a certain extent, however, strategic analyses conducted within the Centre will be made available to the public. Furthermore, this newly established Centre is supposed to produce anonymous strategic analyses on offenders.

Recently, the Centre for Equal Opportunities and Combating Racism has established an electronic user-friendly web-interface database on victims of trafficking in human beings. For this purpose, the Centre cooperates with three specialized centres for the reception and assistance of victims of human trafficking in Belgium that are furnishing the data: *Payoke* (in Antwerp), *Pag-Asa* (in Brussels) or *Surya* (in Liège). This database contains information regarding the victims that the three specialized centres have assisted during recent years. The database is official and confidential, until now it has only been accessible to the above-mentioned Centre and (with lower access rights) the three reception and assistance centres.

The variables gathered for each victim that has been received and assisted by the three specialized centres include:

- his/her identity, nationality and age;
- his/her living conditions in the home country;
- his/her level of education;
- his/her administrative status at the moment of arrival in Belgium;
- the documents that the victim had in his/her possession at the moment he/she arrived in Belgium;
- his/her route of travel;
- the manner in which the victim was recruited;
- the number and identity of the agents;
- the offence of which he/she is a victim;
- the manner in which the victim was exploited;
- the manner in which the victim was held under control by his/her traffickers;
- the service by which he/she was referred to the shelter;
- the question whether or not the victim has filed a complaint against his/her trafficker;
- the manner in which the victim was assisted by the specialised centre;
- the situation of the victim in Belgium at the end of the procedure during which he/she was being assisted;
- the integration into Belgian society by the victim.

The situation in **Finland** is highly distinctive.<sup>34</sup> The Finnish criminal law system does not contain the offence of trafficking in human beings for the purpose of sexual exploitation. The principal offences that courts can rely to punish such behaviour diverge considerably from the internationally agreed definitions of trafficking in

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<sup>34</sup> The Danish expert did not provide any information on the sources of data on the trafficking in human beings in the country. This is the reason why the country is not comprised in this review.

human beings for the purpose of sexual exploitation (Organising illegal entry into Finland – Criminal Code Article 17:8; Kidnapping and slave trade – Criminal Code Article 25:3; Procuring – Criminal Code Article 20:9).

Data on these offences are collected in three main databases. The *RIKI-database* contains investigative data on all offences reported to the police authorities. Each police district records its own data in the centralised database. The authority/office furnishing the statistics is the Criminal Police. This database contains basic information about the crime (type, time, place, method, and a short description of crime scene), the suspects, and the victims (number of suspects and victims, date(s) of birth, nationality, sex, marital status, number of children, employment status, income level(s), educational level(s), residence, state of intoxication, injuries). Importantly, however, in the crimes outlined by Article 17:8 and Article 20:9 FPC the trafficked people/procured prostitutes are not given the status of victim; hence, the database does not contain any information on them.

The database of the *Criminal Records Office of the Ministry of Justice* maintains a database of the criminal records of persons convicted in the Finnish courts. The number and type of previous convictions can be obtained from this database, and this information can be combined with that contained in the RIKI-database. No information on victims is contained in this database.

Finland also has an *electronic database at the National Institute of Statistics*, which stores information about persons sentenced in the courts (court statistics). This information is based on data sent from the courts. The database contains information about the type of crime, the type and the length of the sentence, and the sex and the age of the people convicted. No information on victims are present.

For the time being, *Pro-tukipiste* in Helsinki is the only NGO in Finland that offers support services for prostitutes, whether Finnish or foreign, and is the only independent agency monitoring the prostitution situation in the country on a full-time basis. It was established in 1990, and is subordinated to the private *Diakonissalaitos*, an institution providing health care and social services. The activity of *Pro-tukipiste* is focused on the Helsinki region. However, *Pro-tukipiste* does not collect or file systematic information about its clients, and its employees work under a confidentiality agreement. However, the employees of the support centre have the most long-standing and thorough knowledge of the prostitution situation and its developments in the Helsinki region. This experience and knowledge is available for outside research purposes.

In **France**, there are few official data on the trafficking of human beings for the purpose of sexual exploitation. The OCRTEH (*Office central pour la répression de la traite des êtres humains* – Central Office for the Suppression of the Traffic in Persons), whose mandate is to fight all forms of trafficking in human beings for the purpose of sexual exploitation, is the only organism that provides official data on this phenomenon. This information is police data, so they refer to reported persons. Information that can be provided includes the type of offence and gender and nationality of the offender and the victim. Until now, the only available and useful information refers to the offence of procuring, which does not coincide exactly to the phenomenon of trafficking for sexual exploitation. In France, however, the crime of trafficking in human beings was introduced in March 2003. Thus, it is likely that data on this offence will be recorded by the OCRTEH.

In **Germany** four official electronic databases – produced annually – contain standardised information on trafficking in human beings for the purpose of sexual exploitation:

- the *Federal Police Crime Statistics (Polizeiliche Kriminalstatistik)* which collects investigative data. With reference to the offence, this database records unlawful (criminal) acts dealt with by the police. The data comprises the total number of trafficking acts including attempts subject to punishment broken down by the provisions of the German Penal Code. It further subdivides the offences by the size of communities (less than 20,000, 20.000 to 100,000, 500,000 or more inhabitants). The information on offenders provided by the Police Crime Statistics is broken down by sex, age, whether the suspect acted alone, appeared as a suspect before, acted under the influence of alcohol or consumes heavy drugs, and whether he/she carried a firearm when committing the offence. The statistics also contain information on the suspects' place of residence and categorises non-German suspects according to the nature and reason for their stay in Germany. Due to the counting rules, the Police Crime Statistics do not reveal whether the same offender has committed two or more crimes;
- the Police Crime Statistics also records the number of victims. The victim must be recorded for all completed and attempted (categories of) offences subject to punishment. The data provided on the victims are divided by age and sex. Finally, the victim-suspect-relationship is recorded according to whether the victim and suspect were related, acquainted, fellow countrymen, or had a passing or no relationship. The victim-suspect-relationship is assessed from the victim's point of view, the closest relationship always having priority. The information contained in this database are "outgoing statistics", i.e. the criminal offences that come to light are not recorded until the police investigations have been concluded and the respective files can be handed over to the public prosecutor's office or the court;
- the *Federal Situation Report on Trafficking in Human Beings (Lagebild Menschenhandel)* which is produced by the German Federal Bureau of Investigation (BKA) and gathers information related to registered preliminary investigations conducted by the police departments in each state for the offences of trafficking in human beings for sexual exploitation ("intake statistics"). The reports provide statistics on victims, suspects, as well as the characteristics of the offence. Information on the latter includes data related to the methods of victim recruitment (use of deception or violence, professional recruitment, consent to participate in prostitution), methods of transport, victims' residence status, prostitution-related violence, the location of victims as well as threats against victims to influence their willingness to testify. Finally, the reports contain information on the estimated illegal proceeds and the amount of confiscated proceeds. In contrast to the Police Crime Statistics, the Situation Reports on Trafficking only count the preliminary investigations in which foreign citizens are victimized. The Situation Report on Trafficking in Human Beings records the number of victims pursuant to sections 180b, 181 StGB. The information provided is broken down by sex, age, nationality, and the number of victims registered in the individual preliminary investigations;
- the *Statistics on Criminal Proceedings (Strafverfolgungsstatistik)* count the annual number of convictions for crimes of trafficking in human beings for sexual exploitation. The information on offenders provided by the Statistics on Criminal

Proceedings is not broken down according to specific provisions, it thereby fails to reveal further information on the offenders accused or convicted of trafficking in human beings. No information is available on victims;

- the *Central Criminal Registry (Bundeszentralregister)* which provides information on whether citizens were being convicted in the past for crimes of trafficking in human beings. It gives information on offenders according to age, sex, nationality, type of conviction as well as previous criminal convictions. No information on victims is available.

To date, the only available source of data on trafficking in human beings for sexual exploitation in **Greece** is the Greek Police, which belongs to the Ministry of Public Order. Data on offences of sexual exploitation are classified as completed, attempts, and total number, including the number investigated. The Greek Police data include, but are not limited to, information on the *modus operandi* of the related organised groups. These records refer to the recruitment methods used with victims, means of transportation, countries of origin, passage and destination countries, ways of acquiring forfeited documents, ways of controlling victims in the destination country and other related information. Data on offenders of sexual exploitation are classified as nationals, foreigners and the total number. The electronic archives held by Greek Police also include information other than the traffickers' nationality, but it is not publicly available. This information lists the type and primary activity of the organised crime group, its members' nationalities, whether the group was involved in offences other than trafficking of human beings and how these offences relate. The Greek Police also collects data on victims of trafficking and sexual exploitation but they are not publicly available. The recorded variables for victims include country of origin, nationality or ethnicity, sex, age, victim history and other information. Information on victims is confidential and some of it may be given out for research purposes only after a written request.

In principle, the Ministry of Justice compiles data on court decisions (prosecutions and detentions) and presents them in the Statistical Yearbook of Justice published by the National Service of Greece. This publication, however, only includes data up to 1996. Clearly, the Ministry of Justice data would not include any data on victims.

In **Ireland**, statistical information relating to the detection–prosecution–conviction of all criminal offences is contained in the Annual Report to the Minister for Justice, Equality & Law Reform of the Commissioner of Garda Síochána. The lack of a precise definition for trafficking in human being limits the knowledge related to this phenomenon: for this reason, one must rely on different crimes to have a general view of the situation.

In **Italy**, after the entry into force of Law 228/2003, a better collection of data on the phenomenon of trafficking in human beings is to be expected. However, these data are not yet available.

Currently there are three important sources of data: CED, ISTAT and the survey carried out by the Ministry of Justice and the Ministry of Equal Opportunities. The first two sources are public databases maintained by the Ministry of Interior and National Institute for Statistics, while the latter is a study implemented by the Anti-Mafia National Division and Transcrime. The survey collects data directly from Prosecutor's Offices in Italy, giving a more precise pattern to the phenomenon.

*CED* (Centro Elaborazione Dati) of the Ministry of the Interior is mainly for law enforcement purposes. CED handles all the data from the criminal courts and police forces on criminal proceedings and investigations. Consequently, it stores an enormous amount of information that can be used for a variety of purposes. In particular, the data gives access to the following investigative and judicial information: a) data on crimes and persons reported; b) data on persons arrested by the police forces; c) data on convicted persons. The authority that furnishes the statistics is the Ministry of the Interior. The variables on which data are collected include the type offence; date and location of the offence; informative source.

The *Database of the National Institute for Statistics* (ISTAT) gathers judicial information pertaining to the following: a) data on persons reported to the judicial authorities which initiated the criminal trial and b) data on convicted persons. Data related to the following variable are collected: type of offence; date and location of the offence and information source. In relation to the data on convicted persons the information collected includes the number of the proceeding, date of the report and type and date of offence.

The *database from the survey of the Ministry of Justice and the Ministry of Equal Opportunities*. This survey was carried out by Transcrime in cooperation with the *Anti-Mafia National Division* (AND). It was designed to gather quantitative and qualitative information on trafficking in human beings for sexual exploitation. The study consisted of two main phases. First, the crimes of “trafficking in human beings” and “smuggling of migrants” were defined. This was followed by the creation of a spreadsheet that was sent to 164 Italian Prosecutor’s Offices. The purpose of this instrument was to determine the existence and quantitative characteristics of ongoing legal proceedings concerned with the “trafficking in persons for the purpose of exploitation” and the “smuggling of migrants”. The expression “ongoing legal proceedings” meant those proceedings that dealt with trafficking/smuggling during the investigation and committal phases, or those proceedings that had already led to sentencing between June 1996 and June 2001. After the completion of the spreadsheet, the Anti-Mafia National Division identified the fifteen most active prosecutor’s offices and started the second phase of the project. The phase required Transcrime to conduct follow-up interviews with various prosecutors in order to collect data on the victims and the best practices in the fight against the phenomenon.

The database from the survey of the Ministry of Justice and the Ministry of Equal Opportunities contains data on the number of victims and their nationalities. Important quantitative and qualitative information on victims is also collected by the Ministry for the Equal Opportunities in the programme for social/judicial protection according to Article 18 Legislative Decree 286/1998.

In **Luxembourg** information on criminal offences is centralised with the *Direction de l’Information*, a special unit within the grand-ducal police force that collects data on various types of crime. There is, however, no specific database for trafficking in human beings. It should be noted that the legislation on data protection is quite restrictive. The only official sources that exist regarding related criminal offences are police data related to prostitution, procurement/pimping, immoral activities, abduction or alien trafficking. The available data simply qualifies the criminal offence and contains basic information, to the extent available, on the suspects and the victims. The data is primarily statistical in nature and does not provide significant insight into the problem of human trafficking itself.

In **Portugal**, the Portuguese Criminal Investigation Police (CIP) has an Integrated System of Criminal Investigation (SIIC) as its source for collecting data. It is an official and confidential electronic database. The Criminal Investigation Police work under the Public Prosecutor's Office. During the investigation phase, there is a close relationship between the work done by the criminal investigators and the public prosecutor's activities. Because of this, the data collected in the Integrated System of Criminal Investigation is both police and prosecution data. The database collects information according to the case/criminal incident. The CIP's database only records data from the most serious offence related to the case. The other, less serious, offences related to the criminal incident will not show up. This can be a limitation for analysis of information. The database contains several types of information on the offences, the offenders and the victims. More specifically the variables collected on the offender are name, gender, age, address, nationality, related offences, criminal history, profession, bank accounts, vehicles, phones, weapons, family history, physical characteristics, aliases, and identification documents. The variables collected on the victims include name, gender, age, address, nationality, and profession.

Theoretically, it has the potential to identify the diverse components related to trafficking of human beings. However, in reality the majority of the criminal incidents of this nature have been introduced into the database as crimes of abduction. Therefore, it becomes difficult to select only those cases dealing with exploitation of women and children. In order to do this, it would be necessary to read each case and recode the crime classification. Since trafficking of human beings is a relatively recent phenomenon it is still in the development stage in the terms of law enforcement.

In Portugal, there are also several official and non-official statistical data systems regarding criminal victimisation. However, they are not interconnected, which makes it very difficult to have an accurate perspective of the victimisation problem especially for crimes like trafficking of human beings.

Until 2003 the offence which probably gave the best measure of the overall phenomenon of trafficking in human beings for the purpose of sexual exploitation in **Spain** was recorded under the rubric "coercion into prostitution" as defined by Article 188-2 of the Criminal Code. The offence under Article 188-2 corresponds exactly to the international definitions, facilitating the collection and exchange of data. The new Article on "coercion into prostitution", which defines the offence of trafficking in human beings for the purpose of sexual exploitation, was inserted into the Spanish Criminal Code by the reform undertaken in 1999. After the reform, enacted on 29 September 2003, the specific offence of trafficking in human beings (318bis) and that of trafficking in human beings for the purpose of sexual exploitation (188-2) were integrated into one article (318 bis).

Information on these articles can be found in the database maintained by the *Ministerio del Interior*, which stores investigative information relating to each chapter of the Criminal Code. The information contained in this database originates from the data collection forms compiled by the police forces (the *Cuerpo Nacional de Policía* and the *Guardia Civil*) when they become aware of a case, either because a report has been made or through their own actions. This database stores information on the offence, the perpetrators and the victims. With particular regard to the victims, data is collected on the following variables: category, gender, age, nationality, relationship to the perpetrator of the offence (father or mother, child,



spouse/partner, other relative, work/school friend, casual acquaintance, other, none), injuries caused by the crime (no harm, non-serious harm, serious harm, death).

The two police units collect other data that focus on human trafficking for the purpose of sexual exploitation. Each department processes these data separately with information arising from concluded investigations. The result is two different databases, with no co-ordination and no common basis.

*Cuerpo Nacional de Policía – Foreigners and Documentation Division.* The Foreigners and Documentation Division of the National Police is responsible for investigation of trafficking in human beings. The Division is organised into various investigative units, each specialised in a particular type of victim, i.e. women from Eastern Europe, Africa, Asia or South America. The Division uses the data collected during its investigations to compile a brief annual report on criminal offences such as coercion into prostitution (Article 188 of the Criminal Code), offences against workers' rights (which are covered by Article 313-1 of the Criminal Code), offences against the rights of foreign citizens (under Article 318bis of the Criminal Code), false documentation, and the falsification of residence permits. These data are therefore gathered when investigations have been completed. Information on traffickers relates to the number of rings identified and the number of persons arrested. The data collected on victims includes category, gender, age, nationality, relationship to the perpetrator of the offence (father or mother, child, spouse/partner, other relative, work/school friend, casual acquaintance, other, none), injuries caused by the crime (no harm, non-serious harm, serious harm, death).

*Guardia Civil – EMUME Central.* Complete quantitative and/or qualitative analysis of the data available from the Guardia Civil, is forthcoming from studies and solved cases. Data on perpetrators refer to sex, age and nationality. Qualitative information on the rings, their *modus operandi* and contacts in Spain is also available. These data are based on completed investigations.

Since the introduction of the Directorate General of the Police Service Guidelines 3/2000 on action against rings engaged in the trafficking of women and the prostitution of minors, systematic inspections are carried out by the *Guardia Civil* in clubs without the need for accusations or suspicion that a criminal offence has been committed. These inspections yield data on victims. In particular, on the number, nationalities, genders, and ages of the prostitutes working in the clubs inspected. The reports on trafficking produced by the Guardia Civil also contain data on the situations of victims in Spain, e.g. how rings have exploited them, the means of coercion used, etc.

In regards to the judicial activity, the Ministry of Justice has a database that is of no use for analysis because it does not indicate separate offences.

In **Sweden** the National Criminal Investigation Division is largely responsible for information on trafficking in human beings. The National Police Board also retains information on human trafficking, and trafficking for sexual exploitation, as it was appointed in 1997 to be the national rapporteur. Data on victims is gathered through local police reports, as well as the agencies and/or NGOs that the victim uses for rehabilitation.

In **The Netherlands** information on the offence of trafficking in human beings for the purpose of sexual exploitation and on the other offences that the courts can use when punishing such behaviours may be found in the *national database from the Public Prosecution Service (PPS)*. The data are gathered from and provided by the 19 District Public Prosecution Services. PPS furnishes the statistics. The counting unit in the PPS system are individual cases sent to the Public Prosecutor, which may contain several offences for each offender and/or cases brought before the judge. The PPS database includes several types of data: police data (when the criminal trial has not started), prosecution data (when the criminal trial has already started) and conviction data (when a conviction is issued). Variables that are recorded by the PPS include date and place of offence, type of offence, the offenders' date and place of birth, dates of the different steps in the legal procedure, decision by the Public Prosecutor, and decision by the judge. The counting rules used are the number of cases against a person, which could include several offences. Several separate cases involving the same person can be included in the system.

Data collected on the offenders include gender, age, country of birth, and date of birth. The national Public Prosecutors Dataset does not collect information on the victims. There is, however, an official confidential database called the Central Registration of Victims of Trafficking maintained by the Foundation against Trafficking in Women (STV). STV is a non-governmental organization with a separate budget for this task. According to the B9 regulation (special regulation offering reflection period and temporary residence permit to alien victims of trafficking), the police have to report every victim they encounter to the STV. Until recently, STV information was recorded by hand. Now a computer registration system is in use. There is also an official and confidential database maintained by the Immigration and Naturalisation Services (INS) concerning B9 requests and grants. Prior to 2003, STV collected information on the victims' sex, age, and country of origin. Once the computer system was installed the data collection expanded to include information on language, children, travel documents, place of residence, prostitution sector in which the exploitation took place, age when recruited, what kind of promises were made, legal assistance in the Netherlands, B9 requests and grants, as well as the sex, age, and country of origin of the applicants. In addition, data is collected on requests for financial compensation, whether the victim is in the Netherlands, and if not, the reason for their return. Information regarding any type of return assistance is also recorded.

In the **United Kingdom**, the principal official databases holding information on offenders and offences are the Police National Computer (PNC), the Offenders Index and the Courts Database. The PNC is a confidential database containing extensive data on criminals, vehicles and property, it is available 24 hours a day, all year round and information can be accessed in a matter of seconds, through more than 10,000 terminals in police forces across the country. The PNC is accessed through a secure network and all transactions are logged for audit and data protection purposes.

A number of criminal justice partners are linked to the PNC, giving them access to the information held in the computer. They include the 'Jurors' link, which allows crown courts to check whether a proposed juror has a criminal record. There is also the Criminal Records Bureau (CRB), which allows checks to be made, through PNC, on individuals applying to work with children or other vulnerable people and finally

there is the Forensic Science Service's (FSS) DNA database that links to the PNC allowing users to update the national DNA database on an individual's DNA status.

The Offenders Index (OI) is a confidential Home Office Database that holds information on convictions for individuals. Data from the courts related to court appearances is added to the Offenders Index on a quarterly basis. Where an individual has a previous court sentence, information on the new sentence is added to the criminal history for that individual. Only court sentences and those for 'standard list' offences are covered. Standard list offences include all 'indictable only' and 'triable either way' offences and some of the more serious 'summary' offences such as common assault and driving whilst disqualified or under the influence of drugs or alcohol. Data on individual cases is only available to bona fide researchers evaluating programmes of intervention with offenders.

The Courts database is run by the Crown Prosecution Service (CPS), it contains case summaries, and case up-dates and can be searched by offence category. As charges begin to be brought under the new Anti -Trafficking legislation, it will become possible to search existing, official databases for information on these offences. In addition, the CPS is currently setting up a new 'Compass' database that will hold information from the courts on trafficking offences and offenders. The system is due to come on-line later this year.

### *8.2.2 Comments*

The review of the experiences in the field of data collection on trafficking in human beings in the old EU Member States reveals that there is still a great disparity between the databases. These differences could seriously hamper the comparability of data. Even so, there are also good examples of data gathering that may serve as a model to be incorporated across the European Union.

The sources of data vary from country to country. In some instances, it may be the police while in others the primary provider may be the prosecutor's offices. This heterogeneity is also found when looking at the authority that maintains the data. This too varies from country to country (Ministry of Justice, Ministry of the Interior, etc.).

In the 'original' EU countries, one can find different types of data that are being collected. The types range from police and prosecution data to conviction data. Furthermore, there is significant heterogeneity within the same typology of data. Taking police data as an example, some databases collect information on people who have been arrested people, others collect data on investigations that have not yet been completed, while others refer to investigations that have been completed and successfully brought to the prosecutors, and so on. This data relates to different stages of the investigation and, consequently, makes it difficult to compare them across countries.

In some of the countries considered the same article of the Criminal Code covers different offences, therefore, the statistics relative to that article comprise information on two different phenomena. Unfortunately, this creates a situation wherein the data cannot be disaggregated.

The variables collected on offences, offenders and (when applicable) victims vary greatly from database to database and from country to country. The Crime Statistics

of the Federal Ministry of Interior, and the Criminal Police Force (*Bundeskriminalamt*) in Austria make it possible to have the number of victims, their gender and their age, but not their nationality. The same is true for the Federal Police Crime Statistics (*Polizeiliche Kriminalstatistik*) in Germany.

In some of the countries considered, only confidential databases designed for police forces exist. In some cases, data, even if they are not confidential, are not made public. Consequently, no information can be utilised for purposes others than those related to investigations. One could argue that it may be worthwhile to make such information available for research purposes, provided there is sufficient confidentiality and protection of personal privacy rights.

It is remarkable that many of the countries considered do not collect information on victims, but only on the offences and their perpetrators. This is a major shortcoming. The numbers and characteristics of the victims known to the investigative and judicial authorities could be of the utmost importance for not only understanding trends in the phenomenon but also to produce reliable estimates of the total population of trafficked women. All of which could eventually be used to hinder the trafficking process.

In many of the countries covered by this study (i.e. Belgium, Finland, Italy, The Netherlands), NGOs possess significant information and should be encouraged to provide such information and co-ordinate their services with the police. This would yield more complete and accurate knowledge on the numbers, characteristics and needs of victims. In some cases, extremely useful information may be at the disposal of NGOs, yet their data storage systems may be unsatisfactory. NGOs are able to provide not only highly detailed qualitative information on victims but also quantitative data on the number of trafficked women who come in contact with them every year as well as the ratio between trafficked women and foreign prostitutes. They are also able to produce information related to the number of trafficked women who are granted stay permits under social protection programmes. This knowledge should be preserved, and data should be gathered by NGO's in a standardised way and made available for research and policy purposes. To this end, cooperation between the national authorities and NGOs should be improved.

A good example of data gathering on behalf of an NGO is that of the Belgian Centre for Equal Opportunities and Combating Racism, which has established an electronic user-friendly web-interface database on victims of trafficking in human beings. The Centre cooperates with the three specialized centres for the reception and assistance of victims of human trafficking in Belgium. These centres furnish the data. This database contains information regarding the victims that the three specialized centres have assisted during recent years. The variables gathered for each are diverse and wide-ranging thereby, providing an opportunity to have a complete picture of the problem.

The Dutch also provide a good example of an official confidential database called the Central registration of victims of trafficking by the Foundation against Trafficking in Women (STV), a non-governmental organization. Police are required to report every victim they encounter to the STV. Beginning in 2003, STV collected information in a computerized database related to gender, age, country of origin, language, children, travelling documents, place of residence, kind of prostitution utilized, age when recruited, number of false promises, legal assistance in the

Netherlands, B9 requests and grants as well as other data. In addition, a request for financial compensation, if the victim is in the Netherlands, and if not, the reason for return, and return assistance are also recorded. Even though significant information is gathered some data, such as those relating to foreigners who obtain stay permits for social protection, are not collected in a very systematic way.

The *Ministerio del Interior* database is quite complete, but according to the Spanish researchers it is overly general. The researchers note that the same datasheet is used for every offence, so that when a specific offence is analysed, precise and important data are always lacking. Thus, the information gathered on victims is not exhaustive and very little information is gathered on the *modus operandi* of the offence (although there is a very detailed spreadsheet for property crimes). One may therefore conclude that, although this database is a reasonably satisfactory instrument for the purposes of the *Ministerio del Interior*, it fails to provide specific insight into the offences for research purposes. It could be stressed that explicit data gathering techniques could be instituted that are related specifically to the offence of trafficking in human beings for the purpose of sexual exploitation.

A good example of data collection in the field of police information is the *national general police database* in Belgium. There is a specific standard registration form used for trafficking in human beings offences. This form has to be filled out when there are specific trafficking offences and for those offences that are allegedly committed in the 'context' of trafficking in human beings. Specific variables are collected using this form. This process preserves crucial information when a trafficking case takes place but fails to fall exactly in the realm of the specific trafficking offences and is instead dealt with using offences allegedly committed in the 'context' of trafficking in human beings. Data collected in this case are defined in a more criminological nature as opposed to using a strictly legal basis.

Another excellent example of data collection procedure is the data collected by the Spanish Guardia Civil when it inspects the clubs where prostitutes work. The data collected enable quantification of foreign prostitution in the country and the percentage of foreign prostitutes who report their traffickers/exploiters to the police.

Another good example of data collection procedure is that put in place by the Italian *Direzione Nazionale Antimafia* with its 1998 survey and its ongoing survey for the *Tratta di persone a scopo di sfruttamento sessuale e traffico di migranti* (Trafficking in persons and smuggling of migrants) project of the Italian Ministry of Justice and the Ministry of Equal Opportunities. These surveys enable the monitoring of all judicial activity (cases under preliminary investigation, committals for trial, cases already adjudicated) in the field of trafficking in human beings/trafficking in human beings for the purpose of sexual exploitation and alien smuggling. Close attention is paid to victims. One of the important features of the new survey is that it is not limited to national legislative definitions of the phenomena and it could be easily reproduced in other countries with minor adjustments.

*8.2.3 Conclusions: problems related to the organisation of the existing databases which may hamper effective data collection and the exchange of information on trafficking and best practices in the field of data collection*

The application of Model Spreadsheet 2 in the countries considered made it possible to gather existing quantitative data on trafficking in human beings for the purpose of sexual exploitation. These data are related to offences, perpetrators and victims, and, when presented, they are set out in the national reports. Application of Spreadsheet 2 enabled cross-analysis of the existing data collection procedures in the 'original' EU Member States. The following are the main problems noted which could hamper effective data collection and the exchange of information on trafficking. Best practices in the field are also provided.

**PROBLEMS RELATED TO THE ORGANISATION OF EXISTING DATABASES WHICH MAY HAMPER EFFECTIVE DATA COLLECTION AND THE EXCHANGE OF INFORMATION ON TRAFFICKING**

1. *There are many diverse authorities collecting data.* Collection may be carried out by the Ministry of Justice, the Ministry of the Interior as well as the National Office for Statistics. In some cases, only specific authorities (e.g. law enforcement personnel, public prosecutor's offices) have access to the data. As a result, there is little centralisation of data and the possibility of sharing information among countries is reduced.
2. *The data stored in databases are not immediately comparable across countries because the relevant criminal offences are sometimes different.*
3. *Statistics are not always clear and useful. Some databases combine data on offences connected with trafficking in human beings with data referring to other offences.* This implies that little attention is paid to the issue of trafficking in human beings from a statistical point of view. When the same article in the Criminal Code or of a law covers different offences, it is possible that the statistics on one article includes information on different phenomena. In which case the relevant data cannot be disaggregated.
4. *The criteria for the storing of data differ from country to country.* Data may be investigative or judicial. Furthermore, investigative data may refer to the initial phase of investigation or to the phase in which investigations are concluded.
5. *The types of data collected may differ.* In some countries, data are only investigative and collected at the beginning of the investigation; they are not judicial. In other countries, data may refer to concluded investigations. In Italy, the PNA survey collects data on cases under preliminary investigation, brought to trial and *sub judice*, and, in different instances, adjudicated. Data may also refer to convictions. Attention should be paid to the data collection stage in order to ensure comparability across countries.
6. *Different variables are used to collect information on offences, perpetrators and victims.* In some cases, these variables may not be very useful because they are not tailored to the specific offence of trafficking for the purpose of sexual exploitation.
7. *Insufficient attention is paid to gathering information on victims.* One of the main deficiencies in many databases is that the victims are ignored. The lack of information about this group is a major shortcoming. The number and

characteristics of the victims known to investigative and judicial authorities may be of crucial importance, not only to understanding trends in the phenomenon but also to producing reliable estimates of the total population of trafficked persons.

8. *Some countries only maintain confidential databases and occasionally these are the only ones available for information on trafficking in human beings.*
9. *Information from NGOs is under-utilised.* Extremely useful information may be gathered by NGOs, but their data storage systems are sometimes unsatisfactory. This knowledge should be preserved, and standardised data should be collected by NGOs and made available for research and policy purposes. Correspondingly, cooperation between national authorities and NGOs needs to be improved.

**BEST PRACTICES IN THE FIELD OF DATA COLLECTION**

1. *The activity of the Spanish Guardia Civil provides a good example of pro-active police activity and the gathering of data.* Without the need for a formal investigation, the *Guardia Civil* gathers data on foreign prostitutes found in the clubs that it inspects throughout the country. This body also records the number of prostitutes who report their traffickers/exploiters during these inspections. This constitutes a type of census on the amount and type of foreign prostitution in the country.
2. *A good example of collection of data in the field of police information is the national general police database in Belgium.* A specific standard registration form has to be filled out when specific trafficking offences and offences allegedly committed in the 'context' of trafficking in human beings take place. Specific and tailor-made variables are collected through this form on the offence, the offenders and the victims.
3. *The activity of the Italian Direzione Nazionale Antimafia presents a good example of a judicial monitoring system.* It allows for the retrieval of data from judicial activities with the help of Public Prosecutor's Offices. In practice, it enables the Prosecutor's Office to monitor the field of trafficking and prostitution, given that quantitative and qualitative information is available from every part of the country. It also furnishes data on cases under investigation, brought to trial and therefore *sub judice*, and those already adjudicated, as well as information about victims.
4. *The activity of the Dutch Central registration of victims of trafficking by the Foundation against Trafficking in Women (STV), a non-governmental organization, maintains an excellent database.* Police have to report every victim they encounter to the STV, which collects and stores in a computer database a vast amount of information on the victims.

**8.3 RESULTS FROM MODEL SPREADSHEET 3: QUANTITATIVE AND QUALITATIVE INFORMATION**

Model Spreadsheet 3 was designed to gather information from investigative and judicial cases. This source was of special importance because it provided information and data from those directly involved in trafficking operations, both for the purpose of sexual exploitation and otherwise. In other words, direct investigations and judicial evidence – including wire-taps, testimonies, declarations, findings – provided data not always collected in databases and thus complemented the other sources of information in yielding a more complete picture of the phenomenon.

The two main categories of data collected were quantitative and qualitative, and they present two different points of view on the problem, the first being concerned with figures, the second with features of the phenomenon. All the questions asked with Model Spreadsheet 3 referred to both these categories. The aim was to obtain fresh information from real-life experiences/stories in order to describe the situation, to reveal the weaknesses, and to propose solutions for the problems that arose.



In detail, we considered the following:

- quantitative data: numbers of people trafficked and exploited, number of traffickers and exploiters, prices paid to be trafficked, revenues of the exploiters, both for each girl and in total;
- qualitative data: origin of the trafficked/exploited people (i.e. main points of recruitment), characteristics of the trafficked people (i.e. problems of specific social classes), trafficking routes (i.e., geographical loopholes), duration of trafficking operations, *modi operandi* of both traffickers and exploiters (i.e. crimes committed in order to facilitate trafficking operations such as corruption, counterfeiting documents, etc.), type of actors involved (i.e. individuals or crime organisations), duration of the exploitation and reason for stopping it, places of exploitation (i.e. information concerning the demand for prostitution services).

#### *8.3.1 Cross comparative analysis*

#### **AVAILABLE QUANTITATIVE DATA**

Table 2 and Table 3 at the end of this paragraph synthesise the data provided by national experts on quantitative aspects of trafficking thus allowing a cross comparative analysis among Member States. Blank spaces were left when no information was available.

#### AVAILABLE QUALITATIVE DATA

Most of the countries involved had a route from eastern European countries to western European countries. In addition, nearly all of the countries reported that poor economic and social conditions were factors luring the women into prostitution. Women vary in age from 18–30. Most of the countries reported that exploitation took place in apartments or in clubs, sometimes before moving on to an apartment. Several countries reported that women first encountered the notion of going to the western European countries through advertisements in newspapers or on the internet.

Tables from 4 to 9 at the end of this paragraph synthesise the data provided by national experts on qualitative aspects of trafficking thus allowing a cross comparative analysis among Member States. Blank spaces were left when no information was available.

#### 8.3.2 Comments

The cross-comparison of situations in the considered EU Member States, uncovered these most relevant trends.

*The main points of recruitment always occur in less- or under-developed countries, usually from Eastern European countries, or in the case of **Portugal** and **Spain**, from South American countries, whose inhabitants still live in very poor social and economic circumstances. So there are countries, such as **Luxembourg**, for which the victims come mainly from Bulgaria, Russia and Ukraine, and countries such as **France**, **Germany**, **Spain**, and **The Netherlands** which has a population of victims from many different origins. Anyway, what is certain – as the **Austrian** experts suggests – is that a “common characteristic that can be seen in victims is that before being trafficked there is a tendency for them to be insecure regarding their future”.*

*Trafficking routes differ according to the place from which they start, but there is always a reason for the choice of a specific path: loopholes. These can be geographical (i.e. the topography), institutional (i.e. colluding authorities, lack of domestic control, etc.) and/or bureaucratic (i.e. visa requirements and immigration policy). Here are some examples chosen from many. In **Italy** the Northern border and the sea border (Otranto Channel) in the South present vulnerable geographical loopholes. The changing geographical nature of the terrain in these areas enables people to cross the borders without being intercepted by police. In the **United Kingdom**, the widespread availability of low-cost flights has provided facilitators with another relatively cheap method of transporting migrants to the UK. These flights often use smaller airports further from the big cities and may be perceived*

by facilitators as a less risky option given the controls in place at larger airports. Clandestine entry remains a major method for facilitators bringing people into the UK.

*The modi operandi of both traffickers and exploiters show that the crime of trafficking in human beings for the purpose of sexual exploitation is never committed on its own. Related crimes, such as corruption, counterfeiting documents, etc., are invariably committed in order to facilitate trafficking operations. The use of forged documents pertaining to nationalities different from those of the victims is common.* In **Austria** the national expert declared that traffickers frequently forge documents for entrance into the Schengen area. For example, the recruiters often obtain visas without the victims knowing that a visa application has been made. Hence, the signature of the victim was forged. In **Belgium** trafficking is characterised by the use of false or falsified documents or the use of authentic documents that were required by fraudulently obtained visas (tourist, business, student, show business). Traffickers use the expensive false or falsified documents more than once. West-African victims commonly use documents of compatriots. The falsification mainly consists of photo-substitution. Portuguese, Italian and Greek passports are frequently used. West-African victims sometimes use false British passports. In **France** the trafficker provides counterfeit documents, a plane ticket, and organises the travel, in exchange for payment (which can be as much as \$45,000 US). In **Greece** illegal transportation occurs using legal transport papers with fake consulate approval, legal transport papers that belong to other persons who “lend” them to the victims, counterfeit or stolen documents, unguarded passage routes and transportation in the hidden parts of buses and lorries. In **Ireland** the recent increase in immigration has led to the discovery of a number of counterfeit documents (particularly stolen birth certificates of African origin). In **Italy** the Italian prosecutor’s offices note increasingly numerous cases of corruption concerning the issue of passports, both in the Eastern European countries and the former Soviet Union, and in the countries traversed during the journey to Italy (especially Hungary). Various forms of illegal or apparently legal entry are reported. In the latter case, forged documents and/or fake stay permits, as well as the bribery of police officers, are used. The methods vary according to the ethnic group of the victim. In **Sweden** there have been cases where counterfeit documents replaced original passports. In **The Netherlands** counterfeited documents are used to secure entry into The Netherlands; however, the percentage of cases wherein one or more suspects use counterfeit documents has decreased. In the **United Kingdom** serious and organised criminals have many uses for false documents beyond facilitating illegal immigration, for example to support drug trafficking. Some organised criminals develop the capability to produce false documentation themselves while others buy them from specialists. Bangkok is recognised as a centre for forgery, but false documents are produced throughout the world, including in Albania, Singapore, Bulgaria, Greece and Poland, as well as in the UK itself. False documentation is also provided to illegal entrants in order to allow them to work once in the UK.

In many countries, organised criminals are not only involved in the trafficking of human beings but also of drugs, steroids, arms and vehicles.

*Most of the actors involved are not individuals but rather crime organisations and/or networks, often working on a transnational basis in the country of origin, the intermediary points, and the final destination (exploitation) points.* In **Austria** trafficking in human beings for sexual exploitation is mostly carried out by criminal

groups or criminal organisations. Within these groups or organisations, there are persons responsible for the recruitment, others for the logistics related to transportation and others for accompanying the victims on their trip. There are inevitably people with specialised skills who take care of the financial details and/or money laundering activity. Occasionally money is transported to the organisers in “suitcases” or it may also be transferred by Western Union. In **Belgium** three types of traffickers or organisations are known: the loner who operates as an individual (8%), the isolated group consisting of two or more persons accounting for the recruitment, the transport and the exploitation (15%), the cluster of persons in a criminal network (77%). These clusters mainly consist of smaller networks of pimps with a common contact point where the women arrive and profits leave. This contact point operates directly or with the use of intermediaries. In **Denmark** the criminal networks vary in size, structure, level and mode of organisation. According to the police, there is usually a criminal network in the victims’ home country as well as a partner network on the receiving end. In Denmark, the police have seen criminal networks with African, Albanian and Czech origin as well as networks from ex-Yugoslavia. In **Finland** the current opinion of the Finnish NBI is that Russian and Estonian prostitution in Finland is organised mainly by people involved in Estonian and Russian organised crime. In **France** single individuals rarely conduct criminal activities linked to trafficking in human beings for the purpose of sexual exploitation. More often, they are carried out by groups. One group can include 2 or 3 traffickers (which controls 5, 6 or 7 people), but it can also be larger and include 20 persons. Traffickers are usually men but women have also been known to be involved. In **Germany** it is assumed that about 50% of trafficking is conducted by small, informally structured networks (3 to 10 people), whereas the others are believed to imply larger more organised structures (10 or more people). Larger criminal networks are believed to work according to the orders of headquarters, which are responsible for the preparation, organisation, control as well as coordination of the trafficking. In **Greece** in 2002, the principal networks successfully supplying prostitution in Greece with immigrant women were the following, in order of importance: Russian, Ukrainian, Balkan, Albanian, and to a lesser extent Central European and African. In **Italy** with regards to trafficking in persons for the purpose of sexual exploitation, the market is controlled by traffickers from Nigeria, Albania and Eastern Europe. The degree of organisation within these criminal groups and their methods vary according to ethnicity and culture. In **Portugal** the criminal groups that carry out these activities are small groups with some recruiters in Brazil or Eastern Europe and several individuals in Portugal. In **Spain** in almost half of cases, traffickers and exploiters belonged to the same organisation. Five cases consisted of international organisations with foreign members; in the remaining five cases, the members of the organisation were Spanish citizens. The international organisations were based in Eastern Europe (two cases), Nigeria (two cases), and South America (one case). In **Sweden** the criminal activities mentioned are carried out by single individuals who usually belong to a larger network comprised of actors within Sweden, and within countries from which the women are recruited. In **The Netherlands**, 156 out of the 158 successfully completed police investigations [...] between the 1998 and 2002, 41 (26%) were perpetrated by an individual, 35 (22%) involved an isolated group, and 80 (51%) were carried out by a network. In the **United Kingdom** numerous groups are involved in trafficking into the UK, and control of victims within the UK. Eastern European (mainly Balkan and Former Soviet Union) and South East Asian (Chinese, Thai etc) groups are involved in trafficking for sexual exploitation, West African groups are involved in trafficking for both sexual and labour exploitation.

*The duration of the exploitation depends on the ethnic group involved. It may last indefinitely or finish when the debt has been fully repaid. There is evidence that very rarely do prostitutes report to the police spontaneously but must be persuaded by social workers or police officials.* So in **Austria** typically, the victims are in debt with the recruiting agencies or unknown people in the background. An intermediary is taking the money and telling them that it is being sent to the organiser(s). In **Belgium** debt bondage is also a commonly used control technique. Although the women believe that they will be free once they have paid back their “debt”, the reality is different: women are “sold” to another trafficker who makes them to pay their “debt” again. In **France** the process of exploitation lasts at least one year. Some victims have to repay a debt. For an example, an African woman whose debt reaches \$45,000 US should repay \$1,000 a week. Given that payment schedule, she will repay the debt in approximately one year. But some European women remain under their trafficker’s control for 2, 3, or even 5 years. In **Italy**, in relation to trafficking from Nigeria, various prosecutors’ offices confirmed that the women must repay to the criminal organisation the cost of their transfer to Italy, the accommodation provided, and transport during their prostitution work. In addition this is a sum that must be paid for the release of the document seized at the arrival in Italy. The total amount is approximately € 40,000. In **Portugal** the criminal group hires individuals for surveillance and control of the women. The traffickers accuse the women of having a debt, which includes the travel and personal expenses (food, clothes,). In **Spain** captors always provide the documents and money necessary for the journey to Spain. They obtain passports, invitation letters, airline tickets, etc, and also give the victims approximately € 2,000 to ensure that they are not stopped by the police because they do not have enough money to pay for their holiday. This sum of money must always be repaid to the member of the organisation who meets the victims upon their arrival in Spain. In exchange for these services, the captors tell the victims that the money advanced can be reimbursed in Spain after a few weeks of work. In **Sweden** the duration of the exploitation process is not known. It is known that women are told that they need to pay back a debt incurred for the transportation and lifestyle, but this amount can be stretched over a long period. In the **United Kingdom** once recruited, traffickers control their victims by a variety of means. Violence is widespread and debt-bondage is used to control both sweat-shop labourers and trafficked prostitutes.

*The involvement of ‘legal’ actors also exist, who facilitate the exploitation of prostitution, such as letting agencies, taxi drivers, and hotel owners.* In **Austria** the recruitment is usually either carried out by direct personal contact with the victims or facilitated via ads in newspapers. In **Belgium** traffickers make use of other persons who are not always mala fide. Other people include those responsible for food, lodging, transport and possible recruitment (e.g. model bureaus) as well as people who provide these services occasionally and on a non-professional basis. In **France** victims reply to small ads in newspapers or are recruited by job agencies. They promise a well-paid job in France (as a waitress or hostess, for example). Once in France or during transit, they are forced to work as prostitutes. In **Germany** legal entrepreneurs may be involved in the organisation and in the course of the trafficking process as well as in the exploitation phase. To disguise the purpose of trafficking, connections with legal entrepreneurs engaged in, for example, import/export trades, transport companies and travel agencies are used. In **Italy** there are various agencies specialised in the organisation of study-holidays and travel and/or employment abroad in the fashion and entertainment industries. These agencies place advertisements in local newspapers. In the case of the fashion

and entertainment agencies, the victims are attractive girls lured by a future on the catwalks or in front of the cameras. In **Portugal** traffickers have complaisant individuals who are, in the majority of cases, hotel owners and taxi drivers.

*The information available on the places of exploitation indicates different situations in each of the countries analysed (street prostitution, prostitution in clubs and hotels, prostitution in apartments, etc.) but it is obvious that the demand for prostitution services and prostitution policies/practices play a fundamental role in the localisation of the activity (e.g. areas of the country in which prostitution takes place and whether it does so indoors or outdoors, or in private or public). The places of exploitation vary from Member State to Member State and include apartments, streets, hotels, erotic restaurants, clubs, massage parlours, camping areas, brothels, windows, and escort services.* Here are some examples, to show how large the differences are between Member States. In **Austria** women have to work as prostitutes mostly in nightclubs, sometimes in apartments or on the streets. In **Denmark** women generally prostitute themselves both in the streets and massage parlours. Reports from the police and NGOs show that there has recently been a drastic increase in the number of African women (mainly of Nigerian origin) primarily involved in street prostitution. In **France** for African and European victims, exploitation mainly occurs in the streets. Asian women (especially Thai) are usually exploited in massage salons, relaxation salons, apartments and bars for Asian clients. In **Italy** exploitation mainly occurs in the form of prostitution on the streets. In **Portugal** exploitation occurs especially in apartments and clubs. In **Spain** exploitation occurs in apartments, hotels and brothels. While in the **United Kingdom** exploitation occurs largely on the streets. These differences are certainly influenced by the type of demand and by policies on prostitution and related practices.

*Organised crime uses expedients in order to disguise the exploitation (for example, stay permits for 'posted workers', deduction from the dancer/hostess's wages of the hours spent with clients).* In **Belgium** some exploiters play more "facilitating" roles (money transfer, falsification of documents, underground bankers, transporters, etc.). In **Finland** the procuring operations (also those run exclusively by Finns) are mainly led and run outside Finnish borders, i.e. Estonia or Russia. This serves as one of the main mechanisms the organisers use to avoid the risks imposed by the Finnish authorities. In **France**, to reduce the risk of being detected, traffickers avoid approaching their victims. Sometimes, they stay in another country and delegate surveillance and the collection of money to intermediaries. In **Germany**, to disguise the purpose of trafficking, connections with legal entrepreneurs engaged in, for example, import/export trades, transport companies and travel agencies are used. After the arrival in Germany, different contacts and connections with the restaurant as well as brothel or club owners are used. In Germany to avoid inspections the bribing of police officers may be attempted. Another method of avoiding inspections as well as escaping justice consists of the regular rotation of victims from one brothel to another. In so doing, criminal investigations are hindered in tracking down the whereabouts of the victims as well as the perpetrators. In **Portugal** criminal groups controlling women, generally have a businessman / owner of a nightclub, disco, bar, etc., who controls the activities of the group. They are usually white males of Portuguese or Brazilian nationality and have a legal business related to "evening" entertainment. They use the legal business for laundering the income derived from sexual exploitation.

*There are frequent cases of bribery of foreign public officials.* In **Belgium**, traffickers look for a network of corrupt government officials or key figures in harbours and

airports to disrupt the control of their activities. In **Germany** the phase marked by corruption may be related to the illegal entry or residence of a victim (e.g. counterfeiting of documents) or to the prostitution of the victim. Corrupt police officers may warn brothel owners prior to police inspections or undercover investigations. In **Italy** in 1996, the Italian authorities at the Italian Embassy in Lagos were involved in the issue of spurious tourist visas. Members of the trafficking organisation went to the Embassy with applications for such visas that were then issued upon the payment of sums of money. The visas were for three months, allowing the women to enter Italy legally and then remain in the country illegally. Also, many cases of corruption among Albanian police officers have been reported. These officers supervise loading operations and the falsification of documents, and they often sexually assault the women being trafficked. This causes a high degree of distrust among victims in all police officers, even Italian ones. In the **United Kingdom** a small proportion of corrupt solicitors and immigration advisors in England and Wales play a significant role in the facilitation process by fraudulently completing asylum or work-permit applications for clients.

*Street prostitutes are exploited in places different from those where they live, the purpose being to conceal the exploiters. It is a sort of commuting.* In **Austria** the victims are usually brought to Vienna or other large cities, such as Salzburg, Graz or Linz first. They either stay in the city or are transported into the surrounding areas, as there is a bigger market for sexual services (e.g. tourists, foreign workers, events with many people coming into the cities for amusement and relaxation). In **France** victims are regularly moved from town to town, in order to escape police. This is commonly referred to as the prostitution's "turn over". In **Italy** a distinct feature of street prostitution is commuting: the prostitutes ply their trade in venues different from their places of residence, moving from one town to another some distance away but easily and quickly reached by public transportation. Sometimes the inefficiency of local public transportation services, especially in regards to connections, forces the women to use taxis, in which case connivance between the taxi drivers and the criminal organisations has been established. The fact that the victims work far from their places of residence reduces the risks of discovery for their exploiters. In **The Netherlands** it is a general characteristic of the crime that the victims are regularly moved to other locations, in order to prevent law enforcement detection.

*Money is often transferred in cash to the countries of origin by emissaries or via money transfer agencies.* In **Austria** there are inevitably people with specialised skills who take care of the financial details and/or money laundering activity. Money is also transported to the organisers in "suitcases" or it may also be transferred by Western Union. In **France** the money does not stay in the country. It is sent to the countries of origin by "Western Union": a private US organisation used to transfer funds and is accessible in post offices. In **Italy** the money is usually remitted via money transfer agencies, or it is laundered by buying precious metals, especially gold, and gemstones, which are easier to transfer to the country of origin. When these methods are not adopted, the money is transferred, in cash, by a member of the criminal organisation beginning with the women in Italy. The money eventually returns to the country of origin with the illicit profits. These methods have raised a number of obstacles for financial investigations.

### 8.3.3 Conclusions: qualitative information which may yield better understanding of the trafficking chain

Application of Model Spreadsheet 3 in the countries considered made it possible to gather quantitative information which is described in this paragraph and in the various national reports (section 4 of national reports). But above all, application of Model Spreadsheet 3 in the countries produced qualitative information which, because it was collected by means of a uniform method, may offer significant assistance in devising preventive policies. In this regard, the following are the main “qualitative” conclusions drawn from the cross-country analysis.

#### QUALITATIVE INFORMATION WHICH MAY YIELD BETTER UNDERSTANDING OF THE TRAFFICKING CHAIN

1. *Analysis of the origins of people trafficked/exploited, highlights that the main points of recruitment always coincide with less- or under-developed countries, usually from Eastern European countries, or in the case of Portugal and Spain, from South American countries, whose inhabitants still live in very poor social and economic circumstances.*
2. *Trafficking routes differ according to the place from which they start, but there is always a reason for the choice of a specific path: loopholes. These can be geographical (i.e. the topography), institutional (i.e. colluding authorities, lack of domestic control, etc.) and/or bureaucratic (i.e. visa requirements and immigration policy). Regarding this, the United Kingdom expert stressed that given the fluidity with which routes can be used and the responsiveness of organised criminals to law enforcement activity, focusing on routes may be less productive for law enforcement than concentrating on specific nexus points, where routes converge and where illegal migrants congregate before being moved on.*
3. *The modi operandi of both traffickers and exploiters show that the crime of trafficking in human beings for the purpose of sexual exploitation is never committed on its own. Related crimes, such as corruption, counterfeiting documents, etc., are invariably committed in order to facilitate trafficking operations. The use of forged documents pertaining to nationalities different from those of the victims is common.*
4. *Most of the actors involved are not individuals but rather crime organisations and/or networks, often working on a transnational basis in the country of origin, the intermediary points, and the final destination (exploitation) points.*
5. *The duration of the exploitation depends on the ethnic group involved. It may last indefinitely or finish when the debt has been fully repaid. There is evidence that very rarely do prostitutes report to the police spontaneously but must be persuaded by social workers or police officials.*



6. *The involvement of 'legal actors' exist who facilitate the exploitation of prostitution, such as letting agencies, taxi drivers, hotel owners.*
7. *The information available on the places of exploitation indicates different situations in each of the countries analysed (street prostitution, prostitution in clubs and hotels, prostitution in apartments, etc.) but it is obvious that the demand for prostitution services and prostitution policies/practices play a fundamental role in the localisation of the activity (e.g. areas of the country in which prostitution takes place and whether it does so indoors or outdoors, or in private or public).*
8. *Organised crime uses expedients in order to disguise the exploitation (for example, stay permits for 'posted workers', deduction from the dancer/hostess's wages of the hours spent with clients).*
9. *There are frequent cases of bribery of foreign public officials.*
10. *Street prostitutes are exploited in places different from those where they live, the purpose being to conceal the exploiters. It is a sort of commuting.*
11. *Money is often transferred in cash to the countries of origin by emissaries or via money transfer agencies.*

TABLE 2: QUANTITATIVE INFORMATION ON THE TRAFFICKING PROCESS IN THE “OLD” EU MEMBER STATES (AU – IRL)

Variables	AU	BE	DEN	FIN	F	GER	GR	IRL
<i>N of trafficked and exploited</i>	160 for one organisation	173	2,250 foreign prostitutes	72–179 between 1998–2001	15,000	4,278 ('98–'02)	17,200	
<i>N traffickers and exploiters</i>		159				4,476 ('98–'02)	3,866 ('99–'03)	267 ('00–'02)
<i>Price paid to be trafficked</i>	Africa € 10,000 SEE € 0			€ 0	Africa \$ 45,000 China € 18,000 – 24,000	€ 2,000 – 30,000	€ 6,000 – 16,000	
<i>Price told to repay</i>	SEE € 1,000 – 2,000					€ 2,000 – 30,000	€ 6,000 – 16,000	
<i>Revenue for the exploiters</i>	€ 800,000 over the 160 women over time							
<i>Cost of girls</i>								
<i>Total</i>				€ 16,819 net profit		€ 9 billion per year		
<i>Cost per hour</i>	€ 100			€ 70 – 100				
<i>Cost per night</i>	€ 1,000							
<i>Daily</i>				Tens of thousands of € for the market				
<i>Yearly</i>				Tens of millions of € for the market				
<i>Prostitute's earnings</i>				2–3,000 €/month				
<i>Intercourse</i>								

Source: MON-EU-TRAF II national experts' country reports

TABLE 3: QUANTITATIVE INFORMATION ON THE TRAFFICKING PROCESS IN THE “OLD” EU MEMBER STATES (I – UK)

Variables	I	LUX	P	S	SW	NL	UK
<i>N of trafficked and exploited</i>	2,741 (‘96-‘01)				400-600 (2003)	1,483 (‘98-‘02) 343 (‘02)	
<i>N traffickers and exploiters</i>	7,582 (‘96-‘01)					706 (‘98-‘02)	
<i>Price paid to be trafficked</i>	€ 75- 500 from Albania € 25,000 from Nigeria		€ 600	€ 6000 Eastern Europe, € 2,400-6,000 South America, € 36-48,100 Balkans			
<i>Price told to repay</i>	€ 46,000 Nigerians		€ 2,500	€ 5,600			Moldavia £ 7,000 - 20,000 Thailand £ 23,000 Nigeria £ 40,000 Lithuania £ 4,000 to several thousands
<i>Revenue for the exploiters</i>	estimated from € 380,160,000 to € 950,400,000		€ 20,000-25,000 per month exploiting 6 women (‘03-‘04)	€ 25,000		€ 115,000 in 2002 (average in limited number of cases)	up to £ 100,000 per year from a single woman
<i>Cost of girls</i>	€ 1,000-6,500 Albanians € 12,000-14,000 Nigerians			€ 7,200-30,000			
<i>Total</i>							
<i>Cost per hour</i>							
<i>Cost per night</i>			€ 150-400				
<i>Daily</i>	€ 500-600			€ 300-600			£ 200
<i>Yearly</i>							£ 100,000
<i>Prostitute’s earnings</i>				€ 120-270 (Balkans)			
<i>Intercourse</i>	€ 50-100				€ 55-165		

Source: MON-EU-TRAF II national experts’ country reports

TABLE 4: QUALITATIVE INFORMATION ON THE TRAFFICKING PROCESS IN THE 'OLD' EU MEMBER STATES *MODUS OPERANDI* OF TRAFFICKERS/EXPLOITERS (AU – IRL)

Variables	AU	BE	DEN	FIN	F	GER	GR	IRL
<b>Modus operandi of traffickers/recruiters</b>								
<i>Knowledge of prostitution</i>	maybe	sometimes		y	n, usually	50%		
<i>Relationship to traffickers</i>		sometimes friends or boyfriends			boyfriend, friend, brother	professional/ trusted friend		
<i>Known</i>	30% of the time was a relative, lover or former employer			y, most		often		
<i>Unknown</i>	60% acquaintance through agencies			y, some		some		
<i>Same nationality as victims?</i>	50%			y		most		
<i>Newspaper ads</i>	y			y	y	y		
<i>Internet</i>				y				
<i>Offered other job (maid, waitress, dancer, au-pair)</i>	y	y				y		
<i>Traffickers and recruiters same persons?</i>	maybe	sometimes				sometimes		
<i>Who covers the costs?</i>	traffickers	traffickers				traffickers/ brothel owners		
<i>Victims pay to be trafficked?</i>	some	y		n, traffickers pay				
<i>Forged documents?</i>	y	y		n, usually tourist visas	y	some, usually tourists	y	y
<i>Means of transport</i>	public busses/microbuses, car or plane	train, bus, plane, car, van, ship		tourist busses, tourists, boat, plane, train		bus, car, train, plane, foot, boat	bus, car, taxi, boat, foot	plane, boat
<i>Duration of transport</i>	Few days			few hours				
<i>Points of entry</i>	Vienna International Airport, Hungary/Austria border, Slovak Republic/Austria border			Finnish borders; through Estonia, Sweden, Germany, Netherlands; Vaalimaa, Nuijamaa, Vainikkala, Niirala, Raja-Jooseppi		Poland, Czech Republic, Austria, Switzerland, France, Luxembourg, Belgium, the Netherlands, Denmark	unguarded passages into Greece (sea – land)	Dublin port and airport, Dunlaoighre Port or Rosslare Port, Northern Ireland border
<i>Cities taken for exploit</i>	y	y		Helsinki Region, other big cities, and northern Finland	Paris	Berlin, Hamburg, Frankfurt and others	Athens, Thessaloniki, Ioannina, Patra	Dublin
<i>Clientele</i>	Tourists, foreign workers					all		
<i>Routes from East to West?</i>	y	y		y	y	y	y	
<i>Routes from Africa?</i>	n	y		y	y	n		
<i>Routes from Asia?</i>	n	n		n	y	n		
<i>Routes from South America?</i>						y		
<b>Modus operandi of exploiters</b>								
<i>Sold to whom?</i>	owners of night clubs, agencies, bars, escorts services	other traffickers, club owners, bars				brothel owners, apartment owners		
<i>Characteristics of criminal groups</i>	ethnic groups, Ukrainian, Romanian, Belarusian, Bulgarian, Serbian, Lithuanian	Albanians and Belgians		Estonian and Russian		ethnic groups, networks	Ukrainian, Balkan, Albanian, lesser extent Central Europe and Africa	
<i>Same nationality as victims?</i>	50%	44.2%				German, Turkish, Bulgarian, Lithuanian, Polish, Romanian	y	
<i>Duration of exploitation</i>	Days to months, dependent upon origin country of girl			few days to a few weeks		days, months, years		
<i>The flow of money</i>	Suitcases or Western Union							

Source: MON-EU-TRAF II national experts' country reports

TABLE 5: QUALITATIVE INFORMATION ON THE TRAFFICKING PROCESS IN THE 'OLD' EU MEMBER STATES *MODUS OPERANDI* OF TRAFFICKERS/EXPLOITERS (I – UK)

Variables	I	LUX	P	S	SW	NL	UK
<i>Knowledge of prostitution</i>	sometimes		y	50%		sometimes	sometimes
<i>Relationship to traffickers</i>	acquaintance or trusted friend or lover			professional, friend, boyfriend		50% strangers, rest acquaintances, partners, (good) friends and family, or unknown	acquaintances
<i>Known</i>	y		y	60%		of the 50% known some 17% were acquaintances, 12% partners, 6% (good) friends and 4% family	some
<i>Unknown</i>	y			40%		Some 50% is unknown	
<i>Same nationality as victims?</i>	y			y		Some 50% of the exploiters (in 2002) had the same nationality as their victim(s). In also some 50% of the completed police investigations (in 2001 and 2002) victims were recruited in the country of origin of the suspect(s) involved.	y
<i>Newspaper ads</i>	y			y	y	y	y
<i>Internet</i>				y	y		
<i>Offered other job (maid, waitress, dancer, au-pair)</i>	y			60%	y		y
<i>Traffickers and recruiters same persons?</i>	y					According to Dutch penal law, the recruiter is considered to be trafficker. If is meant: recruiter and exploiter the same person, then this is more and more the case (loverboy constructions)	y
<i>Who covers the costs?</i>	traffickers for EE, victims partially from Africa			traffickers	traffickers		traffickers
<i>Victims pay to be trafficked?</i>				n	y		y
<i>Forged documents?</i>	y		n	n	y	y, but decreasing	y, but decreasing
<i>Means of transport</i>	airports, trains, taxis, ferries, speedboat		plane, public transportation, bus, taxis, cars	plane, car or boat	car, ferry	plane or over land	plane, car, train
<i>Duration of transport</i>	3 months to 1 year		2-4 days	2-10 days, months for Africans			
<i>Points of entry</i>	Otranto Channel, Border with Slovenia	borders with France and Belgium	Lisbon, Paris, Madrid, Munich, Portuguese border, Lisbon airport			Germany, Belgium, Schiphol Airport	from Greece and Italy, from Germany through NW Europe, Ireland
<i>Cities taken for exploit</i>	Genoa, Rome, Naples, Palermo, Milan		cities of interior, border cities		cities and small towns		
<i>Clientele</i>							
<i>Routes from East to West?</i>	y	y			y	y	y
<i>Routes from Africa?</i>	y				y	y	y
<i>Routes from Asia?</i>					y		
<i>Routes from South America?</i>			y				y
<i>Sold to whom?</i>	club owners, apartment owners					window prostitution, clubs or brothels, escort and street prostitution	
<i>Characteristics of criminal groups</i>	Albanian mafia					26% involved soloists, 22% isolated groups and 51% a criminal network ('98-'02)	groups from Eastern European, China, South East Asia and West Africa
<i>Same nationality as victims?</i>	sometimes						y
<i>Duration of exploitation</i>	3 years to indefinitely					1 year	
<i>The flow of money</i>							

Source: MON-EU-TRAF II national experts' country reports

TABLE 6: *MODUS OPERANDI* OF TRAFFICKERS/EXPLOITERS

Variables	AU	BE	DEN	FIN	F	GER	GR	IRL	I	LUX	P	S	SW	NL	UK
<i>Other trafficking</i>															
<i>Drugs</i>	y			y		y			y					y	y
<i>Money</i>	y					y			y					y	
<i>Steroids</i>	y													y	
<i>Arms</i>	n			y		y			y					y	
<i>Vehicles</i>						y			y						
<i>Actors involved</i>															
<i>Kinds of actors involved</i>	club owners	hotels, clubs, saunas		lawyers for visas		club owners, restaurants, lodgings, transporters			police, cab drivers, “scafisti”		hotel owners, taxi drivers				
<i>Police corruption?</i>						sometimes			y						
<i>Places of exploitation</i>															
<i>Apartment</i>	y	y		y		y			y	y	y		y		
<i>Street</i>	y	y	y			y	y		y	y				y	y
<i>Hotel</i>		y		y		y	y		y				y		
<i>Hostel</i>				y											
<i>Erotic restaurants</i>		y		y		y									
<i>Clubs</i>	y	y		y		y	y		y	y	y			y	
<i>Massage parlours</i>		y	y		y	y	y		y					y	
<i>Camping areas</i>				y											
<i>Brothel</i>						y	y						y	y	
<i>Window</i>		y												y	
<i>Escort service</i>		y				y								y	
<i>Sauna</i>		y				y									

Source: MON-EU-TRAF II national experts' country reports

TABLE 7: COUNTRIES OF ORIGIN OF THE VICTIMS OF THE TRAFFICKING FOR SEXUAL EXPLOITATION IN THE “OLD” EU MEMBER STATES

Countries of origin	AU	BE	DEN	FIN	F	GER	GR	IRL	I	LUX	P	S	SW	NL	UK
<i>Africa</i>							✓		✓				✓		
<i>Albania</i>		✓			✓		✓		✓			✓		✓	
<i>Algeria</i>					✓							✓			
<i>Balkans</i>							✓								✓
<i>Belarus</i>	✓											✓		✓	
<i>Brazil</i>					✓	✓					✓	✓			
<i>Bulgaria</i>	✓	✓			✓	✓				✓		✓		✓	
<i>Cameroon</i>					✓									✓	
<i>China</i>		✓			✓									✓	✓
<i>Colombia</i>					✓							✓			
<i>Eastern Europe</i>			✓		✓	✓	✓		✓		✓	✓		✓	✓
<i>Ecuador</i>		✓			✓							✓			
<i>Estonia</i>				✓	✓							✓	✓		
<i>Ghana</i>					✓										
<i>Hungary</i>						✓						✓		✓	
<i>Kazakhstan</i>					✓										
<i>Kosovo</i>					✓										
<i>Latvia</i>						✓								✓	
<i>Liberia</i>					✓							✓		✓	
<i>Lithuania</i>				✓	✓	✓						✓	✓	✓	
<i>Moldavia</i>	✓	✓			✓	✓						✓		✓	
<i>Morocco</i>					✓							✓			
<i>Netherlands</i>												✓		✓	
<i>Nigeria</i>		✓	✓		✓				✓			✓		✓	
<i>Peru</i>					✓							✓			
<i>Poland</i>					✓	✓						✓	✓	✓	
<i>Romania</i>	✓	✓			✓	✓						✓		✓	
<i>Russia</i>		✓		✓	✓	✓	✓			✓		✓	✓	✓	✓
<i>Sierra Leone</i>					✓							✓		✓	
<i>South East Asia</i>					✓								✓		✓
<i>Thailand</i>			✓												✓
<i>Ukraine</i>	✓	✓			✓	✓	✓			✓		✓		✓	
<i>Yugoslavia</i>					✓	✓						✓			

Source: MON-EU-TRAF II national experts' country reports

TABLE 8: CHARACTERISTICS OF THE VICTIMS (AU – IRL)

Variables	AU	BE	DEN	FIN	F	GER	GR	IRL
<i>Urban or rural</i>	urban					varied, mostly rural	mostly rural	
<i>Job before</i>	varied							
<i>Educational level</i>	varied	low		39% in university or finished		varied	low	
<i>Common characteristics</i>	Bad economic situations	gender discrimination, economic factors		poor social and economic conditions, differences in wages	poverty, jobless, isolation (familial)	poor social and economic conditions, jobless, dependency	poor social and economic conditions, jobless	
<i>Age</i>		<18 (23%) 18–24 (58.4%) 25–30 (19.1%) >30 (9.2%)		18–29	15–25	16–30 (mostly 18–259)		
<i>Familial difficulties?</i>	y	y			y	some	y	
<i>Poverty?</i>	y	y		y	y	some	y	
<i>Children?</i>						some		
<i>Husband?</i>		y (12.6%)				some		
<i>Conflict?</i>		y				some		
<i>Criminal organisations involved</i>	y				y	some	y	

Source: MON-EU-TRAF II national experts' country reports



TABLE 9: CHARACTERISTICS OF THE VICTIMS (I – UK)

Variables	I	LUX	P	S	SW	NL	UK
<i>Urban or rural</i>	mostly rural			rural		urban mostly	
<i>Job before</i>				hotels, shops, prostitution		hotels, catering, factories, entertainment industry, prostitution	
<i>Educational level</i>	low for African, higher for Eastern Europe		mostly low	Africa: no education S. America: basic education E. Europe: high education		mixed	
<i>Common characteristics</i>	dependency	poor social and economic conditions, jobless		poverty, low salaries, dependency		loverboy constructions, single (living with parents or family) 40% grew up without father, in case a father was around there was often times no or only a shallow relation, sometimes maltreatment (by father and/or mother)	poor social and economic conditions, jobless
<i>Age</i>	18–23	18–35	18–25	18–31	18–35	18–30 (54%) 14–18 (12%)	
<i>Familial difficulties?</i>			y	y	y	sometimes	y
<i>Poverty?</i>	y	y		y	y	y	y
<i>Children?</i>			y 2–3	y			
<i>Husband?</i>			n	n		vast majority no	
<i>Conflict?</i>							
<i>Criminal organisations involved</i>	y	y		y		sometimes	y

Source: MON-EU-TRAF II national experts' country reports

## 9

### A METHOD TO ESTIMATE THE SCALE OF TRAFFICKING AND THE MONETARY TURNOVER OF TRAFFICKERS

Project MON-EU-TRAF II, among others, also aimed to quantify trafficking in human beings for the purpose of sexual exploitation (number of victims involved, turnover of traffickers, etc.) in the considered EU Member States.

In order to achieve this aim, the researchers wanted to follow the same logical method of estimation that was used successfully in the project MON-EU-TRAF I. According to this method, official information on the number of trafficking victims who came into contact with NGOs or with the police/judicial authorities (victims in judicial proceedings) provides an important source of reliable estimates. Using these numbers, it is necessary to calculate the ratio between victims who contact the police/judicial authorities or NGOs and those who do not (i.e. the hidden number of victims). If a reasonable definition is given to this ratio, reliable estimates can be made. This ratio could be defined using the results of victimisation surveys or with the help of the national experts on trafficking. A starting point for calculating the ratio between the number of victims recorded by this monitoring study on trafficking and the real number of its victims was a victimisation survey conducted on the victims of sexual offences in the UK. For this type of crime only two in every ten victims contact the authorities. The ratio between the number of victims reported in official statistics and those who go unreported is thus 1/5. Taking account of a) the lack of trust in the authorities shown by victims of trafficking, b) their illegal status in the destination country and their isolation; c) their subjugation to the traffickers, and d) the covert nature of the trafficking, it is possible to argue that this ratio is much lower. It therefore seemed likely that the ratio between the victims recorded and the real number of victims could vary between 1/10 and 1/20.

So, using this method, it is possible to estimate:

- the yearly number of victims (min. and max.) = Number of victims who contacted the police or judicial authorities or NGOs per year \* 10 (min.) or 20 (max.);

- the maximum annual turnover from the sale of trafficked persons to exploiters (TT) (min. and max) = yearly number of victims (min. and max.) x value of victims (min. and max.). This figure indicates the annual monetary turnover of criminals who procure foreign persons for the exploiters of prostitution in destination countries. Women are sold to these exploiters at different prices (the woman is a 'good' and has a "value"). TT is given by the total annual number of trafficked victims multiplied by their "value". This turnover is termed "maximum" because it describes a case in which, in one year, all the victims are sold to exploiters. In practice, this does not always happen: a) some victims are sold; b) some victims are not, when the entire trafficking and exploitation processes is managed by the same organisation. The problem is that, at the moment, this maximum figure is the only one that can be provided because it is impossible to ascertain the proportion of victims who fall under case a) and under case b);
- the maximum annual turnover from the sexual exploitation of trafficked persons (TE) (min. and max.) = yearly no. of victims (min. and max) x yearly income of victims from sexual services (min. and max.). This figure indicates the annual monetary turnover of exploiters for sexual purposes in the destination countries. Each prostitute earns an annual income from sexual services. TE is given by the number of victims per annum multiplied by their annual income from prostitution services. The turnover is termed "maximum" because not all the earnings of the prostitutes derive to the exploiters. It may happen that victims retain a percentage for themselves, but at present we do not know the precise amount of this percentage.

Using this method, in some of the countries but not in all, it would have been possible to achieve estimates based on the data gathered through the model spreadsheets. During the meeting of the research team with the national experts, the idea expressed by the majority of the national experts was that of not calculating these estimates and rather stressing the importance of having good and official comparable qualitative and quantitative information as a basis for producing better estimates in the future. The experts acknowledged that the reasons for this choice were:

- the general scarcity of official data on victims;
- the heterogeneity of official sources (Ministries, Police, Judicial Authorities, NGOs) and the different criteria in data collection on victims;
- the absence of specific anti-trafficking legislation in some countries;
- the difference in the level of law enforcement efforts from country to country which may impact on the level of recorded victims by police, judicial authorities and NGOs;
- the need for boosting the culture of official data.

All the national experts acknowledged the quality of the proposed method of estimate, but they agreed that it would be better to use it if official statistics were more reliable and that these statistics and the national law enforcement efforts put in anti-trafficking were more homogeneous. For all these reasons, it was decided not to produce estimates but rather to concentrate on how to produce better official data for better estimates.

To conclude, regarding the need to refine and improve the method of estimating levels of trafficking in human beings across the European Union and beyond, it is possible to add that, besides the actual number of victims as an input to produce reliable estimates, other factors could also be considered as inputs of a more complex model of estimate. Among these factors (to be measured at the national level) include: the nature and diffusion of the demand for sex services; the level of anti-trafficking control measures (law, both in theory and practice); the level of closure/openness of migratory regulations; the level of competence and spread of organised criminal groups; the level of corruption in various sectors (law enforcement, judicial, political, etc). This is a path for future research and for future data collection.



## 10

## RECOMMENDATIONS

This chapter contains a series of recommendations (paragraph 10.1) intended to provide the EU and Member States with guidelines for improved quantitative and qualitative data collection and collation, and on the basis of the knowledge acquired (paragraph 10.2) to offer suggestions as regards prevention.

## 10.1 RECOMMENDATIONS FOR IMPROVED QUANTITATIVE AND QUALITATIVE DATA COLLECTION

**RECOMMENDATION 1 – HARMONISATION OF LEGISLATION***Background and rationale*

The efforts of the European Union and other international organisations to approximate or harmonise national legislation on the matter are producing their results at the level of the 'old' EU Member States, but there is still some work to do. Every minor disharmony in the field of criminal offences may impair the collection and comparability of data on trafficking for sexual exploitation. Efforts should be made in closing all existing gaps.

*Recommendation*

Action should be taken to induce the EU Member States to introduce into their criminal law systems, clear and distinct offences of alien smuggling, trafficking in human beings for sexual exploitation, and trafficking in human beings for other purposes. These offences should be defined according to the internationally agreed standards.

*Implementation of the Recommendation*

The European institutions might explore the feasibility of implementing a peer-to-peer system to monitor the criminal law and law enforcement standards in the field of alien smuggling, trafficking in human beings for sexual exploitation, and trafficking in human beings for other purposes.

**RECOMMENDATION 2 – BETTER DEFINITION OF OFFENCES/BETTER SYSTEMS FOR ACQUIRING COMPARABLE DATA ON TRAFFICKING/SMUGGLING***Background and rationale*

Many criminal systems in line with international standards on trafficking in human beings provide an all-in-one model, i.e. the criminal system only provides a general offence of trafficking in human beings and the trafficking for sexual exploitation is a part or an aggravating circumstance of such an offence. From a merely statistical point of view, this may hamper the collection and the exchange of information of data. In fact, it would be impossible, once data is collected on this offence, to separate the information which regards, for instance, trafficking for black labour from trafficking for sexual exploitation and so on. Collection mechanisms to reduce such a side-effect should be studied and implemented.

*Recommendation*

Action should be taken to establish common systems of data collection aimed at gathering separately information on the various forms of trafficking in human beings (sexual exploitation, labour exploitation, etc.) and smuggling of human beings.

*Implementation of the Recommendation*

The European Union institutions may wish to consider the possibility of drafting datasheets comprising a new set of variables on which data would be collected in the case of offences relating to human trafficking for the purpose of sexual exploitation, and as regards both investigative and judicial data. The institutions could also devise appropriate measures to induce the competent national authorities (i.e., the Ministry of Justice and Ministry of the Interior in each Member State) to implement these datasheets.

**RECOMMENDATION 3 – AUTHORITY COLLECTING DATA AND UNIQUE REFERENT***Background and rationale*

The authorities collecting and collating data are several and different in each state. Collection may be undertaken by the Ministry of Justice, the Ministry of the Interior, or the National Statistics Office. It may also happen that some data are gathered by specific authorities (police corps, public prosecutor's offices, etc.) and that data remain only at their disposal and are not published. As a result, information is scattered and the possibility of sharing it among countries reduced.

*Recommendation*

Action should be taken to establish, in each Member State, a single national agency (unique referent) which acts as the focal point for the collection, collation or harmonisation of statistics on trafficking in human beings/trafficking in human beings for the purpose of sexual exploitation. This national agency should share such statistics with the agencies of other Member States. At a central EU level, action should be taken to establish also a central EU agency with a view to improve the co-operation among national agencies, to collect data at the EU level, and to propose policy guidelines to the EU institutions.

*Implementation of the Recommendation*

The European institutions might explore the feasibility of developing a European network of national authorities plus a central EU authority for the collection, collation or harmonisation of statistics on trafficking in human beings/trafficking in human beings for the purpose of sexual exploitation. See, for instance, the example of the Dutch National Rapporteur on THB.

**RECOMMENDATION 4 – ORGANISATION OF DATABASES***Background and rationale*

The criteria for storing data on trafficking in human beings in databases and the organisation of data sources differ from country to country. The types of data collected may differ among countries, and they may be collected on different variables with regard to the offence and the perpetrator and the victims (when collected). The variables collected may not be very useful, because they are not tailored to the specific offence of trafficking for the purpose of sexual exploitation. Statistics are not always clear and useful because they may aggregate data on different offences, some of which are not referable to trafficking in human beings for sexual exploitation.

*Recommendation*

Action should be taken to induce EU Member States, through the national agencies (unique referents), to collect data on the same offences and to harmonise the criteria for collection and storage of data on trafficking in human beings.

*Implementation of the Recommendation*

The European Union institutions may wish to consider the possibility of drafting datasheets comprising a new set of variables on which data would be collected in the case of offences relating to human trafficking for the purpose of sexual exploitation, and as regards both investigative and judicial data, as well as devising



appropriate measures to induce the competent national authorities (i.e., the Ministry of Justice and Ministry of the Interior in each Member State) to implement these datasheets. Under this framework particular attention should be paid to the development of guidelines for data collection and storage that will enable cross-country comparability.

#### **RECOMMENDATION 5 – INFORMATION ON VICTIMS**

##### *Background and rationale*

One of the main lacunae in the databases analysed is that often no information is collected on victims. The number of victims, and their characteristics, known to investigative and judicial authorities may be of crucial importance, not only in understanding the trends in the phenomenon but also in producing reliable estimates on the total population of trafficked people.

##### *Recommendation*

Action should be taken so that investigative and judicial statistics in EU Member States comprise data on the victims of trafficking in human beings/trafficking in human beings for sexual exploitation. The variables on which data are collected should reflect the specific characteristics of these offences.

##### *Implementation of the Recommendation*

This recommendation is closely connected with rec. 4. Accordingly, the European Union institutions may wish to consider the possibility of inserting variables on victims in the newly-introduced datasheets for the collection of investigative and judicial data on offences related to human trafficking for the purpose of sexual exploitation. More generally, the European Union institutions might use more effective measures to persuade the European Union Member States of the importance of collecting data on victims within the context of investigative and judicial statistics.

#### **RECOMMENDATION 6 – INFORMATION FROM NGOS**

##### *Background and rationale*

Extremely useful information may be at the disposal of NGOs, but their data collection and storage systems are either non-existent or unsatisfactory. Although the purpose of NGOs is not statistical but operational, they possess a stock of knowledge that should be preserved, and data should be gathered on the basis of common standards among NGOs and disseminated for research and policy

purposes. To this end, improvements should be made in the cooperation between NGOs and national authorities.

#### *Recommendation*

Action should be taken to establish systems within NGOs for the collection and collation of statistics, and for the maintenance of databases, with reference to the victims of trafficking with whom they have contact (in compliance with the international and national rules on the protection of privacy). Within this framework, contacts between NGOs and national and central EU authorities should be fostered.

#### *Implementation of the Recommendation*

The European Union and national institutions might consider action to devise incentives for gathering data and the maintenance of databases by NGOs. Further study and research may be essential for understanding how to achieve this goal.

### 10.2 RECOMMENDATIONS FOR MORE EFFECTIVE PREVENTION OF THE PHENOMENON

#### **RECOMMENDATION 7 – A METHOD FOR PREVENTION**

##### *Background and rationale*

Knowledge about the decision making processes and *modi operandi* of organised criminal groups might help crime control authorities to anticipate and respond to complexity, changes and innovation in organised crime. This proposal is based on the situational crime prevention approach which focuses on the collection of data and analysis of crime (identifying and monitoring loopholes, weaknesses of criminal activities, opportunities, etc.) in order to devise the most effective way to combat the phenomenon. With particular regard to trafficking in human beings for the purpose of sexual exploitation, this requires detailed information on the various stages into which the activities of criminal enterprises can be divided (i.e., the trafficking chain), and in particular up-to-date and comparable qualitative data.

##### *Recommendation*

Action should be taken to foster the development of “methods for prevention” comprising the “rapid” acquisition of qualitative, cross-country comparable information on the trafficking chain, analysis of this information, and the devising of intervention policies grounded on the knowledge thus acquired. The method should be based on “rough and ready” research in each of the European Union Member States. In particular, ethnographic “rough and ready” research on the demand side should be fostered at the EU level.

*Implementation of the Recommendation*

European Union institutions might consider the possibility of promoting studies and research for the development of “methods of prevention” with regard to trafficking of human beings. This is an avenue already explored and which should not be neglected. Another important added value arising in this regard is cooperation between law enforcement authorities and academic research.

**RECOMMENDATION 8 – IMPROVING ECONOMIES AND AWARENESS**

*Background and rationale*

Analysis of the origins of people trafficked/exploited, highlights that the main points of recruitment always coincide with less- or under-developed countries, usually from Eastern European countries, or in the case of Portugal and Spain, from South American countries, whose inhabitants still live in very poor social and economic circumstances.

*Recommendation*

Action should be taken to improve the economies, the level of employment of women, and the awareness of women and children with respect to the trafficking in human beings in the Eastern European countries, as well as those which are already Member States of the European Union.

*Implementation of the Recommendation*

European Union institutions might consider the possibility of using structural funds to implement projects to reduce crime levels related to trafficking in human beings for exploitation, in the new Eastern European Member States. This possibility should be given special consideration due to the fact that the example of the Italian Operative Programme “Security for the Development of Southern Italy” has proven to be positive.

**RECOMMENDATION 9 – INVOLVEMENT OF LEGAL ACTORS**

*Background and rationale*

In all EU countries there is a common involvement of ‘legal actors’ who facilitate the exploitation of prostitution, such as letting and travel agencies, taxi drivers and hotel and apartments owners. Furthermore, other ‘legal actors’ also seem to be involved in the exploitation process, such as club owners.

*Recommendation*

Action should be taken at the Member State level in order to devise non criminal systems to more effectively supervise letting and travel agencies, taxi drivers, and owners of hotels, apartments and clubs.

*Implementation of the Recommendation*

European Union Member States might consider the possibility of introducing more effective administrative systems to control the different markets which seem to be involved in the exploitation process, especially those of travel agencies (for instance, envisaging the possibility to issue a certificate for those agencies considered reliable and allowed to work at the national level), of apartments, of clubs (for instance, considering administrative sanctions as an objective responsibility for those clubs in which exploited prostitution is exercised or introducing stricter criteria for obtaining licenses).

**RECOMMENDATION 10 – APPROACHES TO PROSTITUTION***Background and rationale*

The information available on the places where exploitation takes place indicates different situations in each of the countries analysed (street prostitution, prostitution in clubs and hotels, prostitution in apartments, etc.) but it is obvious that the demand for prostitution services and prostitution policies/practices play a fundamental role in the localisation of the activity (e.g. areas of the country in which prostitution takes place and whether it does so indoors or outdoors, or in private or public).

*Recommendation*

The European institutions and the European Union Member States might consider the possibility of exploring the link between prostitution policies/practices and the trafficking of human beings for sexual exploitation in the light of taking an EU approach to prostitution capable of minimising the social and human costs of this activity, especially when exercised under criminal control.

*Implementation of the Recommendation*

European Union institutions might consider the possibility of promoting evaluation studies on the social and human costs of prostitution related policies/practices and on their impact on the market of trafficked prostitution.



## 11

AUSTRIA<sup>35</sup>

## 11.1 INTRODUCTION

Since 2002, many changes have been made in Austria concerning the structure of police as well as the legal framework on trafficking in human beings. The new police structure has improved the fight against trafficking – special units that focus on trafficking in human beings for the purpose of sexual exploitation, smuggling in human beings and prostitution related criminality have been set up at all levels of law enforcement. This is why the number of cases in human trafficking for the purpose of sexual exploitation brought to court by police has risen. In addition, the number of victims supported by the specialized LEFÖ-Intervention Centre for Trafficked Women has risen enormously since its start in 1998.

Austria, like many other states in the European Union, had to change its legislation on trafficking in human beings according to the new legal provisions in the EU. The new laws, introduced in the chapters below, entered into force on May 1st, 2004. There are now two articles in the Penal Code on trafficking in human beings – one of them (similar to the old one) focuses on transborder trafficking for the purpose of prostitution, while the other is on general trafficking in human beings (similar to the UN definition). Until now, there is no experience with the new provisions. Thus, everything stated in this report depends on the old legal provisions.

Data on trafficking have improved with the establishment of the Austrian Bundeskriminalamt, which collects and analyses data from all over Austria. However, in 2000 the statistics system was modified. Hard copy reports were replaced with an electronic system of recording the relevant data. Therefore, due to these changes, only data between 2001 and 2003 was available for this report. Older data are not comparable to the new information.

The results of this research in Austria are summarised below according to the format for the national report agreed to by the project partners.

## 11.2 CRIMINAL LAW RESPONSES

*11.2.1 The offence of trafficking in human beings*

Trafficking in human beings has recently been redefined in Austria according to European Union legislation, where the supplementary “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” to the UN “Convention against Transnational Organized Crime” was adopted. Therefore

<sup>35</sup> This section has been written by Eva Kaufmann, *LEFÖ-IBF*, Vienna and Erich Zwettler, *Bundeskriminalamt*, Vienna.

Trafficking in human beings is defined in §104a Penal Code – this legislation entered into force on May 1st, 2004.

§104a states that “those who recruit, harbour or receive, transport or transfer a person with the intention to exploit this person sexually, through the removal of organs or exploit the persons labour, if this person is a minor or if the person is adult and dishonest means are used, are to be punished with imprisonment up to three years. Dishonest means are the deception regarding facts, the abuse of a position of authority or a position of vulnerability, a mental illness or a condition, that renders a person helpless, the intimidation and the granting or gaining an advantage because of the transfer of power over the person.”

Aggravating circumstances are also outlined:

§104a further states that those who commit the crime by use of violence or dangerous threats can be punished with imprisonment from 6 months to 5 years. Those persons – within the framework of a criminal organisation – who commit the crime against an underage person or someone who is legally dependent, by use of severe violence or in a way that deliberately endangers the life of the victim or by culpable negligence or if the crime results in a especially grave disadvantage for the person can be punished with imprisonment of 1 to 10 years.

As stated previously, there is little practical experience with this new law because it recently entered into force (May 1st, 2004). Prior to the May 1st law, there existed another article in the Penal Code, which was called §217 “Trafficking in Human Beings”. This article was recently renamed and redefined because it only dealt with trafficking for the purpose of sexual exploitation. Therefore available statistics, prior to May 1<sup>st</sup>, relate to this article and not the more comprehensive §104a.

### *11.2.2 The offence of trafficking in human beings for the purpose of sexual exploitation*

In 1997 the §217 Penal Code “Trafficking in Human Beings” was introduced into Austrian legislation. It punished people who recruited or made another person, who was not a citizen of Austria or did not have their “ordinary stay”<sup>36</sup> in Austria, devote his/her life to prostitution in Austria with an imprisonment of 6 months to 5 years. This punishment is also applicable even if this person had already been working as a prostitute. If the crime had been committed to gain a regular income, it was punished with imprisonment from 1 to 10 years.

Section 2 of §217 Penal Code referred to people who committed the crime using fraudulent promises, violence or severe threats. Persons who engaged in such activity could be punished with imprisonment from 1 to 10 years.

As stated, the §217 Penal Code was recently renamed and its language modernized. The new §217 Penal Code entered into force on May 1st, 2004 along with §104a. It is now called “Transborder Trafficking into Prostitution”. The content and penalties

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<sup>36</sup> “Ordinary stay” of a person in Austria refers to the centre of a persons life, his/her economic existence and social relations.

remained the same – the language has been simply been modernized to describe prostitution.

The explanations of this law define that a deed shall only be judged according to this law. In other words, if the perpetrator has actively and intentionally influenced another person to devote his/her whole life to the life of a prostitute in Austria then their activities would be punishable.

### *11.2.3 Other offences*

Before §104a entered into force it was sometimes difficult to convict people who had trafficked others into alternative forms of labour. This is true because the former article on trafficking – §217, as described before – focused on trafficking into sex work. Therefore, several other articles could be used.

Concerning trafficking of human beings into other forms of labour, §104 Penal Code “Slave Trade” could theoretically be used. People convicted under this article could and still can be punished with 10 to 20 years imprisonment. The problem is that slavery or slavery-like conditions are not precisely defined. The definition focuses more on the concrete act of selling other people than on their exploitation. In addition, the punishment is quite severe compared to other articles in Austrian legislation. Hence, this article was practically dead legislation as there were no convictions under this article.

More interesting, in this respect, are §104 and §105 “Foreign Act”. These legal provisions were introduced in 1997 and cover smuggling of human beings (§104) and exploitation of foreigners (§105).

Section 3 in §104 can be used if smugglers act in an income generating way or as member of a criminal group. For people convicted under this article punishments of imprisonment up to 5 years are outlined. Section 4 in §104 states that, if the crime is committed in such a way that the foreigner, particularly during the transport stage, is put in an agonizing situation, the perpetrator shall be punished with 6 months to 5 years imprisonment. If the foreigner dies from the treatment, the crime shall be punished with 1 to 10 years imprisonment.

§105 “Foreign Act” states that those persons with the intention of abusing the special dependence of a foreigner’s illegal status exploit this person in order to have a regular income shall be punished with imprisonment of up to 2 years.

In the case of trafficking for the purpose of prostitution, if there is not enough evidence for a conviction under §217 articles related offences are used. For example, the article on pimping (§216 Penal Code) is used quite frequently. According to the individual case, articles on severe threat, injury, rape and the denial of personal freedom of movement as well as forgery of documents are occasionally used. Furthermore, the legal provisions related to membership in criminal groups or organizations are also used to convict perpetrators.



#### 11.2.4 Other information

In Austria, the police force began to be restructured in 2002. The highest institution in this structure is now *Bundeskriminalamt* (Federal Criminal Authority). Within *Bundeskriminalamt* there is a specialized unit with nationwide jurisdiction to fight cases of trafficking in human beings for the purpose of sexual exploitation and smuggling of foreigners. Within each of the nine Austrian provinces, there is a specialised unit responsible for the fight against trafficking in human beings for the purpose of sexual exploitation and for prostitution related criminality (e.g. pimping) as well as human smuggling. The specialised unit in *Bundeskriminalamt* has direct access to the nine provincial forces and has the right to give them orders. In the cities of Austria, for example Vienna, there are also specialized police units focused on trafficking in human beings for the purpose of sexual exploitation and prostitution related criminality.

In the business plan for 2003 and 2004, the fight against trafficking in women for the purpose of sexual exploitation is a major issue that the Austrian police must focus on. From today's point of view, the programme will be prolonged throughout 2005. To achieve this goal, special arrangements were made with the Ukraine, Belarus, Romania and Bulgaria to enhance police cooperation in the fight against this type of crime.

In 1998, a non-governmental agency (NGO) – LEFÖ-IBF, Interventions Centre for Trafficked Women was created, which specializes in supporting victims of trafficking. This NGO offers victims shelter, counselling, escort to authorities and the courts as well as general psychosocial support. LEFÖ-IBF, recognized as a victim support organisation, is in close cooperation with police authorities on both the *Bundeskriminalamt* and city levels. Police agencies refer suitable female victims of trafficking for the purpose of sexual exploitation to this NGO. LEFÖ-IBF is the only officially acknowledged victim support organisation dealing with trafficked women in Austria. Thus, the ability to support victims is currently still very limited.

Trafficking in human beings for the purpose of sexual exploitation is usually discovered by police during the course of raids on nightclubs, go-go/table dancing bars, massage facilities and the like. These raids are carried out on a regular basis throughout Austria according to Austria's proactive policy. Austria also runs a monitoring programme on specific newspaper advertisements in order to find illegal prostitution facilities. Furthermore, a few victims manage to escape and turn to police for help.

Victims of trafficking can be issued temporary residence permits for the duration of legal proceedings against the perpetrators. This residence permit may be prolonged for individual humanitarian reasons, such as those cases where it is extremely risky for the victim to return to their country of origin. Other reasons include the need for psychotherapy and the like. Victims of trafficking may also be taken into the general witness protection programme if they are extremely endangered; however, there is no special scheme for victims of trafficking within this programme.

There are 15 district courts in Austria responsible for the legal proceedings regarding trafficking in human beings – the responsibility depends on the place of the main criminal activities. These 15 district courts deal with major offences as opposed to the local courts, which deal with minor offences.

An inter-ministerial working group on trafficking in human beings was installed in 2003. All institutions that are involved in the topic are invited to the meetings, which are currently carried out on an informal basis. Meetings, planned and hosted by Ministry for Foreign Affairs, have taken place about two or three times a year. The Ministry of Interior, Ministry for Foreign Affairs, Ministry for Justice, Ministry for Health and Women, *Bundeskriminalamt*, Stability Pact Task Force on Trafficking in Human Beings of the OSCE and LEFÖ-IBF have been invited to the meetings so far. It is planned that this working group will have a more formal framework in future.

### 11.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

#### *11.3.1 Sources of data on offences, offenders and victims of trafficking and sexual exploitation*

The main source of structured data is the Crime Statistics Database of the Federal Ministry of Interior, Criminal Police Force (*Bundeskriminalamt*). Every police officer in the field is obliged to enter data on such offences into this computerized programme. Data held in this database are, by law, non-personal data.

Another important source is the “red-light database” which is accessible only to police. This database contains personal information for the purpose of a specific investigation and/or analysis. Data held in this database must be deleted when the purpose for its collection/storage has been completed (i.e. after the operation is finished).

There is also a database on convictions, which is maintained by the police upon request of the Ministry of Justice. It contains the personal data of convicted perpetrators and the length of their sentence.

### 11.4 THE TRAFFICKING PROCESS TO AUSTRIA

The information contained in this section of the report is based on the experience of the police, their statistics as well as the analysis of the data by *Bundeskriminalamt*. The information on victims was provided by LEFÖ-IBF, the Austrian victims support organisation for trafficked women. It is based on a combination of their statistics as well as their experience and documentation. The information is focused on trafficking for the purpose of sexual exploitation; otherwise, the complexity of the topic would break the framework of this report. Furthermore, the experience and data are mainly on trafficking for the purpose of sexual exploitation as the legal definition was broadened only recently to all forms of trafficking.

### 11.4.1 The Phenomenon

The phenomenon of trafficking in human beings is a complex topic dependent on many variables, such as the country of origin and destination, but also on individual circumstances. The phenomenon of trafficking also changes as time goes by and adapts to political conditions or the logistics of traffickers. This paragraph attempts to describe how trafficking currently works as well as highlight the main tendencies.

According to *Bundeskriminalamt* women are being trafficked primarily from Romania, Bulgaria as well as the Ukraine and Belarus to Austria. LEFÖ-IBF also had a high percentage of Moldavian victims in 2003. Thus, the countries of origin for victims trafficked to Austria are mainly Eastern and South Eastern European countries. LEFÖ-IBF has also occasionally supported victims from Africa.

The recruitment is usually either carried out by direct personal contact with the victims or facilitated via ads in newspapers. In many cases, the victims know they are expected to work in the sex industry but are deceived concerning the wages and work conditions. Criminal organisations often take almost all of the money earned by the women. In other cases, victims are offered jobs as house cleaners, hotel-maids, waitresses, dancers, au-pairs and the like.

The victims are usually transported to Austria by someone other than the recruiter. However, on occasion, the recruiter fulfils both roles. The traffickers cover their travel expenses or visa costs. The victims rarely know how much these things really cost as the traffickers tell them inflated sums that they have to repay. Traffickers frequently forge documents for entrance into the Schengen area. For example, the recruiters often obtain visas without the victims knowing that a visa application has been made. Hence, the signature of the victim was forged.

Victims often are transported via public transport (mostly buses or so-called minibuses) into Austria. Other modes of transportation include car or airplane. If they go by bus or car, they usually go through Hungary or the Slovak Republic. Transport usually lasts a couple of days or sometimes only a couple of hours depending on the distance. In a few cases, the victimisation begins after leaving the country of origin along the trafficking route. The entrance points into Austria are Vienna International Airport, border-crossing points Hegyeshalom-Nickelsdorf (Hungary/Austria) and Petrzalka-Berg (Slovak Republic/Austria) and less frequently used border-crossing points. The victims are usually brought to Vienna or other large cities, such as Salzburg, Graz or Linz first. They either stay in the city or are transported into the surrounding areas, as there is a bigger market for sexual services (e.g. tourists, foreign workers, events with many people coming into the cities for amusement and relaxation).

Usually the victimisation starts when the women arrive in Austria. They are sold to the owners of different nightclubs, agencies, bars and so on and have to work almost immediately the day they arrive or in some cases the next day. Clothing for prostitution is provided and they are confronted with the truth. Sometimes traffickers use physical violence, threats concerning their future or their family and friends at home to make the victims submit to the conditions created by the traffickers. Owners of nightclubs, go-go bars, escort services and the like serve as accomplices who provide food, lodging and means of transport.

Women then have to work as prostitutes mostly in nightclubs, sometimes in apartments or on the streets. They usually have to work long hours, do not – or infrequently – have a day off, are often forced to work without protection (condoms), are very rarely brought to see a doctor when ill and are not allowed to refuse a client. Before offering sexual services, they usually have to drink alcohol with the potential clients and are therefore constantly drunk if they have not learnt to deal with it professionally. Furthermore, victims are not usually allowed to go out on their own or maintain contact with their family or friends. Only in those instances where the traffickers or the exploiters are sure that the victims have submitted completely (because of threats against family members, spells put on the victims etc.) are they allowed to buy cigarettes on their own and the like. The exploitation period can last between several days and many months – this depends on the country the victim comes from, on her readiness to engage in the sex industry and of course on the time it takes police to free them in a raid.

#### *11.4.2 The Perpetrators*

Trafficking in human beings for sexual exploitation is mostly carried out by criminal groups or criminal organisations. Within these groups or organisations, there are persons responsible for the recruitment, others for the logistics related to transportation and others for accompanying the victims on their trip. There are inevitably special people who take care of the financial details and/or money laundering activity. Occasionally money is transported to the organisers in “suitcases” or it may also be transferred by Western Union.

The criminal groups and organisations are comprised of different ethnicities (Ukrainians, Romanians, Byelorussians, Bulgarians, Serbians, and Lithuanians) and no single group in Austria controls the market. These groups typically control the recruitment and trafficking phase. The owners of nightclubs, bars, etc., who are in contact with the foreign criminal groups/organisations – because they provide new “employees” for their business – are often Austrian citizens. Nevertheless, any combination of the process can be found in the police files.

Sometimes these groups and organisations are also involved in drug trafficking, trafficking of counterfeit money and the trafficking of steroids for fitness studios; however, trafficking in women is still their core business. The financial gains are obviously quite high, but there is no overall figure available. An example, however, could show the dimensions of this business. A recent operation revealed that a customer had to pay € 100.00 per hour and up to € 1,000.00 per night. The organisation, which was dismantled when the lead persons were arrested, kept nearly all of that money. The organisation had trafficked about 160 women in a two-year period. Austrian financial authorities estimate that the gain of this single organisation was about € 800,000.00 during the organisations existence.

### 11.4.3 The Victims

According to LEFÖ-IBF, Intervention Centre for Trafficked Women, there are no specific characteristics of victims beyond gender and age. Victims come from both urban and rural regions with a slight tendency toward urban areas.

Before becoming victims of trafficking these women engaged in a wide range of occupations. They were pupils at boarding schools, university or college students, married women with small children at home, unemployed women who were dependant on social welfare, dancers, women who worked as tailors, waitresses, hairdressers, cooks and the like.

The educational level of women in the care of LEFÖ-IBF includes pupils of high schools and universities (about 35% of clients), women with an average level of education (about 35% of clients) as well as women with little or no formal schooling or even literacy (about 30% of clients).

Concerning the relationship with traffickers, most women (estimated to be at least 60%) had no direct relationship with the traffickers. They contacted agencies from newspapers or heard about them through people they recently encountered, such as when they were looking for a job. Women were often trafficked by an acquaintance of their loved ones or friends. Those who had a relationship with the traffickers were trafficked by lovers, uncles, aunts, and occasionally even parents, brothers, sisters or cousins and the like. Finally, some were trafficked by former employers.

There have been changes in the importance of the victims' countries of origin over the past few years. According to the statistics of LEFÖ-IBF, in 2002 29.2% of the victims in the shelter came from Slovakia, 8.3% from Kyrgyzstan and 8.3% from Russia. In 2003 38% came from Romania, 24% from Bulgaria and 12% from Moldova. Concerning these numbers, it has to be taken into consideration that not all victims of trafficking are seen by this organisation, as some of the victims are not referred to LEFÖ-IBF. In these instances, for example, the victims typically wish to return to their country of origin immediately. Nonetheless, the figures at least show trends.

The only common characteristic that can be seen in victims is that before being trafficked there is a tendency for them to be insecure regarding their future. For those that were students, it was unknown if they would find a job after completing their studies and be able to sustain themselves or their families. The housewives often had husbands who lost their employment (due to the economic situation in countries of origin, alcoholism etc.) and were no longer able to sustain their families. For those women working as tailors, waitresses, cooks and so on they were dismissed or earned so little money they could no longer live on it. The chances for positive development in the future were bad. Furthermore, a high percentage of victims who, before being trafficked, found themselves in a situation of being or feeling responsible for other members of their family – either as mother, daughter or sister. Some of them were looking for work because their mother and/or father lost their employment, had fallen seriously ill and needed money for treatments in a hospital or similar reasons. Thus, certain life events (unemployment, sudden illness, sudden death of member of family, etc.) often played a role in the women urgently needing to earn some money and therefore being more vulnerable and dependent on tempting offers. Of course having experienced violence before adds to the women's vulnerability regarding what is

considered normal behaviour. A lack of self-esteem makes potential victims highly dependent on promises without ensuring that they are being treated fairly.

LEFÖ-IBF suggests that victims often have the same nationality as traffickers or at least some of the people involved in the trafficking network. Recruiters and transporters are often the same nationality as the victim, whereas only about 50% of the exploiters in the destination country are of the same nationality.

According to LEFÖ-IBF, the amount victims have to pay to their traffickers is connected to the distance they have been trafficked. African victims, as far as LEFÖ-IBF knows, are paying the largest sums. These women often pay their recruiters in the country of origin to organise everything (travel costs, visa, contacting their “future employer”). They sometimes have to pay around € 10,000.00; however, this amount typically depends on how much money can be squeezed out of a family. Families often sell property to enable a member to go to a “Western” country and earn money. After having been brought to their destination country the victims are told that the money already paid was insufficient and that they have to work for several weeks or months in order to be freed of the debt.

Victims coming from South Eastern European countries usually do not pay before leaving their country of origin or at least comparably small sums. The exploitation in the destination country is usually meant to repay the debt. The women are often told that must repay (by working) between € 1,000 and € 2,000. Even if the women are able to earn those sums, there are suddenly told they owe more money for things like doctor’s fees, clothes and rent etc. They are left with very little to buy cigarettes and food.

Typically, the victims are in debt with the recruiting agencies or unknown people in the background. An intermediary is taking the money and telling them that it is being sent to the organiser(s).

#### **11.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND AN ESTIMATION OF HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION**

The most important thing needed to effectively fight trafficking of women is international cooperation. The Stability Pact for South Eastern Europe, together with the Austrian Ministry of Interior, ICMPD, SECI and IOM developed an “Anti-Trafficking Module for Police” especially for the Balkans and other Eastern countries. A constant difficulty is the inability of gaining an overview of the scope of the problem. Data from different police forces are not always comparable due to the various laws in existence and the different counting rules. One area of improvement could focus on a new initiative that makes the different data comparable.



## 12

BELGIUM<sup>37</sup>

## 12.1 INTRODUCTION

Trafficking in human beings in general and for the purpose of sexual exploitation, in particular, has been high on the political agenda in Belgium. The special Parliamentary Enquiry Commission on trafficking in human beings, set up in 1993, formulated several recommendations that led to changes in legislation and policy, focusing on a multidisciplinary and integrated approach to the phenomenon. The Dutroux-case, in which a Belgian citizen raped and murdered several young girls in 1996, created a new momentum for further development of the protection against sexual offences and made Belgium take a leading role in EU-decisions in that respect.

## 12.2 CRIMINAL LAW RESPONSES

*12.2.1 The offence of trafficking in human beings*

The Anti-trafficking Law of 13 April 1995 added a new Article 77bis to the Immigration Law, which explicitly criminalizes trafficking in human beings. Article 77bis of the Immigration Law describes trafficking in human beings as “the situation in which a person, in any way whatsoever, directly or through an intermediary contributes to the entrance, transit or residence of a foreigner in Belgian territory wherein the perpetrator directly or indirectly uses tricks, violence, threats or any other form of coercion with regard to that foreigner or abuses the victim’s vulnerable position in which he/she finds him or herself due to an unlawful or insecure administrative situation, the fact that the victim is a minor, pregnancy, sickness or a physical or mental disability or insufficiency”. From this description it appears that Article 77bis has a broad scope of application since it not only aims at the punishment of human trafficking with a view to sexual exploitation, but also at the punishment of human trafficking with a view to a person’s labour exploitation in various other economic sectors. The mere fact that a foreigner has been brought into Belgium in a deceptive manner is enough to be punishable even though the victim is not exploited afterwards. In those cases wherein the foreigner voluntarily enters the Belgian territory but becomes the victim of exploitation afterwards, punishment is also possible. Whether or not the foreigner entered the Belgian territory legally is irrelevant. It all depends on the moral element, namely the abuse of the extremely vulnerable position in which the foreigner finds him or herself.

Despite the broad applicability of Article 77bis of the Immigration Law, it needs to be pointed out that this Article only applies to foreigners who become the victim of

<sup>37</sup> This section has been written by Gert Vermeulen and Tom Vander Beken, Institute for International Research on Criminal Policy, Ghent University, Ghent.



human trafficking: it does not protect Belgian nationals who are forced or deceived into returning to Belgium or who are trafficked within the Belgian territory. This means that, according to the Immigration Law, human trafficking requires that the Belgian border is crossed. Article 77bis does not tackle the mere export of human beings from Belgium to another country. It only applies when the trafficker contributes to person's entry and residence in Belgium, or in those cases where Belgium acts as a transit country.

According to the Immigration Law trafficking in foreigners is punishable with a sentence from 1 to 5 years of imprisonment and a fine from € 2,750 to € 137,500. The fact that the trafficker repeatedly engages in trafficking activities is regarded as an aggravating circumstance and leads to a more severe punishment, namely a sentence from 5–10 years of imprisonment and a fine from € 2,750 to € 137,500. When the trafficking activities form part of the activities of a criminal organisation, punishment is increased to a sentence from 10 to 15 years of imprisonment and a fine from € 5,500 to € 550,000. In these cases, the mere attempt at trafficking in human beings is also punishable. The fact that the victim is a minor, on the other hand, was not included as an aggravating circumstance.

In 2001, a new paragraph was added to Article 77bis of the Immigration Law. This new paragraph 1bis makes it possible to deal with so-called “rack-renters” who take advantage of the vulnerable position of the foreigner as a consequence of his/her illegal or precarious administrative situation by selling or renting premises, apartments or any other room in an attempt to gain an abnormal profit. These so-called “rack-renters” can be punished with a sentence from 1 to 5 years of imprisonment and a fine from € 2,750 to € 137,500.

Since the Law of 4 May 1999 introduced the criminal liability of legal entities for all offences mentioned in the Criminal Code and the special laws, not only natural persons but also legal entities can be held liable for trafficking in human beings.

### *12.2.2 The offence of trafficking in human beings for the purposes of sexual exploitation*

The Anti-trafficking Law of 13 April 1995 amended the Belgian Criminal Code by explicitly criminalizing trafficking in human beings with a view to their sexual exploitation. Human trafficking is defined in Article 380 of the Belgian Criminal Code as “the recruitment, transportation, transfer and harbouring of adult persons, even with their consent, with a view to their sexual exploitation, more specifically the commission of vice or prostitution in order to satisfy the lusts of another”. This means that the Belgian Criminal Code only applies in those cases wherein the trafficker intends to sexually exploit the victim. The fact that the victim provided consent is of no importance for the possible punishment of the trafficker. Since the Law of 4 May 1999 introduced the criminal liability of legal entities for all offences mentioned in the Criminal Code and the special laws, not only natural persons but also legal entities can be held liable for trafficking in human beings with a view to their sexual exploitation.

According to the Belgian Criminal Code, trafficking in human beings with a view to their sexual exploitation is punishable with a sentence from 1 to 5 years of imprisonment and a fine from € 2,750 to € 137,500 (Art. 380, §1, 1° CC).

Attempted human trafficking is also punishable with a sentence from 6 months to 3 years of imprisonment and a fine from € 550 to € 2,750 (Art. 380, §2 CC).

In case the offender commits these offences “by using, directly or indirectly, tricks, violence, threats or any other form of coercion against a person (not necessarily the victim) or by abusing the victim’s vulnerable position in which he/she finds him or herself due to an unlawful or insecure administrative situation, pregnancy, sickness or a physical or mental disability or insufficiency”, the punishment is aggravated and the trafficking offence can be punished with a sentence from 10 to 15 years of imprisonment and a fine from € 2,750 to € 275,000 (Art. 380, §3 CC). The fact that the human trafficking activities are part of the activities of a criminal organisation also forms an aggravating circumstance: in that case trafficking in human beings is punishable with a sentence of 15 to 20 years of imprisonment and a fine from € 5,500 to € 550,000 (Art. 381 CC).

Contrary to the Immigration Law, trafficking in children has been inserted as a separate and a more grievous criminal offence in the Belgian Criminal Code: child trafficking is punishable with a sentence of 10 to 15 years of imprisonment and a fine from € 5,500 to € 550,000 (Art. 380, §4, 1° CC). In those instances where the victim is under the age of 16, the trafficker can be sentenced with imprisonment for 15 to 20 years and a fine from € 5,500 to € 550,000 (Art. 380, §5 CC). Belgian legislators considered that, as far as possible, special protection had to be afforded to minors against the evil practices of pimping, not only by imposing more severe penalties, but also by creating a special offence. The fact that child trafficking activities are part of the activities of a criminal organisation also forms an aggravating circumstance: in which case child trafficking is punishable with a sentence of 15 to 20 years of imprisonment and a fine from € 5,500 to € 550,000. In case the victim is under the age of 16 and the trafficking offence is committed by an organised group, the traffickers can be sentenced with imprisonment for 17 to 20 years and a fine of € 5,500 to € 550,000 (Art. 381 CC).

### *12.2.3 Other offences*

In Belgium, judges can also punish the traffickers on the basis of Article 380, §1, 2°–4° CC or Article 380, §4 CC (in case the victim is a minor) which criminalises those who run a house of vice or prostitution; those who sell, rent or provide a room or any other place with a view to prostitution in order to obtain an abnormal profit, and those who, in any way whatsoever, exploit the vice or prostitution of another person. These offences are punishable with a sentence of 1 to 5 years of imprisonment and a fine of € 2,750 to € 137,500. In case the victim is a minor, the offences are punishable with a sentence from 10 to 15 years of imprisonment and a fine from € 5,500 to € 550,000.

The Belgian Criminal Code does not provide for any provisions regarding slave-trade or servitude.

#### 12.2.4 Support for testifying victims

Belgium has a specific system of victim support that is based on the difficult compromise between the desire to protect the victims of trafficking and to offer them prospects for the future on the one side, and the necessity for an effective fight against the networks involved in trafficking on the other.

The Parliament and the Federal Government, in collaboration with the Communities and the Regions, have developed a policy that provides help to victims of human trafficking and the enforcement of the possibilities to combat the traffickers and their networks. This policy was set out in the Circular of 7 July 1994 on the issuance of residence documents and work permits to third nationals, victims of trafficking in human beings, and the Guidelines of 13 January 1997 to the Immigration Office, the prosecutor's offices, police services, the services of the inspection of social law and the services of the social inspection concerning the support for victims of trafficking in human beings.

Aid to the victims is aimed at help and support in Belgium as well as support in returning to their home country. The measures for the legal stay of the victims in Belgium, which are provided for within the framework of judicial procedures against the exploiters, allow for the possibility to conduct thorough investigations and offer the chance to let victims testify during the handling of the case in court. Victims of human trafficking who agree to co-operate with the judicial authorities and agree to be assisted by a specialized shelter may be granted a specific residence status: the residence documents and work permits for foreign victims of trafficking in human beings are delivered in phases depending on the progress being made on the judicial inquiry.

##### 12.2.4.1 *The first phase: issuance of an expulsion order to leave the country within 45 days*

In case the police or inspection services intercept a person who is presumed to be a victim of human trafficking, they immediately refer the person to one of the three specialised centres for the reception and assistance of victims of human trafficking: *Payoke* in Antwerp, *Pag-Asa* in Brussels or *Surya* in Liège. These organisations receive government funding and provide for the reception and the socio-psychological, medical, administrative and/or legal assistance of the victims of human trafficking. During their contacts with the alleged victim of human trafficking, the police officers must recognize these persons primarily as victims instead of approaching them as illegal immigrants who violate the Belgian administrative and social legislation.

After the police or inspection services have referred the person to one of the three organisations, they also inform the Immigration Office. The decision whether or not to issue an expulsion order to leave the country within 45 days rests with the Immigration Office. This delayed expulsion order will only be issued in those cases where the alleged victim has severed all links with the environment into which he or she was trafficked and he or she is being supported by one of the three specialized centres. The specialized centre, which has interviewed the person involved and suspects that he or she may have been trafficked, applies to the Immigration Office

and provides full details of the person's story and confirms that it is assisting him or her. The Immigration Office is then supposed to issue the delayed expulsion order within 24 hours.

During this stabilisation phase of 45 days, the victim is given the necessary time to come to ease and decide whether or not he/she will testify and/or file a complaint against his/her trafficker(s). This order gives legal title to stay in Belgium for a period of 45 days, but does not confer the right to work. The persons who refrains from filing a complaint must leave the country within 45 days. In special circumstances, such as for medical or safety reasons or in case of a voluntary repatriation carried out by IOM, (International Organisation for Migration) the duration of the permit can be extended. If the victim decides to testify or to press charges immediately, the specialized centre supporting the victim can immediately ask the Immigration Office for the second phase.

#### *12.2.4.2 The second phase: issuance of a declaration of arrival for three months*

If the victim decides to testify or file a complaint against his or her trafficker(s) the Immigration Office will provide him or her with a temporary residence permit for a period of 3 months or a so-called "declaration of arrival". During this period, the victim still needs to be assisted by a specialized centre; however, he or she can be granted a permit for temporary employment. Just before the end of this second phase, the Immigration Office will contact the Prosecutor's Office for more information on the declarations or charges made by the victim and the progress made in the investigation. In particular, the Immigration Office will ask the prosecutor whether the case is still being investigated and whether the person involved is still considered a victim of human trafficking.

#### *12.2.4.3 The third phase: issuance of a certificate of registration in the immigration register*

In those instances where the prosecutor confirms that the case is still being investigated and that the person involved is still considered to be a victim of human trafficking, the victim will receive a residence permit for more than three months (usually six months), which can be repeatedly renewed until the end of the judicial procedure. If the prosecutor is not able to positively answer both questions, the declaration of arrival is extended for an additional three months. If the prosecutor does not answer both questions, the victim will be registered in the immigration register (temporary permit for a stay of six months). The victim still needs to be assisted by one of the three specialized centre, and the victim can be permitted to work.

At the end of the criminal proceedings against the trafficker, the victim can request a permanent residence permit. In practice it appears that a permanent residence permit will normally be granted if (1) the declaration or complaint, made by the victim involved, resulted in a conviction by the correctional district court or (2) if the offender has not been sentenced on the basis of a trafficking offence, the prosecutor summons the offender before the court on the basis of a trafficking

offence and the declaration or the charge of the victim was of substantial importance for the procedure.

If the criminal case against the trafficker is suspended and the trafficked person has been residing in Belgium (under the framework of the residency procedure for trafficked persons) for two years or more, he/she still has the possibility to apply for permanent residency under humanitarian grounds. This is the so-called STOP procedure agreed on between the three specialised centres, the Centre for Equal Opportunities and Combating Racism and the Immigration Office. The level of integration into Belgian society is the prime factor when issuing permanent residency under the STOP procedure.

Although court proceedings against traffickers depend largely on the testimony of the trafficked victims, they are often reluctant to co-operate with the judicial authorities out of fear of what their traffickers may do to them or their families back home. Two new laws, the Law of 8 April 2002 on anonymous witnesses and the Law of 7 July 2002 containing a regulation for the protection of witnesses being threatened, make it possible to provide better protection to victims of human trafficking who are willing to cooperate with the judicial authorities. Since the Law of 2 August 2002, on receiving declarations by means of audiovisual media, it is also possible to hear the trafficked victim during trial using a video- or teleconference or through a closed circuit television. In this way, it is possible to hear the victim from a distance (another room, another country). It is no longer necessary to confront the victim who wants to testify during trial with his or her trafficker.

#### *12.2.5 Specialisation in investigation and prosecution*

Belgium created a Central Unit on Human Trafficking within the Federal Police. Some local police services have also set up a unit specialised in the fight against human trafficking.

The Central Unit on Human Trafficking of the Federal Police has the task to co-ordinate and support the investigations of the local police services as well as to gather and supply "know-how" related to the phenomenon of trafficking in human beings. It also co-ordinates and facilitates international investigations on human trafficking through Interpol and Europol.

Additionally, Belgium has magistrates specialised in the fight against trafficking in human beings. These so-called "reference magistrates" for human trafficking, who are appointed in each Public Prosecutor's Office and each Public Prosecutor-General's Office, lead the investigations concerning human trafficking.

The reference magistrates at the level of the Public Prosecutor-General's Offices will function as contact persons for the reference magistrates appointed in the Public Prosecutor's Offices of the jurisdiction. They are responsible for following-up on important files regarding human trafficking and drafting the annual report on the fight against trafficking in human beings within the jurisdiction. Furthermore, they can make proposals to the Board of Prosecutor-Generals in order to make the fight against human trafficking more effective.

The reference magistrates at the level of the Public Prosecutor's Offices also have to enhance and co-ordinate the relationship between the judicial authorities and the other actors involved in the fight against human trafficking, such as the police and social services, the departments of social inspection, the services charged with the administrative investigations as well as the three specialized centres for the reception and assistance of victims. They are also responsible for the gathering and exchange of information between the services involved in the fight against human trafficking, the follow-up of the files relating to trafficking in human beings and the drafting of the annual report on the fight against trafficking in human beings within the judicial district, for the benefit of the Public Prosecutor-General's Office.

Once every two or at least three months, the reference magistrates at the level of the Public Prosecutor's Offices have to meet with the police services, the social inspection services and the labour inspection engaged in the fight against human trafficking.

At least once a year, these reference magistrates also have to organise a meeting with all services engaged in the fight against human trafficking, including the specialised victim support services, with the aim of establishing and maintaining an open and respectful dialogue.

The Office of the Belgian Federal Prosecutor was established in 2002. It has the task of instituting appropriate criminal proceedings, to oversee, monitor and co-ordinate criminal proceedings, to facilitate international cooperation and to supervise the activities of the federal police. One of its priorities is trafficking in human beings. In the Department for Public Affairs, three prosecutors deal exclusively with the problem of trafficking in human beings. The Federal Prosecution Office serves as the central contact point for various judicial authorities and international institutions (the International Tribunals, the European Judicial Network, Eurojust, Europol, OLAF and Interpol). The Office can also authorise cross-border operations involving Belgium as a destination, source or transit country.

Finally, and importantly, is the establishment, by Ministerial Decree of May 16th, 2004, of a so-called Interdepartmental Coordination Cell for combating smuggling of and trafficking in human beings. This body gathers as often as required but not less than twice a year and has the following core tasks:

- to enable efficient coordination between the various departments involved in combating smuggling of and trafficking in human beings that mutually exchange information for that purpose, *inter alia* through the so-called Centre for Information and Analysis on Smuggling of and Trafficking in Human Beings (infra);
- to critically evaluate the (progress in) results of the anti-smuggling and trafficking policy;
- to cooperate in formulating policy proposals and recommendations aimed at combating smuggling of and trafficking in human beings;
- to coordinate the policy of the executive committee of the aforementioned Centre for Information and Analysis on Smuggling of and Trafficking in Human Beings.

The Interdepartmental Coordination Cell for combating smuggling of and trafficking in human beings is chaired by the Ministry of Justice and enjoys the permanent secretarial support of the Centre for Equal Opportunities and Combating Racism, which in turn is charged with the incitement, co-ordination and follow-up of the Belgian policy regarding smuggling of and trafficking in human beings. In addition, the Interdepartmental Coordination Cell includes representatives for the following persons, departments and services:

- the Prime minister;
- each Vice-Prime minister not already having a representative in the Cell in another capacity;
- the minister of Justice;
- the minister of the Interior;
- the minister of Foreign Affairs;
- the minister of Labour;
- the minister of Social Affairs;
- the minister of Societal Integration;
- the minister of Development Cooperation;
- the Board of Prosecutors-General;
- the Federal Public Prosecutor's Office;
- the Service of Criminal Policy of the Ministry of Justice;
- the directorate Legislation and Fundamental Rights and Freedoms of the Ministry of Justice;
- the Unit 'Trafficking in Human Beings' of the Federal Police;
- the State Security;
- the Immigration Office;
- the Social Legislation Inspectorate;
- the Special Tax Inspectorate;
- the Social Inspections Service;
- the Ministry of Foreign Affairs, Foreign Trade and Development Cooperation;
- the Centre for Equal Opportunities and Combating Racism;
- the European Centre for Missing and Sexually Exploited Children, operating under the name of Child Focus, i.e. a foundation under Belgian law recognised as being of public utility, having as its mission, both at national and international levels, to provide active support in the investigation of disappearance, abduction or sexual exploitation of children and to prevent and combat these phenomena.

To the extent available, the various departments and services listed above furnish anonymous data to the Centre for Information and Analysis on Smuggling of and Trafficking in Human Beings (*supra*), which in turn has been set up by the said Ministerial Decree of May 16th, 2004. This is a computerized information network upon which analysts, detached to the Centre by the participating partners, conduct strategic analyses. The central aim in establishing the Centre has been to allow for permanent, integrated strategic statistical analysis on smuggling of and trafficking in human beings. As such, it is to play a predominant role in data collection on both phenomena (*infra*).

### *12.2.6 Proactive law enforcement policy*

Proactive research by police services is possible. Article 28bis of the Belgian Criminal Code of Procedure (CCP) explicitly outlines that proactive research is possible for a limited number of crimes, including trafficking in human beings with a view to their sexual exploitation. This is possible on the condition that the police services first receive the written permission of the Public Prosecutor, the Public Prosecutor at the Labour Court or the Federal Prosecutor. Within the framework of a proactive research, the Belgian police services can – in addition to the more traditional investigation techniques such as the tapping of telephone conversations – make use of special investigation methods, such as observation, infiltration and informants (art. 47ter CCP).

Since human trafficking often goes hand-in-hand with infractions against the social legislation, the social inspection services are also allowed to carry out targeted controls on the possible illegal employment of foreign employees, especially in some ‘high-risk’ sectors such as the prostitution sector. In those instances where the social inspectors establish social law infractions in places for which reasonable suspicions exist of infringements of the Anti-trafficking Law, they will inform the competent authorities. In that case, it is also possible for the President of the Court of First Instance, at the request of the competent Minister, to rule that the person or organisation must cease their activities while awaiting a judicial investigation. The demand to cease activities is designed as a preventive measure that can be applied before initiating any legal prosecution. It is one of the measures that allow action to be taken against human traffickers in a quick and more efficient manner.

### *12.2.7 Extraterritorial jurisdiction*

The Belgian Anti-trafficking Law of 1995 inserted a new Article 10ter to the Preliminary Title of the Belgian Criminal Code on Procedure, which provides for the extraterritorial application of the Belgian legislation in case human trafficking offences, including those for the purpose of sexual exploitation, have been committed abroad. According to this Article, the Belgian judicial authorities are qualified to prosecute every person, irrespective of nationality, who has committed a human trafficking offence abroad even when Belgium previously did not receive a complaint or official notice from the authorities of the foreign country in whose territory the offence took place. The requirement of double incrimination, which demands that the human trafficking offence is punishable in Belgium as well as in the country in which it was committed, no longer counts. Article 10ter to the Preliminary Title of the Belgian Criminal Code on Procedure only requires that the trafficker is found in Belgium. The perpetrator does not actually have to stay in Belgium: it is sufficient that the person is only passing through. Consequently, Article 10ter PT CCP has far-reaching extraterritorial jurisdiction for the Belgian judicial authorities. Thus, it is occasionally criticized as it entails universal jurisdiction for Belgium.



### 12.2.8 Planned reforms of the legislation

The Belgian Council of Ministers is about to agree upon a new bill for reinforcing the fight against both trafficking in and smuggling of human beings, which it will soon introduce to Parliament in order to have a parliamentary debate later this year. The bill aims at bringing the Belgian domestic legislation fully in line with both the EU Framework Decision of 19 July 2002 on trafficking in human beings and the Framework Decision and the Directive of 28 November 2002 on assistance in illegal entry, transit and stay, as well as with the Palermo Protocols of 15 December 2000 on trafficking and on smuggling. As a result of the bill as it stands, the offences of trafficking and smuggling will be distinguished from one another in a much clearer way. In relation to trafficking – regardless of its purpose (sexual or labour exploitation or organ smuggling) – acting by means of threats or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability or giving/receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, will not be a constituent element of the ‘trafficking’ offence, but an aggravating circumstance to the basic trafficking offence, which in and of itself does not require that any of these means are used. In so doing, Belgian legislators are about to adopt far more stringent legislation than required by EU or UN minimum standards.

## 12.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SOURCES

### 12.3.1 Sources of data on offences

The following offences can be used by judges to punish the behaviour of trafficking in human beings for sexual exploitation:

TABLE 10: OFFENCES USED TO PUNISH TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION

Offence	Description	Article
1	Trafficking in foreigners with a view to their (sexual) exploitation	77bis Immigration Law
2	Trafficking in human beings exclusively with a view to their sexual exploitation	380, §1, 1° CC
3	Trafficking in human beings with a view to their sexual exploitation with the aggravating circumstance of the use of tricks, violence, threats or any other form of coercion or the abuse of the victim's vulnerable position	380, §3 CC
4	Trafficking in children with a view to their sexual exploitation	380, §4 CC
5	Trafficking in human beings with a view to their sexual exploitation with the aggravating circumstance that it forms part of the activities of a criminal organisation	381 CC
6	Vice, corruption and prostitution of a minor	379 CC
7	Running a house of vice or prostitution	380, §1, 2° CC
8	Selling, renting or providing a room or any other place with a view to prostitution in order to obtain an abnormal profit	380, §1, 3° CC
9	Exploitation of another person's vice or prostitution	380, §1, 4° CC

Source: IRCP

### 12.3.1.1 Databases with standardised information: The national general police database

At the level of the police services, there exists a national criminal database. It contains police data that are delivered by several police services, for which the Minister of the Interior is responsible. The quality of the data derived from the national criminal database is mainly dependent on the registration by the local police services and can be expected to dramatically improve as a result of a uniform registration method and standard registration form that has recently been developed and introduced by a circular letter issued by the prosecutors-general. This national general police database came into force in recent years and has been structured on a modular basis, following the same classifications and legal qualifications found in the Belgian Criminal Code. As such, it contains information on all possible offences as well as those related to trafficking in human beings. Given that trafficking in human beings is currently looked upon as a criminal phenomenon, implying that other than specific 'trafficking' offences or legal qualifications may constitute trafficking or be considered related to it (*supra*). The police database allows one to specify the so-called trafficking in human beings-related 'context' of alleged offences contained in the database (see hereafter the list of sub-classifications for offences allegedly committed in the 'context' of trafficking in human beings). For facilitating and streamlining police decisions to label non-specific trafficking offences as committed in the context of trafficking, a standardized set of 'indicators' has been developed and included in an annex of a circular letter, issued by the minister of justice on April 20th, 2004 (Col. 10/04), concerning the investigation and prosecution policy for trafficking in human beings. This national general police database can be used for tactical analysis within the framework of pending investigations as well as for strategic analysis. The system can also be used for drafting depersonalised statistics. The database is official, confidential and electronic. The counting unit for this database is offences, counted separately.

The following is a list of sub-classifications for offences allegedly committed in the 'context' of trafficking in human beings:

1. illegal migration;
2. pseudo-legal immigration, organised or not;
3. organised introduction of illegal foreigners (other than pseudo-legal immigration);
4. sexual exploitation of adults;
5. sexual exploitation of minors;
6. child pornography;
7. labour exploitation – clandestine workshops – textile sector;
8. labour exploitation – clandestine workshops – other than textile sector;
9. labour exploitation – season labour in the agricultural sector;
10. labour exploitation – domestic workers;
11. labour exploitation – road transport;
12. labour exploitation – construction work;
13. labour exploitation – in hotels, restaurants or cafés;
14. other;
15. organ smuggling – taking away of illegal organs;
16. organ smuggling – illegal organs brokering.

In this database, the set of variables stored for each offence is quite extensive; thus, impossible to list here. For trafficking in human beings, reference should be made to the list of sub-classifications used to indicate the 'trafficking' context in which non-specific trafficking offences have been committed (supra), as well as to the newly developed standard registration form for specific trafficking offences, introduced by circular letter issued by the prosecutors-general indicators (supra), in which *inter alia* the following fields are foreseen (in addition to the type of offences):

- general information (*procès-verbal* or information report; accuracy of the source of information; date and place where the form was filed; filing police service, etc.);
- *modus operandi* (sexual intercourse; sexual aggression; erotic/pornographic audiovisual means; via internet; payment for each service; administration of medication; administration of drugs; abduction of the victim; makes victim follow him/her; locks victim away/ties him/her up; in prepared storing-place; takes documents away from victim; by means of deception; by means of force/threat; forces the victim to work; fraudulently represents a labour office; fraudulently represents a mediation office; collects money for a fictitious charity purpose; organised trafficking; etc.);
- information regarding the person (suspect/potential victim; surname/given names; alias; gender; date and place of birth; nationality; civil status; fingerprint; etc.);
- liaisons (partner (Y/N): surname/given names); spouse (Y/N); children (Y/N); accompanying children (Y/N); together with other person for which a form is filed (Y: identity and type of liaison));
- address (official; de facto; current professional address; starting date of current job; previous professional address; date of termination from previous job);
- professional status (under contract, not under contract; independent);
- profession (recruiter; au pair, bartender/maid; driver; dancer; animation girl; waiter/waitress; deejay; owner; escort/call-girl; photographer; fruit worker; impresario; domestic servant; masseur/masseuse; entrepreneur; *passeur*; pimp; door person; prostitute; stripper; movie director; telephone receptionist; intermediary; tenant; etc.);
- in possession of documents (Y: labour card; labour concession; asylum request; order to leave the country; id card; passport; travel/transport ticket; driving license; residence permit; visa; declaration of arrival, etc.) (to be specified: number; issuing country; expiration date; allegedly forged or falsified/authentic/stolen/copy);
- place of control (public space; apartment; firm; gasoline station; boat; bordello/bar/private club/*carré*; cabaret/nightclub; camping car/caravan; café; restaurant; escort bureau; garage; castle; sports centre; peep show; hotel/motel; youth club; sauna/massage; stable; station/parking/harbour; video/book shop; (night) store; etc.);
- sector (agriculture; construction; hotel/restaurant/café; services; sexual services; textile; transport, etc.);
- financial information (starting date rent; amount of rent; payment term; extra costs);
- means of transport (plane; bus; boat; truck; container; train; car; other + identification vehicle concerned (license plate; country; (sub)type; colour) + country of origin; contact persons; transit country; place of arrival in Belgium);

- firm/commercial business (name; legal status; address; official activity; real activity; commercial registration number; VAT number; starting date; name, date of birth and address concessionaire/responsible person).

#### *The annual statistics of the public prosecutor's offices*

At the level of the Public Prosecutor's Offices, the files containing prosecution data are classified with the help of special codes and sub-codes, following the various types of offences under Belgian criminal law, making it possible to identify the various trafficking offences in the electronic and confidential data systems of the distinct Public Prosecutor's Offices. In addition, the aforementioned circular letter issued by the minister of justice on April 20th, 2004 (Col. 10/04) on the investigation and prosecution policy concerning trafficking in human beings, also introduced, similar to the practice described above for the national general police database, the possibility to label files dealing with non-specific 'trafficking' offences as related to a trafficking in human beings 'context'. Recently, based on information retrieved from these data systems, the first annual statistical analysis was produced for the year 2002. This was completed by statistical analysts working under the supervision of the Board of Prosecutor's General. These annual statistics have been made available to the public but are not sufficiently detailed to allow identification of trafficking offences under investigation or prosecution at the level of the Public Prosecutor's Offices. Upon request, however, it is technically possible to have figures broken down for the various trafficking offences. The counting unit for this database is cases. The variables stored for each case are (sub)codes and file numbers and may encompass various offences.

#### *The annual statistics on conviction data*

Conviction data relating to offences (including the various trafficking offences) are collected and held electronically by the Service of Criminal Policy of the Ministry of Justice, and are based on data retrieved from the central criminal record, using the same codes used in the Public Prosecutor's Offices' data systems. Conviction data, divided into larger categories of offences (not sufficiently detailed to allow for identification of conviction data for the various trafficking offences) are available to the public. Detailed data can be produced on request. The counting unit for this database is convictions. The convictions are held per type of offence or category of offences, and may encompass various offences.

#### *The Centre for Information and Analysis on Smuggling of and Trafficking in Human Beings*

As indicated before (*supra*), this computerized information network has recently been set up with the aim of producing permanent, integrated strategic statistical analysis on smuggling of and trafficking in human beings. As yet, given the recent establishment of the Centre, no data collection template for the envisaged strategic analyses has been designed or made available to the public. There is no doubt,

however, that strategic analyses produced by the Centre will cover offences of trafficking in human beings for the purpose of sexual exploitation. The activities of the Centre are official and confidential. Of course, to a certain extent, strategic analyses conducted within the Centre will be available to the public.

#### *12.3.1.2 Reports to Parliament*

The Anti-trafficking Act of 13 April 1995 obliges the Belgian Federal Government to annually report to Parliament on the application of the Anti-trafficking legislation and the fight against trafficking in human beings in general.

#### *12.3.2 Sources of data on offenders*

For the national general police database many of the variables listed above can relate to suspects of trafficking. The annual statistics of the public prosecutor's offices contains no variables on offenders (requires quasi-manual research). The annual statistics on conviction data contains no variables on offenders (requires in-depth analysis). Obviously, the newly established Centre for Information and Analysis on Smuggling of and Trafficking in Human Beings is supposed to also produce anonymous strategic analyses on offenders.

No information could be obtained from the national general police database (confidential database; requires a lengthy procedure to get permission from the Minister of the Interior in order to use it for scientific purposes). Information contained in both the annual statistics of the public prosecutor's offices and the annual statistics on conviction data – in their general version available to the public– are not sufficiently detailed to allow for identification of trafficking cases. This also requires a lengthy procedure to get permission from the Board of Prosecutors general and/or the minister of Justice in order to use it scientific purposes.

#### *12.3.3 Sources of data on the victims of trafficking and sexual exploitation*

##### *12.3.3.1 General databases*

The variables listed above of for the general police database can relate to potential victims of trafficking. However, the annual statistics of the public prosecutor's offices and the annual statistics on conviction data contain no variables on victims. As for offenders, the newly established Centre for Information and Analysis on Smuggling of and Trafficking in Human Beings is supposed to produce anonymous strategic analyses on victims.

### 12.3.3.2 Specific database on victims of trafficking

#### General

Only recently, the Centre for Equal Opportunities and Combating Racism, which is charged with the incitement, co-ordination and follow-up of the Belgian policy regarding trafficking in human beings (supra), has established an electronic user-friendly web-interface database on victims of trafficking in human beings. For this purpose, the Centre cooperates with the three specialized centres for the reception and assistance of victims of human trafficking in Belgium, furnishing the data: *Payoke* (in Antwerp), *Pag-Asa* (in Brussels) or *Surya* (in Liège). This database contains information regarding the victims that the three specialized centres have assisted during recent years. The database is official and confidential, until now it has only been accessible to the above-mentioned Centre and (with lower access rights) the three reception and assistance centres.

The variables gathered for each victim that has been received and assisted by the three specialized centres, relate to:

- his/her identity (date of birth, place of birth, gender), nationality and age;
- his/her living conditions in the home country (civil status, number of children);
- his/her level of education (diploma, profession, income);
- his/her administrative status at the moment of arrival in Belgium;
- the documents that the victim had in his/her possession at the moment he/she arrived in Belgium;
- his/her route of travel;
- the manner in which the victim was recruited;
- the number and identity of the agents;
- the offence of which he/she is a victim;
- the manner in which the victim was exploited;
- the manner in which the victim was held under control by his/her traffickers (means of coercion);
- the service by which he/she was referred to the shelter;
- the question whether or not the victim has filed a complaint against his/her trafficker;
- the manner in which the victim was assisted by the specialized centre;
- the situation (accommodation, education profession, income) of the victim in Belgium at the end of the procedure during which he/she was being assisted;
- the integration into Belgian society by the victim.

#### Statistical analysis

Upon request of the Centre for Equal Opportunities and Combating Racism, the first in-depth scientific statistical analysis of the data contained in the database on victims of trafficking in human beings will probably be conducted by the Institute for International Research on Criminal Policy (IRCP) of Ghent University. This research is scheduled to begin during the autumn of 2004 on; this research project is dependant on funding from the Service for Criminal Policy of the Ministry of Justice. This project also aims at developing an integrated data collection template for the envisaged strategic analyses to be conducted within the newly established

Centre for Information and Analysis on Smuggling of and Trafficking in Human Beings. This template will be based on an extension of the data collection grid used for the aforementioned database on victims of trafficking of human beings, held at the Centre for Equal Opportunities and Combating Racism.

However, based on the victim files of two (*Payoke* and *Pag-Asa*) out of the three officially recognized victim reception and assistance centres in Belgium, the first scientific report was produced by *Payoke* in early 2003. This project was co-financed by the European Commission under the Hippocrates programme (project JAI/2001/HIP/023), with expert support from the Institute for International Research on Criminal Policy (IRCP) of Ghent University (Prof. Dr. Gert Vermeulen).

In total, 321 victim files were reviewed, 128 of which were held by *Pag-Asa* (relating to 1999–2000) and 193 held by *Payoke* (relating to 1999–2001).

Hereafter, the main conclusions of the research project are being reproduced (source: W. Vandekerckhove, Z. Pari, B. Moens, I. Orfano, R. Hopkins, J. Nijboer, G. Vermeulen, W. Bontinck, 2001, 103–109):

#### a. Individual characteristics

##### a.1. Age

The different modules of exploitation types give a different image of the victims at the moment they left their country of origin.

TABLE 11: AGE AT TIME OF DEPARTURE

Age categories	sexual	economic	smuggling	total
Below 18	23 N 13.3 %	9 N 13 %	8 N 10.1 %	40 N 12.5 %
18–24	101 N 58.4 %	33 N 47.8 %	24 N 30.4 %	158 N 49.2 %
25–30	33 N 19.1 %	17 N 24.6 %	19 N 24.1 %	69 N 21.5 %
Above	16 N 9.2 %	10 N 14.5 %	28 N 35.4 %	54 N 16.8 %
Total	173 N 100 %	69 N 100 %	79 N 100 %	321 N 100 %

Source: ICRP on data *Pag-Asa* – *Payoke*

In the ‘smuggling module’ one clearly finds more victims in the age category ‘above 30’ than in the modules ‘sexual and economic exploitation’.

In case of the module ‘sexual exploitation’ almost 60% of the victims can be found between the ages of 18 and 24.

In case of the module ‘economic exploitation’, almost half of the are between 18 and 24 years old.

## a.2. Nationality of the victim

The different modules of exploitation types give a different image of the nationality of the victims.

TABLE 12: NATIONALITY OF VICTIMS

Country	Sexual	Economic	Smuggling	Total
Albania	31 N 17.9 %	1 N 1.4 %	11 N 14.1 %	43 N 13.4 %
Russia	16 N 9.2 %	0 N 0 %	0 N 0 %	16 N 5 %
Romania	10 N 5.8 %	2 N 2.9 %	3 N 3.8 %	15 N 4.7 %
Bulgaria	9 N 5.2 %	2 N 2.9 %	3 N 3.8 %	14 N 4.4 %
Nigeria	22 N 12.7 %	17 N 24.6 %	2 N 2.6 %	41 N 12.8 %
Iraq	0 N 0 %	1 N 1.4 %	7 N 9 %	8 N 2.5 %
China	4 N 2.3 %	13 N 18.8 %	14 N 17.9 %	31 N 9.7 %
Ukraine	14 N 8.1 %	1 N 1.4 %	1 N 1.3 %	16 N 5 %
Moldova	21 N 12.1 %	1 N 1.4 %	0 N 0 %	22 N 6.9 %
Ecuador	1 N 0.6 %	10 N 14.5 %	11 N 14.1 %	22 N 6.9 %
Iran	0 N 0 %	0 N 0 %	8 N 10.3 %	8 N 2.5 %
Other	45 N 26 %	21 N 30.4 %	18 N 23.1 %	84 N 26.3 %
Total	173 N 100 %	69 N 100 %	78 N 100 %	320 N 100 %

Source: ICRP on data *Pag-Asa – Payoke*

In case of sexual exploitation, we find many victims of the Albanian, Nigerian, Moldovan, Russian or Ukrainian nationality.

In case of the module 'economic exploitation' we mostly find Nigerian, Chinese and Ecuadorians victims. In this module, there are very few Albanian, Moldovan or Russian victims.

In the 'smuggling module' we find mostly Chinese, Albanian, Ecuadorian, Iraqi or Iranian victims.



## a.3. Gender

The prostitution victims are all women, while the half of the smuggling victims are male. Nearly two thirds of victims of economic exploitation are male.

TABLE 13: GENDER OF VICTIMS

	sexual	economic	smuggling	total
<b>Male</b>	0 N 0 %	43 N 63.3 %	40 N 50.6 %	83 N 25.9 %
<b>Female</b>	173 N 100 %	26 N 27.7 %	39 N 49.4 %	238 N 74.1 %
<b>Total</b>	173 N 100 %	N 100 %	N 100 %	321 N 100 %

Source: ICRP on data *Pag-Asa – Payoke*

## b. State of the dossier

There are some striking differences between the different modules concerning sexual exploitation, economic exploitation and smuggling.

59% of the smuggling victims with a closed dossier disappear from the aid centre with an unknown destination, while this fluctuates to around 30% for the victims of sexual and economic exploitation. Most of the smuggling victims actually want to continue their interrupted smuggling route as quickly as possible.

21% of the victims of sexual exploitation request voluntary repatriation to their country of origin, while the percentage for economic (8%) and smuggling victims (2%) is significantly lower.

## c. Social background of the victims

There are prominent differences between the modules 'sexual exploitation', 'economic exploitation' and 'smuggling', concerning the background of the family of the victim in the country of origin.

What is the most notable is the high score of the smuggling victims with a partner. Half of the smuggling victims lived in their country of origin with a partner, while this percentage is much lower for victims of economic exploitation (31%) and sexual exploitation (13%). Correspondingly, 40% of the smuggling victims are married in the country of origin. Victims of sexual exploitation lived in their country of origin predominantly with their family (57%) or were single (23%). 73% of the victims of sexual exploitation were single in their country of origin. Only 6% of them were married in their country of origin.

The victims of economic exploitation lived with their family (54%) in their country of origin or lived with a partner (31%). Approximately one fourth of the economic victims were married in the country of origin.

TABLE 14: FAMILY SITUATION IN COUNTRY OF ORIGIN

	Sexual	Economic	Smuggling	Total
<b>Alone</b>	33 N 23.1 %	5 N 8.2 %	7 N 11.1 %	45 N 16.9 %
<b>Partner</b>	18 N 12.6 %	19 N 31.1 %	32 N 50.8 %	69 N 25.8 %
<b>Family</b>	82 N 57.3 %	33 N 54.1 %	20 N 31.7 %	135 N 50.6 %
<b>Friends</b>	5 N 3.5 %	0 N 0 %	1 N 1.6 %	6 N 2.2 %
<b>Other</b>	5 N 3.5 %	4 N 6.6 %	3 N 4.8 %	12 N 4.5 %
<b>Total</b>	143 N 100 %	61 N 100 %	63 N 100 %	267 N 100 %

Source: ICRP on data *Pag-Asa – Payoke*

#### d. Motives of the victims

What was the motivation of the victim to accept the offer of the recruiter? Within one dossier, different options can be indicated, which is why the result is not 100%. In the next table, the different options about the motives of the victims are merged.

TABLE 15: MOTIVES

	Sexual	Economic	Smuggling
Money for primary needs	30 %	35 %	24 %
Money for family	23 %	42 %	29 %
Money for a more luxurious life	14 %	20 %	3 %
Adventure	8 %	3 %	3 %
Work	35 %	51 %	27 %
Better future	17 %	16 %	23 %
Kidnapping/compulsion	7 %	4 %	0 %
Political instability in the country of origin	4 %	3 %	25 %

Source: ICRP on data *Pag-Asa – Payoke*

The victims of economic exploitation are still more focussed on financial expectations than the other victims.

It is remarkable that one fourth of the smuggling victims refer to the political instability in the country of origin as a motive to leave, while this is to be disregarded in case of the other victims.

#### e. Promises

Within one dossier different options could be found, which is why the end result is not 100%. In the next table, the different options concerning the promises the recruiter made to the victim are merged.

TABLE 16: PROMISES

	sexual	economic	smuggling
Ho.Re.Ca <sup>38</sup>	21 %	22 %	6 %
Au pair	8 %	9 %	0 %
Specific job	23 %	49 %	3 %
None	28 %	29 %	42 %

Source: ICRP on data *Pag-Asa – Payoke*

It is remarkable that one fifth of the victims of sexual exploitation were lured with the promise of the traffickers that they would get a job in the hotel and catering industry. This score is equally as high as the one for the victims of economic exploitation. Half of the victims of economic exploitation obtained the promise of a specific job from the traffickers. For victims of sexual exploitation, this is the case for one fourth of them.

#### f. Network

A network of 2 to 4 trafficking mediators is considered a small network. A network with 5 or more trafficking mediators is considered a large network. If there is only 1 or even no trafficking mediator, it is not considered a network.

##### f.1. Size of the network

There are prominent differences between the different modules 'sexual exploitation', 'economic exploitation' and 'smuggling'.

It is noteworthy that 40% of the victims of sexual exploitation were found in a large network, which is almost as many as those coming out of a small network (45%).

Two thirds of the smuggling victims come out of a small network. One fourth of the smuggling victims were found in a large network.

In case of the victims of economic exploitation almost 30% met only 1 trafficking mediator or did not meet any mediator at all. Slightly more than half of them were the victim of a small network.

TABLE 17: SIZE OF NETWORK

Number of trafficking mediators met	Sexual	Economic	Smuggling	Total
0-1	25 N 15.7 %	19 N 29.2 %	4 N 6.2 %	48 N 16.9 %
2-4	71 N 44.7 %	34 N 52.3 %	44 N 67.7 %	149 N 51.6 %
5 or more	63 N 39.6 %	12 N 18.5 %	17 N 26.2 %	92 N 31.8 %
Total	159 N 100 %	65 N 100 %	65 N 100 %	289 N 100 %

Source: ICRP on data *Pag-Asa – Payoke*

<sup>38</sup> Hotels, Restaurants, Catering.

## f.2. Correlation nationalities of the victim and the trafficker

TABLE 18: CORRELATION NATIONALITY VICTIM AND ALL PASSEURS

correlation	sexual	economic	smuggling	total
Yes	38 N 44.2 %	12 N 30.8 %	23 N 59 %	73 N 44.5 %
No	48 N 55.8 %	27 N 69.2 %	16 N 41 %	91 N 55.5 %
Total	86 N 100 %	39 N 100 %	39 N 100 %	164 N 100 %

Source: ICRP on data *Pag-Asa – Payoke*

In case of the modules 'sexual and economic exploitation' more than half of the victims have a different nationality than the *passeurs*.

For smuggling victims the results are exactly the opposite. Here more than half of the victims have the same nationality as the *passeurs*. However, one has to make a subtle distinction. When dividing the 'smuggling module' based on the size of the network it becomes obvious that in cases involving large smuggling networks there is little similarity between the nationalities of the victims and the group of *passeurs*. For small networks there is a large similarity between the nationality of the victim and the group of traffickers.

## f.3. Nationalities of the traffickers

In how many dossiers does one find Albanian or Belgian traffickers? In how many dossiers is there a network of traffickers, which consists of a mixed group of nationalities? Of course overlapping is possible, even evident, because in many networks of traffickers with a mixed composition one can find Albanians.

TABLE 19: NATIONALITIES TRAFFICKERS

	Sexual	Economic	Smuggling
Albanian	38 %	5 %	44 %
Belgian	13 %	49 %	17 %
Mixed	29 %	28 %	28 %

Source: ICRP on data *Pag-Asa – Payoke*

Among the smuggling victims as well as the victims of sexual and economic exploitation, the 30% of the networks of traffickers consists of a mixed group of nationalities.

It is remarkable that for victims of economic exploitation there is almost no Albanian traffickers. This is in contrast to the victims of smuggling and sexual exploitation. An Albanian trafficker is involved in almost half of the cases of the smuggling.

In half of the cases of economic exploitation a Belgian trafficker is involved. This is more than 10% for victims of sexual exploitation and smuggling.

## g. Pressure, coercion and violence in the process of exploitation

What type of pressure, coercion or violence did the trafficker use? Within one dossier different options can be indicate, which is why the end result is not 100%.

TABLE 20: TYPE OF PRESSURE, COERCION, AND VIOLENCE IN THE PROCESS OF EXPLOITATION

	sexual	economic	smuggling
Trafficker kept the official documents from the victim	26 %	27 %	19 %
No return ticket at departure	5 %	9 %	1 %
Abused the victim (physically, mentally, rape)	56 %	13 %	5 %
Victim got less money than agreed	16 %	30 %	0 %
Gave the victim no money at all	38 %	17 %	0 %
Victim was told that he/she owed a large amount of money, which couldn't possibly be correct	15 %	9 %	4 %
No freedom allowed	46 %	10 %	11 %
Continuous control over victim	35 %	4 %	2 %
Threatening the victim	45 %	16 %	16 %
Intimidation of the victim's family	23 %	6 %	20 %

Source: ICRP on data *Pag-Asa – Payoke*

The victims of sexual exploitation are significantly more ill-treated, threatened and deprived of their freedom than the victims of economic exploitation and smuggling. Approximately half of the victims of sexual exploitation are assaulted, threatened and deprived of their freedom. For the smuggling victims 20% of the files show that their families are being threatened. This number is comparable to the victims of sexual exploitation.

## 12.4 THE TRAFFICKING PROCESS

The following information is based on strategic analysis by the unit trafficking in human beings of the Belgian federal police.

### 12.4.1 The Phenomenon

#### 12.4.1.1 Recruitment

For transnational trafficking in human beings for sexual exploitation women are recruited abroad and – sometimes with several stops in between – brought to Belgium to work in the sex industry. Often the women do not know what kind of activity they will have to perform in Belgium. In cases of national trafficking in human beings for sexual exploitation, the women are predominantly recruited in Belgium for prostitution purposes. In both forms of trafficking high profits are promised. In reality, the women face forced labour, sometimes in combination with violence or deprivation of liberty.

The victims are mainly women. Their legal situation determines the *modus operandi* or recruitment system used: marriage, student, tourist, labour permit as au-pair or

as dancer. The methods for recruitment differ according to the *modus operandi* and organisational level of the traffickers. The most common methods are: individual looking for interested women in bars, pubs, clubs, disco's; use of informal networks of family and friends; job or study offers abroad; agencies for marriage, photo or fashion models, students and for work abroad and sham marriages. The kinds jobs promised are numerous: waitress, dancer, artist, escort lady, housekeeper, beauty specialist etc. In some cases families, friends or institutions (e.g. orphanages) sell the victims (sometimes teenagers) directly to the traffickers. The victims end up in the sex industry in four ways: under force or abduction; false promises for *bona fide* jobs in the office or in restaurants and bars; after the offer to work in the entertainment business as dancer or stripper and voluntary migration to work as a prostitute without knowledge of the intimidation, debt obligations, exploitation or control.

#### 12.4.1.2 Routes followed

No hard distinction between country (city) of origin, destination or transit can be made, as sexual exploitation of the victims not only occurs in the country of destination but in the others as well. As a reaction to supply and demand and law enforcement activity, victims are sent to new countries. In Belgium, their destination is no longer limited to the bigger cities (Brussels, Antwerp, Ghent, Liege and Charleroi).

The traditional focus of law enforcement is on West-African and East-European sex workers as they represent a significant portion of the victims. These are among the women who have to face the most serious situation due to the use of violence. They are typically trafficked by commonly recognizable routes and methods.

The victims follow the migration flows to the EU. Once in the EU, they travel individually or in small groups (2 to 3 persons) consisting solely of victims of sexual exploitation. They use all types of transport facilities: train, bus, plane, car, van, ship (ferry, yacht, fishing boat). Traffickers take no special efforts in hiding the victims.

#### 12.4.1.3 Use of persons

Traffickers make use of other persons who are not always *mala fide*. Other people include those responsible for food, lodging, transport and possible recruitment (e.g. model bureaus) as well as people who provide these services occasionally and on a non-professional basis.

In Belgium, very few cases that involve corrupt police or other government officials, representatives of social associations and lawyers in the recruitment stage have been registered. The traffickers look for a network of corrupt government officials or key figures in harbours and airports to disrupt the control of their activities. However, in many cases the existence of open borders and false documents allows the traffickers to act without the need to corrupt government officials.

#### *12.4.1.4 Use of counterfeited documents*

Trafficking in women for sexual exploitation is characterised by the use of false or falsified documents or the use of authentic documents that were required by fraudulently obtained visas (tourist, business, student, show business). Traffickers use the expensive false or falsified documents more than once. West-African victims commonly use documents of compatriots. The falsification mainly consists of photo-substitution. Portuguese, Italian and Greek passports are frequently used. West-African victims sometimes use false British passports.

#### *12.4.1.5 Control techniques*

The control technique most generally used is debt bondage. In this case the victim is obliged to reimburse exorbitant costs (including high interest rates) for their travel to the destination country and pay large sums of money for all types of facilities and services (lodging, publicity infrastructure, transport, etc.). These additional “expenses” make it impossible to reimburse the first trafficker. Each consequent “sale” of the victim to another trafficker for a higher price puts the victim in a worse financial position.

#### *12.4.1.6 Exploitation*

Victims are found providing all sorts of services: visible prostitution on the street or behind windows, escort, sauna, massage, bar, private clubs, hotels, etc. There is also a tendency towards sexual exploitation of women by means of prostitution in private houses rented by the pimp and escort services.

The victims are controlled by the traffickers by several forms of coercion, including physical violence (assault, rape, deprivation of liberty) and psychological influence (carefully planned or acted love-techniques, pregnancy, addiction to drugs or alcohol, threat with repatriation, threat to the family, voodoo, etc.). These techniques are used to isolate the victim. Debt bondage is also a commonly used control technique. Although the women believe that they will be free once they have paid back their “debt”, the reality is different: women are “sold” to another trafficker who makes them to pay their “debt” again. Another technique used to isolate the women is to take their travel documents, passports and visa when the destination has been reached. This makes escape and steps towards complaints to the police – who traffickers picture as corrupt, accomplices or clients – nearly impossible.

Bigger cities have red light districts; others have bars, nightclubs and less visible locations for sexual exploitation. There are signs that the enhanced control efforts of law enforcement have driven the exploitation to less visible places such as private houses, apartments and beauty farms, to name a few.

### 12.4.2 *The Perpetrators*

#### 12.4.2.1 *Types of traffickers*

Three types of traffickers or organisations are known: the loner who operates as an individual (8%), the isolated group consisting of two or more persons accounting for the recruitment, the transport and the exploitation (15%), the cluster of persons in a criminal network (77%). These clusters mainly consist of smaller networks of pimps with a common contact point where the women arrive and profits leave. This contact point operates directly or with the use of intermediaries.

Trafficking for sexual exploitation is committed by a magnitude of smaller groups who mainly operate independently from each other. Next to this there are individual pimps – the so-called “lover boys” – who have several women working for them. The networks have a flexible composition, rather than a strong hierarchical structure. If individuals or smaller groups become active, the bigger groups can claim protection money. In that way, smaller groups dealing with sexual exploitation become entangled in major (organised) crime groups or networks.

Many different perpetrators are involved in trafficking in human beings: well-organised, professional, creative, smaller and larger groups. The groups vary from a hierarchical structure to a flat cellular organisation with changing networks of cooperation. In this case, no direct hierarchy or dependency situation exists. Some people (e.g. the organisers and those capable of financing the operations) assume a more central role compared to the others and appear in several networks. Others play more “facilitating” roles (money transfer, falsification of documents, underground bankers, transporters, etc.) or establish contacts between different organisations and ethnicities (brokers). The “head” of the organisation takes an active part in the trafficking activities (exploitation, negotiation with other groups, payments, etc.). Groups and networks lean toward cooperation rather than conflict.

These organisations try to counter law enforcement efforts and control by interception of police communication, pre-paid mobile phone cards, public phones, contra-observation, use of hired or stolen cars, code language. Although the groups expect the use of special surveillance police techniques, they do not systematically take all precautions to make them ineffective.

### 12.4.3 *The Victims*

Migration and recruitment are dependent on push and pull factors. They determine the route, the means of travel and the destination country. Push factors can include, for example, ethnic and religious conflicts, natural calamities, economic and ecological pressure, discrimination, political instability, overpopulation and poverty. Pull factors are the declining birth rates, shortage of a cheap labour force, economic and political stability, historical ties, common language, and lenient asylum procedure among others. In most cases unemployment, poverty, gender discrimination, violence or the lack of education are the main push factors for the sex workers who become the victims of sexual exploitation.



Many women come from countries in transition where important political, social and economic changes haven taken place. For many women the situation ends up being worse than before. The social and economic changes have put enormous pressure on the employment market. This situation and growing gender discrimination makes it hard for women to find and keep a job in the regular economy.

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## 13

DENMARK<sup>39</sup>

## 13.1 INTRODUCTION

Trafficking in human beings was brought to the attention of Danish authorities in the late 1990s, primarily through the former American government's initiatives to raise international awareness on and to combat trafficking. In 1999, the former Danish Council of Equal Status held the first conference on the issue presenting ample documentation of the growth and development of trafficking in women (specifically) and the consequences for the victims. The former Centre for Prevention of Female and Male Prostitution (PRO-Centret, presently the PRO-Theme) under the Ministry of Social Affairs had already started to cooperate with NGOs in the Nordic and Baltic countries to monitor trafficking in the Baltic Sea Region. This centre also helped to develop a plan of support for people being trafficked from the Baltic countries to Denmark. This planned focused primarily on women being trafficked for the purpose of prostitution.

A growing awareness among NGOs and parliamentarians through participation in European and international conferences within the EU, Council of Europe, the OSCE and UN, lead to increased parliamentary demand for police to give priority to the issue. Furthermore, the American Embassy and national organisations organised conferences in support of political action in the field. In 2000, Denmark ratified the UN Convention against Transnational Organized Crime in Palermo and signed the supplemental UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The Protocol was ratified on 30 September 2003.

Initially the Danish police did not expect that the issue of trafficking would require specific monitoring and attention, as very few cases were noted. In 2000, the Danish Public Prosecutor published a report assessing the extent of trafficking in women. The report suggested that the unknown number of such cases could be substantial and that there may be reason to assume that the extent of the problem would increase during the coming years. In June 2001, the National Commissioner of Police published a report that concludes that "foreign women represent a relatively large number of prostitutes operating in the more organised prostitution milieu. Criminal networks often help and generally arrange for these foreign women to come to Denmark". A number of young women, particularly from the Baltic States, who were working as prostitutes in Denmark may have been trafficked and were being economically exploited by Danish pimps or kingpins. A Baltic Sea Task Force on Organised Crime in the Baltic Sea Region is also engaged in combating smuggling and trafficking in women. Furthermore, through its presidency, Denmark made initiatives to combat such trafficking a priority in 2001.

<sup>39</sup> This section has been written by Nell Rasmussen, PRO-Centre, Ministry of Equality, Copenhagen.

## 13.2 CRIMINAL RESPONSES

### *13.2.1 Specific offence of “trafficking in human beings”*

In 2002, Act 380 introduced the offence of trafficking of human beings into the Penal Code in order to ensure that Denmark fulfilled the obligations of the UN Convention on Transnational Crime and the Palermo Protocol as well as the EU Framework Agreement on Trafficking in Human Beings. The definition of the crime is closely modelled after the definition of Article 3 of the Palermo Protocol.

The wording of §262a in the Danish Penal Code<sup>40</sup> is:

#### §262a

Section 1: The act of trafficking in human beings can be punished with a sentence of imprisonment for up to 8 years. The crime of trafficking is committed by a person who recruits, transports, transfers, harbours or receives a person, by employing or having employed:

- 1) illegal coercion pursuant to §260 (the Penal Code);
- 2) deprivation of liberty, pursuant to §261;
- 3) threats pursuant to §266;
- 4) unlawful installing of, corroboration or exploitation of mistake;
- 5) other improper procedures.

for the purpose of exploiting the person by sexual exploitation (in Danish improper behaviour), forced labour, slavery or practices similar to slavery, or the removal of organs.

Section 2: The same penalty is applicable to a person who, with the intent of sexual exploitation, forced labour, slavery or practices similar to slavery, or the removal of organs,

- 1) recruits, transports, transfers, harbours or receives a person under the age of 18 years,
- 2) provides payment or other remuneration in order to obtain consent to exploit the victim from the person who has authority over the victim. The person who receives such payment or other remuneration is also punishable.

The crime of trafficking in human being is not intended to expand the legal definitions of the Penal Code in relation to the other crimes referred to in the paragraph.

The paragraph pertains to both transnational trafficking in human being and internal trafficking.

Aggravating circumstances are applicable if the trafficked person is under the age of 15 years, if the objective of trafficking is for the purpose of sexual exploitation

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<sup>40</sup> This article has been translated by the author.

(prostitution), if the smuggling in human beings is organised and if the victim, purposely or by gross negligence, is exposed to life threatening danger.

Legal entities are not liable for punishment pursuant to §262a.

#### *13.2.2 Specific offence of “trafficking in human beings for the purpose of sexual exploitation”*

No such offence exists in the Danish Penal Code. However, §228 section 2 of the Penal Code addresses “white slavery”. A person who assists in the transportation of a person out of the country in order to have this person work in sexual indecency (prostitution) or participate in such indecency (prostitution) can be imprisoned for up to 4 years. If the person transported is under the age of 21 or is unaware of the objective.

The paragraph was introduced into the Penal Code in 1930 and has not been applied for many years.

#### *13.2.3 Other offence*

A new law – §125a of the Penal Code – was introduced regarding the crime of smuggling of human beings. The penalty for this activity is imprisonment for up to 8 years if the smuggling is committed for financial gain or under aggravating circumstances.

§223a of the Penal Code states: A person who, as a customer pays for or promises to pay, has intercourse with a person under the age of 18 years can be punished with a fine or imprisonment for up to two years.

§228 and §229 of the Penal Code addresses the following: pimping, procuring or making profits from the prostitution of others, preventing a person from giving up prostitution, runs a brothel or rents rooms for prostitution, and inciting or helping a person under the age of 21 years to engage in prostitution. The penalty for pimping (§228) is imprisonment for up to 4 years, and the penalty for being an intermediary (§229) is imprisonment for up to 3 years. For persons with prior sentences pursuant to §228 and §229 the penalty may be increased by up to half of the current sentences.

A provision in the Penal Code, §75 section 1, allows for the confiscation of profits from, amongst others, trafficking in human beings and for pimping. An additional fine can be levied when the perpetrator is presumed to be able to pay the fine.

In 2003, the police were granted permission to employ electronic surveillance, wiretapping, stopping and opening mail in relation to the investigation of the crime of pimping under §228 of the Penal Code. This enabled police to employ the same methods of investigation used when investigating the crime of trafficking in human beings.

#### 13.2.4 Other information

Pursuant to the Danish Aliens Act, §33 section 2, there exists a national victim protection scheme that foresees a reflection period of 15 days to women who are thought, by the police, to be victims of trafficking. In very rare instances, a longer reflection period may be granted. It is usually given when it has been found that the abuse inflicted on a woman is considered so grave that it justifies police investigation aimed at bringing charges under §262a of the Danish Penal Code, and where the personal circumstances of the individual woman generally warrant such action.

During the reflection period, a trafficked woman is taken to a safe house and given protection. The national victim protection scheme also applies to victims of trafficking and the Ministry of Justice has issued guidelines for police treatment of victims.

The Danish Government's action plan to combat trafficking in women is outlined in the following paragraphs.

The National Commissioner of Police, National Investigation Unit, is in charge of investigations related to trafficking cases that are prosecuted in the district where the crime has been committed.

The National Commissioner of Police, in cooperation with the Public Prosecution and regional police districts set up a group of investigative support centres for transnational and organised crimes. Since 2001, trafficking in women has been on the agenda and has been systematically monitored by the National Commissioner of Police, National Investigation Unit. The Unit has a database system that allows for the recording of crimes and the registration and monitoring of persons connecting them to the crimes, all of which is considered quite effective. The agenda encourages pro-active investigations and allows police to launch investigations on their own initiative based on the information found in the database.

When the running of brothels and procurement are suspected – §228 and §229 of the Penal Code – the police, pursuant to the Act on Administration of Justice §781 section 1, number 3, have been granted access to employ wire tapping, electronic surveillance and breach of secrecy of communication. Although the penalty is less than the normal one foreseen when these measures of investigation have been used.

The Baltic Sea Task Force on Organised Crime in the Baltic Sea Region, should also take pro-active measures to combat trafficking in human beings.

The Ministry of Aliens and Integration is discussing the possibility of adopting the EU Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings. Denmark is, by reservations, not bound by the EU Directive.

### *The Danish Government's action plan to combat trafficking in women*

#### **Background**

In 2000, the Danish government established an inter-departmental working group to develop a comprehensive action plan on trafficking in women. As trafficking in women was viewed as the core element of this particular crime in Europe and in Denmark, it was felt that an action plan on trafficking in women rather than in human beings was the political issue. Additionally, Christian and women's NGOs strongly endorsed this approach.

The working group was comprised of government officials from the Ministry of Justice, the Ministry of Social Affairs, the Ministry of Foreign Affairs and the Ministry of Interior. The Ministry of Gender Equality acted as the chair. The Danish government's Action Plan on Combating of Trafficking in Women was launched in December 2002 in relation to the Danish presidency of the EU. This action plan presents a number of activities to support the victims and to prevent trafficking in women. However, no coordinated cooperation with the law enforcement system exists.

#### **Implementation of the action plan**

The Action Plan began to be implemented in October 2003 as a pilot project and will terminate in October 2006. The Department of Gender Equality acts as coordinator of a multi-sector cooperative effort. The Danish Research Centre on Social Vulnerability – Unit for Prostitution has a contract with the Danish Ministry of Gender Equality and is responsible for implementing some of the components found in the Danish National Action Plan to Combat Trafficking in Women. The main activities focus on the following: documentation; monitoring the implementation process; monitoring international initiatives; and the development of networks designed to share experiences between GOs (Governmental Organisations), and NGOs (Non Governmental Organisations). Additionally cooperation and networking activities are being carried out with the embassies from the countries of origins.

The implementation is carried out in cooperation with an NGO "Reden (The Nest)–STOP Trafficking of Women", Pro-Vejle (project funded by the Ministry of Social Affairs). This group is responsible for the practical aspects related to social work with the target group, including outreach activities, the establishment of safe houses and support for victims, and The Danish Research Centre on Social Vulnerability, Unit for Prostitution that deals with research and coordination of the project.

### **13.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES**

#### *13.3.1 Assessments of numbers of foreign prostitutes*

The former Research Centre on Prostitution, PRO-Centret, and the Danish Research Centre on Social Vulnerability, Unit for Prostitution, conduct spot tests on the tabloid paper *Ekstra Bladet*, which for many years has been the main source of



prostitution advertisements. These are yearly tests conducted in January. The objective of the tests has been to find foreign prostitutes in the advertisements. Between 1989 and 2001, the share of foreign prostitutes found in the advertisements increased from approximately 4% to about 45%. In absolute numbers it has been estimated to be nearly 2,250 women. This percentage (45%) has been stable from 2001 to 2004. Nearly 40% of the advertisements for foreign prostitutes depict women from South East Asia.

It is likely that the advertisements do not include women who are trafficked into prostitution; however, no knowledge is available on this. The spot tests only provide a picture of the visible foreign prostitution.

### **13.4 THE TRAFFICKING PROCESS TO DENMARK**

#### *13.4.1 The Phenomenon*

As mentioned above, Denmark has experienced an increase in foreign prostitutes over the last 10 years. We estimate that a minimum of about 2,250 foreign women prostitute themselves in Denmark. However, it is difficult to estimate how many of these women have been trafficked to the country and how many have migrated voluntarily. Asian women, mainly from Thailand, still represent the largest group of foreign female prostitute. They typically prostitute themselves in massage parlours. There is, however, an increase in Eastern European women in prostitution and reports from the NGO "the Nest – Stop Trafficking" indicate an increased number of trafficked women among the Eastern Europeans. These women generally prostitute themselves both in the streets and massage parlours. Reports from the police and NGOs show that there has recently been a drastic increase in the number of African women (mainly of Nigerian origin) primarily involved in street prostitution. It seems that these women are subjected to force, debt and control by criminal networks. The women are very forthcoming in their approach, indicating a high level of pressure. Many of the African women apply for asylum upon arrival, which entitles them to stay in an asylum centre while their case handled by the immigration authorities. This appears to be a well thought out strategy on behalf of the perpetrators, enabling them to find free accommodation for the victims. This strategy seems to be specific to the African victims.

#### *13.4.2 The Perpetrators*

The criminal networks vary in size, structure, level and mode of organisation. According to the police, there is usually a criminal network in the victims' home country as well as a partner network on the receiving end. In Denmark, the police have seen criminal networks with African, Albanian and Czech origin as well as networks from ex-Yugoslavia.

### *13.4.3 The Victims*

As mentioned above, it is difficult to estimate how many victims of trafficking we currently have in Denmark. However, since the introduction of the Danish Plan of Action to Combat Trafficking of Women, 26 women have been identified as victims of trafficking and have stayed in the safe house that was initiated as a part of the Plan of action. (A detailed confidential list of the victims' nationality and age will be submitted in the middle of November. This information is part of a report that is currently in the process of being developed by the NGO "the Nest-Stop Trafficking").



## 14

FINLAND<sup>41</sup>

## 14.1 INTRODUCTION

Trafficking in human beings for the purpose of sexual exploitation (trafficking in women) is connected to illegal immigration and to the general supply of commercial sexual services. In Finland, during the last few years, it has been possible to find a relatively large number of instances of illegal immigration and women working in the prostitution industry who come from foreign countries. A smaller amount of data is available on organised trafficking in human beings and its procurement. In looking at the years 1998–2003, representatives from government authorities and citizens' organisations have been unable to pinpoint any unambiguous examples regarding the intersection between illegal immigration and procuring (i.e. trafficking in women) for this study.

It seems that the situation concerning trafficking in human beings, especially trafficking in women, is still very much the same as two years ago (see MON-EU-TRAF Report I). Prostitution-related trafficking is a relatively rare phenomenon in Finland. Thus, the official as well as the unofficial databases that can be used for studying the phenomena are more or less non-existent. Furthermore, very little special legislation concerning trafficking crimes exists and no law addresses trafficking in women. However, this situation will soon change when the new laws, presently being drafted in Parliament, come into force.

What has been said above does not mean that trafficking in women does not exist in Finland. However, it means that currently very serious problems exist when trying to apply a quantitative research method based on existing official or unofficial databases used for gathering information concerning the situation. The simple reason for this is that such databases do not yet exist.

## 14.2 CRIMINAL LAW RESPONSES

*14.2.1 Specific offence of trafficking in human beings*

The Finnish Penal Code does not criminalise trafficking in human beings as a separate crime, but an amendment is in the process of being drafted and should come into force in late 2004. However, a stipulation concerning *abduction* (FPC 25:3), which is applicable to cases of aggravated trafficking in human beings, already exists.

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<sup>41</sup> This section has been written by Martti Lehti and Kauko Aromaa, HEUNI – The European Institute for Crime Prevention and Control, affiliated with the United Nations, Helsinki.

The Article 25:3 of the Finnish Penal Code is based on the 1926 international Geneva Convention, with its subsequent changes and amendments. It criminalises, certain behaviours as abduction wherein someone has: 1) taken someone into his/her power by using violence, threats, or malice with the purpose of putting him/her into circumstances that violate his/her human rights, or situations of forced labour; 2) by using violence, threat, or malice taken a child younger than 15 years old into his/her power with the purpose of subjecting the child to trafficking in human beings; or 3) subjected someone to slavery, kept him/her as a slave, transported slaves, or been involved in the slave trade, provided that such acts may be considered as aggravated in an overall judgement. The punishment for abduction is imprisonment of two to ten years. The crime is subject to official prosecution, and the attempt of this crime is always punishable. Legal entities cannot be liable for this crime.

In instances 1 and 2, which are primarily applicable to trafficking in human beings with the purpose of sexual exploitation, the condition of the crime that must be fulfilled is that the victim is taken into the *power* of the one depriving the person of his/her liberty for a particular purpose (forced labour; bringing someone into circumstances that violate his/her human rights; trade in human beings). In addition, the victim must be taken into the violator's power either by direct violence, threats of violence, or through malice. However, even if these criteria are met, the crime requisites are not fulfilled unless the act could be considered as being aggravated in an overall judgement (HE 94/1993).

According to the preparatory work of the law, the concepts of *slavery* and *humanity* are to be interpreted narrowly when applying this stipulation. The same recommendation includes the act of "taking someone into one's power" as mentioned in points 1 and 2 of the article. If the victim is only prevented from moving around at will, the criteria of "taking someone into one's power" are not met; the victim must be subordinated to a direct commanding power of the one who is depriving the person of his/her freedom. In the preparatory work, examples of circumstances that violate humanity are: i.e., prostitution and drug trafficking; the criteria of forced labour are said to comprise the permanence of the work, and the absence of normal rights to abstain from the work, to resign, and the failure to pay a salary (HE 94/1993).

Currently no interpretation and application practice of this stipulation in Government authorities and courts have been made. During the 1990s and 2000s, there were no known prosecutions based on article 25:3 of the Penal Code, and, consequently, no court decisions. This is because the widespread aggravated trade in women and children has not come to the attention of the authorities. Furthermore, the threshold for applying this stipulation, particularly the requirement regarding "taking the victim into one's power", is very high and is understood by the police as being so high that this it is hardly applicable to the types of prostitution that are known to currently exist in Finland. For example, cases where the freedom of will, choice, and movement of adult prostitutes have been restricted by debt relations or by confiscating their passports are not sufficient to meet the requirements of Article 25:3 of the Penal Code according to interpretation guidelines given in the preparatory works of the law. This is true even if the circumstances also involve violence and threats of violence (HE 94/1993).

A proposed new Article 25:3 is currently being drafted in the Parliament and will come into force in late 2004. It will criminalise acts as *trafficking in human beings*

when someone by 1) exploiting another person's dependence or defenceless situation or 2) misleading another person or 3) by paying a compensation to someone who is holding a person under his/her power or 4) by receiving such a compensation takes a person into his/her power, recruits him/her, or delivers, transports, receives or accommodates him/her in order to make him/her the object of sexual exploitation or forced labour; or in order to bring him/her into circumstances which violate his/her human rights and dignity; or in order to remove his/her organs or tissues with the purpose of economic profit. The punishment will be from four months to six years of imprisonment (HE 34/2004).

If the offender has used violence, threats or deceit or has intentionally or by negligence caused the victim to suffer serious injury, or a dangerous illness, or substantial suffering, or serious danger or if the victim is under 18 or if the offender is a member of an organised criminal group, and the crime as a whole has to be considered as aggravated, the punishment will be from two to ten years of imprisonment (HE 34/2004).

The proposed crime of *trafficking in human beings* is subject to official prosecution, the attempt to commit this crime is also punishable. Legal entities can be liable for the crime according to the general stipulations in the Penal Code (HE 34/2004).

#### *14.2.2 The specific offence of trafficking in human beings for the purpose of sexual exploitation*

See 14.1, 14.3.

#### *14.2.3 Other offences*

Stipulations concerning sexual crimes (FPC 20:1–7), procuring (FPC 20:9), prostitution of minors (FPC 20:8), pornography (FPC 17:18–19), crimes against personal freedom (FPC 25:1–3; 7–9), and the organising of illegal entry (FPC 17:8), as well as the foreigner legislation and the general stipulations concerning assault and homicide crimes are applicable to cases of coerced prostitution and trafficking in human beings.

#### *A – The stipulations protecting the right to sexual self-determination*

In the Penal Code stipulations protecting the right to sexual self-determination, those most centrally applicable to the regulation of coerced prostitution are found in paragraphs 20:6–7. These paragraphs criminalise sexual intercourse or other sexual activity with a person below the age of 16 years as sexual exploitation of a child. In simple cases, the punishment is a maximum of four years of imprisonment. In aggravated cases (where the offence is of a character that is likely to cause particular harm, or has been committed in a manner that is particularly humiliating) the punishment is imprisonment for at least one year, and for a

maximum of ten years. The offence is subject to official prosecution, and according to paragraph 1:11 of the Penal Code, Finnish citizens and foreigners living in the country may be sentenced for sexual exploitation of a child in those cases where the offence has been committed in another country, even if the act is not punishable under the laws of that country. An attempt to sexually exploit a child is also subject to punishment.

In practice, this stipulation is effectively applied to prevent child prostitution in Finland. In contrast, difficulties in producing evidence seriously hamper attempts to hold Finnish citizens responsible for offences committed abroad. However, the stipulation has not gone completely unused in the latter problem area. There is at least one recently documented case, wherein a prolonged relationship between a Finnish man and a local minor girl in Russian Carelia (the town of Sortavala) resulted in prosecution and sentence in Finland. It appears that the paragraph has yet to be applied to regular sex tourism emanating from Finland to the adjacent areas or to more distant countries.

Sexual exploitation in general is regulated by paragraph 20:5 of the Penal Code. Point 4 of part 1 of this paragraph is applicable to trafficking in women. This regulation criminalises acts wherein someone, by making use of his/her position, makes another person engage in sexual intercourse or some other such sexual act that essentially violates the right to sexual self-determination, or subjects someone to such an act, who is particularly dependent on him/her, by abusing the dependency relationship in an aggravated manner. According to point 2 of paragraph 20:5 of the Penal Code, exploiting the helpless state of someone in a similar manner, where the helpless state prevents the victim from being able to defend him/herself is also punishable. The punishment for such crimes is a fine or a maximum of four years of imprisonment. Attempting to commit such acts is also punishable. The crime is a complainant offence – i.e. it can only be investigated and prosecuted with the victim's agreement.

This stipulation is, in principle, applicable to cases of coerced prostitution, where the degree of force does not fulfil the requirements for rape but is more serious than the offence of using pressure to make someone engage in prostitution as defined in paragraph 20:9 of the Penal Code. However, the application of this paragraph is difficult as the offence is a complainant offence. To start prosecution procedures requires the independent activity of the victim, which is quite difficult, particularly for a foreigner. Presenting evidence in court regarding the degree of force used is also difficult. In practice, this stipulation has yet to be applied to prostitution-related crimes.

Extreme forms of forced prostitution are covered by paragraphs 20:1–4 of the Penal Code, which criminalises rape and forcing a person to engage in a sexual act. The criteria given in these paragraphs require that the victim be forced by violence or threats of violence to participate in sexual intercourse or other sexual acts. The more aggravated forms of these crimes (20:1–2) are subject to official prosecution. The less aggravated forms (20:3–4) are complainant offences. The application of these stipulations is hampered by the fact that for prosecution to be effective the victim's active participation is, in practice, always necessary. In the last few years, no known cases exist where these paragraphs have been applied to prostitution-related crimes.

*B – Procuring*

Regulation of prostitution in Finland is currently based on the so-called abolitionist system. Prostitution by adults, whether one is buying or selling sexual services, is not subject to punishment. However, profiting from someone else's prostitution is criminalised.

In Finland, the criminalisation of prostitution was abolished in 1936. Until the mid-1980s, however, prostitutes were subjected to a rather strict factual authority control based on administrative legislation directed against vagrancy. When the law on vagrancy was abolished in 1986, the activity of native prostitutes was no longer controlled. Street prostitution continues to be restricted by municipal regulations in some cities, but national legislation regulating the activities of prostitutes no longer exists. The situation is different for prostitution directed at Finland from abroad as the prostitutes can be controlled and are in effect controlled through the foreign legislation.

Prostitution, as a livelihood, whether the person is Finnish or a foreign citizen, is not legally equivalent to other legal occupations, regardless of the fact that it is formally accepted. It is true that the incomes earned through prostitution are taxable and the claims based on prostitution are legally protected in the same way as other private claims. However, the status of prostitutes in regards to pension or labour law is not similar to the status of persons employed in other legal occupations. Furthermore, a foreigner cannot receive a work permit in order to work as a prostitute (Kauppinen & Silfverberg 1992, 9–10; Turunen 1996, 20–29). Although prostitution is permitted, profiting from someone else's prostitution is criminalised in Finland as procuring (art. 20:9 PC). This stipulation is largely based on the same principles found in the 1949 general convention. The criteria for punishable procuring are met if someone, in order to make profit for him/herself or for someone else has 1) provided a room or other space where sexual intercourse or other comparable sexual acts for payment can be performed; 2) has otherwise exploited the fact that someone has engaged in such an act; or 3) has enticed or used pressure on someone to engage in such an act. According to article 20:10 PC, such acts are considered to be sexual acts if their aim is sexual excitement or satisfaction, and it is sexually essential, taking into consideration the perpetrator, the person subjected to the act, and the circumstances of the act. In legal practice, procuring has been understood to comprise, among others, so-called intimate massage services even if these have not included sexual intercourse services (Helsinki HO, R 99/634; Helsinki KäO, R 98/5559). The penalty for procuring is a fine or a maximum of three years of imprisonment. The offence is subject to official prosecution. Attempting to engage in procuring is also punishable.

The present procuring stipulation was put into place in 1998. In practice, it is similar to the previous stipulation written in 1971; however, the punishment scale was lowered considerably. The 1971 stipulation only allowed imprisonment, the maximum punishment being four years.

Thus, according to Finnish law, all types of economic profit – even if it is based on the voluntary agreement between parties – from the prostitution of another person is subject to punishment. In the preparatory works of the law, prostitution has been defined as “engaging in sexual intercourse or a comparable sexual act for compensation”. The compensation may be money or other economic gain. It is not



necessary that the activity be repeated: a single act that meets the criteria is currently considered to be prostitution. Thus, any procuring activity connected to prostitution is subject to punishment. In this respect, the 1998 law is stricter than the previous one. According to earlier court practices the requirements for procuring were not met until the activity was repeated (HE 94/1993; Kauppinen & Silfverberg 1992, 12).

Criminalised economic gain is explicitly defined by law and includes making a room or other suitable space available for a prostitute. The preparatory works explain that, in practice, such an act should be understood to comprise hiring out an apartment, a hotel room, or other such space for a higher price than the one paid under normal circumstances, or under exceptional conditions (such as on short notice), charging extra for use of the rooms, or any kind of attempts to force the prostitute to work in a given place. Furthermore, a simple permanent co-operative relationship between the prostitute and the person letting the room may be considered as procuring. However, the preparatory works of the law explicitly state that if someone lets out ordinary housing to a prostitute they are not subject to punishment. This is the case even if he/she uses the room or the apartment – at least irregularly – for prostitution (HE 6/1997).

Besides criminalising the act of renting out the place for prostitution, the proposal also mentions making arrangements for customers in order to profit. The sale of working areas as well as charging the prostitute for the number of customers, or by the hour, is also covered by the provision. Conversely, indirect gain received from prostitution is, according to the legalisation, not to be considered as the exploitation of a prostitute, and therefore not subject to punishment. For instance, if someone cleans a prostitutes' working premises, the activity has not been considered as receiving economic gain and in court practice has not been punishable (HE 6/1997; Helsinki KäO, R 98/5852).

In point 1, part 3 of article 20:9 PC, a separate provision criminalises the act of alluring or pressuring someone to engage in prostitution. The prerequisite for punishment is economic gain for oneself or someone else. In cases where the prostitute has been forced into prostitution by stronger means, the general provisions on rape, sexually forcing someone to engage in sexual acts, and sexual exploitation should be applied (HE 6/1997).

The law does not distinguish between procuring based on mutual equality and voluntary agreement among the parties, and those instances where the prostitute is subordinated to the procurer. However, according to the preparatory works, the prostitute's status has to be taken into account when making an assessment regarding the blameworthiness of the act and when deciding on the punishment (HE 6/1997).

This corresponds to what has been done in court practice. The 1998 verdict delivered by the Helsinki district court (court of first instance) and confirmed by the Helsinki Court of Appeal in 1999, stated that the procuring relationship was based on a voluntary mutual agreement. It was found that the prostitutes were able to freely decide on their working hours and working methods, hence these were considered to constitute mitigating circumstances in regards to the punishment (Helsinki KäO, R 98/5559; Helsinki HO, R 99/634).

Correspondingly, restrictions related to the prostitutes freewill are to be considered aggravating circumstances, albeit no examples of such cases could be found in the court data analysed for this study. Furthermore, the data that was found did not contain any cases where the procuring relationship was clearly based on direct or indirect coercion (Kotka KäO R 97/922, R 98/221, R 01/334; Kouvola HO R 98/286, R 98/583, 99/101, R 01/735; Kouvola KäO R 98/389; Helsinki HO R 98/1836, R99/524 and R 99/634; Helsinki KäO R 96/3398, R 98/5559, R 98/5852 and R 98/7337).

Nevertheless, when applying the procuring provision, the assessment regarding the seriousness of each act should be done in an overall manner where attention is paid not only to the relationship between the parties but also to other factors related to the parties and the activity. If the persons procured are minors it is always considered an aggravating circumstance, independent from the relative positions of the parties (cf. art. 1:11 PC). In court practice, the seriousness assessment seems to have, in some instances, taken into account the kind of services offered (Helsinki KäO, R 98/5559 cf. R 98/7337, R98/5852 and R 96/3398).

During recent years, the provision on procuring is the only provision in the Penal Code that has a widespread application to the control of prostitution. The end of the 1990s, when the statute was revised, happened to be a period of a rapid change for Finnish prostitution. It was also a period of increasing control of prostitution by the State authorities. This is reflected in the rapid increase in police-recorded cases and in the number of prosecutions concerning procuring. Between 1990 and 1996, two cases of procuring were recorded by police; in 1997–2003 the number increased to 250.

A new Article, 20:9a PC, is currently being drafted by Parliament and will come into force during 2004. It will criminalise, as aggravated procuring, the act of procuring where 1) considerable economic profit is pursued or 2) the crime shows an exceptionally high level of organisation or 3) the offender has intentionally caused or by qualified negligence a serious physical injury, or a dangerous illness, or serious danger, or substantial suffering to the victim or 4) the victim is under 18, and 5) the crime as a whole has to be considered as aggravated. The punishment for aggravated procuring will be from four months to six years of imprisonment. Legal entities can be held liable for the crime according to the general stipulations in the Penal Code (HE 34/2004).

#### *C – Buying sexual services from a minor*

Another specific provision concerning prostitution can be found in article 20:8 PC. In the 1998 reform of the Penal Code, different from the general tendencies of the reform, buying sexual services from a person younger than 18 years was criminalised: “someone, who by promising or providing remuneration makes a person younger than 18 years old engage in sexual intercourse or other sexual acts, shall be sentenced with a fine or imprisonment for a maximum of six months”. The offence is subject to public prosecution, according to Article 1:11 PC Finnish citizens as well as foreigners living in the country may be sentenced for this crime. Furthermore, according to Finnish law if the act has taken place abroad, even if it is not punishable according to the law of the country where the act has taken place the perpetrator is liable for punishment. This is also applicable to the crime of

procuring, if the person procured is younger than 18 years old. Finally, any attempt to commit this crime is punishable.

The provision is primarily applicable to the prevention of prostitution of teenagers. Buying sexual services from a person younger than 16 years old is directly criminalised in Article 20:6–7 PC as sexual exploitation of a child. When Article 20:8 PC was accepted, the arguments in favour of this were twofold: that young persons have a particular need to be protected, and that street and drug-related prostitution need to be prevented. This offence is completed also if the client does not commit any sexual act with the minor (passive role). Also the person offering the services is liable, even if there are no sexual acts between the buyer and the minor. The remuneration mentioned in the provision need not be of an economic nature and can instead be any kind of compensation relevant to the young person (HE 6/1997).

A proposed new law, which is currently being drafted in the Parliament, will change the maximum penalty for this crime from six months of imprisonment to one year (HE 34/2004).

#### *D – Pornography*

Sexual exploitation is also connected to the trade in persons meant to satisfy the needs of the pornography industry. This phenomenon may be regulated by the application of provisions in Chapter 17 PC, which criminalises the manufacturing, dissemination and possession of certain immoral publications.

The manufacturing, importation, dissemination and possession of child pornography is always punishable according to Finnish law (art. 17:18–19 PC). The manufacturing and dissemination of other kinds of pornography is largely allowed and its possession is permitted without restrictions. In addition to child pornography, criminalisation only applies to the manufacturing and trade in pornography containing sexual acts with animals, or violent pornography (art. 17:18 PC). The punishment scale defined in Article 17:18 PC, criminalising manufacturing, importation and dissemination is a fine or a maximum of two years of imprisonment; the scale defined in Article 17:19 PC, criminalising the possession of child pornography, is a fine or a maximum of six months of imprisonment. Thus, Finnish law provides, in principle, relatively good instruments to prevent the manufacturing of child pornography. On the contrary the manufacturing of *other kinds* of pornography is not regulated.

A proposed new law currently being drafted in Parliament will bring some changes to Article 17:18. It will criminalise all pornography containing persons under 18 years of age as child pornography, and change the maximum penalty for the crime from two years imprisonment to six years (HE 34/2004).

#### *E – Crimes against personal freedom*

The basic requirement for trafficking in women and children comprises forcing the victim to act in the target country, at least partly, against his/her own free will. If

this occurs, regardless of the kind of activity the victim has been forced to participate in, the stipulations of Chapter 25 of the Penal Code, regarding crimes against personal freedom, become applicable. Depending on the case, the crime could be *deprivation of freedom*, *aggravated deprivation of freedom*, or *abduction*. All of these provisions, in their present form, went into force in 1995. If the offences against personal freedom are connected with direct physical violence, the offences simultaneously fulfil the requirements for assault, rape, or homicide (Chapters 20 and 21 of the Penal Code).

The regulations in the paragraphs 25:1 and 25:2 address the *deprivation of liberty* and *aggravated deprivation of liberty*. These paragraphs sanction the unauthorised deprivation of the right to free movement of another person as well as isolating him/her from his/her environment. If the act is committed by using particular cruelty or under the threat of violence, continues for more than three days, or causes serious danger to the life or health of the victim, it is considered to be an aggravated case. The punishment is a fine or a maximum of two years imprisonment. For those cases that are considered aggravated the punishment is a minimum of four months and a maximum of four years of imprisonment. These offences are subject to public prosecution (i.e. not complainant offences).

These stipulations may be applied to those cases where the freedom of movement for victims of trafficking in persons has been restricted against their will or they have otherwise been isolated from society but have not been subordinated to the power of the one depriving them of their freedom in a manner that would meet the criteria for kidnapping as defined in Article 25:3 of the Penal Code. For instance, taking away the passports of foreign prostitutes, or temporarily locking the prostitutes in their working premises meets the criteria for deprivation of freedom but usually does not constitute kidnapping (HE 94/1993).

The offences of *unlawful threat* and *coercion* defined in Article 25:7–8 of the Penal Code are crimes for which the criteria are often met when persons are being trafficked. These paragraphs criminalise illegally threatening someone with a weapon or with another crime as well as forcing someone to commit or refrain from committing a certain act by similar methods. The punishment for both offences is a fine or a maximum of two years imprisonment. Both crimes are complainant offences. The rulings are of a secondary nature and, since forcing someone into prostitution has been criminalised separately in the more severe Article 20:9.3 of the Penal Code, they cannot be applied to those cases where persons have been trafficked with the motive of sexual exploitation. However, if the exploitation connected to the trafficking activity was of another kind, no fundamental obstacles to the application of these paragraphs exist. There is, however, no indication that these paragraphs have been applied to trafficking in persons. Furthermore, paragraphs 25:1–2 of the Penal Code, referring to the deprivation of freedom, have not, as yet, been applied to trafficking in persons or to prostitution, even if these provisions are not secondary in regards to Article 20:9 of the Penal Code.

#### *F – Organising illegal entry*

Article 17:8 of the Penal Code is directed towards organisers of smuggling in persons. This paragraph criminalises organising illegal entry into the country. According to this provision, a person who engages in the following activity is to be

sentenced to punishment: 1) brings or attempts to bring into Finland a foreigner who does not have a passport, visa, or permit to stay in the country; 2) organises or mediates the transportation into Finland for such a foreigner; or 3) gives to another person a false or forged passport, visa, or permit to stay, or a similar document issued to another person, to be used when entering the country. The punishment is a fine or a maximum of two years imprisonment. However, such an act is not punishable if it can be judged to have been committed on acceptable grounds, taking into consideration the perpetrator's motives and the circumstances influencing the foreigner's safety in his/her home country.

This stipulation is suitable for punishing organisers and middlemen of trafficking in persons who have, in one form or another, actively participated in the transport of persons into the country or arranged for their travelling documents. The act itself, i.e. bringing a person into the country without the required documents, is sufficient to constitute an offence and the perpetrator's motives are irrelevant. In this respect, the stipulation has a considerably broad scope, as it goes beyond trafficking in persons and can be applied to any activity that assists illegal immigrants in entering the country. The only exceptions are political refugees; however, even when they are involved, an overall assessment of the case must be made. In practice, political refugees and illegal immigrants use the services of the same organisers. However, the objective of making an economic profit is usually assessed independently from the motives of the clients. If the smugglers transporting refugees are primarily acting with economic motives, the activity is punishable according to Article 17:8 of the Penal Code, regardless of the motives of the clients. In the original proposal, the punishment was restricted to organising illegal entry into the country explicitly and exclusively for economic profit. Thus, the provision was originally intended to have a more narrow scope, and was aimed primarily at trafficking in persons. However, the restrictions were abolished by Parliament (HE 6/1997).

Punishment, as defined in Article 17:6 of the Penal Code, does not apply to making a profit from the persons brought into the country illegally, their work or other activities. Punishment for such profit making, depending on the exact nature of the activity, is applied from the stipulations found in Chapters 20 and 25 together with provisions outlined in the labour protection legislation, which protect the rights of the labour force.

The contents of Article 17:8 of the Penal Code is closely related to the State border offence defined in Article 17:7. Trafficking in persons that only uses Finnish territory for transit purposes but does not cross the Finnish border is not criminalised according to article 17:8.<sup>42</sup>

A proposed new Article 17:8a is currently being drafted by the Parliament, and will come into force during 2004. It will criminalise as *aggravated organising of illegal entry* those behaviours wherein 1) someone has intentionally or by negligence caused serious injury, dangerous illness, substantial suffering, or serious danger to the victim, or 2) the offender is a member of an organised criminal group, and 3) the crime as a whole has to be considered as aggravated. The punishment for this crime will be from four months to six years of imprisonment (HE 34/2004).

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<sup>42</sup> The Schengen Agreement, which requires the passport control of air passengers traveling through Finland to other Schengen Countries, is likely to increase the number of punishable transit cases in the future.

The proposed new law will also criminalise trafficking in persons that uses Finnish territory for transit purposes only (HE 34/2004).

Because the stipulation of Article 17:8 PC is applicable to a broad range of activity, of those cases that have reached the courts only a few are likely to have been connected to actual organised smuggling of persons, and still fewer with trafficking in persons. This does not prove that there is no organised trafficking in persons involving Finland or other countries around Finland, or even that such activity would be very rare (Juntunen, 1998). Uncovering and arresting the perpetrators, as well as securing evidence that will hold up in court is, nevertheless, very difficult. The clients of the smugglers are usually unwilling to provide accurate information about their routes, and even less likely to volunteer to testify against their smugglers. Furthermore, the majority of those organising and participating in the smuggling operations are normally operating outside of Finnish territory, and the chances Finnish authorities have of taking them to court in Finland are slight.

### *G – Foreigner legislation*

In Finland, a considerable proportion of the persons involved in prostitution are foreigners from Eastern European countries. The provisions regulating their right to stay in the country, to work, and to travel are included in the foreigner law and statute. These provisions were put into place in 2004.

In an effort to control prostitution by foreigners, the central provisions are outlined in Chapter 9 of the Foreigner law. These provisions address the issues surrounding refusal of entry, the deportation of persons to their country of origin, and repatriation. Deportation is applied to remove those persons who do not have permit to stay from the country, while the repatriation stipulation is used for those cases that involve persons who have permission to stay. Most of the active prostitutes in Finland are in the country on a temporary basis, using either a tourist passport or a visitor's visa. In practice, the most important rules for the regulation of their stay are the provisions regarding refusals of entry and deportation. Article 148 6) of the Foreigner law states that the selling of sexual services is a legal basis upon which someone can be deported.

In practice, this provision can be applied when there is a well-founded suspicion that the person is selling or intends to sell (or offers for other economic compensation) sexual services. According to the preparatory works of the law, the suspicion is well founded if the person is known to have received income from the sale of sexual services at an earlier point in time. Such activity does not need to take place on a full-time basis.

When the decision to refuse entry or to deport a person is made, it is necessary according to Article 146 of the Foreigner law – regardless of the existence of the legal grounds – to take into account all the circumstances that may influence the overall assessment of the case. Such circumstances are specifically stated to include the length of stay of the foreigner, and his/her family as well as other ties to Finland. Furthermore, no one can be deported to a country where he/she may be subjected to inhuman treatment or persecution that fulfils the criteria given in Article 147 of the Foreigner law.

The decision to deport a person is made by the passport control authority or the police. In certain cases, the decision may be transferred to the Foreigner authority; this authority may also, at anytime, assume responsibility for the matter through its own initiative. The decision concerning deportation always refers to the revocation of the visa.

The argument for adding the sale of sexual services to the list of explicit grounds for deportation, despite the fact that prostitution is not illegal in Finland, was given in the law draft written by the Government in 1998. This law draft refers to the social disturbances caused by Eastern prostitution, as well as to the procuring activity and other prostitution-related crime. The objective was to protect Finnish society from disturbances caused by foreign prostitution.

The authorities implementing the provision are not, however, in agreement about its appropriateness in this respect. If the control concentrates on individual prostitutes instead of those who are organising the activity, this may, in their opinion, result in the strengthening of organised prostitution in comparison to prostitutes working independently. Since the problems connected to prostitution and its links to the criminal underworld are explicitly concentrated on organised prostitution, the provision reinforces a development that is in sharp conflict with its objectives. Even so, the annual number of deportation decisions made based on prostitution have remained rather low, indicating that the amendments made to the Foreigner law have not, at least for the time being, caused any visible changes in the actual situation of foreign prostitutes. Overall, the border and local control of prostitutes is quite random and lenient, which is common knowledge among the prostitutes.

#### 14.2.4 Other information

No effective witness protection mechanisms exist in Finland that are applicable to victims of trafficking.

No specific investigative/prosecution units specialised in cases of trafficking exist.

No special proactive law enforcement policies concerning crimes of trafficking in human beings for sexual exploitation exist.

See also section 14.1.

In May 2004, crimes such as *trafficking in human beings* or *trafficking in women* did not exist in Finnish legislation. The only legal provision expressly directed at trafficking in persons is Article 25:3 of the Finnish Penal Code, criminalising *abduction*. However, there is an amendment currently being drafted that will add a stipulation to the Penal Code that criminalises all forms of trafficking in human beings, including trafficking for prostitution. The stipulation should come into force during 2004.

Currently, the regulation of prostitution is mainly based on Article 20:8–9 of the Finnish Penal Code, criminalising *procuring* and *buying sexual services from a minor*, and Article 20:6–7 of the Penal Code, criminalising *the sexual exploitation of children*. Depending on the motives and the concrete details of each case, the general provisions in the Penal Code that address crimes of violence, sexual

offences, immigration offences, and extortion/deprivation of liberty, together with stipulations in foreigner legislation are applied in order to prevent trafficking in persons.

### 14.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

#### 14.3.1 Sources of data on offences

TABLE 21: POSSIBLE OFFENCES

Offence 1:	Offence 2:	Offence 3:	Offence 4:	Offence 5:
<i>Abduction</i> (FPC 25:3)	<i>Procuring</i> (FPC 20:9)	<i>Buying sexual services from a minor</i> (FPC 20:8)	<i>Sexual exploitation of children</i> (FPC 20:6–7)	<i>Organising illegal entry</i> (FPC 17:8)

#### 2–6) Databases:

Information on trafficking in women in Finland is collected by one full-time investigator of the National Bureau of Investigation in Helsinki. No database on the phenomenon, its victims or perpetrators exists. This is because no offences that would fulfil the criteria for trafficking in women (as understood by the Finnish police authorities) have come to the attention of the police during recent years.

Investigative data on all offences can be obtained from the RIKI-database, which contains information on all offences reported to the police authorities. Each police district records its own data in the centralised database. This database contains basic information about the crime (type, time, place, method, and a short description of crime scene), the suspects, and the victims (number of suspects and victims, date(s) of birth, nationality, sex, marital status, number of children, employment status, income level(s), educational level(s), residence, state of intoxication, injuries). Importantly, however, in the crimes outlined by Article 17:8 and Article 20:9 FPC the trafficked people/procured prostitutes are not given the status of victim; hence, the database does not contain any information on them.

The Criminal Records Office of the Ministry of Justice maintains a database of the criminal records of persons convicted in the Finnish law courts. The number and type of the previous convictions can be obtained from this database.

Statistics Finland has an electronic database that contains information on the persons sentenced in the law courts (court statistics). This information is based on data sent from the law courts. The database contains information about the type of crime, the type and the length of the sentence, and the sex and the age of the people convicted.

The Border Guard Authority, subordinated to the Ministry of Interior, compiles statistics on unauthorised border crossings (including those related to illegal



immigration), deportations, attempts to enter the country illegally that are discovered at the border crossing points, as well as the asylum requests filed at the Border Guard Authority. The available information is mostly of a general nature, illuminating the routes and the volume of illegal immigration. In those cases where the people are returned to their country of origin, it is, however, possible to retrieve data about the reason for the return decision as well as more detailed information about the persons concerned. The statistics and information collected are used for annual Border Reviews. These reviews contain a relatively full overview of, among others things, illegal immigration and related phenomena as well as any observed changes in these activities. In addition to information collected by the Border Guard Authority, the reviews also make use of information received from the authorities of neighbouring countries. The information collected by the Border Guard Authority is non-public, as a rule, but generally available for research purposes.

It is possible to combine the data found in all the above databases with, for example, the information obtained from the yearly censuses.

#### 14.3.2 Sources of data on offenders

Data about traffickers

##### A) RIKI-database

##### a) Abduction (FPC 25:3)

There were no recorded cases of abduction (FPC 25:3) in 1998–2003.

##### b) Procuring (FPC 20:9)

TABLE 22: THE NUMBER OF RECORDED CASES OF *PROCURING* (FPC 20:9) IN 1998–2003

Year	Cases	All offenders	Non-citizen offenders
1998	23	–	–
1999	12	29	5 (17%)
2000	41	53	14 (26%)
2001	64	91	27 (30%)
2002	63	92	36 (39%)
2003	35	49	27 (55%)

Source: Finnish National Bureau of Investigation: PolStat

Between 1 January 1999 and 31 December 2003, the Finnish police recorded 215 cases of procuring; the number of suspected persons was 314 (1.5 suspects per case). Finnish citizens composed 65% (205) of the suspects, Estonian citizens 21% (67), Russian citizens 8% (25), and citizens of Thailand 3% (10). The rest 2% (7) were mainly citizens of the successor states of the former Soviet Union. (PolStat; Leskinen 2003). Thus, in the majority of the recorded cases, the pimps have been Finns or Finns working with Estonians/Russians. Even so, the proportion of Estonian and Russian offenders has increased substantially during the last five years: in 1999 non-citizen offenders made up 17% of all offenders, in 2003 their share was already 55%.

The connections between the Finnish, Estonian and Russian underworlds have become close during the last decade (see Junninen & Aromaa 2000), making it likely that most of the procuring operations (even for those where only Finnish suspects are brought to justice) have both Finnish and local (foreign) organisers. In practice, organising prostitution in Finland from Estonia or Russia without any local contacts would be very difficult. Correspondingly, recruiting prostitutes, especially from Russia, is practically impossible without local partners; merely obtaining the necessary travelling documents usually requires some type assistance. Among the court cases examined, there was not a single instance wherein a Finn could have procured Russian prostitutes without having Russian partners involved in the operation.<sup>43</sup> However, the local contacts from Estonia and Russia cannot usually be brought to justice in Finland, let alone sentenced. Furthermore, they are not necessarily revealed during the preliminary investigation. Neither the prostitutes nor the Finnish pimps gain any advantage by revealing them, nor is the co-operation between police authorities over the border always smooth (Helsingin Sanomat: "Puhelintyttöjä paritetaan eniten"; Prostituutio ja paritus Suomessa, 3–5; Trafficking in Women, 118–120).

### *B Court Statistics*

#### a) Abduction (FPC 25:3)

There were no prosecuted cases of abduction in 1998–2002.

TABLE 23: PROCURING (FPC 20:9)

Year	Prosecuted persons	Sentenced persons
1998	27	16
1999	6	5
2000	6	6
2001	34	27
2002	72	66
2003	–	–

TABLE 24: BUYING SEXUAL SERVICES FROM A MINOR (FPC 20:8)

Year	Prosecuted persons	Sentenced persons
1998	–	–
1999	1	1
2000	1	1
2001	1	1
2002	4	4
2003	–	–

<sup>43</sup> Kouvola HO R 98/286, R 98/583, 99/101 ja R 01/735.

TABLE 25: SEXUAL EXPLOITATION OF CHILDREN (FPC 20:6–7)

Year	Prosecuted persons	Sentenced persons
1998	64	55
1999	112	92
2000	117	97
2001	137	121
2002	179	153
2003	–	–

Prostitution-related cases of this crime are not recorded separately. As far as can be determined, the total number of prostitution-related cases of sexual exploitation of children prosecuted in the courts in 1998–2002, was less than ten.

TABLE 26: ORGANISING ILLEGAL ENTRY (FPC 17:8)

Year	Prosecuted persons	Sentenced persons
1998	–	–
1999	6	3
2000	5	3
2001	6	5
2002	17	16
2003	–	–

#### 14.3.3 Sources of data on victims of trafficking and sexual exploitation

See 14.2.1 and 14.2.2.

No official databases in Finland with standardised information on victims of trafficking or sexual exploitation exists.

*Pro-tukipiste* in Helsinki is the only NGO in Finland that offers support services for prostitutes, whether Finnish or foreign, and is the only independent agency monitoring the prostitution situation in the country on a full-time basis. It was established in 1990, and is subordinated to the private *Diakonissalaitos*, an institution providing health care and social services. The activity of *Pro-tukipiste* is focused on the Helsinki region. It employs seven permanent workers who regularly frequent the working areas of prostitutes and actively attempt to establish contacts with them. However, *Pro-tukipiste* does not collect or file systematic information about its clients, and its employees work under a confidentiality agreement.

See 14.2.1, 14.2.2, and 14.2.3.

No accurate data on the extent of prostitution, either indigenous or foreign, exists in Finland. Foreign prostitution in the country is primarily mobile, the foreign citizens who live in Finland on a permanent basis typically play a secondary role. Although it must be noted that their involvement with prostitution is probably underrepresented in the cases reported to the police or field researchers. Their

legal status is similar to that of Finnish citizens and their need to resort to pimps or sex-clubs is considerably smaller than the need of foreigners who come to the country as tourists. However, a strong local community of foreigners is able to conceal, at least from the authorities, the prostitution that their compatriots may engage in. The various connections between prostitution and the foreigners living permanently in Finland remain hidden more often than those of foreigners who are there only temporarily (*Prostituutio ja paritus Suomessa*, additional part, 1). The estimates of the share of resident foreigners out of persons engaged in Finnish prostitution vary, but it is less than 25% (*Reet Nurmi*).

Estimates of the number of prostitutes visiting the country are based on qualified expert opinion at best, and vary substantially. The current estimation made by the Finnish National Bureau of Investigation (NBI) is that approximately 10,000–15,000 foreign prostitutes visit Finland every year. Most of them come from the areas in the immediate area surrounding the Finnish borders, i.e. northern Estonia and north-western Russia. In 2000, the estimates were considerably smaller with only 4,000–5,000 women a year. It is unclear if the rapid increase in the numbers has been caused by better data, new analysis methods or by a real increase in the volume of foreign mobile prostitution in Finland.

During the last few years, the annual number of prostitutes contacting the *Pro-tukipiste* has been stable. In 2003, the NGO was contacted by 1,300 foreign prostitutes, 370 of whom were new contacts. According to *Pro-tukipiste* there are currently about 1,000 to 1,500 foreign prostitutes working in the Helsinki Region. These numbers include resident prostitutes (*Jaana Kauppinen*).

The information obtained from a recent study on Russian prostitution in northern Finland contradicts the NBI figures. According to the researchers of the University of Rovaniemi, the volume of foreign prostitution in Finnish Lapland is presently decreasing, not increasing. Furthermore, the number of women in the Murmansk Region currently occupied in the trade is between 20 and 60, which is much smaller than the number recorded at the end of the 1990s (*Helsingin Sanomat: Kotimainen prostituutio on korvannut venäläistä tarjontaa Lapissa*).

Importantly, the above numbers refers to the total number of prostitutes, not to victims of trafficking. Eastern prostitution seems to be primarily organised on a voluntary basis. There have been no cases of coerced prostitution or trafficking in human beings for prostitution reported to the Finnish police authorities during the last five years. In addition, the actual annual number of foreigners and citizens coerced to work as prostitutes in Finland is estimated, by the NBI, to be very small, with only a few dozens at the most (Leskinen 2003). The annual number of aggravated cases of coerced prostitution reported to *Pro-tukipiste* has been stable, with less than ten during the last few years. The annual number of less severe cases of prostitution-related intimidation and conflicts has also been stable with less than a hundred (*Jaana Kauppinen*). Some independent researchers think that the situation is more serious, but their opinion is usually based on second hand information (*Reet Nurmi*). A serious problem when interpreting the different estimates is the heterogeneous use of the concept of trafficking in women. This is partly due to different ideological and moral attitudes towards prostitution. The most comprehensive definition of trafficking in women is understood to include all female prostitution; conversely, at its most limited, only those reported cases of aggravated abuse and coercion, where investigation has established enough

evidence for prosecution and sentencing, have the cases been considered trafficking.

Overall, coerced prostitution exists in Finland, but it seems that the number of annual victims is fairly small.

#### **14.4 THE TRAFFICKING PROCESS TO FINLAND**

##### *14.4.1 Trafficking in human beings for sexual exploitation (the phenomenon)*

###### *Recruitment*

Most of the Estonian and Russian prostitutes who work in Finland are recruited through personal relationships; other means of recruiting are advertisements in Russian, Estonian and Latvian men's magazines and daily papers. It is also common for the owners of brothels in Estonia and Russia to send their prostitutes on short trips to Finland. The trend during the last five years has been towards personal and more subdued forms of recruitment (Lehti & Aromaa 2002; Leskinen 2003).

The information given to the prostitutes during the recruitment stage seems to be accurate overall. At least for the time being, the organisers have no difficulty in finding voluntary recruits. Therefore, they have no reason to try to recruit prostitutes by using deceit or coercion. Prostitutes recruited against their will would cause problems and gain negative attention, weaken the daily cash flow and jeopardise the functioning of the procuring operations. However, this does not mean that the process completely lacks aspects of coercion. The pimps and the prostitutes make oral agreements in the country of departure on the operational preconditions, and these agreements, as well as the agreed length of the stay must be respected without compromise: non-compliance will cause a security threat to one's body or even life (Leskinen 2003).

Until the late 1990s, independent prostitutes and part-time pimps dominated the portion of the prostitution trade in Finland that was composed of women from Eastern countries. The pimps were either Finns or people who had moved from the neighbouring areas with their Russian and Estonian prostitutes. Many of the pimps had drifted into the trade more or less accidentally during the Finnish depression years of the early 1990s. This was in part due to the unemployment, and as a whole, their backgrounds did not contain a previous criminal career (Lehti & Aromaa 2002)

However, the situation has changed substantially during the last few years. At the end of the 1990s, the independent pimps and prostitutes have been increasingly pushed out of the market or have gone to work under the leadership of Estonian and Russian criminal groups. Today, the NBI is of the opinion that the recruitment of Estonian and Russian prostitutes is organised almost totally by people involved in Estonian and Russian organised crime and that the Finnish pimps who run the operations in Finland are mainly hired hands. Furthermore, the Finnish operators who have maintained their independence, usually recruit their prostitutes through contacts in the Estonian and Russian underworld (Leskinen 2003).

### *Transportation and entry*

The foreign prostitutes come from the areas in the immediate area around the Finnish borders. The Estonians enter the country as individual tourists, the Russians work in a more organised way (because of stricter visa regulations), and usually arrive in larger groups (20–40 people) on rented buses, often with a “tour leader”. However, Russians have also come to the country as tourists.

The Estonians come to Helsinki mainly by boat through the passenger ports. A small number come from Tallinn to Helsinki by air. Those from Latvia and Lithuania usually come through Estonia by bus/train and boat. The Russian prostitutes mainly arrive through the land crossing points of Vaalimaa, Nuijamaa, Vainikkala, Niirala and Raja-Jooseppi. In Finland, the prostitutes proceed to their final destinations by train, bus or in their pimps' car (Leskinen 2003).

Apart from the direct routes into the country, the pimps transport Estonian and Russian prostitutes to Finland through third countries, particularly Sweden (by bus/car/boat), Germany and the Netherlands (by air). These routes are mainly used to transport those prostitutes who have had problems with the Finnish border authorities (Leskinen 2003).

The Finnish police and the border authorities have noticed that the same Finnish, Estonian and Russian citizens (usually men) come to meet the prostitutes at the port time after time. In order for the women to receive visa's, these men send the formal invitations to the women with Russian citizenship and promise to pay for the cost of their stay in Finland. Some men do this for several women at a time. If their entry into Finland is refused, the prostitutes contact the same few Finnish lawyers who assist them in the courts and file the complaints about the decisions (Leskinen 2003).

There are no reported cases of prostitution-related corruption of police or border authority officials in Finland. Additionally, the number of prostitution-related cases involving forged travel documents has been small. This is likely because entering the country legally is relatively easy and there is no need for forged documents or corruption.

The trip from Tallinn to Helsinki takes 1.5 to 3.5 hours by boat, and 18 to 30 minutes by air; the trip from St. Petersburg/ Murmansk to the Finnish border takes a few hours. There has been no reported cases of exploitation or victimisation during transportation (if casual traffic accidents are excluded).

### *Forms of prostitution and working conditions*

As mentioned above, the current opinion of both authorities and most independent observers is that the majority of persons from Eastern countries working as prostitutes are recruited on a voluntary basis. Thus, the word exploitation is somewhat incorrect when used to describe this phenomenon.

Although the recruiting process does not usually include deceit or coercion, aspects of subdued and even open coercion are present during their stay in Finland. The prostitutes coming from Russia and the Baltic States know that failing to observe

the agreed working conditions or giving information to the authorities is a security risk for themselves and their families. In practice, it means the organisers take revenge against them. Security threats to their body or even life are also present from the hired Finnish pimps working for the Estonian and Russian criminal leaders. If the prostitute refuses to continue to sell sexual services during the agreed period of stay or if the pimp thinks that the prostitute has acted dishonestly (i.e. she has not informed him in advance about the beginning of her menstruation), the pimp will respond with sanctions. This punishment is usually a fine that the prostitute must pay by selling a certain amount of sexual services and giving the profit entirely to the hired pimp, i.e. she works for a certain period without pay. Some cases provide evidence that the pimps have deliberately broken their commitments, and forced the prostitutes to work in Finland longer or under worse conditions than agreed (Leskinen 2003; Jaana Kauppinen).

The relations between the prostitutes, the hired pimps, and the main organisers are usually pure business relationships lacking any social or emotional aspects.

Brothels are illegal in Finland, and it is unlikely that they exist in any considerable number.<sup>44</sup> To run an illegal brothel for a long period and manage to keep it secret from the authorities is rather difficult and the risk of apprehension is great. The selling of sexual services typically takes place in rented apartments, sex clubs, erotic restaurants, hostels and hotels. In northern Finland this also occurs in the camping areas. The sexual services offered in private apartments clearly differ from those offered in sex clubs and erotic restaurants. In the rented apartments, sex services are sold from morning to night, even 24 hours a day; these are usually provided largely by Estonian prostitutes. In the few sex clubs and erotic restaurants sexual services are provided by Russian prostitutes, who take their customers to a hostel or apartment near the restaurant at night and in the early morning hours. The financial profit earned by the prostitutes working in the erotic restaurants is marginal compared to the all-day sex trade in the rented apartments; on the other hand, the working conditions are often worse in the apartments than in restaurants and sex clubs (Lehti & Aromaa 2002; Leskinen 2003; Jaana Kauppinen).

The main centres for foreign prostitution in Finland are the Helsinki Region and the other major cities. In northern Finland there is large-scale prostitution in some rural communities.

No large-scale direct connections between procuring and legal businesses exist in Finland. In the 1990s, the recruitment of clients was organised mainly through advertisement of sexual services in daily papers, and formed a substantial source of income for some media houses. However, nowadays this connection has grown weaker as client recruitment has been moved increasingly towards the Internet. Eastern prostitution indirectly benefits a wide and varied group consisting of sex-bars, massage establishments, hotels, restaurants, taxi firms, telephone operators, and shopkeepers. Prostitutes do not come to Finland to simply earn money but they also spend part of their incomes on the local economy. Even so, they do not bring any additional value to the Finnish economy (Lehti & Aromaa 2002).

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<sup>44</sup> These have, however, been located on occasion; for example, a recent article in *Helsingin Sanomat* ("Itämaafia tuo ilotyttöjä Helsinkiin") claims that in an old factory building in southern Helsinki, a Russian organised crime group operates a large brothel-speak-easy. The claim may be true.

The prostitutes enter the country as tourists and work in Finland for short periods lasting from a few days to a couple of weeks. No information is available on possible debt relations between prostitutes, pimps, and the organisers, however, lack of information does not mean that this kind of dealing does not exist. Even without any debt-based or other direct pressure coming from the pimps, the prostitutes tend to maximise their daily number of clients when in an attempt to maximise their earnings during their short stay (Lehti & Aromaa 2002).

The driving force behind Eastern prostitution is the financial profit it offers. In Helsinki alone, the daily turnover from the trade is estimated to be in the tens of thousands Euros; annually the level the turnover in the whole country amounts to tens of millions of Euros (Helsingin Sanomat: "Itämafia tuo ilotyttöjä Helsinkiin"). Although the profits have been decreasing during the last few years, due to increasing competition and a sharp drop in the purchasing power of the Euro, especially in Estonia, the trade is still very profitable for both prostitutes and pimps.

In an Estonian-led procuring operation in Helsinki in 2001, a Finnish criminal organisation hired some pimps who worked for an Estonian criminal leader who had five apartments used simultaneously, basically one apartment for each prostitute. There were five to eight Estonian prostitutes involved, and a full-time operator receiving the calls and directing new customers to available prostitutes. A visit of 20 minutes cost FIM 300 (EUR 50.46), of which the Estonian organisers received FIM 200 (EUR 33.64) and the prostitute FIM 100 (EUR 16.82). According to the seized bookkeeping records, there were 491 customers seen in the five flats during two weeks. The total earnings of the operation were FIM 147,300 (EUR 24,774) of which FIM 98,200 (EUR 16,516) was taken by the organisers, and FIM 49,100 (EUR 8,258) was divided between the prostitutes. During one month, about 1,000 Finnish customers – most of them were regulars – spent about FIM 300,000 (about EUR 50,456). The organisers received about FIM 200,000 (EUR 33,637) and the five to eight prostitutes divided FIM 100,000 (EUR 16,819) amongst themselves. After the overhead expenses (rent for five furnished flats, daily advertising in the newspapers, basic necessities of the girls), the net profit for the organisers was at least FIM 100,000 (EUR 16,819) a month (Leskinen 2003).

In Helsinki the prostitutes' charge € 70 to € 100 per hour, which is approximately the same as two years ago. She usually receives one-third (€ 20 to € 35) of the total amount. In the late 1990s, the prostitutes received half of their earnings and the charges were higher. Increased supply, however, has lowered the prices. All the while this has made the pimps increase their share of the income. In spite of this, a prostitute can still earn € 2,000 to € 3,000 per month (30,000 to 45,000 FIM), while the average monthly wage in Estonia is currently € 450 (6,748 EEK). Besides, the income is tax-free. For a Russian prostitute the relative level of income is even higher (Lehti & Aromaa 2002; Leskinen 2003).

The trade is even more profitable for the pimps. In the above case, the annual tax-free profit from the small-scale operation with five to eight prostitutes would have been € 200,000. Compared to the average Finnish wage, that income level is good, to say the least. Despite the decreased profits, Eastern prostitution is economically still very lucrative for both the prostitutes and the organisers. This kind of situation has tended to reduce the mutual conflicts between parties and has kept the supply of voluntary prostitutes high enough that the demand has been met quite well.



#### 14.4.2 The Perpetrators

The current opinion of the Finnish NBI is that Russian and Estonian prostitution in Finland is organised mainly by people involved in Estonian and Russian organised crime. The Finnish pimps who run the operations are only hired hands, and the independent prostitutes have been forced out of the market. According to the NBI, the Estonian and Russian criminal organisations, in order to ensure high income and peaceful operations, have divided the Finnish towns and provinces into territories between themselves. By respecting the common agreements related to the territories, the Estonian, Estonian-Russian and Russian criminal groups have succeeded in creating an efficient organisation managed in a business-like manner throughout Finland. The professional pimps conducting their business in Finland are backed by the trans-border organised crime, which is managed from either Estonia or Russia. The sex trade led by pimps actually involves large-scale financial crime and money laundering. The hired Finnish pimps working for the Estonian and Russian professional sex business organise the smuggling of large sums of cash, gained by prostitution, to the main organisers in Estonia and Russia (Leskinen 2003).

The police authorities may exaggerate both the extent of organisation of the Eastern prostitution and the role of organised crime in it. The police forces mainly gather information from, and base its assessments on the few reported cases of large-scale procuring concerning mobile prostitution. This may lead to an under-estimation of the role of independent resident prostitutes and small-scale Finnish operators play in the trade. According to *Pro-tukipiste*, independent prostitutes and small-scale pimps still have an important role in the trade, and the general picture of Eastern prostitution is much less organised than the NBI assumes (Jaana Kauppinen). However, there is no reason to doubt that the general picture of Eastern prostitution in Finland has changed during the last few years. Estonian or Russian organised crime currently control part of the trade.

The procuring operations (also those run exclusively by Finns) are mainly led and run outside Finnish borders, i.e. Estonia or Russia. This serves as one of the main mechanism the organisers use to avoid the risks caused by the Finnish authorities.

Concerning information on the economic profits gained from the operations, see the case explained above. The profits have decreased since the late 1990s because of excessive supply but the trade is still economically very lucrative, and the risks are much smaller than the drug trade, for example. Besides financial crime and money laundering, organised procuring is also connected to trafficking in illegal weapons, serious extortion and violence as well as professional drug crimes (Leskinen 2003).

#### 14.4.3 The Prostitutes

The following paragraph provides information related to the main characteristics of the foreign prostitutes working in Finland. Annually, only a few dozen cases of coerced prostitution are reported to the authorities or Finnish NGOs during the last few years.

TABLE 27: THE PROSTITUTES IN THE HELSINKI SEX CLUBS IN 1999 BY AGE GROUP (HOLLMÉN &amp; JYRKINEN 1999, 41)

Age	%	N
15–20	10,3	18
21–25	27,6	48
26–30	34,5	60
31–35	16,1	28
36–50	11,5	20
Total	100,00	174

Most of the women working in foreign prostitution in Finland are in their twenties. In the procuring cases tried in the courts of appeal in Helsinki and Kouvola in 1996–2001 six of the eight Estonian prostitutes bearing witness were under 25. The Russian women were somewhat older: 20% were under 25 and 53% were 25–29 years old. The estimates of the experts who were consulted are similar: accordingly, more than 70% of the prostitutes are under 30 years old. Thus, the majority of the prostitutes are between 18 and 29 years old (Lehti & Aromaa 2002). The number of minors in the group is evidently extremely small. Prostitution of minors exists in Finland, but it is unorganised and mainly related to the financing of personal drug consumption of under-age drug addicts present in the country (Reet Nurmi).

TABLE 28: THE NATIONALITY OF PROSTITUTES IN FINLAND IN 1998–2001

NBI <sup>45</sup> Native country	%	N	Stakes <sup>46</sup> Nationality	%	N
Estonia	68	49	Estonian	1	2
Russia	24	17	Russian	87	155
Finland	7	5	Finnish	2	4
Other	1	1	Other	10	18
Total	100	72 <sup>47</sup>	Total	100	179

About 90% of the prostitutes in the procuring cases reported to the Finnish police between 1998–2001 were either Russians or Estonians.<sup>48</sup> According to a study carried out by Stakes, Russians and Estonians made up 88% of the sex club workers in Helsinki in 1999 (Hollmén & Jyrkinen 1999, 41). Thus, the general picture

<sup>45</sup> Prostituutio ja paritus Suomessa, table of appendix.

<sup>46</sup> Hollmén & Jyrkinen 1999, 41.

<sup>47</sup> Division according to cases; two cases in which there were both Russian and Estonian prostitutes have been included as four separate cases (two Estonians & two Russians).

<sup>48</sup> Prostituutio ja paritus Suomessa, table of appendix; the basis of calculation is the number of criminal cases.

obtained from both sources is identical; however, in looking at the details the findings differ. According to NBI, the majority (68%) of the prostitutes come from Estonia, according to Stakes they come from Russia (87%).

This discrepancy can be partly explained by the different classification criteria used. NBI has used a classification based on the country of residence; the criteria used by Stakes was based on the ethnic nationality. Russians from Estonia have been classified as Russians.<sup>49</sup> However, the majority of the Russians contacted by Stakes were from Russia. Therefore, the difference is also partly due to different source material. Different preconditions (especially visa regulations) for the Russian and Estonian prostitutes in Finland have resulted in an over-representation of Estonians amongst the prostitutes found in the procuring cases reported to the authorities and Russians amongst the workers of the sex-clubs. The large number of Russian sex-club workers is accounted for by the fact that their prostitution in Finland generally takes place in a more organised manner than their Estonian counterparts. Conversely, both of sources mentioned are likely to exaggerate the role played by foreigners in the Finnish prostitution market. The need for Finns and resident foreigners to resort to sex-clubs and pimps for work is essentially smaller than for non-resident foreigners; Furthermore, their activity is not revealed to the authorities or field researchers.

The combined proportion of Russian and Estonian prostitutes working in Finland is probably smaller than suggested by the results of the above studies. However, the proportions of the prostitutes coming from Estonia and Russia are closer to each other. It is evident that Russian and Estonian prostitution is currently responsible for a very significant proportion of Finnish prostitution (Lehti & Aromaa 2002).

Most of the prostitutes working in Finland come from the areas surrounding the borders of the country. The regional recruitment of Estonian prostitutes has not been extensively examined; however, since a large number of them are Estonian-Russians, they probably come mostly from Tallinn, other big cities and the north-eastern part of the country. In the procuring cases tried in the Helsinki Court of Appeal, the Estonian-Russians heard as witnesses came from Tallinn almost without exception. Overall, according to both the NGOs and the police authorities the proportion of Russians among prostitutes coming from Estonia to Finland is far greater than their proportion of the population of Estonia. The situation is the same in Estonia where authorities estimate that about 80% of all prostitutes in the country are non-Estonians by nationality (Trafficking in Women, 130).

Because the prostitutes are heard as witnesses only in the procuring cases, the court documents give only information about their sex, age, nationality, place of residence and mother tongue. However, according to the results of a study carried out by Stakes, the women usually have a high educational background. Of the sex-club workers in Helsinki in the late 1990s, 23% had a university degree and 16% were university students, only one-fifth had no kind of formal education. The majority had been involved in prostitution for a relatively short time (55% less than two years). Conversely, one-third had been in the trade for five years or longer (Hollmén & Jyrkinen 1999, 41).

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<sup>49</sup> Another purely technical factor that may have had some influence on the results, yet not accounted for in the fundamental discrepancy, is the fact that Korpisaari has used a classification based on criminal cases whereas Stakes has used one based on individual prostitutes.

The main explanatory factors for the large number of Russian and Estonian recruits are the poor social and economic conditions in these countries, and the difference between the wages and costs of living when compared to those in western European countries. Despite the decreasing profits, the monthly earnings of a visiting prostitute in Finland are still many times the amounts available to him/her in his/her native country (Lehti & Aromaa 2002; Leskinen 2003).

#### 14.5 CONCLUSIONS

The basic problem of the method used for researching trafficking in women in Finland is still the same as during phase I of the project: the lack of standard sources. The number of criminal cases connected to Eastern prostitution (investigated, prosecuted, tried in a court of law) is higher today than two years ago, but is still very small – especially if it is compared to the volume of the trade. Furthermore, the cases do not cover all the sectors of the phenomenon in an equal way. For the same reason, it is hard to estimate the possible shortcomings of the existing data collection systems used by the authorities.

The structure of international prostitution in Finland differs in many ways from that found in central and southern European countries and it is evident that the number of actual cases of intimidation and serious abuse is relatively small. The basic situation of Eastern prostitution does not favour the extreme forms of forced prostitution. Several different factors contribute to this: the position of the organisers of Eastern prostitution with respect to the prostitutes is not sufficiently strong and using intimidation and abuse to raise their profit does not make good business sense. On the contrary, maximum profit and minimum risk are achieved when the procuring relationship is based on a voluntary and smooth co-operation.

This does not mean, however, that prostitution coming from abroad to Finland is problem-free; on the contrary it is a phenomenon that brings with it substantial volume and social problems. Unfortunately, the basic research of the topic is still insignificant. The organisation of the trade as well as many other aspects related to the activity are as poorly known today as they were two years ago.

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## 15

FRANCE<sup>50</sup>

## 15.1 INTRODUCTION

Between 1995 and 1997, the phenomenon of French prostitution underwent a radical transformation with the arrival of young foreign women (and men) from Eastern Europe and the Balkans (Poland, Russia, Lithuania, Estonia, Moldavia, Rumania, Bulgaria, Yugoslavia, Kosovo, Albania, Kazakhstan). Beginning in 2000, women and men from Africa (Ghana, Nigeria, Sierra Leone, Cameroon, Liberia) were added to the list. All the major French cities have been concerned with this influx of young people. The appearance of these young women on urban streets has increased the visibility of prostitution and provoked French citizens to react. Tensions have developed between young foreign prostitutes and French sex workers due to the increase in competition and the decrease in prices charged. The French government has reacted to the citizens' dissatisfaction and to the massive arrival of foreign people by passing a new law: the Law for Interior Security (March 18<sup>th</sup>, 2003). This law aims to simultaneously stop the development of prostitution and protect the victims of trafficking of human beings. Notably, it reintroduces the "*racolage passif*" offence (passive soliciting), which pertains to all people, foreign and French alike.

## 15.2 CRIMINAL LAW RESPONSES

15.2.1 *The offence of trafficking in human beings*

The offence of trafficking in human beings was introduced into the French Penal Code, with Law n° 2003-239 on March 18<sup>th</sup>, 2003. This law defines trafficking of human beings as: the recruitment, transportation, or lodging of a person in order to make her available to a third person for the purpose of committing the offences of procuring, sexual aggression, exploitation by forcing this person to beg, providing work or living conditions that violate her dignity, or forcing this person to commit a crime or an offence, in exchange for remuneration (Article 225-4-1).

Trafficking in human beings is punishable by seven years imprisonment and a fine of € 150,000.

The offence is punishable by ten years imprisonment and a fine of € 1,500,000 when it is committed:

- with a minor;

<sup>50</sup> This section has been written by Dolores Pourette, EHESS – *Ecole des Hautes Etudes en Sciences Sociales*, Paris.

- with a person whose particular vulnerability, due to age, sickness, disability, mental or physical deficiency or state of pregnancy, is apparent or known to the offender;
- with several persons;
- with a person who was incited to engage in prostitution either outside the territory of the French Republic, or upon arrival into the territory of the French Republic;
- by the use of constraint, violence or fraudulent behaviour towards the person herself, her family or a close person;
- by a legitimate, natural or adoptive ascendant of the person or by a person holding authority over her or who misuses the authority conferred by his functions;
- by a person called upon to take part, by virtue of his functions, in the fight against trafficking or in keeping the public peace (Article 225-4-2);
- when the offence is committed by an organised gang, it is punishable by twenty years imprisonment and a fine of € 3,000,000 (Article 225-4-3).

According to the law passed on March 18<sup>th</sup>, 2003, the offence of trafficking in human beings for the purpose of sexual exploitation is included in the offence of trafficking in human beings.

The Law for Interior Security provides that the administration, in collaboration with social services, should propose a system of protection and assistance to each victim of trafficking for the purpose of sexual exploitation (Article 42).

The same law provides that a temporary residency permit can be given to a foreign victim who lodges a complaint against her trafficker(s). The victim can work with this temporary permit. If the trafficker is convicted, a resident card can be given to the victim (Article 76).

### *15.2.2 Other offences*

Other offences can be invoked to punish the behaviours related to the trafficking of human beings for the purpose of sexual exploitation:

- Procuring (Articles 225-5 to 225-12);
- Recourse to prostitution by minors (Articles 225-12-1 to 225-12-4);
- Working and living conditions violating the dignity of persons (Articles 225-13 to 225-16).

### *15.2.3 Other information*

Legislating the trafficking of human beings for the purpose of sexual exploitation was necessary. However, the French law is extremely difficult to enforce. Indeed, in most cases, persons who are victims of trafficking refuse to denounce their traffickers because they are afraid. Traffickers threaten the victims' families and children and risk death if traffickers are denounced. In the case of young African women, traffickers take samples from their body: hair, nail, skin etc. These corporal

substances can be manipulated with a harmful intention. In this way, the victim is tied to her traffickers and she knows that she would risk her life if she denounced them.

More often than not, the victims are in an unstable situation. They are afraid of being deported, whether they denounce their procurer or not.

### 15.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

There are few official data on the trafficking of human beings for the purpose of sexual exploitation. The OCRTEH (*Office central pour la répression de la traite des êtres humains* – Central Office for the Suppression of the Traffic in Persons), whose mandate is to fight against all forms of trafficking in human beings for the purpose of sexual exploitation, is the only organisation that provides official data. Even so, these data are partial and underestimate the size of the phenomenon because estimates are based on controls carried out in public spaces. The OCRTEH estimates that 15,000 persons prostitute themselves in France; around 7,000 of them work in Paris, and 3,000 “professionals” work in bars and massage salons. According to the OCRTEH, 75% of these people are foreign. According to associations working with prostitutes, this proportion is higher (90% in Paris). Around 30% of foreign prostitutes are men.

All the associations and social workers affirm that OCRTEH’s data underestimate the actual situation. Data also underestimate the number of minor girls and boys exploited by traffickers. According to UNICEF, in France, between 3,000 and 8,000 French and foreign children prostitute themselves. However, official data are less alarming: French police arrest very few minor persons in a year. In 2001, the Parisian BRP (*Brigade de répression du proxénétisme* – Brigade for the Repression of Procuring) counted 164 minor prostitutes. According to the associations, the number of minor prostitutes is higher. However, this number cannot be precisely determined because most of the persons arrested have no official documents and can lie about their age.

#### 15.3.1 Sources of data on offences

In France, there are few official data on the offences of procuring and trafficking of human beings for the purpose of sexual exploitation. The OCRTEH is the only organisation that provides official data on this phenomenon. Information that can be provided is: type of offence and the gender and nationality of the offender and the victims. Until now, the only available and useful information refers to the offence of procuring, which does not exactly coincide with the phenomenon of trafficking for sexual exploitation. Nevertheless, in France, the crime of trafficking in human beings was introduced in March 2003; it is likely that data on this offence will also be recorded by the OCRTEH.

### *15.3.2 Sources of data on offenders*

According to the OCRTEH, the number of persons incriminated for procuring was 405 in 1998, 407 in 1999, 472 in 2000, 466 in 2001, 643 in 2002, and around 700 in 2003. The proportion of men to women among the offenders has remained stable: 73% are men and 27% are women. In 2002, 58 % of the offenders were not of French nationality (48% in 2001 and 2000, 45% in 1999, 32% in 1998). Offenders originating from Eastern Europe and the Balkans composed 33%.

### *15.3.3 Sources of data on victims of trafficking and sexual exploitation*

In 2003, around 900 victims were identified by police procedures (875 in 2002, 737 in 2000), 98% of whom were women including 50 minors. Seventy-seven percent were not of French nationality. Between 2001 and 2003, the proportion of victims originating from Eastern Europe decreased from 70% of foreign victims in 2001, to 56% in 2003. Conversely, the proportion of African victims increased: they represented 14.11% of the foreign victims in 2000, 22% in 2001, 26% in 2002 and 35% in 2003. Forty-one percent of African victims come from Cameroon, 28% from Nigeria, and 16% from Sierra Leone. Throughout France, associations and social workers have noted the massive arrival of young women from Africa.

The associations working with prostitutes consider the OCRTEH's estimates to be unrealistic. For instance, an association working in the 18<sup>th</sup> *arrondissement* of Paris recorded the presence of approximately 100 prostitutes each night (90% of whom were foreign persons, of which 90% were African women). In 2003, in the 12<sup>th</sup> *arrondissement* of Paris, around 600 prostitutes were registered, 40% were African women and 29% were women from Eastern Europe. The associations also noted the presence of minor male and female prostitutes. The young boys were mostly Rumanian and Kurdish while the girls were African.

However, the associations noted a decrease in the number of observable prostitutes beginning in March 2003 (when the law was voted). This does not mean that the number of prostitutes has decreased, but simply that they have become less visible. Indeed, the law forbids all forms of soliciting ("active" and "passive") and punishes "active" and "passive" soliciting with six months imprisonment and a fine of € 3,750. As a result, all prostitutes, victims of trafficking or not, are considered delinquent. They can be controlled, arrested and even deported if they refuse to denounce their traffickers, as is often the case. Prostitutes became less visible to the police as well as to the associations. Working in distant, dark and hidden spaces, prostitutes became more vulnerable to victimisation. All the French associations noted an increase in the number of prostitutes who had been victimised (rapes, physical aggressions, murders).

The law has also contributed to the increasing use of new technologies (internet,<sup>51</sup> portable phones...) for prostitution and trafficking.

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<sup>51</sup> In August 2002, there were 108 websites that focused on Paris. In August 2003, there were 482 websites (Handman and Mossuz-Lavau, 2004).

Male prostitution has also increased, primarily in Paris, where 30% of the prostitutes are male or transvestites.

With the new Law for Interior Security, persons arrested by the police for soliciting are considered offenders not victims, unless they declare that they are victims of a net or a trafficker. Therefore data concerning victims of procuring and trafficking fail to take them into account.

## **15.4 THE TRAFFICKING PROCESS TO FRANCE**

### *15.4.1 The Phenomenon*

In France, the phenomenon of trafficking human beings for the purpose of sexual exploitation has grown since the end of the nineties. Several regions of origin must be distinguished:

- Eastern Europe and the Balkans (Poland, Russia, Lithuania, Estonia, Moldavia, Rumania, Bulgaria Yugoslavia, Kosovo, Albania, Kazakhstan);
- Africa (Ghana, Nigeria, Sierra Leone, Cameroon, Liberia);
- Asia (China and South-East Asia);
- North Africa (Morocco, Algeria);
- Latin America (Ecuador, Peru, Brazil).

### *Recruitment*

Victims from Eastern Europe and the Balkans are generally young women, sometimes they are minors and a smaller proportion is composed of young minor boys. Young women are often influenced by someone they trust: i.e. a boyfriend, friend or even a brother. This man suggests that they go to France or another Western country to work and to have a better life. Occasionally, the trafficker and the victim have children together. The young woman trusts her “friend” and follows him. If she has children, the trafficker ensures that they stay in her country with her family. He claims to have friends in France who will help them find jobs and accommodations. In France, the trafficker places the woman in a hotel with other girls. They explain to her why she is there and what she must do. If she refuses, the trafficker or one of his “friends” will beat her, rape her and threaten to lay the blame on her family or her children. She is obliged to prostitute herself. Generally, the trafficker and his “friends” control several other girls. The extent of their organization and the numbers of traffickers and victims involved vary in size.

Sometimes, during transit, victims are forced to engage in prostitution in other European cities before arriving in France.

In other cases, victims reply to small ads in newspapers or are recruited by job agencies. They promise a well-paid job in France (as a waitress or hostess, for example). Once in France or during transit, they are forced to work as prostitutes.

In most cases, women do not know that they will be forced to prostitute themselves.

The victims are selected according to their age (they are usually between 15 and 25 years old, sometimes younger, rarely older), and their economic situation (poverty, no job). According to the centre "Moulin Joly (Croix rouge), African women are becoming increasingly younger. In 2002, the average age was 24.5 years old compared to 32.6 years old in 2000.

In the case of minor boys between 11 and 18 years old, who are largely from Romania, frontier runners ("*passseurs*") or people they know entice them to leave their country, with their parents' agreement. Some parents know what their son is going to do others are unaware. Nevertheless, all count on him to send them money.

African victims are typically minor girls or adult women. African nets are different from Eastern European nets because they extract money as a debt for passage to Europe. Young African women (Nigerian, Cameroonian, Ghanaian, and those from Sierra Leone) are usually recruited by someone they know, a woman or a man who promises them a better life in Europe. These traffickers take advantage of the various wars and constant poverty. Occasionally, parents sell one of their daughters. The trafficker provides counterfeit documents, a plane ticket, and organises the travel, in exchange for payment (which can be as much as \$45,000 US). Once in France, young women are forced to engage in prostitution until they have repaid their debt. They give the money they earn to a "*mama*", an older woman who is usually a former prostitute, who supervises them and collects money.

### *Transportation*

Persons from Eastern Europe cross several countries before arriving at their final destination in Western Europe (France, Germany, Belgium, etc). For an example, a person coming from Moldavia crosses Romania, Hungary, Yugoslavia, Kosovo, Croatia, Macedonia and Albania, before crossing the Adriatic Sea. Once in Italy, she travels by car with her traffickers towards Paris, Berlin, Amsterdam or another big city in Western Europe. Young women "working" in Paris also worked in Italy and Greece.

Traffickers move their victims with all types of transportation: planes, cars, boats, trains, buses, etc.

The transportation process can last from a few days to several weeks. Victims can be forced to engage in prostitution while crossing the different countries. They can also be beaten or raped during transit.

### *Entrance*

Roissy airport constitutes one of the entrance points for girls coming from Africa. Persons arriving from Eastern Europe usually enter France via the Italian borders.

More often than not, victims enter the country illegally. Their papers are confiscated or destroyed by traffickers. African victims sometimes have counterfeit documents. To ask for political asylum and to obtain refugee status, African women claim to be from Sierra Leone, regardless of their native country. In the same way, victims from Eastern Europe all claim to be from Kosovo.

Occasionally victims enter the country with a 3 months tourist visa (Chinese women especially); however, they illegally stay in France longer.

### *Exploitation*

Prostitution in the street is the most widespread form of exploitation. There are also cases of exploitation using pornography, notably with minors. For African and European victims, exploitation mainly occurs in the streets. Asian women (especially Thai) are usually exploited in massage salons, relaxation salons, apartments and bars for Asian clients.

Physical violence, rape, threats towards families and children, as well as confiscation of money and papers all constitute methods used to force victims into submission and continue their exploitation.

This activity can be found in all the major French cities: Paris and its adjacent towns, Lyon, Marseille, Toulon, Nice, Cannes, Montpellier, Nîmes, Bordeaux, Nantes, Rennes, Rouen, Toulouse, Strasbourg, Nancy, Troyes, etc.

Victims are regularly moved from town to town, in order to escape police. This is commonly referred to as the prostitution's "turn over".

The process of exploitation lasts at least one year. Some victims have to repay a debt. For an example, an African woman whose debt reaches \$45,000 US should repay \$1,000 a week. Given that payment schedule, she will repay the debt in approximately one year. But some European women remain under their trafficker's control for 2, 3, or even 5 years.

The money earned from each exploited person varies. In Paris, young women can earn from € 300 to € 500 a night: approximately € 2,000 to € 3,500 a week or € 100,000 to € 180,000 per year. They keep less than 10 percent of what they earn. An exploited person can bring in around € 150,000 a year. Nevertheless, some prostitutes earn more or less than others, according to the place, the practices, the clients.

### *The Perpetrators*

Single individuals rarely conduct criminal activities linked to trafficking in human beings for the purpose of sexual exploitation. More often, they are carried out by groups. One group can include 2 or 3 traffickers (which controls 5, 6 or 7 people), but it can also be larger and include 20 persons. Traffickers are usually men but women have also been known to be involved.



Methods used by traffickers to reduce the risk of being detected consist of transferring the victims from town to town and from country to country. They must not stay in any one place too long in order to avoid being caught. Victims stay a few weeks or a few months in the same place and they disappear. To reduce the risk of being detected, traffickers avoid approaching their victims. Sometimes, they stay in another country and delegate surveillance and the collection of money to intermediaries.

In 2002, the OCRTEH estimated that profits from trafficking were between € 2,3 and € 3 billion a year, which includes the 70% for the traffickers. In Nice, a young woman working for one year would give between € 76,000 and € 153,000 to her procurer. On average, a trafficker exploits five women. Hence, he could earn around € 600,000 in a year (estimate by Interpol). These estimates show that trafficking generates a large amount of money.

According to the OCRTEH, many nets have other criminal activities: clandestine immigration, trafficking in arms, drugs, stolen cars, break-ins, and money laundering.

### *The Victims*

The characteristics of the victims are extremely varied. Young women are generally recruited from rural areas in Africa as well as in Europe. Some, however, come from the cities. The poverty and lack of work are frequent characteristics. Educational levels are also varied: some European female victims of traffickers never went to school while others have studied and earned their diplomas.

According to OCRTEH's data, women from Eastern Europe seem to continue to constitute the majority in France. But women from Africa, particularly from Nigeria and Cameroon, are increasingly numerous.

The main factors pushing victims into the traffickers' net are poverty and precarious situations. The same factors leads former victims to continue to prostitute themselves because it is the only activity which offers them as much money. War and armed conflicts (in Africa) are also factors that can push victims into prostitution and the traffickers' net.

Asian victims are usually women from South-East Asian countries (Philippines, Indonesia, Thailand, Cambodia, and Laos) who work in massage salons or apartments. This form of prostitution is hidden; hence, there is very little information available.

Little is known about the prostitution of Chinese women. In Paris, it involves women from North-West China who are 40 years old or more. They are often divorced or separated from their husbands. They may have lost their job and cannot provide for themselves and their children any longer. They usually come to France to find a job and to earn money. In order to gain passage to Europe, they must resort to the Chinese mafia who provide them with a tourist or business visa and sometimes counterfeit papers. They may spend between € 18,000 and € 24,000; a sum usually borrowed from their family and friends whom they must repay. In France, they work as nurses for rich Chinese families or as dressmakers in clandestine workshops,

where they are exploited. Some of them choose prostitution to earn more money and to repay the debt. We do not know if they are controlled by traffickers.

European victims do not have to repay any debt. However, they must give almost all the money they earn to traffickers. The person who collects money is either one of the prostitutes in the group (generally a woman older than others, or the “girlfriend” of the trafficker), or a local intermediary (when traffickers do not collect themselves).

The money does not stay in France. It is sent to the countries of origin by “Western Union”: a private US organisation used to transfer funds and is accessible in post offices.

In all cases, poverty, isolation (some young people have lost their parents in armed conflicts), or the attraction of better living conditions push victims into the traffickers’ net.

#### **15.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND AN ESTIMATE OF HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION**

In France, official data about human trafficking for the purpose of sexual exploitation underestimate the phenomenon. The associations and social workers working with female and male prostitutes have a better understanding of the phenomenon. To obtain a better estimate of human trafficking for the purpose of sexual exploitation, one should:

- take the data of each French association into account and inventory them; ask the associations to provide, in their annual activity report, precise quantitative and qualitative data concerning the victims of trafficking, the phenomenon of trafficking, and the traffickers (as much as possible);
- the Ministry of Interior should catalogue each judicial action concerning trafficking of human beings for the purpose of sexual exploitation, or procuring. Data about victims, offenders (age, sex, nationality...), offences, the outcome of the trial should all be registered.

Data collected by the French police should be more precise and detailed.

The law should be reformulated in order to provide effective protection and a definitive residency permit to victims of trafficking, regardless of whether they denounce their traffickers or not. In this way, they would be less afraid to confide in the social workers and in police forces.

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## 16

GERMANY<sup>52</sup>

## 16.1 INTRODUCTION

Within Europe, Germany is considered the most popular destination country for traffickers. The downfall of the 'Iron Curtain' and the increasing economic difficulties of Eastern European states paved the way for the trafficking of persons from Eastern to Western European states particularly for the purpose of sexual exploitation. In this context, the problems faced by Germany are of special significance. Geographically, Germany is a key interface between East and West as it has common borders with two East European states: Poland and the Czech Republic. Consequently, Germany is not only a popular destination country for traffickers but serves as a transit area for persons who are smuggled to other Western European countries. Criminal investigations into trafficking in persons dramatically increased in the early 1990s, causing changes in the relevant penal provisions as well as adaptations of new policies. In 1992, a new penal provision entitled "Trafficking in Human Beings" was introduced, supplementing the existing penal provision on aggravated forms of trafficking in human beings.

In 1997, the Federal Working Group on Trafficking in Women (*Arbeitsgruppe Frauenhandel*), composed of police officers, criminal justice representatives, members of counselling centres as well as representatives from relevant ministries, was established by the Federal Ministry of Family, Elderly People, Women and Youth Affairs. The working group seeks to develop new strategies as well as harmonise existing approaches to combating trafficking in women. The federal working group was soon followed by the creation of local working groups on trafficking in human beings in various regions. In 1994, the Federal Bureau of Investigations (BKA) began releasing an annual report on criminal investigations in human trafficking. This report contains condensed information on the offence as well as perpetrator and victim characteristics. Secondly, the BKA introduced special police training seminars designed to sensitize police officers to the challenges of investigating cases of trafficking, e.g. organised crime structures, role of victim-witnesses, witness protection and cooperation with counselling centres. Finally, the BKA intensified transnational cooperation in trafficking cases combined with training seminars for police officers in the countries of origin.

Thus far, public attention as well as research mainly focuses on adult trafficking leaving out the phenomenon of child trafficking. This is partly because no specific data on child trafficking is systematically collected and evaluated. In turn, the data collection on adult trafficking is limited to sexual exploitation leaving the registration of exploitive working conditions as a task for the future. The main problem in the present data collection procedures on trafficking in persons, however, is the unknown number of discontinued trafficking proceedings as well as

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the prosecution and conviction of trafficking pursuant not to existing trafficking provisions, but to related provisions that are easier to prove (e.g. pimping, exploitation of prostitution, sexual abuse, infiltration of foreigners). Consequently, the Federal Ministry of Interior together with the Federal Ministry of Family, Elderly People, Women and Youth Affairs commissioned the Max-Planck-Institute for Foreign and International Criminal Law in Freiburg to complete a research project on trafficking in collaboration with the Wiesbaden German Institute of Criminology. The research project, "Criminal Prosecution of Trafficking in Human Beings", is designed to find possible causes for changes in the annual number of trafficking investigations and, in particular, the extent and reasons as to why offences other than trafficking are given preference in the course of criminal prosecutions. The project also examines the reasons for the considerable regional differences found in numbers of trafficking investigations. Additionally, the research project assesses various aspects that contribute to a successful criminal investigation of human trafficking, e.g. resources and professionalism of criminal justice authorities, problems of evidence, role of victim-witnesses and estimates of the dark figure. The project is based on a multi-level approach including the analysis of files as well as written and oral interviews. Interviews will be conducted not only with police officers, but also with public prosecutors, judges, lawyers, counselling centres as well as people involved in prostitution (e.g. brothel owners). The final report will be submitted August 2004.

## 16.2 CRIMINAL LAW OFFENCES

### 16.2.1 *The offence of trafficking in human beings*

The German Penal Code (StGB) contains only one offence concerning "trafficking in human beings" which is not restricted to sexual exploitation: section 236 StGB (Trafficking in Children/*Kinderhandel*). The provision, which was introduced in 1998, fulfils the requirements of the UN Convention on the Rights of the Child (1989), ratified by Germany in 1992. Section 236 StGB primarily addresses trafficking in children in the context of illegal adoption through agencies and was proposed against the background of increasing numbers of parents offering their children for financial gain. The provision is classified as an offence against personal freedom (*Straftaten gegen die persönliche Freiheit*).

The provision states that a person responsible for raising a child under the age of 14 years is prohibited from permanently leaving that child with another person in return for payment in gross neglect of the duty of upbringing, and from handing over the child with the intention of personally enriching themselves or a third party. Simultaneously, it is a punishable offence to take on and pay for a child under such circumstances. The punishment is a maximum 5 years imprisonment or a fine (section 236(1) StGB). In the context of adoption, another age limit applies, namely 18 years. Any unauthorised individual is prohibited from procuring minors for adoption, or from performing procurement activities with the aim that a third person permanently adopts a minor. The prerequisite is that the deal is made in return for money or with the intent of personal enrichment or enrichment of a third party. Penalties for inland procurement or unauthorised adoption are a maximum 3 years imprisonment or a fine. In the event that the minor is brought into Germany

from abroad or taken from Germany to a foreign country, the penalties are higher, namely, a maximum of 5 years imprisonment or a fine (section 236(3) StGB). Penalties are more severe if the perpetrator acts for profit, professionally or as a member of a gang, which has developed for the continued commission of trafficking in children; or places the child or the procured person in danger of a substantial impairment to his/her physical or emotional development. In the event that the underlying intent is of a sexual nature section 180b, StGB (Trafficking in Human Beings) and section 181 StGB (Serious Trafficking in Human Beings) apply.

### *16.2.2 The offence of trafficking in human beings for the purpose of sexual exploitation*

As a signatory to the UN Conventions of 1904, 1910 (Convention for the Suppression of the White Slave Traffic) and 1921, Germany has penal provisions against trafficking in human beings for the purpose of prostitution or illicit sexual practices. As Germany has not ratified the Convention of 1949, its laws permit the operation of brothels. Prostitution is prohibited only if it takes place in certain locations or at certain times. The provisions on trafficking distinguish between "Trafficking in Human Beings" pursuant to section 180b StGB (*Menschenhandel*) and "Serious Trafficking in Human Beings" pursuant to section 181 StGB (*Schwerer Menschenhandel*). The current versions of sections 180b, 181 StGB date back to 1992. Despite their broad titles, sections 180b, 181 StGB only address trafficking for the purpose of sexual exploitation. Both are classified as offences against sexual self-determination (*Straftaten gegen die sexuelle Selbstbestimmung*). German courts may try offenders for offences pursuant to sections 180b, 181 StGB irrespective of the nationality of the offender, where the offence was committed and if the offence is punishable under foreign law or not (section 6 No 4 StGB, *Weltrechtsprinzip*).

In Germany, trafficking in human beings for the purpose of sexual exploitation is not legally defined. Sentence 1 of section 180b(1) StGB prohibits anyone from using their knowledge of a person's condition of constraint for the purpose of persuading that person to commence or continue working in prostitution. Penalties are a maximum of 5 years imprisonment or a fine. The term "condition of constraint" (*Zwangslage*) refers to the existence of serious economic or personal distress. The influence exercised by the accused may comprise promises, persuasion, applying pressure, actions of deceit, intimidation, asserting authority, and arousing the curiosity of the victim. In regards to people who are already working as prostitutes, exerting influence is only punishable if the aim was to induce the prostitute to continue prostitution under harder working conditions or prevent that person from giving up prostitution. The perpetrator must act with the intent of making a pecuniary gain.

In accordance with section 180b(1) Sentence 2, the exertion of influence on another person with the intention of persuading that person to perform illicit sexual activities with another person or to tolerate sexual acts by another person is punishable if the perpetrator acted for the purpose of his/her own financial gain. The perpetrator must be aware that the respective person, who lives in a foreign country or is to be brought to a foreign country, is helpless because of foreigner-specific difficulties. The penalty is 5 years imprisonment or a fine. Penalties are

higher if the intent is to persuade the victim to commence or continue prostitution, or if the victim is induced to commence or continue prostitution (section 180b(2) No 1 StGB). Penalties range from 6 months to 10 years imprisonment. The difference in severity of the penalties for trafficking in foreigners for the purposes of illicit sexual practices on the one hand, and prostitution on the other, has to do with the legislator's endeavour to distinguish between the sexual activities on the international "marriage market" and prostitution. Section 180b(2) No 2 StGB equally provides for an increased penalty of six months to ten years if influence is exerted on a person under the age of 21 years, in order to persuade that person to engage in, or continue to engage in prostitution, or to induce such a person to prostitute him/herself, or to continue prostitution. Neither the financial motivation of the accused, nor the foreign status of the victim and any helplessness connected therewith are required.

Severe trafficking in human beings in accordance with section 181 StGB forbids the use of force, ruse or vicious threat to coerce another person to engage in, or to continue to engage in prostitution (section 181(1) No 1 StGB). Neither the foreign status of the victim nor the financial interests of the perpetrator are definitional elements of the offence. It is also forbidden to procure a person by deceit, or to abduct a person against his or her will by means of force, vicious threat or ruse, in order to induce the victim to commit illicit sexual practices with full knowledge of the victim's helplessness connected to his/her being in a foreign country (section 181(1) No 2 StGB). Commercial procurement is a punishable offence, even in the absence of use of force, ruse or vicious threat. This only applies, however, if a person is persuaded to engage in or continue prostitution, and the perpetrator has knowledge of the helplessness connected to the person's stay in a foreign country (section 181(1) No 3 StGB). Section 181(1) StGB outlines a punishment of 1–10 years imprisonment.

In regards to the question of the victim's consent, the Federal Supreme Court has chosen the following approach: the foreign victim's consent to, or awareness of, the sexual character of the work, for which she/he has been recruited, does not automatically imply consent to the concrete working conditions abroad. Valid consent only exists if the working conditions were fully disclosed to the victim.

Sections 73 (Forfeiture, *Verfall*) and 74 (Confiscation, *Einziehung*) StGB apply to cases of trafficking and aggravated forms of trafficking. Furthermore, section 181c StGB provides that in cases under section 181 StGB (Serious Trafficking in Human Beings) section 73d StGB (Extended Forfeiture, *erweiterter Verfall*) shall be applicable if the perpetrator acts as a member of a gang, which has combined for the continued commission of such acts. Section 73d shall also be applicable if the perpetrator acted professionally. Confiscated assets are generally transferred to the treasury and cannot be transferred to victims as compensation payments. The annual report on the status of human trafficking in Germany by the German Federal Bureau of Investigation (BKA) contains information on the amount of confiscated assets in trafficking cases.

### 16.2.3 Other offences

The other provision to which courts can refer in punishing "trafficking in human beings for the purpose of sexual exploitation" is section 234 StGB, which covers

kidnapping, slavery, and bondage (*Menschenraub*). Regarding the slave trade, referred to as “kidnapping”, the emphasis is on the use of force, grievous threat or ruse to coerce a person into slavery, bondage, or a military or similar establishment. Buying or selling a person, per se, is not mentioned as an element of the offence in German criminal law. Kidnapping falls under the section of offences against personal freedom (*Straftaten gegen die persönliche Freiheit*). The penalty is imprisonment for no less than 1 year. The use of force, vicious threat or ruse to remove a minor under 18 years of age from the person who has the care and custody of the child is regarded as deprivation of liberty (*Freiheitsberaubung*) and punishable pursuant to section 235 StGB (*Entziehung Minderjähriger*). Abduction (*Verschleppung*) is prosecuted when, by the use of ruse, threat or force, a person is brought into a country where that person is politically persecuted or his/her human rights are violated in any other way (section 234a StGB).

Additional indicators exist that can be used to measure the phenomenon of trafficking in human beings for the purpose of sexual exploitation in Germany. It is presumed that the criminal prosecution of trafficking in human beings often gives preference to provisions that are easier to prove, namely sections 180a (Exploitation of Prostitutes/*Ausbeutung von Prostituierten*), 181a StGB (Pimping/*Zuhälterei*) as well as sections 92a, 92b Foreign Nationals Law (Infiltration of Foreigners/*Einschleusung von Ausländern*). Finally, the German Penal Code contains a provision criminalising the formation of criminal organisations pursuant to section 129 StGB (*Bildung krimineller Vereinigungen*). Section 180a StGB criminalises the professional management of brothels wherein prostitutes are held in personal or financial dependency (maximum penalty three years imprisonment or a fine). Section 181a StGB equally criminalises the exploitation of prostitutes. Additionally, the exploitive management of prostitutes as well as the professional promotion of prostitution by the procurement of people for the purposes of sexual trafficking are criminalised (maximum penalty six months to five years imprisonment). Under the Foreign Nationals Law (AuslG), instigating or assisting another person to enter Germany without a visa/residence permit, or stay in Germany without the mandatory valid documents is also prohibited. The perpetrator must have received or expected a financial advantage, or must be repeatedly active, or active for the benefit of more than five foreigners. The penalty is a maximum of 5 years imprisonment or a fine (section 92a(1) AuslG). Penalties range from 6 months to 10 years imprisonment when the perpetrator acts commercially or as a member of a gang associated for the purpose of continuously committing such crimes (section 92a(2) AuslG). The penalty is 1–10 years imprisonment if the perpetrator acts commercially as a member of a gang associated for the purpose of continuously committing such crimes (section 92b(1) AuslG).

#### 16.2.4 Other information

##### a) Victim–witness protection programmes

In June 2000, Germany released an Ordinance to the Enforcement of the Foreign Nationals Law (*AuslG–VwV*). Regulations with regard to trafficking in persons, especially women and children, were adapted in order to make criminal investigations in the area of trafficking more effective, and to make the victims



more likely to testify in court. The various residence permits for victims of trafficking, regulated by this ordinance, mainly depend on the status of the criminal proceedings and the involvement of the victim.

Generally, three different phases can be distinguished. The initial phase starts with the first detection of the illegal residence, e.g. the point at which the woman first comes into contact with the police. If there are any signs or indications to suggest that the person who is under the obligation to depart – as a result of his/her working illicitly as a prostitute, thereby violating section 3 AuslG – could be a victim of trafficking, the new regulation provides a four-week minimum term of voluntary repatriation. This period is granted to enable the organisation of personal affairs. The person is to be informed that help and counselling are available at specialized counselling centres. This period applies regardless of the person's willingness to testify as a witness; however, it should be used to consider whether the person is willing to testify in court. A second phase will be enacted if the person decides to testify and be available as a witness for the investigation and criminal proceedings against the trafficker. According to section 55(3) AuslG deportation of a foreigner can be suspended if there is considerable public interest for the person to remain in Germany. A considerable public interest could be present if the person is needed as a witness in criminal proceedings. If a victim is no longer needed as a witness, the obligation to repatriate is reactivated. The possibility of imminent danger, together with other conditions, can result in the continuation of the suspension, which may eventually lead to a residence permit under exceptional circumstances. This provides a third possibility for a residence authorization. The authorization requires considerable actual danger for life, person, or freedom.

In practice, imminent danger relating to trafficking is hard to prove. The existing difficulties and uncertainties in establishing a situation of imminent danger has led to a new measure within the AuslG-VwV. According to No 53.6.1. AuslG-VwV one must consider the endangerment of witnesses with regard to his/her participation in German criminal proceedings against organised crime figures (e.g. trafficking in persons). In summary, victim-witnesses are only granted statutory temporary suspensions of deportation that are directly linked to the criminal proceedings. As such, their status is reduced to that of a summoned witness.

A victim of trafficking willing to serve as a witness may be placed in a police witness protection program. Several preconditions have to be met. First, without the person's testimony successful investigation would be severely hampered. Secondly, the person has to face a serious physical or other impairment due to his/her willingness to testify. Finally, the person has to be suited for and agree to participate in the victim protection program. The classic witness protection program was originally geared towards perpetrators of organised crime serving as principle witnesses. Victims of trafficking often do not fulfil the program requirements for various reasons, e.g. they are not privy to the details concerning the structure of the organisation. Consequently, only a small number of trafficking victims are placed in the police witness protection program each year.

A victim of human trafficking, not eligible for the classic police witness protection program, may nevertheless be eligible for individual witness protection measures. It is up to the states to adopt a national model program regulating the cooperation between specialised counselling centres and police agencies. The requirements of the model program of cooperation that apply to victims of trafficking are geared towards the classic police witness protection program. However, the model

cooperation requires less of the victim in relation to information on the perpetrators. The model program divides the protection measures (e.g. accommodation in shelter apartments, personal security during interrogations) between the police authorities and the specialised counselling centres.

#### b) Special investigative units

In Germany, the public prosecutor has original jurisdiction in leading investigations. Specialised organised crime units, sexual offence units and general units may be in charge of trafficking cases. Since each public prosecutor's office has its own individual structure, the competences vary accordingly. The head of the public prosecutor's office decides how much of the investigation of trafficking cases is put in the hands of the specialised units. This in turn depends on the importance attributed to the trafficking issue.

The same applies to the police. Each State Bureau of Investigation (supreme police authority of the "*Länder*" (LKA)) and each regional police district may have its own structure. Accordingly special organised crime units, serious crime units, "crimes within the red light district" units, sexual offence units, white-collar crime units or general units may be in charge of trafficking cases. Since the resources of organised crime units are easily stretched, other units deal with the majority of trafficking cases. Within the LKA, organised crime units are generally in charge of trafficking cases. Their jurisdiction, however, is restricted to trafficking cases within the limits of several regional police districts, cases that extend beyond the capabilities of a regional police district (e.g. transnational investigation) or cases of national importance. The German Federal Bureau of Investigation (BKA) does not have original jurisdiction in combating trafficking. Instead, it functions as a central agency, responsible for collecting and evaluating criminal police information. Additionally, the BKA may coordinate the trafficking proceedings of individual state offices or initiate new preliminary trafficking investigations based on its findings. The BKA also serves as national headquarters for Interpol and Europol, and is thus responsible for international criminal police correspondence and cooperation with the countries of origin. Liaison officers, placed in almost all relevant countries of origin, make an essential contribution.

#### c) Investigative Means

The legal foundation for proactive law enforcement policies as preventive measures is found in the state police codes. All state police codes contain a so-called blanket clause, which allows preventive measures in order to avert impending threats to public order and safety, particularly the prevention of crimes. Prostitution is not prohibited in Germany. However, prostitution is generally associated with the commission of crimes, e.g. trafficking in illicit narcotics or trafficking in human beings for the purpose of prostitution. Furthermore, preventive measures are justified against persons suspected of illicit prostitution, violating the Foreign Nationals Law (AuslG). The AuslG views prostitution as a profession, therefore it is necessary to obtain a working permit. As a rule, employment authorities do not grant working permits for prostitution to non EU-members. Migrants, who have entered as tourists, artists, au-pairs, or those without any legal status and who work as prostitutes violate the AuslG. Consequently, regular inspections of brothels

or model's apartments are part of proactive law enforcement policies. This becomes even more important considering the fact that trafficking in human beings is an offence that is generally not revealed by a victim's report but by proactive police investigations. Inspections may also initiate new preliminary trafficking investigations. The approach to (illegal) prostitution and, as a consequence, the methods of control vary considerably between states and police districts. Whereas some police officers believe in the deterrent effect of constant raids, others prefer regular inspections. During inspections, police officers may distribute their cards in order to enable possible trafficking victims to get in contact with the police. The police also make use of informants. To prevent "the market" from being immediately replenished with new trafficking victims after a raid two responses are possible. Either the police continue to do raids (repressive approach) or the police refer to inspections and informative talks with prostitutes and owners of brothels in order to gain knowledge on the prostitution scene. In the latter approach, raids are only used as a last resort (preventive approach).

After official proceedings have been instituted criminal law enforcement agencies have various investigative means at their disposal as outlined in the German Code of Criminal Procedure (StPO). For the successful investigation of trafficking cases, undercover investigation methods are of considerable importance. The possibility of prolonged observation, pursuant to section 163f stop, is limited to crimes of "considerable importance", a term that is not legally defined. In principle, "simple" trafficking as well as serious trafficking in human beings (sections 180b, 181 StGB) can be considered to constitute crimes of considerable importance. Additionally, prolonged observation requires that the success of the investigation or the location of the suspect be otherwise seriously hampered. In the context of trafficking, measures of electronic surveillance may also be used. The German law enforcement agencies can make use of telecommunication monitoring (TKU) as an undercover investigative measure pursuant to section 100a StPO. However, the application of section 100a StPO is limited to certain cases of serious trafficking in human beings (section 181(1) No 2, 3 StGB). Photographs and videos may be taken without the knowledge of the person concerned if the success of the investigation is otherwise seriously threatened (section 100c(1) No 1a StPO). Section 100c(2)(3)a StPO justifies eavesdropping measures. However, the eavesdropping measures are again restricted to certain cases of serious trafficking in human beings (section 181(1) No 2, 3 StGB). The use of undercover agents is possible only in the investigations of cases in which the perpetrator acts professionally, habitually, as a member of a gang, or is otherwise organised (section 110a(1) No 3, 4 StPO). Certain clauses apply only to indictable offences and, therefore, in trafficking cases only to cases of serious trafficking in human beings. Here, undercover agents may also be used if there is an imminent danger of the crime to be repeated and if successful investigation is otherwise impossible or seriously hampered. The use of undercover agents in the investigation of indictable offences is also possible if the crime is of considerable importance and if other measures are futile.

#### d) Upcoming Criminal Law Reforms

On December 12, 2000, Germany signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), which supplements the UN Convention against Transnational Organized Crime. Secondly, Germany is bound by the Council framework decision on trafficking in human

beings of 19 July 2002. The deadline for implementation of the framework decision in the Member States is 1 August 2004. The UN Protocol (Article 3a) as well as the framework decision (Article 1) obliges the Member States to criminalise trafficking not only in the context of sexual exploitation but to exploitive work in general (e.g. slavery, slavery-like practices). Accordingly, a bill submitted to the German Parliament on May 4, 2004 proposes to consolidate, harmonize, and broaden the existing scattered and inadequate German penal provisions.

The bill proposes four provisions entitled “Trafficking in Human Beings for the Purpose of Sexual Exploitation”, “Serious Trafficking in Human Beings for the Purpose of Sexual Exploitation”, “Trafficking in Human Beings for the Purpose of Exploitation of Labour”, and “Serious Trafficking in Human Beings for the Purpose of Exploitation of Labour”. The existing provisions 180b, 181 StGB are to be abolished. Instead of protecting the right to sexual self-determination, the new provisions are to be classified as offences against personal freedom. They are to be put alongside the existing provisions on kidnapping (section 234 StGB), deprivation of liberty (section 235 StGB), and trafficking in children (section 236 StGB). The difference in severity of the penalties for trafficking with the purpose of illicit sexual practices and for prostitution are to be abolished. The bill further suggests classifying acting as a member of a gang, which has combined for the continued commission of trafficking as an aggravating circumstance. The same is to apply if the act places the trafficked person in danger of a substantial impairment of his/her physical integrity or death. The age limit for section 180b(2) No 2 StGB is to be reduced to persons below the age of 18. The proposed sections introduce debt bondage or servitude as a form of labour exploitation. The bill also refers to the facultative Protocol of 25 May 2000 supplementing the UN-Convention on the Rights of the Child (1989) which was signed by Germany on 6 September 2000. Consequently, trafficking in persons under 14 years of age is classified as an aggravating circumstance.

### 16.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

In Germany, four official electronic databases – produced annually – contain standardised information on trafficking in human beings for the purpose of sexual exploitation. These include the Federal Police Crime Statistics (*Polizeiliche Kriminalstatistik*), the Federal Situation Report on Trafficking in Human Beings (*Lagebild Menschenhandel*), produced by the German Federal Bureau of Investigation (BKA), the Statistics on Criminal Proceedings (*Strafverfolgungsstatistik*) and the Central Criminal Registry (*Bundeszentralregister*).

#### 16.3.1 Sources of data on offences

The Police Crime Statistics as well as the Situation Report on Trafficking in Human Beings collect investigative data. The Police Crime Statistics record unlawful (criminal) acts dealt with by the police. The data recorded by the Police Crime Statistics is broken down by sections 180b StGB and 181 StGB. The data collected on section 181 StGB (Serious Trafficking in Human Beings) is limited to subsection 1 No 2, 3 StGB. The data on subsection 1 No 1 (trafficking committed using force,

threat, or trickery) is registered as pimping instead. The Police Crime Statistics does not explain this omission of data. The annual police crime statistics contain the total number of trafficking cases including attempts subject to punishment (sections 180b(2)(3), 181 (1)(2) StGB). Information on suspects, victims, and victim–suspect–relationship is provided as well. This, however, is an “outgoing statistic”, i.e. the criminal offences that are discovered are not recorded until the police investigations have been concluded and the respective files can be handed over to the public prosecutor’s office or the court.

Unlike the Police Crime Statistics, the Situation Report on Trafficking in Human Beings is based on “intake statistics”. The annual reports are calculated using the number of registered preliminary investigations conducted by the police departments in each state for crimes pursuant to sections 180b, 181 StGB. The reports provide statistics on victims, suspects, as well as the characteristics of the offence. Information on the latter includes data related to the methods of victim recruitment (use of deception or violence, professional recruitment, consent to participate in prostitution), methods of transport, victims’ residence status, prostitution–related violence, the location of victims as well as threats against victims to influence their willingness to testify. Finally, the reports contain information on the estimated illegal proceeds and the amount of confiscated proceeds. In contrast to the Police Crime Statistics, the Situation Reports on Trafficking only count the preliminary investigations in which foreign citizens are victimized.

The Statistics on Criminal Proceedings as well as the Central Criminal Registry contain judicial data. The Statistics on Criminal Proceedings count the annual number of convictions for crimes pursuant to sections 180b, 181 StGB. Excerpts from the Central Criminal Registry provide information as to whether citizens were being convicted in the past for crimes pursuant to sections 180b, 181 StGB.

### *16.3.2 Sources of data on offenders*

The information on offenders provided by the Police Crime Statistics are broken down by sex, age, whether the suspect acted alone, appeared as a suspect before, acted under the influence of alcohol or consumes heavy drugs, and whether he/she carried a firearm when committing the offence. The statistics also contain information on the suspects’ place of residence and divides non–German suspects according to the nature of and reason for their stay in Germany. Due to the counting rules, the Police Crime Statistics do not reveal whether the same offender has committed two or more crimes. The Situation Report on Trafficking in Human Beings registers the number of suspects pursuant to sections 180b, 181 StGB. The information provided is broken down by sex, age, nationality, and whether the suspect acted alone. The information on offenders provided by the Statistics on Criminal Proceedings is not broken down according to specific provisions, it thereby fails to reveal further information on the offenders accused or convicted for trafficking in human beings. The Central Criminal Registry, by contrast, provides information on offenders according to age, sex, nationality, type of conviction as well as previous criminal convictions.

### 16.3.3 Sources of data on victims of trafficking and sexual exploitation

The Police Crime Statistics records the number of victims pursuant to sections 180b, 181 StGB. The victim must be recorded for all completed and attempted (categories of) offences subject to punishment. The data provided on the victims are divided by age and sex. Finally, the victim–suspect–relationship is recorded according to whether the victim and suspect were related, acquainted, fellow countrymen, or had a passing or no relationship. The victim–suspect–relationship is assessed from the victim’s point of view, the closest relationship always having priority. The Situation Report on Trafficking in Human Beings registers the number of victims pursuant to sections 180b, 181 StGB. The information provided is broken down by sex, age, nationality, and the number of victims registered in the individual preliminary investigations.

## 16.4 THE TRAFFICKING PROCESS TO GERMANY

### 16.4.1 The Phenomenon

What is known of the phenomenon of trafficking in human beings to Germany largely depends on data collected pursuant to criminal provisions on trafficking in persons. Little is known on the phenomenon of trafficking in children due to a lack of systematic data collection and evaluation. Current reports on trafficking focus primarily on adult trafficking for the purpose of prostitution. However, apart from the recruitment phase the following remarks are believed to apply equally to child trafficking. In addition to sexual exploitation, the purpose of child trafficking is thought to imply procurement for begging or as petty criminals (e.g. theft, so-called *Klaukinder*). In the latter case, the victims’ lack of criminal responsibility is taken advantage of.

Recruitment of adult victims for trafficking, with the exception of kidnapping, is related to people trying to escape poverty and lack of prospects. Secondly, a relationship between the recruiter and the recruited person is necessary. The relationship can be either professional (e.g. newspaper advertisements) or based on trust (e.g. recommended as trustworthy by other people, relatives). Various recruitment methods have been identified. The victim may be approached by acquaintances or relatives in their hometown. The victim’s attention may be drawn to other people known to the victim already “successfully” working in Germany. The victim may be approached directly at competitions, shows, or discos by recruiters working for agencies (e.g. travel agencies, employment agencies) or indirectly (e.g. newspaper advertisements). The victims are usually selected according to specific rules such as openness, readiness to take risks and to change existing disadvantageous living conditions, as well as age, looks, and inexperience. The victims are seduced with the promise of excellent opportunities for earning money together with good working and living conditions. The recruitment phase is generally organised in such a way that one to two recruiters, fellow countrymen of the victim, approach the victim.

At the time of recruitment, different categories have been identified related to the starting position of the victims. The victim is either both kidnapped and transferred

to Germany by force or the victim agrees to be moved to Germany. In the latter case, the victim is either persuaded to work in a non-prostitution related area (e.g. au-pair, waitress, cleaning lady) or is explicitly recruited to work as a prostitute. Some of the victims who agree to work as prostitutes are already experienced prostitutes – some are not. In either case, the victims are generally not informed of their future working conditions. The working conditions in Germany imply isolation and illegality. This in turn increases the probability of sexual exploitation. The victims' situation of helplessness in Germany is independent from the method of recruitment or the victims' starting position at the time of recruitment. It may only vary in extent and severity. If coercion is used it either occurs at the time of recruitment (e.g. kidnapping, abduction) or during prostitution in Germany taking the form of exploitive slavery-like working conditions as well as the threat of taking reprisals against the victim or family members.

Germany has common borders with numerous countries such as Poland, the Czech Republic, Austria, Switzerland, France, Luxemburg, Belgium, the Netherlands, as well as Denmark. The Eastern borders, particularly with Poland and the Czech Republic, are especially significant for trafficking. Thus, together with a number of national and international airports Germany offers a variety of possible entry points for traffickers and trafficked persons. Trafficking routes are chosen according to simplicity, practicability, and risk minimisation, such as frequency of border controls. Traffickers also adapt trafficking routes to changing national and European immigration or prostitution laws and policies. Due to thorough controls at German airports as well as carrier liability legislation, trafficking people from non-European countries to the capitals of Eastern European cities by plane and continuing overland to Germany is considered to be less detectable than the use of airlines flying directly to Germany. However, in contrast to airports, borders are even less likely to be perfectly controlled, even with the most rigid immigration laws. Furthermore, Germany allows non-European nationals from listed countries to enter as tourists for a period of three months with no visa requirements visa (*Positivstaatler*). Other non-European nationals may enter Germany by using a tourist visa or achieve a seemingly legal entry by using counterfeit documents. Regardless, the majority of victims enter Germany legally.

Despite ever-changing trafficking routes three routes from Central and Eastern Europe to Western Europe can be distinguished: The northern route goes through Russia, the Baltic states and Poland. To the south is a route through Ukraine, the Balkans and the Czech and Slovak Republics. The third route goes through Bulgaria, Romania and the Balkans. Along these routes are some countries, towns and cities through which migrants are routinely trafficked. In general, all methods of transport are used (bus, car, train, airplane, by foot, and boat). To Germany, the majority of victims are transported by car or public transport, since all major Central and Eastern European cities have direct bus routes to the bigger German cities (e.g. Berlin, Hamburg). If a car is used the victim is usually accompanied by a driver functioning as guard. Otherwise, the victims travel alone. According to individual victim statements, incidents of sexual coercion and rape take place during the time of transport. However, no official data exists on its extent and frequency.

Once inside the German border, victims are picked up by local contact men and taken to their accommodations and subsequently to brothels or model apartments. Criminals make use of accomplices who aid and abet the trafficking operations by providing food, lodging, transportation, etc. However, it is difficult to assess the extent to which these complaisant persons are actually involved in the criminal

network as such. Corruption of (police) officials also occurs. The phase marked by corruption may be related to the illegal entry or residence of a victim (e.g. counterfeiting of documents) or to the prostitution of the victim. Corrupt police officers may warn brothel owners prior to police inspections or undercover investigations. However, no statistics reveal the actual extent of corruption in cases of trafficking in human beings so far.

Persons forced into prostitution face various methods of exploitation. Most commonly, a situation of dependency is either used or created (e.g. illegality, lack of knowledge of German, lack of financial means). The situation of dependency is usually achieved by physical or psychological violence. The victims may be threatened with everything from beatings to murder. Exploitation may take place in all forms and sectors of prostitution. It has to be noted that victims are most easily exploited in the absence of social or official control and where the victims do not have, or to a limited extent, access to possible aid and support mechanisms (e.g. public health departments, street workers, other legally working prostitutes). Victims face isolation mostly in apartments or in secluded brothels in the countryside.

The process of trafficking may be organised on either a low scale by individuals or a small number of people or a large structured network or organisation. In the latter case, a wide range of people may be involved in the process of exploitation, e.g. drivers, pimps, brothel owners, guards, etc. According to the range of possible functions played by the exploiters, a spectrum of possible relationships between exploiters and their victims exists. Within a criminal group certain members may be deliberately divided into those approaching the victim as “friend” or “helper” (e.g. as migration facilitator, guard, driver) and others are assigned to control and intimidate (e.g. through rape, physical violence, threats). As a result, victims may feel obliged to follow instructions or even develop stronger emotional ties with the perpetrators. However, because of the victims’ motivation (willingness to migrate, desperate to earn money) and their situation in Germany (illegality, lack of knowledge of German, isolation) the victim–offender–relationship is always marked by dependency. At a minimum, the victims are held in debt bondage, forced to pay back imposed debts for transport, housing, daily needs, etc. The duration of the exploitation phase is based on the debts imposed upon the victims and lasts, at a minimum, until the debt is paid back.

Due to its federal structure, every German district may handle prostitution differently, mostly through the establishment of areas in which prostitution is prohibited (*Sperrbezirk*). Some regions may only allow out of town nightclubs, others only special brothels (*Laufhaus*), street prostitution, or apartment prostitution. Commonly, the bigger German cities with established and well-known red light districts (e.g. Berlin, Hamburg, Frankfurt) account for the majority of trafficking cases and are, therefore, believed to house the majority of trafficking victims. However, the amount of trafficking recognised largely depends on police activity as well as detailed knowledge of the prostitution scene. The higher number of trafficking cases reported in the bigger cities, with established red light districts, does not necessarily reflect the actual extent of exploitation within the prostitution scene. Since exploitation not only occurs in all forms of prostitution but also in all regions of Germany, differing numbers of trafficking cases do not depend so much on differing levels of exploitation but on differing levels of exposure as well as police methods of control and police knowledge of the local prostitution scene.



Legal entrepreneurs may be involved in the organisation and course of the trafficking process as well as the exploitation phase. To disguise the purpose of trafficking connections with legal entrepreneurs engaged in, for example, import/export trades, transport companies and travel agencies are used. After the arrival in Germany, different contacts and connections with the restaurant as well as brothel or club owners are used. The latter can take place in various forms. First, the club or brothel owners merely profit from the traffickers without being directly linked to or involved in the criminal group organising the trafficking. Secondly, the owners may have specifically “ordered” the trafficking as part of the criminal group without being directly involved in the process of recruitment and transport. Thirdly, the owners may be directly involved in the process of recruitment and transport. Finally, owners may exploit the prostitution of the victims either by keeping the victims in a situation of physical or psychological dependency or by rotating (i.e. buying and selling) the victims to other brothel or apartment owners.

The money earned from each exploited person depends on various factors: the costs of transport, the “price” for buying and selling a trafficked person, the respective conditions of the prostitution sector as well as the number of clients received by the victim. Since all these variables vary from case to case and, above all, are often impossible to reconstruct afterwards, existing estimations as well as information drawn from individual cases do not constitute a solid basis from which generalisation can be made.

#### *16.4.2 The Perpetrators*

It is assumed that the majority of trafficking is conducted by criminal groups with a minimum of three members. To accomplish the costly and complex organisation of the different phases of trafficking (recruitment, transport, and exploitation of the victim), permanently, but often only loosely, joined perpetrators work according to a division of responsibilities in dealing with the victims during each phase. It is assumed that about 50% of trafficking is conducted by small, informally structured networks (3 to 10 people), whereas the others are believed to imply larger more organised structures (10 or more people). Larger criminal networks are believed to work according to the orders of headquarters, which are responsible for the preparation, organisation, control as well as coordination of the trafficking. Furthermore, autonomous criminal groups may work hand in hand, dividing responsibilities particularly with regard to the recruitment and transport of victims as well as the counterfeiting of documents. Apart from these larger cases based on an organisational structure, individual, non-professional or “private” forms of trafficking exist as a form of secondary income or “personal use”.

Besides the German suspects, Turkish as well as Eastern European nationals (mostly Bulgarians, Lithuanians, Polish, and Romanians) play a major role. In the 2002 Situation Report on Trafficking in Human Beings by the Federal Bureau of Criminal Investigation 39.6% of the suspects were of German origin followed by 10.2% Turks, and 35% Eastern Europeans. The high proportion of suspects from Eastern countries mirrors the high proportion of victims from Eastern countries. The criminal groups are believed to be hierarchically structured. Frequently, criminal groups of a certain nationality were observed to isolate themselves from the public (e.g. a brothel run by Turks, only allowing Turkish clients). Brothel owners were observed employing

Eastern European woman as partners, the latter being responsible for instructing as well as observing the victims. Due to the women's language skills and knowledge of the victims' mentality, an extremely thorough method of control is established. It is generally assumed that trafficking activities are linked with other criminal activities, typically associated with organised crime (e.g. trafficking in weapons, drug trafficking, trafficking in vehicles) using existing or comparable methods (e.g. drug couriers). Again, no data is collected on the frequency and extent of linkages between trafficking in human beings and other criminal activities.

To avoid inspections the bribing of police officers may be attempted. Another method of avoiding inspections as well as escaping justice consists of the regular rotation of victims from one brothel to another. In so doing, the criminal investigation authorities are hindered from tracking down the whereabouts of the victims as well as the perpetrators. Another way of escaping justice is the strict division of responsibilities among perpetrators, making it more difficult to provide the necessary evidence of facts, in particular a suspect's intent with regard to the entire trafficking process as is required by sections 180b, 181 of the German Penal Code. The same result is achieved when the perpetrators act conspiratorially, in particular by using various mobile phones to discuss upcoming transactions as well as to control the victims. Additionally, the victims as well as the perpetrators are usually referred to by their first names or nicknames thereby hindering the identification process. The already mentioned alliance between fellow countrymen adds to the conspiratorial nature of perpetration. Another method of avoiding controls is the attempt to legalise the victims' residence status, e.g. by arranging marriages. By doing so, the police face the difficulty of identifying victims of trafficking, a process which is usually initiated as the police interrogate and sometimes detain foreign prostitutes who do not have the necessary residence or work permits due to violations of the Foreign Nationals Law.

The profits made by the criminal groups involved depend on various factors such as the costs of transport, the "price" of buying and selling a trafficked person, the price for counterfeit documents and the arrangement of marriages, the respective conditions of the prostitution sector as well as the number of clients received by the victim. Considering these variables vary from case to case, existing estimations as well as information drawn from individual cases do not constitute a solid basis from which generalisation can be made. Considering these factors, it is estimated that the trafficking of victims amounts to € 2,000 – € 30,000. The estimated net profits for trafficking in Germany amount to € 9 billion per annum.

Accordingly, it is estimated that victims have to pay back sums ranging from € 2,000 to € 30,000. The victims' earnings are taken by the brothel owner, functioning as pimp, or by those perpetrators responsible for recruiting, transfer, guarding, and/or accommodations. Whether the brothel owner takes the earning for his/her own benefit or for the benefit of others depends on the arrangements made between the brothel owners and the traffickers as well as on who the "owners" of the victim are. Generally, the victims are forced to give away at least half of their earnings. However, no systematic data is collected on this point.

### 16.4.3 The Victims

According to the 2002 Federal Bureau of Investigation's Situation Report on Trafficking in Human Beings, the majority of trafficking victims were women between 20 and 30 years of age, only a small percentage were minors. About half of the victims were misled about the real purpose of their entry into Germany. About one third of the victims were recruited professionally. Violence was used in the recruitment of about 15% of the victims. More than one-fourth of the victims agreed to work as prostitutes. For those victims with information as to whether they had worked as prostitutes prior to being recruited, about one-fourth of the victims had previously worked as prostitutes. Prostitution-related violence, (i.e. violence comprising physical and psychological violence used against the victims in order to force them into or to remain in prostitution) was used against 41.3% of the known victims. Of the 500 victims willing to testify against the perpetrators, more than one-fourth were influenced by threats against the themselves or their relatives. No information exists on the social background of the victims (level of education, rural or urban background). It is assumed that the majority of women come from rural areas with a low level of education. However, various cases are reported in which victims, particularly from Central and Eastern Europe had a comparatively high level of education.

Objective factors pushing victims into the traffickers' net consist of the fact that the victims, mostly women, are in a situation of financial misery or poverty and do not have any job perspectives. Most of them have difficult family relations, being either single parents, and/or responsible for the maintenance of children and other relatives. Due to these factors, the victims are forced to actively look for alternative solutions rather than to stay in their hometowns. Subjective push factors can include the fact that the victims are brave, ready to take risks, but at the same time are naive. Even though some of them may believe in the false promises, a number of victims are well aware of the danger inherent to trafficking, having been warned beforehand (e.g. by friends, other trafficking victims, informational material distributed by counselling centres). Even so, the victims shield themselves from the imminent danger of being exploited simply by believing that they are clever enough to escape this fate. Another subjective factor is the existence of trust between the trafficker and the trafficked person, which may be based on kinship or recommendation. Due to the way in which Western European countries are portrayed in the media, victims easily believe in the promise of excellent earning opportunities as well as good living and working conditions. However, most of them are unaware of the high costs of living in a country like Germany.

According to the Federal Bureau of Investigation's Situation Report on Trafficking in Human Beings (2002), most of the victims are from Central and Eastern European countries (87%) of which 17.6% are of Russian, 14.7% Lithuanian, and 11.2% of Bulgarian origin. In comparison, most of the suspects are Germans (39.6%) followed by Turks (15.2%). About 1/3 of the suspects were from Central and Eastern European countries, the largest proportion being Bulgarians (8.3%) followed by Lithuanians (8.2%), Polish (4.3%) and Romanians (3.7%). Russians play a minor role. These figures have to be interpreted against the background of the organisational characteristics of trafficking in human beings. Criminal organisations often consist of Germans as well as nationals from the victims' home countries. The division of responsibilities imply that the victims are recruited and transported mostly by fellow compatriots. Germans and Turks, by contrast, are often involved in the

exploitation of prostitution, functioning as brothel owners, guards, or pimps. Commonly, they are more easily tracked down by the police due to their fixed abodes in Germany. Additionally, Germans of Russian origin are frequently involved in the exploitation of victims in Germany, being familiar with the victims' language and social backgrounds. In the cases of individual, non-professional or "private" forms of trafficking, the perpetrators are mostly Germans.

## ANNEXES

## 1. Police Crime Statistics

TABLE 29: TRAFFICKING CASES PURSUANT TO SECTIONS 180b ("SIMPLE" TRAFFICKING IN HUMAN BEINGS) AND 181 (SERIOUS TRAFFICKING IN HUMAN BEINGS) StGB

Year	Sections 180b and 181 StGB
1998	1011
1999	678
2000	1016
2001	746
2002	827
2003	850

TABLE 30: OFFENDERS (SECTION 180b StGB)

Offenders (section 180b StGB)			
Year	Total	Non-citizens	Sex
1998	560	271	M: 456 F: 102
1999	429	192	M: 347 F: 82
2000	491	217	M: 394 F: 97
2001	374	164	M: 301 F: 73
2002	406	156	M: 312 F: 73
2003	395	176	M: 300 F: 95

TABLE 31: OFFENDERS (SECTION 181 StGB)

Offenders (section 181 StGB)			
Year	Total	Non-citizens	Sex
1998	531	281	M: 430 F: 101
1999	333	157	M: 285 F: 48
2000	490	242	M: 393 F: 97
2001	439	217	M: 378 F: 61
2002	423	243	M: 320 F: 103
2003	489	258	M: 390 F: 99

TABLE 32: VICTIMS (SECTION 180b StGB)

Victims (section 180b StGB)		
Year	Total	Sex
1998	575	M: 11 F: 564
1999	405	M: 20 F: 385
2000	683	M: 19 F: 664
2001	512	M: 19 F: 493
2002	479	M: 19 F: 460
2003	472	M: 11 F: 461

TABLE 33: (SECTION 181 StGB)

Victims (section 181 StGB)		
Year	Total	Sex
1998	614	M: 5 F: 609
1999	426	M: 3 F: 423
2000	514	M: 4 F: 510
2001	411	M: 8 F: 403
2002	509	M: 9 F: 500
2003	646	M: 6 F: 640

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## 17

GREECE<sup>53</sup>

## 17.1 INTRODUCTION

Since the late 80s, the sexual exploitation of women trafficked to Greece has been a persistent problem. It is sustained by the vast and accelerated economic deprivation of the victims' countries of origin, Greek societal stereotyping, widespread secondary beneficiaries from the trafficking activities in Greece and the corruption of public officials across the borders. As will be explained, the Greek Police is the only source of data on trafficking of human beings while the Greek Juridical System lags behind in data availability and case processing. A special Law addressing this issue was introduced in October 2002.

## 17.2 CRIMINAL LAW RESPONSES

*17.2.1 The offence of trafficking in human beings*

In October 2002, the offence of trafficking in human beings was addressed with the new Law 3064 of 2002, Article 1. The new law provides a more severe penalization of all contemporary forms of trafficking in human beings – such as the sale of human organs, compulsory and deceitful exploitation of labour, economic exploitation of sexual life, and the recruitment of minors for the purpose of using them in armed conflicts. Special emphasis, however, is given to the protection of minors and other vulnerable social groups (women and foreigners). In addition to the above, the Law contains a special provision explicitly designed to confront the problem of child pornography, which has taken on disquieting dimensions through the expansion of Internet.<sup>54</sup>

The penalties are up to 10 years imprisonment and fines between € 10,000 and € 50,000. In those cases where the victims are under-age or trafficking is the perpetrators' business or a civil servant is involved or the offence has inflicted bodily harm the penalties are increased to at least 10 years imprisonment and fines between € 50,000 and € 100,000. Greek legislation allows criminal liability of legal entities but can only impose administrative sanctions, such as fines, temporary or permanent withdrawal of operating licence etc. legal penalties are not allowed (see Law 3064/2002, article 11).

Prior to 2002, other Articles of the Penal Code existed which could deal with the phenomenon, such as (a) Article 323 of the Penal Code (PC) on slave trade, (b) Article 323A, PC, on trafficking in human beings for the purpose of work

<sup>53</sup> This section has been written by Andromachi Tseloni, University of Macedonia, Thessaloniki.

<sup>54</sup> Please see [http://www.mfa.gr/english/the\\_ministry/temp/combating\\_en.html](http://www.mfa.gr/english/the_ministry/temp/combating_en.html) for the text of this law.



exploitation, (c) Article 349, PC, on procuring, (d) Article 351A, PC, on lechery or indecent assault against minors and (e) Article 351, PC, on white slave trade.

### *17.2.2 The offence of trafficking in human beings for the purpose of sexual exploitation*

Law 3064 of 2002, Articles 7 and 8 deal with the offence of trafficking in human beings for the purpose of sexual exploitation. “Combating trafficking in human beings, crimes against sexual freedom, child pornography and more generally on economic exploitation of sexual life and assistance to the victims thereof”.

Prior to 2002 Greek legislation did not cover trafficking as such. It referred to crimes against sexual freedom and the economic exploitation of sexual life (Penal Code – Chapter 18, Articles 336 rape; 337: insult to sexual dignity; 338: assault; 343: assault by abuse of power; 344: indictment). Additionally, Articles 348–351 deal with sexual exploitation.<sup>55</sup> Law 3064/2002 improves a number of Articles found in the Penal Code which relate to general trafficking of human beings or for the purpose of sexual exploitation. In particular, Article 323A improves Article 323 of the Penal Code on slave trade by incorporating trafficking of human beings. Article 351 of the Penal Code on white slave trade has included trafficking for the purpose of sexual exploitation regardless of sex with aggravated penalties in case of under-age victims. It is worth noting that this Article, as amended by Law 3064/2002, imposes penalties of at least six months imprisonment on the customers. Finally Articles 348 and 349 of the Penal Code refer to child pornography and procuring (Sykiotou, 2003).

The penalties imposed are up to 10 years imprisonment and fines between € 10,000 and € 50,000, similar to the trafficking of human beings Article. In cases where there are under-age victims or trafficking is the perpetrator's business or a civil servant is involved or bodily harm has been inflicted or the trafficking is related to illegal entrance and residence, the penalties are increased to at least 10 years imprisonment and fines between € 50,000 and € 100,000.

### *17.2.3 Other offences*

The new Law 3064/2002 improves a number of Articles in the Penal Code, which relate to general trafficking of human beings or for the purpose of sexual exploitation. In particular, Article 323A improves article 323 of Penal Code on slave trade by incorporating trafficking of human beings. Article 351 of Penal Code on white slave trade has included trafficking for the purpose of sexual exploitation regardless of sex with aggravated penalties in case of under-age victims. It is worth noting that this article as transformed by Law 3064/2002 imposes penalties of at least six months imprisonment on customers. Finally, Articles 348 and 349 of the Penal Code refer to child pornography and procuring (Sykiotou, 2003).

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<sup>55</sup> International Helsinki Federation for Human Rights, 2000.

#### 17.2.4 Other information

Shortly after Law 3064/2002 was introduced, the Presidential Decree 233 of 28th August 2003 was published. This defined ways of protecting the victims or those who reported trafficking of human beings. In particular, the same Law establishes – for the first time in Greece – the necessary legal framework for providing protection and assistance to the victims of the aforementioned criminal deeds: by virtue of the said Law, a Presidential Decree (P.D.) was signed on August 26, 2003, and published in the official gazette (P.D. 233/2003, official gazette issue A 204/2003) on the protection of and assistance to the victims of crimes provided for in Articles 323A, 349, 351 and 351A of the Penal Code, in conformity with Article 12 of Law 3064/2002.

According to the provisions of the P.D., victims of the crimes, provided for in Articles 323, 323A, 349, 351 and 351A of the Penal Code, are defined as those persons, Greek citizens or foreigners, that have directly suffered a prejudice on their physical integrity or their personal or sexual freedom or when these or their life are in serious jeopardy. For the purposes of the P.D. all state agencies, as well as those operating in the wider public sector and local self-government bodies that can provide protection and assistance, are considered “Agencies or Units for the Provision of Protection and Assistance”. If the victims have had recourse to the Agencies or Units for the Provision of Protection and Assistance, they are given protection and assistance regardless of whether prosecution has already started against the unlawful deeds provided for in the above mentioned Articles. Protection is provided as long as there is still a risk against life, physical integrity, or personal and sexual freedom, whereas the provision for assistance lasts for as long as it is deemed indispensable by the Agencies and Units for the Provision of Protection and Assistance.

In order to provide protection and assistance, the Agencies or Units are entitled to create the appropriate contracts with non-profit bodies, corporate entities, in either the public or private sector, as well with non-governmental organizations active in this field. The security of both the victims and their residencies is ensured by the appropriate measures. In parallel, the Greek Police are available to provide assistance. Victims under 18 years of age have access to public schools that host special reception classes, sections or are implementing cross-cultural education programs; victims under the age of 23 are entitled to participate in the training programs implemented by the “Agency for the Employment of the Workforce” (O.A.E.D. in its Greek acronym), even if the total number of admissions expected for those programs has been reached. Immediate and free medical care is provided to uninsured victims by the National Health System. The Agencies and Units for the Provision of Protection and Assistance secure legal assistance for the victims; they also ensure that interpretation services are provided when the victims do not speak Greek. A standing committee is provided for, which is to be presided over by the Secretary General for Welfare and composed of representatives of the appropriate Ministries. Its mission is to coordinate all activities related to the protection of and assistance for the victims, to issue circular notes on all relevant questions that may

arise, to gather statistical data and to suggest measures aimed at improving the provision of protection and assistance to the victims.<sup>56</sup>

However, victims of trafficking of human beings for the purpose of sexual exploitation were not, in practice, provided with residence permits due to minor bureaucratic problems until the 4<sup>th</sup> of June 2004. Since this date the problem has been addressed. Two residence permits for victims of trafficking for sexual exploitation have just been issued by the Regional Office of Central Macedonia, Thessaloniki. Three more are about to be issued by the Regional Offices of West Greece and South Aegean.

The Greek Police have taken the following steps towards dealing with the problem of trafficking of human beings:

1) OKEA: Since its inception 22 months ago (i.e. December 2001), the Task Force for Combating Human Trafficking (known by its Greek acronym "OKEA") has been involved in various activities, including:

- Preparing the legal framework: OKEA fulfilled its main goal when Law 3064/2002 was passed on 15 October 2002, and the relevant Presidential Decree was signed on 26 August 2003, and published in the official gazette;
- During the Greek Presidency of the European Union, in the field of Justice and Home Affairs, OKEA promoted the adoption of the Brussels Declaration on Preventing and Combating Human Trafficking by the Council of Ministers of the EU (May 2003);
- Communications Strategy and Public Awareness: Systematic dissemination of information through media-participation of OKEA members in seminars and meetings in Greece and abroad;
- Publication of a newsletter;
- Exhibit, "Europe Against Human Trafficking" at the Cultural Centre of the City of Athens (30 January – 12 February).

Importantly, OKEA has contributed to the mobilization of relevant NGO's and encouraged governmental agencies to take appropriate action in combating human trafficking, especially within the framework of the Greek Presidency.

Combating human trafficking is a priority for all Greek police services. The Police Headquarters is actively involved with the Department of Public Safety, whose director is a member of OKEA. Three officers have been assigned to deal specifically with issues related to human trafficking and to provide guidance to the regional police services. Special anti-trafficking squads in the Public Safety Divisions of Athens and Thessaloniki began operations in October 2003. Furthermore, Cross-border Police Cooperation, is enhanced with regular bilateral meetings with neighbouring Former Yugoslavian Republic of Macedonia (FYROM), Albania, and Bulgaria. These should improve, among other things, border controls for combating illegal immigration and human trafficking.

The next round of activities for OKEA seek to reinforce inter-agency cooperation with a view to identifying victims of human trafficking and providing them with all possible assistance.

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<sup>56</sup> [http://www.mfa.gr/english/the\\_ministry/temp/combating\\_en.html](http://www.mfa.gr/english/the_ministry/temp/combating_en.html).

2) "Europe" Seminar: The "Europe" Seminar was organized by the Ministry of Public Order in June 2002, in cooperation with the International Organization of Migration and co-financed by the EU. This seminar was designed to assist victims of human trafficking. The seminar provided a venue to exchange practical information on identifying and assisting victims of human trafficking as well as present information on assistance programs found in other countries. Professional training on human trafficking issues for 48 Greek Police officers, representing sensitive geographic areas, was also introduced. Police officer training on the subject of human trafficking is included in the curriculum at all levels of the Police Academy, as well as in post-graduate studies. The training is provided by University scholars and police officers. Finally, police officers are encouraged to prepare their theses on subjects related to human trafficking.

3) Exchange of information: Exchange of information on human trafficking issues is included in our cooperation with international bodies, such as EUROPOL, INTERPOL and the South East Europe Cooperation Initiative (SECI). It is also included in the bilateral agreements related to police cooperation that were concluded between Greece and EU member countries as well as non-EU countries. Police liaison officers have already been posted in Bulgaria, Cyprus, Turkey and Albania. There will be similar postings in the Russian Federation, the Ukraine, FYROM, Croatia, Bosnia-Herzegovina, Serbia-Montenegro, Romania (apart from our liaison officer in SECI) and Lebanon. On a national level, our efforts are focused on widening and systematically analysing our sources of information in order to combat human trafficking networks.

4) "Mirage 2002": Operation "Mirage 2002" was initiated by the SECI's working group on human trafficking and illegal migration on September 7-16, 2002. Member states, international organizations and NGO's participated in this operation, targeting the identification of criminal groups involved in the trafficking of women. According to SECI, the results of this operation include 20,558 investigatory operations. A number of the 1,738 women were reviewed. Amongst them, 237 were identified as being definite victims of human trafficking. Greece is also participating in Operation "Mirage 2003".

5) SECI (South East Europe Cooperation Initiative): Greece is a member of SECI, and participates in the Joint Commission with two police officers (one police officer and a customs officer). The Greek authorities contact point for SECI is the Department of International Police Cooperation of Police Headquarters. Exchange of information between Greece and SECI is obtained through contact point officers in SECI centre.<sup>57</sup>

6) An information sheet is given to victims during preliminary the inquiries into violations of Law 3064/2002. This sheet outlines the situations under which they may have found themselves and assists them in coming to terms with their condition as victims of trafficking of human beings for sexual exploitation. It also explains their rights to assistance and protection in Greece. This information is written in several languages such as English, French, Albanian, Arabic, Bulgarian etc.

The following two reforms are currently underway by the Greek Police: establishing a special group against child pornography and an Internet site dedicated to missing children.

<sup>57</sup> [http://www.mfa.gr/english/the\\_ministry/temp/traffic1\\_en.html](http://www.mfa.gr/english/the_ministry/temp/traffic1_en.html).

### 17.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

#### 17.3.1 Sources of data on offences

To date, the only available source of data on trafficking in human beings for sexual exploitation in Greece is the Greek Police, which belongs to the Ministry of Public Order. Data on offences of sexual exploitation are classified as completed, attempts, and total number, including the number investigated. This data can be found on the Greek Police website [www.mopo.gr](http://www.mopo.gr). "Sexual exploitation" comprises all related offences both before and after the introduction of Law 3064/2002. The data presented on the Greek Police web site cover the period 1991 and 2003. Table 1 below presents Greek Police data on the number of cases, traffickers and victims. The latter was provided by the Greek Police after a written request.

TABLE 34: CASES OF OFFENCES RELATED TO SEXUAL EXPLOITATION (TRAFFICKING IN HUMAN BEINGS, PROCURING, WHITE SLAVE TRADE ETC.) THAT CAME TO THE ATTENTION OF THE GREEK POLICE DURING THE PERIOD 1999–2003.

Year	Number of Cases	Number Of Victims (Foreign women)	Number of Greek Offenders	Number of Foreign Offenders
1999	41	140	397	184
2000	41	125	382	356
2001	54	165	567	421
2002	64	184	449	322
2003	49	93	502*	286*

\* These are preliminary data.

The Greek Police stores data on trafficking of human beings for the purpose of sexual exploitation in electronic files. These data are analysed for the investigation and evaluation of the phenomenon in the country. Annual reports on trafficking in human beings in Greece are also based on these data. The reports are disseminated to Europol.

The Greek Police data include, but are not limited to, information on the *modus operandi* of the related organised groups. These records refer to the recruitment methods used with victims, transportation methods, countries of origin, passage and destination countries, ways of acquiring forfeited documents, ways of controlling victims in the country of destination and other related information.

In principle, the Ministry of Justice compiles data on court decisions (prosecutions and detentions) and presents it in the Statistical Yearbook of Justice published by the National Service of Greece. This publication, however, includes data up to 1996, i.e. prior to Law 3064/2002. Clearly, the Ministry of Justice data would not include any data on victims.

### *17.3.2 Sources of data on offenders*

The only available source of data in Greece is the Greek Police since the Ministry of Justice data, which are publicly available, do not go beyond 1996.

Data on offenders of sexual exploitation are classified as nationals, foreigners and the total number. This information can be found on the Greek Police website [www.mopo.gr](http://www.mopo.gr). As already mentioned the term “sexual exploitation” encompasses all related offences that have existed both before and after the introduction of Law 3064/2002. The data presented in the Greek Police web site cover the period 1991 and 2003. Table 1 above replicates part of these data for the period 1999–2003. In 2003, 284 traffickers, both Greek and foreigners, were arrested.

The electronic archives held by Greek Police includes information other than the traffickers’ nationality but it is not publicly available. This information lists the type and primary activity of the organised crime group, its members’ nationalities, whether the group was involved in offences other than trafficking of human beings and how these offences relate.

### *17.3.3 Sources of data on victims of trafficking and sexual exploitation*

The Greek Police collects data on victims of trafficking and sexual exploitation but they are not publicly available. The recorded variables for victims include country of origin, nationality or ethnicity, sex, age, victim history and other information (which was not specified by the Greek Police). Information on victims is confidential and some of it may be given out for research purposes only after a written request.

Twenty-seven out of 93 victims in 2003 (see Table 1 above) have been provided for by the Greek state according to Article 12 of Law 3064/2002. Their nationalities were as follows: Moldavian (6), Uzbekistan (3), Russian (10), Ukrainian (7) and Romanian (2). Eight victims were residents at KESO (an NGO) that operates in cooperation with the General Secretariat of Equal Opportunities and the Directorate of Public Order. Six others were assisted by the *Médecins du monde*. The remaining victims did not require help and have either stayed with friends or returned to their own countries.

The above is official information based on cases that came to the attention of the Greek Police. Professor Gregory Lazos and colleagues have completed a few research projects that have attempted to understand and estimate the phenomenon of trafficking in human beings for the purpose of sexual exploitation. The information on victims given in the spreadsheets has been taken from Lazos 2003. The results are published in a two volume book written in Greek (Lazos 2002) and a report written in English (Lazos 2003). Both are publicly available on the internet ([www.stop-trafficking.org](http://www.stop-trafficking.org)) and attached to the national report and spreadsheets on Greece. Information on trafficking of Albanian children into Greece is given in a report by Terre des homes, OAK foundation and Unicef (Terre des homes 2003).

## 17.4 THE TRAFFICKING PROCESS TO GREECE

### 17.4.1 The Phenomenon

As mentioned all available information on the phenomenon of trafficking to and sexual exploitation in Greece comes from research by Professor Gregoris Lazos and his colleagues. Notably, the report “Trafficking in Greece in 2002” by Gregoris Lazos may be downloaded.<sup>58</sup> This is the only academic source of information on trafficking of human beings. It is based on a research project financed by the Centre of Research and Action on Peace (KEDE) and conducted mostly during the second half of 2002. It estimates the number of non-Greek women forced into prostitution to be 17,200 in 2002 (Lazos 2003, p. 7) and provides unique information on trafficking networks and operations. An earlier study by the same researcher was conducted in 1998. Results of both studies are combined in order to estimate trends. A two volume book entitled “Πορνεία και Διεθνική Σωματεμπορία στη Σύγχρονη Ελλάδα [Prostitution and International Trafficking of Human Beings in Contemporary Greece]” by Gregoris Lazos, εκδόσεις Καστανιώτης published by Kastanioti Publishers in 2002 is available in Greek. Finally, the report written by the organisation *Terre des Hommes* entitled “The trafficking of Albanian children in Greece”, January 2003, provides information on this issue.<sup>59</sup>

Information on the trafficking routes and cities involved is provided by the *Terre des Hommes* report (2003, pp. 20–22) as well as the report by the Institute for War & Peace Reporting, dated 16th September 2003. “Trading in misery: Trafficking in women in the Balkans” (Balkan Crisis Report No. 460).<sup>60</sup> According to the Balkan report women are trafficked from Romania to Bulgaria and then to Greece. The means of transportation include buses, cars, taxis, boats, and/or on foot. According to the Greek Police, traffickers use unguarded passages into Greece both by sea and land (mountain trails). The victims enter the country both legally and illegally. Illegal transportation occurs using legal transport papers with fake consulate approval, legal transport papers that belong to other persons who “lend” them to the victims, counterfeit or stolen documents, unguarded passage routes and transportation by buses or lorries in the hidden parts of the vehicles (Sykiotou, 2003, p. 82).

The main outlet for trafficking is prostitution and child pornography (Sykiotou 2003). Exploiters may withhold women’s official documents or threaten them with deportation. If they come from a religious family, the traffickers threaten that they will inform their family about their prostitution. Brain-washing the victims so they do not trust anyone is another common control tactic (A form of Slavery, pp. 2–3). Sykiotou (2003) refers to drug-addiction as an additional means of forcing women into work. Finally, *Terre des hommes* mentions that children are “owned” by their exploiters (*Terre des hommes*, 2003, pp. 20–22). Women are related to their exploiters emotionally or professionally. In Greece the victims generally work in

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<sup>58</sup> Please see <http://www.stop-trafficking.org> for this report.

<sup>59</sup> For additional information on the recruitment methods and phase please see G. Lazos, 2003, pp. 28–33; International Helsinki Federation for Human Rights, 2000; Sykiotou, 2003, pp. 80–81; and *Terre des Hommes*, 2003, pp. 20–22.

<sup>60</sup> Please see <http://www.iwpr.net> for this report.

brothels, bars–nightclubs, massage centres, hotels, telephone services/call girls, and the street (A Form of Slavery, p. 2; Λάζος [Lazos] 2002 (book in Greek) pp. 255–291; Lazos, 2003, pp. 23–26).

Victims work in the main cities of Greece, i.e. Athens, Thessaloniki, Ioannina, Patra, etc. or their surrounding areas. Since prostitution and bars/nightclubs and brothels are legally operated businesses in Greece about 60,000 individuals are estimated to be actively working, however this is dependant “to a certain extent on trafficking and forced prostitution” while these legal workers have no actual participation in the exploitation (Lazos, 2003, p. 24). According to all the sources, exploitation does not cease after a certain age, children move between markets, i.e. from begging or selling small items in the streets to prostitution, the drug market, or eventually become traffickers themselves. Similarly, women may also become traffickers or recruiters (Lazos, 2003, p.27; Terre des hommes, 2003, pp. 21–23; Sykiotou, 2003, pp. 86–88). Regarding victims’ earnings, please see Lazos (2003) pp. 18 and 41–47.

#### 17.4.2 The Perpetrators

The various organisational structures under which traffickers of human beings operate are given in detail by Lazos (2003, pp.8–18) and, in particular, in his Diagrams in pp. 11, 13, 15 and 18. The *Terre des hommes* report provides this information for Albanian child victims (Terre des hommes 2003, pp. 18–20). Lazos gives information on the nationality of traffickers (Lazos 2003, pp. 20–23) and provides estimates of the profits made by the criminal groups from trafficking of human beings (Lazos 2003, pp. 42–44).

“In 2002, [...] the principal networks successfully supplying prostitution in Greece with immigrant women [were the following, in order of importance:] Russian, Ukrainian, Balkan, Albanian, and to a lesser extent Central European and African” (Lazos, 2003, p. 20). The report by the Institute for War & Peace Reporting, (16th September 2003) entitled Trading in misery: Trafficking in women in the Balkans (Balkan Crisis Report No. 460) also includes information on trafficking related to the Olympics in Athens during 2004.

#### 17.4.3 The Victims

The victims come from lower economic groups. Indeed, women live “under subsistence levels” (Lazos 2003 p. 29) while children come from families and areas of extreme poverty, illiterate parents and broken families (Terre des hommes 2003 p. 15). The main factors pushing victims into the nets of traffickers are economic as well as ignorance of what awaits them during transportation and in the destination country.

There is no information on the size of debt for victims that is relevant to Greece other than what is known internationally (Sykiotou 2003). According to Dusch (2002) debts, which allegedly cover the costs of passport, visa and transportation are between € 6,000 and € 16,000, to which traffickers may add costs for



subsistence, rent etc. all at a high interest rate. Debts also increase exponentially if the victim is sold between different trafficking groups (Dusch, 2002, p. 100).

#### **17.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND AN ESTIMATION OF HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION**

The data are organised by case and included information related to the victim, the traffickers and the *modus operandi*. It is recommended that more socio-demographic information on victims, their families as well as offenders is collected. This may assist in creating more effective trafficking prevention methods as opposed to simple criminal justice responses. According to this author, it is impossible to have an estimate of the number of victims of human trafficking without international cooperation, especially with the countries of victims' origin.

As a preventive measures targeted towards trafficking in human beings, one could design special programmes that monitor school attendance via family allowances per child in the schools in the countries of origin (similar to those currently applied in some developing countries). This programme can be designed to also monitor children of victims of trafficking who may become victims themselves. International organisations can work with the governments of the countries of origin to supply the population groups most vulnerable to being trafficked (i.e. disadvantaged young females of poor countries) with opportunities for legal work and/or subsidised education. Public awareness using victim accounts of their experience while in the hands of their exploiters may reduce both the supply of victims in the countries of origin and client demand present in the destination countries.

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## 18

IRELAND<sup>61</sup>

## 18.1 INTRODUCTION

Specific legislation against trafficking in human beings does not exist in Ireland because foreign immigration is a recent phenomenon. Consequently, very little data is available. Currently, the only source is the *Garda Síochána* (Irish Police) who publishes information on criminality in Ireland on an annual basis. However, the lack of a specific definition for trafficking in human being causes a significant reduction in information, hampering the ability to assess any type of trend.

Data published for the last three years show an increase in sexual offences and prostitution, which could reveal the presence of trafficked people for the purpose of sexual exploitation. Furthermore, a recent investigation conducted by the *Garda Síochána* brought about legislative amendments that make it more difficult to enter Ireland with a work permit for entertainment.

## 18.2 CRIMINAL LAW RESPONSE

*18.2.1 The offence of trafficking in human beings and trafficking in human beings for the purpose of sexual exploitation*

There is no specific offence of trafficking in human beings in Ireland.

*18.2.2 Other offences*

Due to the lack of specific provisions against trafficking, many laws are used to fight the phenomenon such as the “Illegal Immigrants (Trafficking) Act” (2000), “Child Trafficking and Pornography Act” (1998), “Non Fatal Offences Against the Person Act” (1997), “Childcare Act” (1991), “Children Act” (2001), “Child Abduction and Enforcement of Custody Orders Act” (1991) and the “Immigration Act (1999)”.

Section 2 of the “Illegal Immigrants (Trafficking) Act” addresses alien smuggling. It decrees that “a person who organises or knowingly facilitates the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum shall be guilty of an offence and shall be liable:

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<sup>61</sup> This section has been written by Andrea Cauduro, Transcrime, Joint Research Centre on Transnational Crime, *Università degli Studi di Trento/Università Cattolica del Sacro Cuore*, Trento–Milan, on the basis of the information provided by Berry Galvin, Solicitor in Cork and former Bureau Legal Officer of the Criminal Assets Bureau, Dublin.

- a) on summary a conviction, to a fine not exceeding € 1,181.346 (£ 1,500) or to imprisonment for a term not exceeding 12 months or both;
- b) on conviction for the indictment, to a fine or to imprisonment for a term not exceeding 10 years or both.<sup>62</sup>

Section 3 of the “Child Trafficking and Pornography Act” states:

1. Any person who organises or knowingly facilitates

- a) the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation, or
- b) the provision of accommodation for a child for such a purpose while in the State,

shall be guilty of an offence and shall be liable for conviction on indictment to imprisonment for life.

2. Any person who

- a) takes, detains, or restricts the personal liberty of a child for the purpose of his or her sexual exploitation,
  - b) uses a child for such a purpose, or
  - c) organises or knowingly facilitates such taking, detaining, restricting or use,
- shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

3. The term “sexual exploitation” refers to following behaviour:

- a) inducting or coercing the child to engage in prostitution or the production of child pornography,
- b) using the child for prostitution or the production of child pornography,
- c) inducting or coercing the child to participate in any sexual activity which is an offence under any enactment, or
- d) the commission of any such offence against the child.<sup>63</sup>

Within the criminal law statutes, the sexual offences Act in 1993 introduced some provisions against prostitution, in particular:

#### **Soliciting or importuning for purposes of prostitution**

This provision states that a person who in a street or public place solicits or importunes another person or other persons for the purposes of prostitution shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding:

- a. £250, in the case of a first conviction,
- b. £500, in the case of a second conviction, or
- c. £500 or to imprisonment for a term not exceeding 4 weeks or to both, in the case of a third or any subsequent conviction.

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<sup>62</sup> Protection Project, *Ireland – Human Rights Report on Trafficking of Women and Children: Country by Country Report on a Contemporary Form of Slavery*, John Hopkins University, Washington D.C., 2002.

<sup>63</sup> Ibid.

### **Loitering for purposes of prostitution**

(1) A member of the Garda Síochána who has reasonable cause to suspect that a person is loitering in a street or public place in order to solicit or importune another person or other persons for the purposes of prostitution may direct that person to leave immediately that street or public place.

(2) A person who, without reasonable cause, fails to comply with a direction under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding:

- a. £250, in the case of a first conviction,
- b. £500, in the case of a second conviction, or
- c. £500 or to imprisonment for a term not exceeding 4 weeks or to both, in the case of a third or any subsequent conviction.

(3) In this section, "loitering" includes loitering in a motor vehicle.

### **Organisation of prostitution**

A person who for gain:

- a. controls or directs the activities of a prostitute in respect to prostitution,
- b. organises prostitution by controlling or directing the activities of more than one prostitute for that purpose, or
- c. compels or coerces a person to be a prostitute, shall be guilty of an offence and shall be liable
  - i) on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both, or
  - ii) on conviction of indictment to a fine not exceeding £10,000 or to imprisonment for a term not exceeding 5 years or to both.

### **Brothel keeping**

A person who:

- a. keeps or manages or acts or assists in the management of a brothel,
- b. being the tenant, lessee, occupier or person in charge of a premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution, or
- c. being the lessor or landlord of any premises or the agent of such lessor or landlord, lets such premises or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel,
- d. shall be guilty of an offence and shall be liable
  - i) on summary conviction to a fine not exceeding £1,000 or to imprisonment or a term not exceeding 6 months or to both, or
  - ii) on conviction of indictment to a fine not exceeding £10,000 or to imprisonment for a term not exceeding 5 years or to both.<sup>64</sup>

<sup>64</sup> The text is available on the internet at: <http://www.legislationline.org>.

#### *18.2.4 Other information*

##### *Protection Measures*

The Child Care Act, 1991<sup>65</sup> provides protection for any child suspected to be the victim of trafficking. Authority for a child found to be in such circumstances, may transfer from an individual to the State. A child (person under 18 years), may be placed into the care of the State or subject to a Protection Order.

The Republic of Ireland operates a witness protection scheme and is potentially available to the victim of any serious crime.

##### *Investigative Units*

The Garda Síochána (national police organisation) is responsible for the investigation of crimes relating to the trafficking of human beings. Prosecutions are carried out through the State prosecution service, on the direction of the Director of Public Prosecutions.

The Investigation section of the Garda National Immigration Bureau (GNIB), which is part of the Garda Síochána has a particular role in trafficking investigations. The Domestic Violence and the Sexual Assault Investigation Unit of the National Bureau of Criminal Investigation, is responsible for those cases of trafficking that involve sexual exploitation, particularly of children.

##### *Expected legislative reforms*

A Criminal Justice Bill is expected to be presented to the Oireachtas (Irish Parliament) in the near future. This bill is expected to create specific offences relating to the criminal activities of organised groups.

Enhanced legislation relating to the area of trafficking of human beings is expected to be introduced through the enactment of another Immigration Act.

A number of the legislative changes are anticipated and are expected to be introduced in response to the European Council Framework Decision on Combating Trafficking in Human Beings of 19<sup>th</sup> July 2002.

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<sup>65</sup> The text is available on the internet at: <http://www.irishstatutebook.ie/ZZA17Y1991S1.html>.

### 18.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

#### 18.3.1 Sources collecting data on offences

Statistical information relating to the detection/prosecution/conviction of all criminal offences is contained in the Annual Report to the Minister for Justice, Equality & Law Reform of the Commissioner of Garda Síochána.<sup>66</sup>

The lack of a precise definition for trafficking in human being limits the knowledge related to this phenomenon: for this reason, one must rely on different crimes to have a general view of the situation.

Garda Síochána publishes statistics on criminality in Ireland every year. The figures presented in tables 1– 3 are for the years 2000–2002 for the following offences:

- Exploitation of Prostitution
- Brothel keeping
- Sexual assault
- Aggravated sexual assault
- Abduction

TABLE 35: OFFENCES REPORTED OR KNOWN TO THE GARDA SÍOCHÁNA

<b>Offence Year</b>	<b>Prostitution</b>	<b>Brothel keeping</b>	<b>Sexual assault</b>	<b>Aggravated sexual assault</b>	<b>Abduction</b>
2000	63	8	549	12	31
2001	142	5	1048	18	81
2002	250	2	1626	24	61

Source: Garda Síochána

TABLE 36: OFFENCES IN WHICH CRIMINAL PROCEEDINGS WERE COMMENCED

<b>Offence Year</b>	<b>Prostitution</b>	<b>Brothel keeping</b>	<b>Sexual assault</b>	<b>Aggravated sexual assault</b>	<b>Abduction</b>
2000	33	1	130	2	4
2001	98	2	372	6	7
2002	95	1	534	4	4

Source: Garda Síochána

<sup>66</sup> The full text for years 1999–2002 is available on the internet at the site: <http://www.garda.ie/angarda/annreport.html>.



TABLE 37: PERSONS CONVICTED OR AGAINST WHOM THE CHARGE WAS HELD PROVED OR ORDER MADE WITHOUT CONVICTION

<b>Offence</b> <b>Year</b>	<b>Prostitution</b>	<b>Brothel keeping</b>	<b>Sexual assault</b>	<b>Aggravated sexual assault</b>	<b>Abduction</b>
2000	36	0	43	1	3
2001	14	4	41	0	2
2002	57	0	62	2	2

Source: Garda Síochána

The Garda National Immigration Bureau (GNIB) was created at the same time that the Illegal Immigrants (Trafficking) Act of 2000 was enacted. This organisation monitors the trends involved in immigration and is able to provide early detection for trafficking related activity. The GNIB has developed an Information System which includes information relating to non-nationals and has the capacity to greatly assist in the prevention and early detection of criminal activity relating to immigrants, including those trafficked into Ireland for the purpose of sexual exploitation, or otherwise.

## 18.4 THE TRAFFICKING PROCESS TO IRELAND

### 18.4.1 The Phenomenon

Trafficking of human beings – to the limited extent that it exists – is a recent phenomenon in Ireland. The State has only just begun to receive immigrants in any significant numbers, let alone trafficked persons. Most of the relatively few investigations of this nature being conducted in Ireland are relatively new and have yet to be completed.

The discovery of methods used in the commission of such offences will undoubtedly become clearer upon the conclusion of the investigations concerned.

#### *Transportation*

Ireland is not a “direct” destination for nationals coming from most countries of origin for trafficked people. Most of the people transit through another EU State. In particular, Amsterdam has been identified as one city through which victims of trafficking destined for Ireland are suspected to have transited. It is also suspected that the Common Travel Area (CTA) that exists between the Republic of Ireland and the United Kingdom is being exploited by persons engaged in the movement of illegal immigrants destined for Ireland. The CTA is exploited primarily because the land border between the Republic of Ireland and Northern Ireland is not subject to rigorous monitoring.

Studies focusing on the methods used to smuggle people to Ireland are incomplete resulting in an unclear picture of the pattern used. Nevertheless, traffickers from the same country as the victims are suspected to facilitate the entering of victims

into the Republic of Ireland. Furthermore, the recent increase in immigration to Ireland has led to the discovery of a number of counterfeit documents (particularly stolen birth certificates of African origin).

### *Entrance*

As far as travel by air is involved, Dublin Airport is the most commonly used point of entry. Those arriving by sea may arrive at the Dublin Port, Dunlaoighre Port or Rosslare Port, all on the east coast of the country.

In those cases that involve a land border a number of locations along the border of Northern Ireland are used.

### *Exploitation*

Compared to other European capital cities the sex industry in Ireland has recently increased to an extent that it is of any particular significance. However, it remains comparatively small in scale.

The lack of studies on the phenomenon reduces the amount of empirical information gathered. Hence, it is difficult to determine the relationship between the victims and their exploiters and it is not clear where the exploitation primarily takes place. Some data come from an operation executed by the Garda Siochana in June 2003. It was conducted in an effort to determine the extent of foreign prostitution in many premises found in Dublin and other major cities. Consequently, the number of work permits relating to the entertainment industry has become more restricted.

The duration of the victims' exploitation is largely unknown; however, it has been suggested that the activity continues until the victims debt related to her "immigration costs" has been paid in full.

No data regarding the money earned by the traffickers exists. This is true even if investigations relating to assets in the possession of persons suspected to be engaged in illegal immigration (including trafficking) are conducted by the Criminal Assets Bureau (CAB) and Garda National Bureau of Fraud Investigation (GBFI).



## 19

ITALY<sup>67</sup>

## 19.1 INTRODUCTION

Because of its geographical position, Italy represents one of the most important points of entry for migrants in Europe. Some criminal groups that have created networks for smuggling and trafficking in human beings have exploited this situation.

Regarding trafficking in human beings for the purpose of sexual exploitation, there has been a growth in street prostitution controlled by three main groups: Nigerians, Albanians and from other Eastern Europe countries. This consolidated division is confirmed by the hotline created by the Ministry for Equal Opportunities, which collects requests for help from the victims of trafficking. In particular, the figures show that 27% of victims come from Nigeria, 22.2% from Albania and 22.5% from Eastern Europe.<sup>68</sup>

In the last few years, there has been a shift in the phenomenon as the women are often aware of what they will have to do in Italy; however, they do not imagine the conditions of exploitation and deprivation of liberty they will have to face.

The data on recruitment suggest several different methods are used including the family selling the person (particularly for Nigerians), false promises of marriage and abduction (particularly for Albanians).

The way in which the women enter Italy is often dependant upon the country of origin. African women normally enter the country legally using counterfeit documents or tourist visas, while Eastern Europeans more often enter illegally across the Otranto Channel or use the border with Slovenia.

Although the phenomenon of trafficking in human beings has grown in the last ten years, it was only in 2003 that the Italian Parliament approved a law against trafficking in human beings. Nowadays the legislative pattern appears in line with the dispositions of the Palermo Convention and the EU framework.

The data used for this report come from the Ministry of Interior (CED), National Institute for Statistics (ISTAT) and a survey implemented by the Anti-mafia National Division and Transcrime for the Ministry of Equal Opportunities.

<sup>67</sup> This section has been written by Vanessa Bopp (19.4) and Andrea Cauduro (19.1–3), Transcrime, Joint Research Centre on Transnational Crime, *Università degli Studi di Trento/Università Cattolica del Sacro Cuore*, Trento–Milan.

<sup>68</sup> See [http://www.pariopportunita.gov.it/IL-DIPARTI/ATTIVIT-/link-inter/Protezione-e-assistenza-alle-vittime.doc\\_cvt.htm](http://www.pariopportunita.gov.it/IL-DIPARTI/ATTIVIT-/link-inter/Protezione-e-assistenza-alle-vittime.doc_cvt.htm) (in Italian).

## 19.2 CRIMINAL LAW RESPONSE

In August 2003, the Italian Parliament approved Law 228. The text complies with the Palermo Convention and represents a great innovation for the Italian criminal justice system. In addition to the suppressive aspects, other components of the fight against trafficking in human beings are present such as prevention and measures to protect the victims.

Law 228 modified the criminal code and introduced the offence of “Reducing to or Keeping in Slavery or Servitude” (Article 600), “Trafficking in Persons” (Article 601) and renewed the provision related to “Trading in Slaves” (Article 602). Furthermore, this new legislation strengthened programmes for social rehabilitation of the victims and cooperation with international police forces.

### *19.2.1 The offence of trafficking in human beings*

Even though Italy ratified the Palermo Convention, for a long time no specific laws were created to fight trafficking in human beings.<sup>69</sup> This gap compelled judicial authorities to use many different provisions to tackle the phenomenon. Finally, on the 11th of August 2003, Law 228 was approved and a more comprehensible legislative pattern is now operative.

From the international definition of trafficking in human beings, one notes that this phenomenon consists of both trafficking and exploitation, which is the core of the entire process. Italian legislators, through Law 228/2003, defined trafficking in Article 601 of the Criminal Code (CC) and exploitation in Article 600 (CC).

In particular, Article 600 (CC) underlines that exploitation involves, as a minimum, labour or sexual exploitation and begging; yet, in order to prevent other forms of exploitation it also specifies that, “any type of activity that implies [...] exploitation, shall be punished with imprisonment for a period of eight to twenty years”.

Article 600 (CC) states that:

“Whoever exercises, on another person, powers equivalent to property rights or who reduces to or keeps another person in a position of persistent subjugation, forcing him/her to work or furnish sexual services or to beg, or any type of activity that implies his/her exploitation, shall be punished with imprisonment for a period between eight and twenty years.

Reduction to or maintenance in subjugation occurs when the conduct is carried out with violence, threat, deceit, abuse of authority, or by profiting from a situation of physical or psychological inferiority or a situation of necessity, with the promise or payment of money or other advantages to whomever has power over the person.

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<sup>69</sup> See Transcrime, *MON-EU-TRAF – A pilot study on the three European Union key immigration points for monitoring the trafficking of human beings for the purpose of sexual exploitation across the European Union*, University of Trento, Trento, April 2002, pp. 158–160.

The penalty shall be increased by one third to a half if the conduct referred to in the first paragraph concerns a minor or is intended to exploit prostitution or to remove body organs from the person offended against”.

Consequently, the conduct covered by the provision comprises both reducing to and keeping in subjugation. Thus, any doubts arising from the previous wording of the provision, which seemed to punish only the reduction to servitude of free persons are eliminated. Moreover, some forms of exploitation are specified (sexual exploitation and begging), but the list is intentionally left open. This legislative technique is appropriate from the repressive point of view, as it is difficult to determine what form the exploitation may take in the future. However, it is possible to envisage interpretative problems by the courts due to the incomplete nature of the provision, given that the wording of the provision leaves room for extensive, more or less explicit, interpretation by analogy. In regards to sanctions, the new Article 600 (CC) provides harsher treatment for the offence of “reducing to or keeping in slavery or servitude”, increasing the duration of imprisonment from 5 to 15 years to 8 to 20 years. Moreover, three different specific aggravating circumstances are applied to those offences committed against an under-age person (aged under 18 years), for the purpose of exploiting prostitution and for the removal of body organs.

In addition to these circumstances, others (“with special effect”) are envisaged. These apply to those offences that are committed against a person under the age of 14 (Article 600– *Sex/ies* criminal code), or if there are specific relations of kinship, dependence, custody of a minor, or foster care, as well as abuse of power by a public official (Article 600– *Sex/ies*, paragraph 2, CC). In these cases, the judge may not recognise possible mitigating circumstances (with the exception of those provided by Article 98 CC for under-aged persons). This provision resembles those applied to offences committed by Mafia-type organised crime groups (Article 7, legislative decree no. 152, 13 May 1991, converted into Law no. 203, 12 July 1991).

Law 228/2003 introduced the offence of trafficking in persons and reformed the definition of slave trading. These provisions are strictly connected to Article 600, CC. In particular Article 601 states that:

“Whoever traffics a person who is in the conditions envisaged by Article 600 or, with the purpose of committing the offences outlined in the same article, induces by deceit or forces by means of violence, threats or abuse of authority or by taking advantage of a situation of psychological inferiority or a situation of necessity, or by promising money or other benefits to the person with power over the victim to enter, stay within, or exit from the national territory or to move within it, shall be punished with imprisonment for a period between eight and twenty years.

The penalty shall be increased by one third to a half if the conduct referred to in the first paragraph concerns a minor or is intended to exploit prostitution or to remove body organs from the person offended against”.

Article 602 redefines the concept of slave trading:

“Whoever, apart from the cases indicated in the Article 601, acquires or sells a person who is in one of the situations envisaged by Article 600 shall be punished with imprisonment for a period between eight and twenty years.

The penalty shall be increased by one third to a half if the conduct referred to in the first paragraph concerns a minor or is intended to exploit prostitution or to remove body organs from the person offended against”.

The most interesting aspect of these new provisions is that trafficking in persons or trading in slaves for labour or sexual exploitation or removal of body organs shall be punished with the same penalty of the offence of reducing to or keeping in slavery or servitude. This underlines that trafficking in human beings is a unique process even if it is composed of two phases (trafficking and exploitation).

#### *19.2.2 The offence of trafficking in human beings for the purpose of sexual exploitation*

In the Italian system, no specific provision addressing trafficking in human beings for the purpose of sexual exploitation exists. As previously discussed, the Italian system instituted the general offence of trafficking in human beings in 2003. Another relevant piece of legislation is Article 12 of the consolidated text on immigration (Legislative Decree 25 July 1998, no. 286):

- Article 12, paragraph 1, Legislative Decree 286/1998 states that any person who facilitates the illegal entry into the country of aliens against the disposition of Italian immigration law shall be punished with imprisonment for up to 3 years and with a fine of up to € 15,493.706 (30 million Lire) for each alien illegally introduced into the country (aiding and abetting illegal immigration);
- article 12, section 3, Legislative Decree 286/1998, states that if the offence foreseen in section 1 is committed with the intent to recruit persons for prostitution or for the exploitation of prostitution, imprisonment shall be for 5 to 15 years and the fine shall amount to € 25,822.844 (50 million Lire) for each alien illegally introduced in the country. This section 3, also declares that if the offence foreseen in section 1 is committed under one or more of the following conditions: a) to obtain profit; b) by three or more persons jointly; c) against five or more victims; d) with the use of international means of transportation or counterfeit documents, imprisonment shall be for 4 to 12 years and the fine shall amount to € 25,822.844 (50 million Lire) for each alien illegally introduced in the country.

The above-mentioned Article 12 is directed towards a person who aids and abets the illegal entry of aliens into Italy (even if no profit is involved), but when such activity is performed for profit or for sexual exploitation, it envisages a much more severe punishment. Furthermore, immediate arrest and the seizure of all goods and means used is stipulated for persons committing such crimes. In addition to the usual types of confiscation, it is possible to confiscate all means of transport used to commit the offence. These seized means of transport are taken into safekeeping by the police or other public body, they are then definitively allocated following confiscation procedures. All unallocated means of transport are destroyed. Money confiscated or derived from the sale of the confiscated assets connected to

convictions for offences under Article 12 shall be used to improve the prevention and repression of such crimes.<sup>70</sup>

### 19.2.3 Other offences

Other offences have been and are applied by the Italian public prosecutors and judges to punish trafficking in human beings for sexual exploitation:

1. *offences contained in Law no. 75/1958 relating to prostitution* – Article 3, first paragraph, nos. 6–7, punishes those who induce another person to move from one place to another, within the same country or to another country, in order to engage in prostitution and who, in association with others or as part of a national or foreign criminal organisation, recruits persons to be used for prostitution or for the exploitation of prostitution;
2. article 416 (CC): Criminal Associations – When three or more persons associate together in order to commit more than one crime, the persons who promote, direct or organise the association shall be punished, for this sole offence, with imprisonment for 3 to 7 years. For the sole fact of participating in the association, punishment shall be imprisonment for 1 to 5 years. Law 228/2003 modified Article 416 (CC), introducing a harsher punishment: “If the association is directed to commit one of the offences outlined in Articles 600, 601 and 602, imprisonment between five and fifteen years in the cases foreseen by section 1 and between four and nine years in the cases foreseen by the section 2 shall be applied”;
3. article 416-bis (CC): Mafia-type Associations – Any person participating in a unlawful Mafia-type association including three or more persons shall be liable to imprisonment for 3 to 6 years. Those persons promoting, directing or organising the said association shall be liable for imprisonment of 4 to 9 years for this sole offence. These provisions also apply to the Camorra and to any other associations, whatever their local titles, seeking to achieve objectives that correspond to those of unlawful Mafia-type associations<sup>71</sup> by taking advantage of the intimidating power of the association.<sup>72</sup>

### 19.2.4 Other information

With Law 228/2003 investigations have been centralised under the Anti-Mafia District Divisions (*Direzioni Distrettuali Anti-Mafia*), which will also facilitate investigative co-ordination at the international level through actions taken by the National Anti-Mafia Division (*Direzione Nazionale Anti-Mafia*). This agency will be entrusted with all information on the criminal phenomena in question.

<sup>70</sup> See also Ministry of Interior, *Report on Immigration. From Emergency to Programme*, Rome, 2001.

<sup>71</sup> An unlawful Mafia-type association is said to exist when the participants take advantage of the intimidating power of the association resulting in conditions of submission and silence to commit criminal offences. Or if the association is said to manage or in any event control, either directly or indirectly, economic activities, concessions, authorisations, public contracts and services, or to obtain unlawful profits or advantages for themselves or for others. Or if the association engages in activity intended to prevent or limit the freedom to vote, or to obtain votes for themselves or for others on the occasion of an election.

<sup>72</sup> Commissione Parlamentare Antimafia, *Relazione sul traffico di esseri umani* [Report on Trafficking in Human Beings], Rome, 5 December 2000, pp. 93–96.



Furthermore, Law 228/2003 enlarges the range of instruments available to the agencies investigating the trafficking in persons and related crimes. In particular, the following measures are foreseen:

- “Controlled delivery” and under-cover activity;
- given the typically associative nature of the crimes related to the trafficking in persons, Law 228/2003 allows the prosecutor to delay the execution of precautionary measures, arrest, seizure, or police detention when it is necessary to acquire important evidence and to identify or arrest the perpetrator of the crimes envisaged by Articles 600, 601 and 602 (CC), as well those related to prostitution (i.e. Article 3 of Law no. 75, 20 February 1958);
- prosecutors have greater powers to use interceptions in the case of crimes covered by Articles 600, 601 and 602 (CC), as well those related to prostitution (i.e. Article 3 of Law no. 75, 20 February 1958).<sup>73</sup>

The rehabilitation of the victims is addressed by Article 18 of Legislative Decree 286/1998, which establishes that temporary residence permits may be issued to provide protection for the victims of trafficking and exploitation. Under this Article, victims who decide to report traffickers and/or their exploiters may be given special assistance and protection. This piece of legislation states that when, during law enforcement operations, investigations, judicial proceedings, or during welfare interventions by local social services, situations of violence and exploitation against a foreigner are apparent, and his/her life is in danger because of his/her attempts to escape from the criminal association exploiting him/her or as a consequence of his/her testimony in the preliminary investigation or at trial, the *Questura* (local Chief of Police), upon request by the public prosecutor or with his/her approval, may issue a special residence permit. This permit enables the foreigner to escape from the violence and exploitation perpetrated by the criminal organisation and participate in programmes of assistance and social integration. The permit lasts for six months and may be renewed for one year, or for a longer period if necessary for the purposes of justice. According to Italian legislation, there are two cases in which the above-mentioned residence permits may be issued:

1. the judicial case, in which trafficked and exploited persons are given protection and assistance because of their active role in the acquisition of evidence against their traffickers/exploiters;
2. the social case, more closely linked to purely social considerations, in which trafficked and exploited persons are given protection and assistance because of circumstances related to exploitation and danger.

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<sup>73</sup> Article 3 of Law 75/1958 punishes the exploitation of prostitution.

### 19.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

#### 19.3.1 Sources of data on offences and offenders

After the entry into force of Law 228/2003 a better collection of data on the phenomenon of trafficking in human beings is to be expected.<sup>74</sup> However, these data are not yet available.

There are currently three important sources of data: CED, ISTAT and the survey carried out for the Ministry of Equal Opportunities. The first two sources are public databases maintained by the Ministry of Interior and National Institute for Statistics, while the latter is a study implemented by the Anti-Mafia National Division and Transcrime. The survey collects data directly from Prosecutor's Offices in Italy, giving a more precise pattern to the phenomenon. The following paragraph provides a more detailed look at each of the three sources.

*CED (Centro Elaborazione Dati) of the Ministry of the Interior.*<sup>75</sup> This database is mainly for law enforcement purposes. CED handles all the data from the criminal courts and police forces on criminal proceedings and investigations. Consequently, it stores an enormous amount of information that can be used for a variety of purposes. In particular, the data gives access to the following investigative and judicial information: a) data on crimes and persons reported; b) data on persons arrested by the police forces; c) data on persons convicted. The authority that furnishes the statistics is the Ministry of the Interior. The variables on which data are collected include the type offence; date and location of the offence; informative source.

*Database maintained by the National Institute for Statistics (ISTAT).* This database contains judicial information pertaining to the following: a) data on persons reported to the judicial authorities against whom judicial proceeding has begun; b) data on convicted persons. Data related to the following variable are collected: type of offence; date and location of the offence and information source. In relation data on convicted persons the information collected includes the number of the proceeding, date of the report; type and date of offence.

*Survey of the Anti-Mafia National Division in cooperation with Transcrime.* This survey was implemented by the Anti-Mafia National Division and Transcrime for the Ministry of Equal Opportunities. It was designed to gather quantitative and qualitative information on trafficking in human beings for sexual exploitation. The study is particularly important as the method used will be adopted by the United Nations to monitor the implementation of the Palermo Convention by the Member States.

<sup>74</sup> The law provides a precise definition of trafficking, smuggling and servitude so official data will be more detailed. Furthermore, it outlines new methods for collecting data.

<sup>75</sup> For a description of the structure and functioning of CED see Transcrime, *op. cit.*, p. 163.

The study was made up with two main phases. First, the crimes of “trafficking in human beings” and “smuggling of migrants” were defined.<sup>76</sup> This was followed by the creation of a spreadsheet that was sent to 164 Italian Prosecutor’s Offices.

The purpose of this instrument was to determine the existence and quantitative characteristics of ongoing legal proceedings concerned with the “trafficking in persons for the purpose of exploitation” and the “smuggling of migrants”. The expression “ongoing legal proceedings” meant those proceedings that dealt with trafficking/smuggling during the investigation and committal phases, or those proceedings that had already led to sentencing between June 1996 and June 2001.

After the completion of the spreadsheet, the Anti-Mafia National Division identified the fifteen most active prosecutor’s offices and started the second phase of the project. The phase required Transcrime to conduct follow-up interviews with various prosecutors in order to collect data on the victims and the best practices in the fight against the phenomenon.

### *19.3 Sources of data on victims of trafficking and sexual exploitation*

The Anti-Mafia National Division and Transcrime collected data on victims during the survey. Important qualitative information is also collected by the Ministry for the Equal Opportunities in the programme for social/judicial protection according to Article 18 Legislative Decree 286/1998.

## **19.4 THE TRAFFICKING PROCESS TO ITALY**

### *19.4.1 The Phenomenon*

Spreadsheet 3 aimed at monitoring and analyzing the trafficking for sexual exploitation process to each EU Member State, from the recruitment phase to the exploitation phase. The source of information are public prosecutors and law enforcement officials dealing with trafficking in human beings all over the country.

#### *Recruitment*

Because it is difficult to discuss the methods of recruitment separately from the organization of the recruitment phase, both will be discussed concurrently. Most importantly, the recruitment phase varies according to the victim’s origin (both ethnic and geographic). The women are usually from Nigeria, Albania, and Eastern Europe.

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<sup>76</sup> In Italy at that time, a precise legislative definition of these crimes did not exist; hence, prosecutors and judges relied on other norms such as (slave trade, kidnapping, exploitation of the prostitution, etc.).

### *Nigeria*

Nigerian women may be recruited vis-à-vis a sale, knowledge of or direct contact with friends, acquaintances, relatives or through previously trafficked women in Italy who have been given positions of authority as a recruiter.

In the first case, the women are recruited from the poorest villages and are usually sold by their families. No selection criterion, including aesthetic, is used. The victims seem to be aware, from the outset, that they will be employed as prostitutes in Italy, although they claim that they have been guaranteed regular employment.

In the second case, acquaintances, family friends or relatives approach the women with false promises of honest employment in Europe, often as hairdressers and/or tailors. Some prosecutor's offices, however, believe that most of the women are aware of the type of work that awaits them, which they consider an attractive opportunity to earn substantial sums of money in a short time.

Finally, the recruitment may take place by co-option. Once women are already trafficked and exploited in Italy, and have repaid their debts to the exploiters, they join the criminal organisation, serving first as recruiters of victims and then as their supervisors.<sup>77</sup>

### *Albania*

Unlike the case of Nigerian women, in Albania recruitment is based on:

- The orders of a member of the clan to which the woman belongs;
- Violence and, in extreme cases, abduction;
- Sentimental attachments and false promises of marriage.

The first form of recruitment pertains to Albanian culture, where relationships among the members of the clan are regulated by a moral code that replaces the law and establishes roles, powers and obligations. Additionally, it assigns women to the lowest position in society.

A more persuasive approach is usually adopted with younger women. When this does not work, violence and even abduction are used. In some cases, the girls are abducted and raped while they are still minors in order to prevent any form of rebellion.

Adult women are also deceived with promises of marriage to the trafficker or improvement in their living standards if the woman is engaged to her exploiter.

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<sup>77</sup> These are the *mamans*, Nigerian women not young enough (or simply not able) to work as prostitutes. They personally exploit Nigerian girls for the criminal organisation, keeping their earnings and managing their lives, not just their work.

### *Eastern Europe*

Women from Eastern Europe<sup>78</sup> are recruited by methods that differ according to the country of origin and the characteristics of the woman concerned. The most common methods are:

- contacts in nightclubs (in the cases involving women already working as prostitutes in the country of origin);
- fashion and entertainment agencies and/or study-travel agencies, via advertisements in local newspapers;
- direct and/or indirect knowledge of friends or relatives;
- recruitment in Italy.

Women who have already been prostitutes in their own country are contacted by individuals (sometimes known to them) who offer the women employment in Italy as dancers in nightclubs or as prostitutes, luring them with promises of large and rapid earnings.<sup>79</sup> In this case the victims are entirely aware of their future form of employment but they do not know the conditions in which they will be forced to work, nor that most (if not all) of their earnings will be appropriated by the criminal organisation.

There are various agencies specialised in the organisation of study-holidays and travel and/or employment abroad in the fashion and entertainment industries. These agencies place advertisements in local newspapers. In the case of the fashion and entertainment agencies, the victims are attractive girls lured by a future on the catwalks or in front of the cameras.

Recruiters may also use their direct or indirect knowledge of the victim. Former boyfriends or childhood friends are used to contact the girls and persuade them that, thanks to their friendship and trust, they can get rich quickly by working as prostitutes abroad.

Finally, there is recruitment in Italy. In this last case, women who have illegally entered the country without the assistance of a criminal organisation, or who have legally entered the country on tourism or study visas, are persuaded to stay beyond the expiration date of their visas to work as prostitutes. The victims accept this proposal because they need the money, typically because they are alone in Italy and without legal documents. Control over this type of prostitution is exercised by local criminals, not large criminal organisations.

Violent forms of recruitment have not been reported, except for some cases of under-age girls abducted and forced to work as prostitutes in Italy.

Unlike victims from other ethnicities, Eastern European girls are subjected to a selection process based on three criteria: age (they must be young<sup>80</sup>), physical attractiveness, and sexual skills. Their financial solvency is not taken into

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<sup>78</sup> Romania, Baltic Countries, Ukraine, Russia, Belarus, Moldavia, and the former Soviet Republics in general are among the countries most closely involved.

<sup>79</sup> In relation to this specific type of recruitment, 80% of the women voluntarily decide to come to Western Europe to work as prostitutes.

<sup>80</sup> Even under-age, considering the demand for virgins.

consideration because they will be required to repay their debts using their earnings from prostitution.

### *Transportation*

It is possible to identify a number of routes to Italy used by traffickers for the purpose of sexual exploitation. These routes correspond to the countries previously mentioned during the discussion of the victims' origins: Nigeria, Albania, and the countries of Eastern Europe. Two routes from Eastern Europe and one from Nigeria are known. There are two main entry points into Italy: the border with Slovenia (Trieste and Gorizia provinces) in the North and the sea border along the Otranto Channel in the South.

### *Nigeria*

After the women have been recruited, they are taken to one of the large Nigerian cities (Lagos or Benin City). While waiting for the necessary expatriation documents, they are given accommodation in the homes of women belonging to the criminal organisation, where they are subjected to voodoo rituals intended to ensure their obedience. The victims are then put on flights to European capitals (Paris, Berlin, Amsterdam, etc.) from there they travel to Italy by train, heading for large cities like Genoa, Rome, Naples and Palermo. In the cases investigated by the prosecutor's office of Turin, some women arrived directly in Italy on flights landing in Milan and/or Rome. From there, with public or private means of transport (usually provided by taxi drivers working for the traffickers), and under the supervision of the criminal group organising their illegal entry into the country, they travelled to other northern cities.

### *Albania*

The journey from Albania first requires that the women are transferred from the internal areas of the country to Valona or other coastal towns, where they wait to be taken across the Adriatic. In this phase, the youngest and most rebellious women are sometimes subjected to extreme physical and sexual violence. The journey then continues by speedboats across the Otranto Channel.

The landings take place on the coasts of Salento, in Puglia, with the complicity of Italians who warn the traffickers of the presence of the coast guards. The women are picked up by a member of the criminal organisation and transferred by car to the nearest railway station; from there they travel to their final destinations by train.

*Eastern Europe*

The Otranto Channel is also a pivotal route for trafficking in Eastern European women, in particular from the southern countries of Moldova, Bulgaria, and Romania. Albania is therefore the starting point for Albanian women and the intermediate destination for those from other Eastern ethnic and geographic areas.

The journey from the Eastern European countries is divided into several stages handled by different criminal organisations because of the great distance between far Eastern European countries and the Western European countries. The first one consists in an overland transfer from the country of origin to Albania across the Balkans. This route is controlled by criminal organisations of the same nationality as the victims.<sup>81</sup> A network of individuals arranges the purchase of the women, who are then repeatedly sold to different buyers. Each change of ownership, implies that the victim is subjected to physical violence, especially sexual abuse, because each buyer wants to 'test the goods' and to assert his dominance over her. As the number of sales and acquisitions increase, and as the 'goods' (prostitutes) approach the market in which they are to be sold, their prices rise. The final buyers belong to the Albanian criminal groups that arrange their transfer to Italy and ultimately their exploitation. The transfer by seaboard ferries, or on speedboats belonging to the so-called *scafisti*,<sup>82</sup> is the second stage of the journey.

A second route begins in Russia and the Ukraine, and sometimes in Romania. This route winds through Hungary<sup>83</sup> and Austria,<sup>84</sup> arriving in Italy over the Tarvisio Pass if the victim has legal documents, or across the borders though the province of Trieste for those entering illegally.

The northern border and the sea border (Otranto Channel) in the South present vulnerable geographical loopholes. The changing geographical nature of the terrain in these areas enables people to cross the borders without being intercepted by police.

Traffickers use airports, trains, taxis, ferries, and speedboats to move the victims from the point of origin to the final destination.

Taxi drivers aid and abet the trafficking operations by providing transportation within Italy. At times, taxi drivers transport prostitutes from the city where the women live to the city where they work so that the women can avoid having clients in their place of residence. The transfer by seaboard ferries, or on speedboats belonging to the so-called *scafisti*, is the second stage of the journey. The *scafisti* also aids and abets the trafficking operations by providing transportation into Italy. Other members of the organized crime ring provide assistance in the countries outside the point of origin.

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<sup>81</sup> Women exploited in the prostitution market, but also minors used for begging.

<sup>82</sup> *Scafisti* is a derogatory term in Italian for the "drivers" of the speedboat.

<sup>83</sup> Hungary is the hub of numerous routes. For this reason the country has become the assembly point for illegal migrants (victims of both trafficking and smuggling), and not because of the increasing corruption of the country's customs officials. Along this route, the victims never prostitute themselves in the country of transit, but they sometimes are subjected to sexual assaults by their transporters.

<sup>84</sup> Crossings of the Austrian border at Nickelsdorf are very common.

In regards to police authorities aiding and abetting the traffickers, there have been documented cases in Italy, Albania, and Nigeria.

For Nigerian victims, the prosecutor's offices of Genoa and Palermo reported entries on regular documents (legal passports and/or stay permits and tourist visas). The documents were taken away from the victims as soon as they arrived in Italy. In order to get their documents returned, the women had to pay the criminal organisation large amounts of money earned from prostitution. In the case of apparently legal entries, upon departure the women received a passport with their own photographs but false personal details.

Finally, women from Eastern Europe legally enter Italy using their own valid documents and, when required, a visa usually issued for tourism. Their entry is arranged by tour operators in the country of origin that organise the journeys for women intending to work as prostitutes abroad.

These tour operators may be an integral of the criminal organisations engaged in the exploitation, or they may simply provide support services (outsourcing). For this reason, besides supplying the documents necessary to enter Italy legally, they furnish false passports, medical insurance and the minimum sum (€ 500) required by the women to show customs that they have sufficient means of support. Finally, they handle the distribution of the women transported in the Italian prostitution market.

A lack of information exists regarding the exact duration of the transportation process. In past cases, victims from Eastern countries reported that the phase lasts anywhere from one or two months to as long as six months from places like Nigeria and perhaps even the far Eastern European countries.

During the transportation phase of the exploitation process, if women reject the proposal made to them, the crime organisation convinces them using violence, threats of reprisals against their family and themselves, and even rape. Thus, the victim finally consents, or is forced to consent.

During their journey to Europe, the victims reported that they were sold several times to different criminals, who paid a lump sum that included the price of the trafficking service. No data are available about prices paid by women to be trafficked. However, victims interviewed, reported that the price paid by exploiters to '*passeurs*' is generally between € 75 and € 500 (one way) from Albania to Italy. More information on the costs of the journey is explained in the exploitation paragraph.

### *Entrance*

### *Nigeria*

The cases reported by the prosecutor's offices show that Nigerian women apparently enter Italy legally and can therefore be transferred using international airports.



The prosecutor's offices of Genoa and Palermo reported entries on regular documents (legal passports and/or stay permits and tourist visas).

In regards to bribery, before the women were transferred to Europe they spent waiting periods in large Nigerian towns. This was necessary because the criminal organisation controlling the trafficking process had to wait until an accommodating official or police officer was available to issue the necessary authorisations.

In 1996, the Italian authorities at the Italian Embassy in Lagos were involved in the issue of spurious tourist visas. Members of the trafficking organisation went to the Embassy with applications for such visas that were then issued upon the payment of sums of money. The visas were for three months, allowing the women to enter Italy legally and then remain in the country illegally.

### *Albania*

Albanian women illegally enter Italy when they arrive by speedboats belonging to the *scafisti*, whilst their entry is apparently legal when they arrive by ferry. In the latter case, they are provided with documents (passports) falsified by substituting their photographs for the original ones and by using other devices to camouflage the bearer's true identity. The non-existence of birth, marriage and death certificates or registers in Albania precludes identity checks, even when the perpetrators or victims are apprehended by Italian law enforcement.

Many cases of corruption among the Albanian police officers have been reported. These officers supervise loading operations and the falsification of documents, and they often sexually assault the women being trafficked. This causes a high degree of distrust among victims in all police officers, even Italian ones.

### *Eastern Europe*

Women from Eastern Europe legally enter Italy on their own valid documents and, when required, with a visa, usually issued for tourism. Their entry is arranged by tour operators in the country of origin that organise the journeys for women intending to work as prostitutes abroad.

These tour operators may be an integral of the criminal organisations engaged in the exploitation, or they may provide only support services (outsourcing). For this reason, besides supplying the documents necessary to legally enter Italy, they furnish false passports, medical insurance and the minimum sum (€ 500) required to show customs that they have sufficient means of support. Finally, they handle the distribution of the women transported in the Italian prostitution market.

On their arrival in Italy, all women are compelled to change their identity. Deprived of valid documents, they are supplied with perfectly forged false passports<sup>85</sup> that provide false personal details.

The Italian prosecutor's offices note increasingly numerous cases of corruption concerning the issue of passports, both in the Eastern European countries and the former Soviet Union, and in the countries traversed during the journey to Italy (especially Hungary).

Various forms of illegal or apparently legal entry are reported. In the latter case, forged documents and/or fake stay permits, as well as the bribery of police officers, are used. The methods vary according to the ethnic group of the victim.

### *Exploitation*

The trafficking process is almost the same in all the cases. The starting point is an Eastern country, either European (Romania, Bulgaria, Albania) or non-European (Moldova, Ukraine, Russia, the Baltic States, Nigeria). The first stage of the process is managed by local people responsible for the recruitment of the women to be trafficked and then exploited abroad. They look for two kinds of victims: on the one hand, women already working in bars or public places as prostitutes but wanting to go abroad to increase their earnings and improve their living conditions; on the other hand, women or under-age girls, living in poor socio-economic conditions, without jobs, and looking for legal employment elsewhere. Recruitment is conducted by means of advertisements in local newspapers. It is evident that these two groups of women are treated in different ways. In the former case, the women are perfectly aware of the work awaiting them. What they do not know is that they will be working in the streets under the control of an "owner" who keeps them in servitude and takes all their earnings. In the latter case, the women are persuaded to leave their countries with false promises of legal employment as housemaids or waitresses. In this case, it may happen that victim knows the recruiter and trusts him/her because of their friendship. Thus, women leave the country voluntarily and in possession of their own legal documents, which are then taken away by the criminals as soon as they have crossed the border.

Some women think of their exploiters as a fiancé, because, there has been evidence of the criminals offering an engagement to the women in Albania, in order to reassure the victim's family. Once the couple arrived at their destination, the situation completely changed, with the women forced to work on the streets, sometimes the love relationship is maintained.

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<sup>85</sup> Forged passports can only be identified with careful scrutiny. The photograph is always authentic, i.e. it depicts the victim. The victims themselves provide their photographs to the criminal organisation before departure from the country of origin. In the case of trafficking from Romania, the forgery involves substitution of the first page of the passport (the one with the plastic-covered photograph of the bearer). The original page is carefully excised (the cut being hardly visible to the naked eye) and replaced with the bogus one.

The exploitation mainly occurs in the form of prostitution on the streets, in hotels, or in premises expressly used for the purpose of sexual exploitation.

Each prosecutor's office emphasized the distinctive features of the exploitation occurring in its particular area of competence. Three main forms of exploitation present in prostitution emerged, depending on if the sexual services were supplied in nightclubs, apartments or on the street.

Prostitution in nightclubs is the 'up-market' form of prostitution where the girls ostensibly work as escorts or hostesses who encourage clients to purchase drinks. This is a less clear-cut form of prostitution, more accurately termed 'semi-prostitution', whose features are difficult to describe with precision.<sup>86</sup>

According to the information obtained, the girls may be in situations of total dependence on and subjugation to the exploiter/owner of the nightclub, or semi-dependence (especially if they are able to meet clients outside working hours). In the former case, the club has private rooms (*privés*) where the women provide sexual services, and for which part of the payment is kept by the club owner.<sup>87</sup> In other cases, the women can choose to receive clients in their own homes.<sup>88</sup> Often times, contacts made in the *privés* are also used as opportunities for the women to make appointments outside of the club for a house call. The women working as prostitutes in clubs are (relatively) more protected because they have margins of choice and personal freedom, and their clients are more affluent.

This form of prostitution tends to involve women from Eastern Europe. This is because the massive inflow of Nigerian and Albanian women has forced the other prostitutes to find different places to ply their trade. Before they are employed in a nightclub, the women are carefully selected based on their physical appearance and youth in order to cater to the tastes of the Italian clients.

Apartment prostitution has developed in order to find alternatives to the streets or nightclubs, which have by now become saturated. It is especially common in the Italy's central regions, whilst it is still developing in the South<sup>89</sup> and the North.<sup>90</sup> This is considered medium-level prostitution run by criminal organisations from Eastern Europe who exploit co-nationals.

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<sup>86</sup> This is confirmed by the fact that the starting point for detection of cases of trafficking for sexual exploitation in nightclubs are fiscal investigations, inspections conducted for social security offences, and ones relating to the commercial activities that conceal the exploitation, more than reports from the victims. This crime is hard to detect because it is mingled with legal business activities.

<sup>87</sup> The prosecutor's office of Arezzo has found that exploitation by the managers of these nightclubs is done by 'deduction' of the cost of the time spent privately with clients from the wages of the foreign women employed in the clubs as hostesses and/or dancers. This enables the owners to levy a percentage on the prostitution of their employees.

<sup>88</sup> This kind of treatment is quite rare, however, because the women receive a percentage of the sums paid for drinks by clients, who usually do not return to the woman with whom they have had sexual intercourse. Providing sexual services to clients outside the club thus means losing a source of income.

<sup>89</sup> An investigation in Palermo discovered a brothel in a residential area of the city that was used by middle and upper class clients. Unlike in the rest of Italy, the exploited women were from Colombia and very young. They did not work during the day but only at night. This is a less widespread phenomenon than the exploitation of Nigerians for street prostitution.

<sup>90</sup> The only report of this is from the prosecutor's office of Genoa.

Finally, street prostitution is the lowest form of prostitution and mainly involves women from Nigeria and Albania.<sup>91</sup> The victims are forced to work long hours, and their clients are usually of low social extraction and with scant economic means.

A distinct feature of street prostitution is commuting: the prostitutes ply their trade in venues different from their places of residence, moving from one town to another some distance away but easily and quickly reached by public transportation.<sup>92</sup> Sometimes the inefficiency of local public transportation services, especially in regards to connections, forces the women to use taxis, in which case connivance between the taxi drivers and the criminal organisations has been established. The fact that the victims work far from their places of residence reduces the risks of discovery for their exploiters.

The apparent relative freedom enjoyed by street prostitutes is only a facade. Their exploiters are able to maintain close control over them by patrolling their work places,<sup>93</sup> intimidating them with magic rites,<sup>94</sup> and subduing every, even minimal attempt at rebellion, with violence and threats.<sup>95</sup>

In regards to the duration of trafficking, a distinction should be drawn between the phases of recruitment, trafficking and entry, on the one hand, and the actual exploitation on the other. The time necessary for the first three phases varies according to the country of origin and of destination. The only relevant feature of exploitation is the nationality of the victims and the exploiters, because the modes, and consequently the duration, of the exploitation are different for each ethnic group.

Nigerian women, for example, are exploited until they have repaid their debt. This period usually lasts for a couple of years and depends on the percentage of the earnings that the victims pay to the exploiters every month. It should be taken into consideration, however, that the living and working conditions of the Nigerian women gives them a short life expectancy, which sometimes does not extend beyond the time needed to repay the debt. Those who manage to survive usually join the criminal organisation and work as *mamans*.

Albanian women are instead forced to work as prostitutes for their entire lives. The rules imposed on them and the modes of their recruitment (i.e. deceit or abduction) imply unconditional exploitation for an indeterminate period of time. For this reason, their only chance of escape is to contact the public authorities and report

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<sup>91</sup> The curb side patch is often shared by prostitutes from different ethnic groups.

<sup>92</sup> The prosecutor's office of Arezzo has found that prostitutes often live in Rome and travel to Arezzo and other Tuscan towns by train. The prosecutor's offices of Brescia and Genoa state that Nigerian prostitutes always work in different places, even far away from their abodes (for example, lower Piedmont for those living in Genoa, or the Milan hinterland for those living in Turin). According to the prosecutor's office of Ascoli Piceno, the women working in the *Bonifica del Tronto* area arrive by train late in the afternoon from the nearby coastal resorts of Romagna (Rimini) and then return home the next morning.

<sup>93</sup> The exploiter patrols the working areas, which are rigidly divided among criminal organisations. This is done to prevent the encroachment on their 'turf' by other women. In this case, the women either pay a tax to use the stretch of curb or are forced to leave.

<sup>94</sup> An older woman (known as the *maman*) uses voodoo rituals to subjugate the Nigerian women because, besides organising the women and collecting their earnings, she must also prevent their escape.

<sup>95</sup> It is usually a man who controls the exploitation of Albanian and Romanian women; if they break the rules, he uses often-extreme physical abuse.

their exploiters, or be caught by the law enforcement agencies and persuaded to report the crimes committed against them.<sup>96</sup>

Finally, according to the prosecutor's office of Ascoli Piceno, the Eastern European women arrive with the intention of prostituting themselves long enough to save the money necessary to live a comfortable life in their own country. Nevertheless, they in fact stay longer, changing zones every six to seven months, both within Italy and in other countries. These changes are the consequence of both market forces (clients always want new girls) and the need to protect the criminal organisation from capture by the police.<sup>97</sup>

The principle mentioned above in relation to Albanian women also applies to Eastern Europeans, namely, their state of subjugation prevents them from contacting the police in order to put an end to their situation. In these cases as well as intervention by the police represents one of the victims' few chances of being saved.

No cases of bribery have been detected during the exploitation phase in Italy. Nevertheless, mention should be made of a report by the prosecutor's office of Genoa concerning cases of misconduct by police officers. These were isolated episodes of officers who did not report criminal activities related to the exploitation of prostitution in exchange for sexual services. There may also have been collusion between police officers and members of criminal groups, as evidenced by the almost complete lack of controls in some urban areas, especially over apartments occupied by groups of foreign women. However, this information has not been judicially confirmed.

#### SUMMARY

##### CHARACTERISTICS OF AND TRENDS IN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION

1. *Different degrees of 'consent' are given by the women* to prostitute themselves in Italy. This varies according to the ethnic group concerned (reduction to servitude for Albanian women; voluntary decision – though caused by deception about living and working conditions – for Eastern European and Nigerian women).
2. *Trafficking and exploitation planned in each phase by specialised and organised structures* (total control over the process).
3. *Well-defined and well-established routes.*
4. *Three types of prostitution:* prostitution in night clubs, apartment prostitution and street prostitution. These can be distinguished according to the degree of control exerted over the victims by the criminal organisations and the extent to which the victims are deprived of their freedom.

<sup>96</sup> Spontaneous reporting by these women is almost impossible, because they are entirely subjugated to their exploiters, who convince them that the Italian police are just as corrupt as the Albanians. The fear of sexual assault by the Italian police stops them from reporting the members of the organisation that exploits them.

<sup>97</sup> If the girls remain in the same place too long, they may become known or establish friendly relations with local people. This may facilitate reporting or at any rate rebellion against the criminal organisation, as happened in the province of Ascoli Piceno, which prompted an inquiry into the trafficking of girls from Eastern Europe.

5. *Commuting.* Street prostitutes are exploited in places different from where they live, the purpose being to conceal the exploiters.
6. *Importance of apartment prostitution.* This phenomenon, flourishing in the country's central regions, is increasing in the North and South owing to the need to find alternatives to the street and nightclubs. Although this type of exploitation is perpetrated with violence, coercion and threats, it more easily eludes law enforcement control. It is difficult to prove the relationship between the women and their exploiters, as well as identify the forms of assistance provided by some 'links' in legal society, such as estate agents and taxi drivers.
7. *Involvement of 'legal' actors* who facilitate the exploitation of prostitution, such as rental agencies, taxi drivers, hotel owners.
8. *Mobility both national and international of the women working in nightclubs and apartments, and the exchange of women among criminal organisations in order to facilitate such mobility.*
9. *Use of expedients by organised crime in order to disguise the exploitation* (for example, stay permits for 'posted workers', deduction from the dancer/hostess's wages for the hours spent with clients).
10. Use of forged documents pertaining to nationalities different from those of the victims.
11. *Frequent cases of bribery of foreign public officials, seldom of Italian ones.*

The places of exploitation are mostly located in northern Italy. The Lombardy Region and all its provinces seem to be the core area for exploitation: Milan, Varese, Como, and their surroundings, as well as Brescia, are frequently mentioned, together with other big cities in the north like Turin and its surroundings (e.g. Arona), Trieste, Pordenone, and Genoa. Some big cities and towns in the central and southern regions of the country also have high levels of exploitation in their surroundings. Naples, Cosenza and the neighbouring counties are indicated as exploitation places in the cases handled by the public prosecutor's office in Lecce, where numerous trafficking victims have been stopped upon arrival, before their exploitation starts. In one of these cases, the final destination for exploitation was intended to be a country other than Italy, namely Belgium.

Various elements can be taken into account when estimating profits: the daily earnings of each woman, the number of women exploited, their individual value, and the terms for repayment for their debts.

The high profits earned by Albanian criminal groups are indirectly confirmed by the existence of facilities in Albania (i.e. camps and hotels) able to accommodate large numbers of women on their way to work as prostitutes abroad. For some women, they are exploited during the trafficking phase, which prolongs their total amount of time being trafficked.

Women arriving from Albania do not pay for their transfer across the Otranto Channel. The exploiter accompanying the women usually pays € 75 to € 250 for in advance for each woman and then demands repayment once the victims have arrived in Italy.

In relation to trafficking from Nigeria, various prosecutors' offices confirmed that the women must repay to the criminal organisation the cost of their transfer to Italy, the accommodation provided, and transportation during their time working as prostitutes. In addition, this sum must be paid for the return of their documents

that were seized when they arrived in Italy. The total amount is approximately € 40,000. Usually, € 25,000 is paid when they depart from their country of origin, as a deposit for travel expenses, while the final payment occurs through seizure of the woman's earnings from prostitution. Most women must pay between a minimum of € 250 to a maximum of € 500 every month to their *madame*; otherwise, they are beaten. The women are allowed to keep a small amount from the proceeds of their work. The prosecutor's office of Genoa found that Nigerian women had to work steadily for at least two years in order to obtain their freedom by repaying the debt undertaken.

In regards the Eastern European women, their testimonies reveal that they earn € 500 per night on average:<sup>98</sup> this is the target imposed by the exploiters if the women are to avoid sanctions/punishments. The girls are allowed to keep almost nothing. They are obliged to repay the sums paid in advance by the criminal organisation for their journey (around € 1,000 from Romania) and for their false documents (€ 1,500– € 2,500). They must also pay for services supplied by the organisation, such as accommodation (€ 10 per night) and transport to their places of work (€ 5 per night). Fines are levied for any minor infraction of the rules (too much time spent with a particular client or not wearing short skirts).

This information on the 'expenses' sustained by the women once they have arrived in Italy is also confirmed by the prosecutor's office of Ascoli Piceno, which provided one of the most comprehensive financial analyses of the profits made by the criminal organisations active in this illicit activity. The office also ascertained the profits made from prostitution and, on the other hand, the costs sustained by the criminal groups. These data, together with an estimate of the number of women controlled by a criminal organisation,<sup>99</sup> enable an indirect calculation of turnover, which varies according to the type of sexual exploitation.<sup>100</sup>

In regards to the exploitation of Romanian women, the prosecutor's office of Ascoli Piceno provided the following figures:

- Tariffs for sexual services: from a minimum of € 50 for normal intercourse, € 100 for special services, more than € 200 for any other exceptional services;
- Number of clients per woman per day: 10 (average);
- Average daily earnings: € 500–600;
- Working days per month: 30/30;
- Number of women controlled by a criminal organisation: presumably several dozen;
- Percentage of the earnings from prostitution appropriated by the criminal organisation: minimum 50% (this is an exceptional case as the percentage is usually higher);
- Extra costs: fines for 'misbehaviour', percentage of personal expenses, purchases, living expenses.

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<sup>98</sup> According to the prosecutor's office of Lecce, some foreign prostitutes earn up to € 2,000 a day.

<sup>99</sup> For example, in regards to trafficking from Romania, 77 false passports assigned to Romanian women were seized in September 2002. It is probable that even more women are now involved.

<sup>100</sup> Apartment prostitution is more expensive (on average €150 per sexual service) than street prostitution, where a larger number of services are provided in a given time.

The main expense sustained by the women is the cost of their journey to Italy, which comprises:

- Travel: € 500 for a round trip;
- Passport: if false, € 300; if valid, US\$300;<sup>101</sup>
- Medical insurance and cash advance: € 500.

On average, the sum to repay out of the first earnings from prostitution is around € 1,000–€ 2,000 per woman.

In addition to these expenses from the point origin, there are the daily ones that the victims must meet using the money that the exploiters decide to let them keep. These comprise room and board (the monthly rent is approximately € 750), the bills for mobile phones<sup>102</sup> and other essential goods and services, including the purchase of condoms.<sup>103</sup>

The criminal organisations, by contrast, sustain no costs in running their unlawful business apart from the advance payment required to transport of the victims. Moreover, the criminal organisations are able to finance themselves because the proceeds from exploitation are used in subsequent trafficking operations ('self-feeding circuit'). Thereafter, the profit is reinvested in the country of origin and also in legal activities.

The money is usually remitted via money transfer agencies,<sup>104</sup> or it is laundered by buying precious metals, especially gold, and gemstones, which are easier to transfer to the country of origin. When these methods are not adopted, the money is transferred, in cash, by a member of the criminal organisation beginning with the women in Italy. The money eventually returns to the country of origin with the illicit profits. These methods have raised a number of obstacles for financial investigations.

#### 19.4.2 The Perpetrators

In regards to trafficking in persons for the purpose of sexual exploitation, the market is controlled by traffickers from Nigeria, Albania and Eastern Europe. The degree of organisation of these criminal groups and their methods vary according to ethnicity and culture.

In general, criminal organizations manage the trafficking supply. In some cases they have an international and/or transnational dimension, being composed of people from different countries (e.g. Slovenians, Yugoslavians, Italians; Albanians and Italians; Albanians and other Eastern European nationals.)

<sup>101</sup> Interest rates as of 2001–2002, when the dollar was higher than the euro.

<sup>102</sup> The Romanian working in central Italy had two lines, one for clients and one for communications with the criminal organisation, which usually only received calls.

<sup>103</sup> For example, out of around €4,500 earned weekly, the woman keeps €500 on average.

<sup>104</sup> Western Union, UPS and, for Romania, ALTRISIB, a transport company delivering goods to and from the East with a direct Romania – San Benedetto del Tronto – Taranto connection.



The criminal associations may be organised in either a vertical or a horizontal structure. The vertical structure is hierarchical and fixed, and does not permit the existence of interchanging roles. It is used when the boss is very powerful and wants to control the process in its entirety. The boss has very good criminal contacts with other heads of crime organisations: in one case, the head belonged to the Albanian Mafia. In comparison, horizontal organisations are flexible and permit the easy exchange of roles among individual group members. Both structures can sometimes be found in a single network, which is generally hierarchical overall but horizontal within each single phase.

Trafficking from Nigeria is organised and controlled by Nigerian criminal networks believed to be complex and branched. Although they operate mainly in Nigeria, they can count on solid bases in foreign countries, usually European, through which the women sometimes transit before arriving in Italy. These criminal groups recruit and transfer the victims, whilst they are exploited by Nigerian women, the so-called *mamans* or *madames*, who administer and control the workforce (the victims), sometimes in cooperation with Nigerian men.

These *mamans* buy the women<sup>105</sup> from the organisers of the journey, with whom they are usually in contact directly. In some cases, the *mamans* were victims of trafficking who, once they gained their freedom, joined the Nigerian criminal groups to supervise and control the newly recruited women.

In the cases considered by the prosecutor's offices, a clear distinction emerged between the criminal organisation operating in the country of origin, which recruits the women and organises their transport to Italy, and the persons in the destination country, who having ordered or "bought" the women from these organisations, take them against payment. The connections between these two components of the criminal chain have, to date, been difficult to prove, although the victims themselves have confirmed their existence. For these reasons, they are usually viewed more as networks than as compact groups.

From the operational point of view, the exploitation of Nigerian women seems to be carried out in a simpler<sup>106</sup> and less structured manner than by criminal groups of other ethnicities. The distinctive feature of these ethnic groups is their use of voodoo rituals to subjugate the victims, taking advantage of religious beliefs in the country of origin. In extreme cases, use is also made of violence and threats.

Some Nigerian exploiters are also involved in drug trafficking, which they manage separately from prostitution.

according to an organisational model based on shared ethnicity and the bonds of clan membership. The criminals act in small and autonomous groups, but maintain links with the criminal organisation to which they belong. These small groups have an internal hierarchical organisation (the chief is usually the member of the group with the most knowledge and skills), although it is attenuated by the flexibility necessary for transfer, surveillance and financial management. The hierarchical organisation of the Albanian groups – which is typical of other ethnic criminal

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<sup>105</sup> In a case recently encountered by the prosecutor's office of Turin, the *maman* had created a kind of cooperative into which the associates paid sums of money used to finance the purchase of new women.

<sup>106</sup> These activities are usually accompaniment of the women to their working places, close physical control over them, the immediate collection of their earnings, and violence.

organisations as well – is reinforced by the use of violence, which is also applied to the victims in order to intimidate and subjugate them.<sup>107</sup>

A number of relatively unsophisticated Albanian groups operate in Puglia and may sometimes collaborate with each other. The prosecutor's offices in Puglia stressed the presence of individual 'criminal entrepreneurs'. Not always, in fact, do the criminal organisations involved in recruitment also supervise the exploitation. On the contrary, the latter is often entrusted to more stable criminal groups more solidly established in the country, or to single individuals.<sup>108</sup> Moreover, a role may be played in the exploitation by groups or people belonging to the victims' country of origin or to the countries of transit (as said, the women are repeatedly bought and sold during their journeys). Although the exploiters in Italy usually belong to Albanian groups or mixed groups of Italians<sup>109</sup> and Albanians, alliances have begun to develop among criminal organisations from the victims' countries of origin and Albanian and Slavic groups.<sup>110</sup>

Unlike other mafias, the Albanians also supervise the smuggling, trafficking and/or exploitation of women from other Eastern European countries. Furthermore, the Albanians are active in other illicit activities as well, such as the trafficking of weapons and drugs. The exploitation of prostitution is therefore a source of 'easy' financing for other types of trafficking.<sup>111</sup>

The ability of these criminal groups to use local logistical bases to conduct their activities efficiently demonstrates their flexibility. In this regard, connections among criminal organisations and taxi drivers, hotel owners, landlords, and other Italian 'legal' operators have been discovered, as well as close connections with certain nightclub managers.<sup>112</sup> The latter intervene in the exploitation phase, retaining a high percentage of the women's earnings.

The crime groups that supervise the trafficking of Eastern European women seems to be less structured, and the trafficking process is highly fragmented, due to the fact that the victims are repeatedly bought and sold during the journey from their countries of origin.

According to the prosecutor's office of Genoa, the activity is operated in a largely unprofessional manner without the intervention of a solid organisation. However,

<sup>107</sup> These Albanian organisations sometimes manage to buy back the women previously sold to nightclub owners after they have been used as hostesses, to exploit them on the streets.

<sup>108</sup> In the province of Brindisi several foreign women were 'delivered' to exploiters unconnected to any criminal group, who simply bought them for their personal pleasure.

<sup>109</sup> Italians are only marginally involved in street prostitution and more directly involved in the management of nightclubs with dancers and hostesses.

<sup>110</sup> The prosecutor's office of Milan reported collusion among criminal groups of the same nationality as the victims and Albanian and Slav criminal organisations. The former handled the recruitment phase and the first part of the journey, while the latter, to whom the women were sold (on the basis of photographic 'portfolios'), dealt with entry into Italy and the actual exploitation. Since July 2002, the Romanians have acquired a greater role in exploitation. According to the prosecutor's office of Turin, Romanians within a particular organisation maintained links with the country of origin and organised the recruitment of Romanian women, while Albanians in the same organisation controlled the area of Turin, where the girls were forced to prostitute themselves by the Romanians.

<sup>111</sup> The proceeds from prostitution are used to buy drugs.

<sup>112</sup> The 'Sunflower' operation conducted by the prosecutor's office of Perugia, with the assistance of the Anti-Mafia Nation Division and the *Carabinieri* of the ROS of Perugia, has uncovered a prostitution ring using women from the former USSR countries and Eastern Europe (Belarus, Moldavia, Ukraine, Romania) as well as Albania that has been in operation since 1999.

there is evidence that, especially in the case of the routes starting from the former Soviet Union, several organised criminal groups are involved that use particular methods to elude police controls.<sup>113</sup>

This hypothesis appears to be confirmed by the prosecutor's office of Ascoli Piceno, which recently discovered a Romanian criminal network engaged in the trafficking for sexual exploitation of young Romanian women. In this case, the criminal organisation, based on emissaries who supervised each individual phase, was responsible for the entire process (from recruitment to exploitation). The trafficking and the exploitation were systematically organised, not sporadic. The division of tasks was well established: the heads (first level) coordinated the organisation from the country of origin and planned the movements of the women and reinvested the illegal profits; the other members of the organisation (rank-and-file, or second level) were posted at key nodes and controlled individual phases, or supervised the women during their daily work (third level). The prosecutor's office also found logistical support being provided by Italians (taxi drivers and/or landlords).

It is clear that the trafficking and exploitation in Italy of women from Eastern Europe is still controlled by Albanian organisations, with the co-nationals of victims playing purely supporting roles. The case of the Romanian organisation mentioned above highlights the possibility of greater organisational and managerial autonomy of the ethnic criminal groups from Eastern Europe, and as such, should not be underestimated.

One may legitimately enquire whether Mafia-type organisations are involved in the exploitation of Eastern European women in Italy. In this regard, although the 'Sunflower' operation by the prosecutor's office of Perugia found a link between the Russian and the Italian organisations, the prosecutor's office of Palermo reports that the trafficking and smuggling are, at least in Sicily, largely monopolised by small-scale criminals, which are organised to a greater or lesser extent. All of which is excluding the involvement of the Sicilian Mafia families affiliated to the Cosa Nostra.<sup>114</sup>

In regards to the geographical distribution of the foreign criminal organisations involved in the trafficking of persons for sexual exploitation, they operate in every part of the country. Their structure is branched, with logistical nodes in both Italy and abroad.<sup>115</sup>

Recent investigations by the prosecutor's office in Rome have revealed other distinctive features of the *modus operandi* adopted by criminal organisations engaged in trafficking for the purpose of sexual exploitation, as follows:

- the use of foreign languages in conversations among the members of the organisation so that intercepted telephone calls are more difficult to understand;

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<sup>113</sup> One of these measures is to organise beauty contests in nightclubs so that the women can enter the country without arousing suspicion.

<sup>114</sup> The exploitation of prostitution is not regarded as worthy of 'men of honour'.

<sup>115</sup> According to investigations by the prosecutor's office of Ascoli Piceno, the Romanian organisation operating in that province has created an international exploitation network with connections in Italy (especially in tourist resorts on the Adriatic (Marche coast) and the Tyrrhenian Sea (Rapallo)), and in Spain (Costa Brava) acting as channels between supply and demand.

- limited use of mobile phones, as well as the total exclusion of fixed telephones;
- the investment of significant amounts of money to pay the defence's fees in case of arrest;
- the constant use of threats and blackmail against the victims' relatives in their countries of origin.

Besides drug trafficking, the Albanian groups are sometimes involved in the arms trade. The Eastern European criminal organisations engage in other illicit activities such as drug trafficking and trafficking in stolen cars,<sup>116</sup> and the laundering of money earned from prostitution. The money laundering involves the purchase of gold and precious stones, which are goods that also facilitate the transfer of illicit capital to the country of origin. There is then the phenomenon, although it is still limited, of the smuggling of local craft products from Italy to Eastern Europe, which is driven by a high demand for such goods in those countries. These activities are coupled with the commission of other cognate crimes, that is, ones functional to the main illicit activity, such as the falsification and forgery of identity documents.

Some exploiters in the Nigerian criminal groups engage in drug trafficking, although they do so separately from prostitution.

A relatively unexplored area of inquiry concerns the proceeds of trafficking in persons for the purpose of exploitation. Some prosecutors' offices,<sup>117</sup> although they have never conducted thorough financial investigations, estimate from calculations of the amount earned by prostitution that the turnover of the criminal groups involved is considerable.

In relation to trafficking from Nigeria, various prosecutors' offices confirmed that the women must repay to the criminal organisation the cost of their transfer to Italy, the accommodation provided, and transport during their prostitution work. In addition this is a sum that must be paid for the release of the document seized at the arrival in Italy. The total amount is approximately € 40,000.

On average, the sum to repay out of the first earnings from prostitution is around € 1,000–2,000 per woman.

In addition to these expenses from the point origin, there are the daily ones that the victims must meet independently of the sum that the exploiters decide to leave to them. They comprise board and lodging (the monthly rent amounts to around € 750 a month), the bills for mobile phones<sup>118</sup> and other essential goods and services, including the purchase of condoms.<sup>119</sup>

The criminal organisations, by contrast, sustain no costs in running their unlawful business apart from the payment in advance for the transport of the victims.

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<sup>116</sup> With the involvement of the owners of the cars and the consequent frauds committed against the insurance companies.

<sup>117</sup> Prosecutor's offices of Turin, Perugia and Genoa.

<sup>118</sup> The Romanian working in central Italy had two lines, one for clients and one for communications with the criminal organisation, which usually only received calls.

<sup>119</sup> As an example, out of around € 4,500 earned weekly, the woman keeps € 500 on average.

Moreover, the criminal organisations are able to finance themselves because the proceeds from exploitation are used in subsequent trafficking operations ('self-feeding circuit'). The remaining profit, is reinvested in the country of origin, also in legal activities.

Arms trafficking and drug trafficking are close cousins to human trafficking for the purposes of sexual exploitation. Often, trafficking for sexual exploitation will help fund other operations for which the criminal organization is responsible. In addition, a series of small crimes are incurred while trafficking human beings such as falsifying identification documents and illegal entry into ports of entry.

The money is usually remitted via money transfer agencies,<sup>120</sup> or it is laundered by buying precious metals, especially gold, and gemstones, which are easier to transfer to the country of origin.

When these methods are not adopted, the money is transferred in cash by the member of the criminal organisation beginning with the women in Italy, and then money returns to the country of origin with the illicit profits.

These methods have raised a number of obstacles against financial investigations.

#### SUMMARY

##### CHARACTERISTICS OF THE TRAFFICKERS

1. *Same ethnicity of the exploiters and victims.* Shared ethnicity ensures effective control over the women, and it is this factor that gives some criminal groups dominance over others.
2. *Presence of Nigerian criminal organised networks sharing the same aims, although they operate in different phases of the trafficking process* (the Nigerian organisations keeps trafficking sharply distinct from exploitation, which is supervised by a *madame* or *maman*).
3. *Flexibility* of the structure so that local logistical support can be used (collusion with 'legal' actors).
4. *International exploitation network*, also for the transfer of victims from one place to another.
5. *In the country's southern regions, involvement of small-scale local criminals in the exploitation of street prostitution.*
6. *Involvement not only in trafficking but also other illicit activities, principally drug trafficking.* The exploitation of prostitution is used to finance other illicit activities.
7. *Systems for controlling the victims at a distance* by means of mobile phones.
8. *Money transferred in cash from the countries of origin by emissaries or via money transfer agencies.*
9. *Self-financing of the criminal enterprise by reinvestment of criminal proceeds.*
10. *Purchase of gold or gemstones for money laundering.*
11. *Connections between Russian and Italian Mafias.*

<sup>120</sup> Western Union, UPS and, for Romania, ALTRISIB, a transport company delivering goods to and from the East with a direct Romania – San Benedetto del Tronto – Taranto connection.

### 19.4.3 The Victims

The victims of trafficking have a number of features in common, whether they are exploited as prostitutes, as irregular workers, or as beggars. Some of these features are the 'push' factors for trafficking and they may be objective or subjective. The former category comprises difficult socio-economic conditions in the victims' countries of origin. Belonging to the latter are the mirage of a better life made possible by guaranteed earnings (and considerable and rapid ones in the case of prostitution), and the attraction exerted by the Western countries, often as a result of a false belief that well-being and affluence are readily available in them.

In the specific case of prostitution, poverty is inevitably one of the main reasons for leaving the home country. However, there are other concurrent causes. First the influence exerted by the stories told by other women. It may happen that younger women, especially in Eastern Europe, are attracted by the direct testimonies of women the same age who have returned to their home countries and described prostitution in Western European countries (even for a short period) as a way to make easy money and return to a comfortable life at home. Second, the social condition of women. In some ethnic groups, especially Albanian, the social status of women forces them to accept decisions taken by their clan, which facilitates their subjugation to the traffickers/exploiters. In this case, the trafficking phenomenon originates from a lack of education, gender equality, and the value of human dignity. Finally there are the sentimental relationships. Albanian victims may be persuaded to leave for Italy by sentimental relationships formed with men in their home territory, who then prove to be their exploiters when they have reached their destinations.

The characteristics of the victims vary moderately. First of all, they vary according to origin. The women employed in the sex market are primarily Nigerian, Albanian, and from Eastern Europe, mainly Romanian, Moldovan, Ukrainian, Belarusian and Russian. Smaller percentages are from the Baltic region and South American countries (Ecuador, Colombia).

All the women are young or very young, the average age being between 18 and 23 years old. There are also cases of under-age girls, especially from Eastern European countries and Colombia. This is due to the strong demand in the market for virgin girls and their more attractive physical appearance. The under-age girls, however, are given false documents and presented as women of an older age. The exploitation of under-age girls is largely non-existent among Nigerians as most are born after 1981.

The majority of victims are from rural areas and belong to low or very low social classes (this being the case for women from Nigeria, and sometimes from Eastern Europe). Women belonging to the urban middle class, although their homes are located in the hinterlands of big cities and degraded neighbourhoods, are arriving in Italy from Albania and some Eastern European countries.

Women are generally misled initially by false promises. Women from Albania, however, present a unique cultural situation. The Albanian women may have left their country to follow their husbands or boyfriends (i.e. members of the criminal organization who engaged in trafficking and exploitation of women). In this scenario, the women were informed about their future job as prostitutes only when

they arrived at their destination, and they accepted the situation because of their role in the couple and their cultural customs.

The educational level is usually low; victims possess (though not always) elementary and/or basic vocational qualifications.<sup>121</sup> Women from Eastern Europe, however, have higher educational levels and are more intellectually endowed.

To be stressed is the reaction of victims when they come in contact with law enforcement agencies. Women tend to withdraw into themselves. Initially, any attempt to communicate with them is fruitless. This attitude can be explained by the natural distrust that the victims feel towards the police officers, and the men that they have encountered during their journeys. This situation only changes when they arrive at the reception centre and meet other women who have lived through the same experience and persuade them to cooperate.

#### SUMMARY

##### CHARACTERISTICS OF THE VICTIMS OF TRAFFICKING

1. *Poor and degraded socio-economic conditions* in the countries of origin.
2. *In some cases, the decision is taken voluntarily to leave the home country for prostitution in Italy, attracted by the prospect of quick and easy money.*
3. *Objective and subjective 'push' factors* for emigration.
4. *Fear of rebelling against the traffickers/exploiters*, for various reasons: physical violence, menaces, and threats of retaliation against relatives, etc...
5. *Failure to perceive themselves as victims.* Although prostitution and irregular work do not match the expectations formed by traffickers when the women leave the country, those in the circuit do not see themselves as victims, their sole concern is to remain in Italy and not be repatriated.

#### 19.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND AN ESTIMATION OF HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION

Summarising the results of the research conducted in Italy on the national system of collection of data on trafficking in human being for sexual exploitation, the following comments and suggestions can be made:

Until 2003, there has been extensive legislative confusion and an excess of criminal norms in the field of trafficking in human beings. The same offence may be punished under entirely different provisions of law; it was inevitable that statistics will reflect the same degree of disorder. Now with the new rules the situation is clearer. Even so, the same article of the Criminal Code may cover different offences so that the statistics related to that article provides information on two different behaviours that cannot be disaggregated. Action should therefore be taken to specify distinct criminal offences (for instance one offence for alien smuggling, one

<sup>121</sup> The Nigerians are usually hairdressers and tailors, and are therefore persuaded to move to Europe to continue their professions.

for trafficking in human beings for sexual exploitation, one for trafficking in human beings for other purposes) and then adjust the data collection system so that information reflects the trend in a specific offence. Thus, the more closely the offence is tailored to agreed international standards, the more the data collected will be comparable across countries;

- Second, no information is collected on victims and stored in Italian databases. This is a major shortcoming. The numbers and characteristics of the victims known to the investigative and judicial authorities can be of the utmost importance not only for understanding trends in the phenomenon but also in producing reliable estimates of the total population of trafficked women in Italy.
- There is very good information at the disposal of NGOs but the data storage system is wholly unsatisfactory. NGOs can provide not only highly detailed qualitative information on victims but also quantitative data on: a) the number of trafficked women who come into contact with them every year; b) the ratio between trafficked women and foreign prostitutes; c) the number of trafficked women granted stay permits under social protection programmes. This is a stock of knowledge that should be preserved, and data should be gathered based on common standards among NGOs and disseminated for research and policy purposes. To this end, improvements should be made in relation to the cooperation between the national authorities and NGOs.
- A good Italian example of data collection procedure is that put in place by the *Direzione Nazionale Antimafia* and Transcrime with its survey and its ongoing survey for the *Tratta di persone a scopo di sfruttamento sessuale e traffico di migranti* project of the Italian Ministry of Justice. These surveys enable the monitoring of all judicial activity (cases under preliminary investigation, committals for trial, cases already adjudicated) in the field of trafficking in human beings/trafficking in human beings for the purpose of sexual exploitation and alien smuggling. Close attention is paid to victims. One of the important features of the new survey is that it is not limited to national legislative definitions of the phenomena (Public Prosecutor's Offices must comply with the definitions set out in the Protocols to the 2000 United Nations Convention against Transnational Organised Crime to identify the cases and, only once the cases have been identified, return to the offences involved). This could be reproduced in other countries with minor adjustments.
- Some data, such as those relating to foreigners who obtain stay permits for social protection or information gathered by hotlines for trafficking victims, should be systematically collected.
- No systems are in place to acquire comparable quantitative and qualitative information from investigative/judicial cases. This information would be useful not only to aid understanding of the extent of human trafficking for prostitution but also, and especially, to highlight opportunities in both the underworld and the 'upper-world' that may facilitate organised crime networks in their illicit activities. The detection of such opportunities will enable intervention with opportunity-blocking preventive measures.<sup>122</sup>

<sup>122</sup> On this see: Commission of the European Communities, *Towards a European Strategy to Prevent Organised Crime, Joint Report from Commission Services and EUROPOL*, cit., p. 7; Project "The Identification and Prevention of Opportunities that Facilitate Organized Crime" directed by WODC (The Netherlands) in cooperation with Europol, Keskusrikospoliisi (Finland), UNICRI, Okri Institute of Criminology (Hungary), Transcrime (Italy), financed by the European Commission under the 2000 Falcone Programme; D.B. Cornish,



In regards to the estimation of the number of trafficked persons for exploitation in Italy, the research studies by Parsec–University of Florence have shown that the number of trafficked women can be estimated by extrapolating a sub-set of the population of foreign prostitutes (population measured by empirical means). Estimation could also start with reliable figures on victims trafficked for sexual exploitation who have contacted the investigative and judicial authorities. If these number were available, with an appropriate change to the data collection procedure in order to obtain a credible figure, it would only be necessary to calculate, with the help of experts, the ratio between the women reporting their traffickers/contacting the judicial authorities and those who do not (the dark number of victims). That is to say, it would be possible to make an estimate based on a reasonable (and agreed by experts) definition of this ratio.

## 20

LUXEMBOURG<sup>123</sup>

## 20.1 INTRODUCTION

The identification of a criminal and social phenomenon usually occurs through a process. The process of acknowledging trafficking in human beings as an actual problem – whether from a legal, social or any other point of view – is still ongoing in Luxembourg. This is not due to a lack of attention from the relevant actors, but primarily stems from the realization that it is very difficult to understand exactly where trafficking in human beings starts, where it stops and what it entails.

In recent years, government authorities have become increasingly more aware of the issue of trafficking in human beings and the need to address it. The current legislation has not yet been adapted to this new situation and phenomenon. Although it has become more apparent that action on various levels needs to be undertaken, the issue as such has not been investigated in a rigorous and systematic manner in regards to data collection. Hence, although data collection is rather standardized and centralized for common criminal offences, data on trafficking on human beings *per se* does not exist.

The applicable legislation, which has been in force since 1999, criminalises trafficking in human beings for sexual exploitation with respect to adults and children, but does not offer a comprehensive and workable definition of the phenomenon and omits certain forms of exploitation such as forced labour. In this context, it should also be noted that prostitution is not criminalised.

In establishing the present research study, it was noted that the absence of specific data did not imply that the problem of human trafficking does not exist. On the contrary, information has proven to be available albeit not in the form and manner required for this study. While respecting the general outline suggested by the project partners, the structure has been slightly adapted for the following report in order to more accurately reflect the specificities of the situation in Luxembourg.

20.2 CRIMINAL LAW RESPONSES<sup>124</sup>*20.2.1 The offence of trafficking in human beings*

There is no general provision for trafficking in human beings in the Criminal Code.

<sup>123</sup> This section has been written by Sarah Khabirpour, Ministère de la Justice, Luxembourg-Kirchberg.

<sup>124</sup> The text is in italics is the English translation of the legislation.

### *20.2.2 The offence of trafficking in human beings for the purpose of sexual exploitation*

A Law of 31 May 1999 introduced, *inter alia*, provisions regarding trafficking in human beings into the Criminal Code. It was to be included in a chapter regarding "Prostitution, exploitation of and trafficking in human beings". The relevant provisions, Articles 379 and 379bis of the Criminal Code, distinguish between trafficking in children and trafficking in human beings, both for sexual exploitation.

#### **A. Trafficking in children for the purpose of sexual exploitation is defined and punished as follows:**

Definition: The following offences shall be punishable by one to five years of imprisonment and a fine of € 251 to € 50,000:

1. inciting, facilitating or fostering immorality in, or the corruption or prostitution of, minors under 18 years of age in order to satisfy the desires of others;
2. exploiting a minor under 18 years of age for the purposes of prostitution or the production of entertainment or material of a pornographic nature;
3. facilitating the entry into, transit through, presence in or exit from the territory of a minor under 18 years of age for any of the purposes mentioned in (1) and (2) above.

Attempt: Attempts to commit any of the above offences shall be punishable by six months to three years imprisonment.

Aggravating circumstances: The above offences shall be punishable by two to five years imprisonment when committed against a minor under 14 years of age and five to ten years imprisonment when committed against a minor under 11 years of age.

Attempts of aggravating circumstances: Attempts to commit any of the above offences against minors shall be punishable by six months to four years imprisonment if the minor is under 14 years of age and six months to five years of imprisonment if the minor is under 11 years of age.

#### **B. Trafficking in human beings for the purpose of sexual exploitation is defined and punished as follows:**

Definition: The following offences shall be punishable by six months to three years of imprisonment and a fine of € 251 to € 50,000:

1. Employing, inciting or abducting any person, even with their consent, for the purpose of prostitution or immoral activities, in the Grand Duchy of Luxembourg or abroad, in order to satisfy the desires of others.

Attempt: Attempts to commit the offences mentioned in points (1)...shall be punishable by three months to two years imprisonment.

Specific aggravating circumstances: If the victim is employed, incited or abducted by fraud or with the use of violence, threats, abuse of authority or any other form of constraint, and effectively engages in prostitution or immoral activities, or if the offender takes advantage of the particularly vulnerable situation of a person, such as their illegal or precarious administrative situation, pregnancy, ill health or an infirmity or physical or mental disability, the sentence shall be one to five years.

The offence shall be punishable by five to ten years imprisonment if committed in two of the aforesaid circumstances.

General aggravating circumstances: The offences listed in points (1) [...] shall be punishable by one to five years imprisonment and a fine of € 251 to € 50,000 if committed against a minor under 18 years of age, by two to five years imprisonment if committed against a minor under 14 years of age and by five to ten years of imprisonment if committed against a minor under 11 years of age.

Attempts of aggravating circumstances: The attempt shall be punishable by six months to three years of imprisonment if committed against a minor under 18 years of age, by six months to four years imprisonment if the minor is under 14 years of age and by six months to five years imprisonment if the minor is under 11 years of age.

2. Facilitating entry into, transit through, presence in or exit from the territory for the purposes mentioned in (1) above.

An increase in the sentence provided in the second and third paragraph of (1) shall also apply, subject to the same criteria.

### 20.2.3 Other offences

Other criminal law responses that could apply in this respect are as follows:

A. A procurer is defined as a person who:

- in any manner knowingly aids, abets or protects the prostitution of others or the soliciting with a view to prostitution;
- in any manner shares in the proceeds of the prostitution of others or receives financial assistance from a person engaging in prostitution;
- employs, incites or supports another person, even an adult and even with their consent, for the purpose of prostitution or gives them over to prostitution or immoral activities;
- acts as intermediary, in any way whatsoever, between persons engaging in prostitution or immoral activities and those who exploit them or pay for their services;
- by threat, pressure, deceit or any other means obstructs the prevention, inspection, assistance or rehabilitation work performed by the relevant bodies on behalf of persons engaging in prostitution.

Procurement is punishable by six months to three years imprisonment and a fine of € 251 to € 50,000.

Attempt: Attempts to commit the offences mentioned in points...shall be punishable by three months to two years imprisonment.

General aggravating circumstances: The offences listed in points...shall be punishable by one to five years imprisonment and a fine of € 251 to € 50,000 if committed against a minor under 18 years of age, by two to five years imprisonment if committed against a minor under 14 years of age and by five to ten years imprisonment if committed against a minor under 11 years of age.

Attempts of aggravating circumstances: The attempt shall be punishable by six months to three years imprisonment if committed against a minor under 18 years of age, by six months to four years imprisonment if the minor is under 14 years of age and by six months to five years imprisonment if the minor is under 11 years of age.

B. The fact of owning, directly or through a third party, managing, directing or running a brothel or a similar establishment shall be punishable by six months to three years imprisonment and a fine of € 251 to € 50,000.

General aggravating circumstances: The offences listed in points...shall be punishable by one to five years imprisonment and a fine of € 251 to € 50,000 if committed against a minor under 18 years of age, by two to five years imprisonment if committed against a minor under 14 years of age and by five to ten years imprisonment if committed against a minor under 11 years of age.

Attempts of aggravating circumstances: The attempt shall be punishable by six months to three years imprisonment if committed against a minor under 18 years of age, by six months to four years imprisonment if the minor is under 14 years of age and by six months to five years imprisonment if the minor is under 11 years of age.

C. Knowingly allowing all or part of a hotel, guesthouse, nightclub or any other premises of which one is the owner or landlord to be used for the prostitution of others shall be punishable by six months to three years imprisonment and a fine of € 251 to € 50,000.

General aggravating circumstances: The offences listed in points...shall be punishable by one to five years imprisonment and a fine of € 251 to € 50,000 if committed against a minor under 18 years of age, by two to five years imprisonment if committed against a minor under 14 years of age and by five to ten years imprisonment if committed against a minor under 11 years of age.

Attempts of aggravating circumstances: The attempt shall be punishable by six months to three years imprisonment if committed against a minor under 18 years of age, by six months to four years imprisonment if the minor is under 14 years of

age and by six months to five years of imprisonment if the minor is under 11 years of age.

D. Violations of the Law of 28 March 1972 related to 1. the entry and residence of aliens, 2. medical control of aliens and 3. employment of aliens, as amended.

Knowingly facilitating the illegal entry and residence of an alien, by direct or indirect assistance, and notably through transport, housing, even free of cost, shall be punishable by one month to three years of imprisonment and a fine of € 500 to € 125,000.

An employer who hires a worker without a working permit or a similar document, when the worker is subject to the obligation of a working permit, can be punished with a fine of € 251 to € 25,000 and an imprisonment from 8 days to 6 months. Because the Criminal Code does not contain any specific disposition regarding exploitation for the purpose of forced labour in human trafficking, these cases are usually identified with respect to the above articles.

It has become apparent that illegal immigration, trafficking in aliens and human beings for the purpose of forced labour has become offences that the applicable legislation does not clearly identify as separate issues.

#### *20.2.4 Other information*

##### *Reinforcing the protection of witnesses*

A draft law regarding the reinforcement of the rights of victims of criminal offences and the improvement of the protection of witnesses<sup>125</sup> is currently being discussed in Parliament. It provides, *inter alia*, for the partial or total anonymity of a witness under certain conditions as well as for the possibility, for a threatened witness, to testify via different forms of telecommunication. It also states that, in application of the Law of 28 March 1972 (see above), a grand-ducal regulation shall determine the conditions under which a residence permit may be granted for witnesses in, for instance, trafficking of human beings cases.

##### *Monitoring the situation in Luxembourg*

In the last few years, special police units of the grand-ducal police (*Service de la Police Judiciaire* and *Service de Recherches et d'Enquêtes Criminelles, section Moeurs*), specialised in investigations of organised crime, have been very active organising controls in and monitoring the different nightclubs in Luxembourg. This has allowed them get a better picture of the reality of trafficking in human beings in Luxembourg. The systematic approach and the concise reports of these units have

<sup>125</sup> *Projet de loi (n° 5156) renforçant le droit des victimes d'infractions pénales et améliorant la protection des témoins, dépôt le 20 mai 2003.*

helped public and judicial authorities as well as political decision-makers to envisage appropriate measures to combat this phenomenon.

This approach is expected to foster and formalize the exchange of information between various ministries and other authorities with a view to developing policies, creating the necessary infrastructure and adapting the existing laws.

### 20.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

Information on criminal offences is centralised with the *Direction de l'Information*, a special unit within the grand-ducal police force that collects data on various types of crime. There is, however, no specific database for trafficking in human beings. It should also be noted that the legislation on data protection is quite restrictive.

The only official sources that exist regarding related criminal offences are police data related to prostitution,<sup>126</sup> procurement/pimping, immoral activities, abduction or trafficking aliens. The collected data simply qualifies the criminal offence and contains basic information, to the extent available, about the suspects and the victims.

The data is primarily statistical in nature and does not provide significant insights into the problem of human trafficking itself.

Currently the absence of data collection translates into a certain uneasiness when trying to deal with trafficking in human beings. Because trafficking in human beings is a recent and modern criminal offence, it still seems difficult to ascertain whether a given case is about procuring or trafficking in human beings. A lot of genuine trafficking in human beings cases will be eventually qualified as cases of procurement.

### 20.4 THE TRAFFICKING PROCESS TO LUXEMBOURG<sup>127</sup>

#### 20.4.1 The Phenomenon

Until recently (1 May 2004), an administrative practice allowed for most of the victims of trafficking in human beings to enter Luxembourg legally. Through the embassies, traffickers arranged to obtain short-term visas<sup>128</sup> (for one month, renewable five times within twelve months) for artists<sup>129</sup> upon certain conditions<sup>130</sup> imposed by the Ministry of Justice. After the conditions were verified and the

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<sup>126</sup> Although prostitution is not illegal in Luxembourg, street prostitution is restricted to certain areas and streets in the capital of Luxembourg, Luxembourg-city.

<sup>127</sup> Most of the information available about the situation of trafficking in human beings relates to the situation before 1 May 2004.

<sup>128</sup> *Autorisation de séjour provisoire*.

<sup>129</sup> The term "artist" is not legally defined.

<sup>130</sup> (1) Contract with a cabaret or a "*bar à champagne*", (2) disclosure of the fee of the artist, (3) return plane ticket for the artist and (4) proof that the artist has received the wire transfer of the salary.

contract between the impresario (the contact point between the cabaret owner and the contact in the country of origin) and the girl in question was approved, entry into Luxembourg (and thus into the Schengen area) was permitted and legal. In order to renew this short-term permit, one had to prove that the artists had housing and received their fee. If the artists lost their job, the permit would be immediately annulled and the artist would have to leave the territory of Luxembourg at once, without prejudice regarding the possibility to re-enter Luxembourg once a new contract was signed.

A rather large case of trafficking in human beings, where links with an international network were proven, was investigated in 2004. On 31 March 2004, 5 persons were arrested of which 2 were impresarios, so-called "artistic agents". It was noted that these agents had concluded 1,200 contracts with approximately 150 young women in the preceding 16 months.

It is obvious that this administrative practice was not initially conceived to facilitate this type of criminal activities and was increasingly abused, over the years, to serve the interests of organised crime groups.

In order to stop the perverse consequences of this administrative practice, the Luxembourg government decided not to issue this type of visa any longer as of 1 May 2004. The immediate results of this decision have been very positive. Recent police controls in nightclubs have ascertained that very few women from Eastern Europe are to be found anymore. Some nightclubs even had to close down.

The accession of 10 new Member States in the European Union will slightly change the nature of the problem in Luxembourg. It is feared also that the victims will now be trafficked into Luxembourg illegally.

Traffickers usually recruit the victims through model agencies and directly or indirectly use artistic agencies or travel agencies in Eastern Europe (mostly Russia and Ukraine) to organise the transfer towards occidental Europe. The targets are young women, between 18 and 35, who live in poor economic conditions and are thus particularly sensitive to these lucrative offers. Some girls have a faint idea of the job that they are "hired" for whereas others are quite innocent when arriving in Luxembourg.

Through impresarios, visas for artists are organised and entry into Luxembourg is, in most cases, legal.

Trafficking in human beings for sexual exploitation is not necessarily the most common form of trafficking, but it appears as such because of recent international and national efforts to sensitise public opinion regarding this issue. The grand-ducal police observes a similar phenomenon with respect to trafficking in human beings for the purpose of forced labour in, for example, Asian restaurants (mostly Chinese). The difficulty with this particular exploitation is that the Criminal Code does not criminalise it as a separate offence and thus these cases are usually qualified as violations of immigration and employment laws.

Regarding trafficking in human beings for sexual exploitation, the trafficked girls, when arriving in Luxembourg, worked and, most of the time, also lived in



cabarets.<sup>131</sup> Their “job” was to entertain the clients and to fulfil their sexual demands. This included sexual favours as well as sexual intercourse. The price of the beverage<sup>132</sup> usually included the sexual requests. In order to maintain the victims in a submissive and intimidated position, the traffickers would threaten to fire the victims or to refuse to prolong their stay. The less “profitable” girls were obliged to reimburse their performance fees, which the cabaret owner must normally wire transfer them under the control of the Ministry of Justice, as a condition to prolong the permit of the artist.

Regarding the status of these so-called artists, they were until recently considered to be independent workers (case Law of 5 March 1975), thus the artists was not required to have specific working permits. However, because of this status, they were not automatically affiliated with social organisations and did not benefit from social protection. A recent judgment, in 2004, has changed the interpretation of their working status and now considers that the contracts are to be qualified as service contracts,<sup>133</sup> subject to a working permit. The advantage of this new case law is that it allows artists to benefit from social welfare rights.

Regarding the actual exploitation of the victims, cabarets, peep shows and “*bars à Champagne*” (about 50 establishments in 2003) are the most notorious places for trafficking in human beings in Luxembourg. Until 1 May 2004, the number of these establishments was constantly growing. These establishments make an average profit of € 6,000 to € 7,000 per month and per “artist”. Since 1 May 2004, the total number of establishments is estimated to be 35.

Although street prostitution is not typically known to be linked with trafficking in human beings, in 2002, a rising number of street prostitutes from Bulgaria (entering Luxembourg via Belgium or France) was noticed.

In order to solve this new problem, an agreement was sought, after a visit to Bulgaria in 2003, by the Minister of Justice of Luxembourg, Luc Frieden, in order to organise the return of the Bulgarian prostitutes. This experience has proven to be quite effective and the number of Bulgarian prostitutes has dropped considerably. However, it has not yet been possible to dismantle the criminal network behind this lucrative activity.

In recent years, prostitution in private studios and apartments, in relation to trafficking in human beings, has increased considerably and is assessed particularly by the number of advertisements that one can find in some newspapers and through the Internet. Given the private nature of these locations, it is particularly difficult to control this type of prostitution and activity.

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<sup>131</sup> Past tense is used because the situation has considerably changed since 1 May 2004.

<sup>132</sup> Approximately € 500 for a bottle of champagne.

<sup>133</sup> *Contrat de louage de service*.

#### *20.4.2 The Perpetrators*

Thus far, it appears that traffickers, in most cases, operate only locally and do not belong, as such, to an internationally organised network of traffickers.<sup>134</sup> There is no typical profile for the trafficker – their age, sex and nationality vary from one case to another.

#### *20.4.3 The Victims*

Mostly females between the ages of 18 and 35, they are usually trafficked from Russia or the Ukraine. Before 1 May 2004, there was a total estimate of 300 artist visas that were issued in 2002. In 2003, the average number of this kind of visa was thought to be 500 (including both new visa requests as well as renewal requests). It has not been possible to determine to what extent these artists could actually be said to be victims of trafficking of human beings.

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<sup>134</sup> A recent case has proven the contrary, where the trafficker had clear links with a network in a neighbouring country.



## 21

PORTUGAL<sup>135</sup>

## 21.1 INTRODUCTION

In Portugal, the crime of trafficking of human beings for the purpose of sexual exploitation is related solely to prostitution activities. The Portuguese law also has special provisions for the crimes of trafficking of human beings committed against children. The Portuguese Penal Code has others crimes that the judges can use to punish the crime of trafficking of human beings such as pandering, abduction and servitude.

These types of crimes are investigated by the Portuguese Criminal Investigation Police, which works under the supervision of the Public Prosecutor. The data presented in this report is based on the analysis of official sources of criminal police records and interviews conducted with criminal investigators who have experience in cases of trafficking of human beings. The “*Serviço de Estrangeiros e Fronteira*” (SEF), or the Border Control Police is also available to investigate this type of crime.

The Portuguese Criminal Police database has the capability to receive and analyze all the information related to crimes of trafficking. In reality, however, it is not possible to access the actual data due to the way in which the crimes are investigated and classified. For the most part cases that are crimes of trafficking of human beings for the purpose of sexual exploitation are investigated as abduction and pandering.

The success of the investigation for this type of crime greatly depends on joint strategies applied by the different countries involved. It is essential to emphasize that the use of joint forces will help to gain a better understanding of the aspects that characterise these situations and as a result become successful in the prevention and judicial intervention in this area.

## 21.2 CRIMINAL LAW RESPONSES

21.2.1 *The offences of trafficking in human beings*

A criminal law response for the offences of trafficking in human beings in Portugal does not exist.

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<sup>135</sup> This section has been written by Cristina Soeiro, Department of Psychology and Selection, *Instituto Superior de Polícia Judiciária e Ciências Criminais*, Lisbon and Alfonso Sales, *Polícia Judiciária Portuguesa* [Criminal Investigation Police], Lisbon.

### *21.2.2 The offences of trafficking in human beings for the purpose of sexual exploitation*

It is possible to identify two Articles in the Portuguese Penal Code that directly relate to trafficking of human beings for the purpose of sexual exploitation:

Article 169 – Trafficking of human beings related solely to prostitution activities – Persons, whom by means of violence, threats, hoaxes, fraud or abuse of authority, seduce, transport, and accommodate persons for the purpose of prostitution or others sexual acts. The relationship between the suspect and the potential victim can be based on abuse of authority from hierarchical, economic or work dependence. This law also considers the vulnerable conditions of the potential victim.

#### *Article 176 – Pandering and Trafficking of Children.*

These two Articles resulted from the revision of the Portuguese Penal Code in 1995, and from other amendments in the Penal Code in 1998.

In Portugal, laws are applicable to all individuals. Hence, legal means exist that require legal or political individuals to answer for this type of offence.

#### *The Penalties*

Article 169 – The offence of Trafficking of human beings can be punished with a sentence of 2 to 8 years imprisonment;

Article 176 – Pandering and Trafficking of Children – has several penalties:

If the victims of prostitution are between the ages of 14 and 16 years old, the person who facilitates or promotes this kind of activity can be sentenced from 6 months to 5 years;

If the prostitution activities occur with children under 16 years of age and if the victims are either from a foreign country or are nationals taken to a foreign country the exploiter can be sentenced from 1 to 8 years;

If the victims are under 14 years of age and are submitted to professional or lucrative activities by being hoaxed, threatened or by the use of violence, the person who facilitates or promotes these kinds of activities can be sentenced from 2 to 10 years. The relationship between the suspect and the potential victim can be based on hierarchic, economic or work dependence abuse of authority. This law also considers the vulnerable conditions of the potential victim.

#### *Increased penalties*

Article 177 of the Portuguese Penal Code augmented the penalties for the other two Articles previously mentioned. The amendments increased the minimum and maximum times for the sentences, when the victim is related to the aggressor by family bonds, and/or is economically or hierarchically dependent of the offender.

### 21.2.3 Other offences

The Portuguese criminal system has other offences that judges can use to punish the trafficking of human beings:

*Pandering* (Article 170 from the Penal Code) – this crime is used to punish people who facilitate or encourage the practice of prostitution for economic reasons.

- The prison sentence can be from 6 months to 5 years;
- if the victims are subjected to prostitution activities by being hoaxed, threatened or with the use of violence, the person who facilitates or promotes these kinds of activities can be sentenced from 1 to 8 years.

*Abduction* (Article 158 from the Penal Code) – Deprivation of the victim's freedom: This crime has several penalties:

- in general the prison sentence is up to 3 years;
- if the victims are submitted to more than two days of captivity with violence, cruel treatment and/or psychological disorders, suicide or physical problems result from this situation, the person who promotes these kinds of activities can be sentenced from 2 to 10 years;
- if the crime of abduction results in the death of the victim, the penalty is 3 to 15 years imprisonment.

*Servitude* (Article 159 from the Penal Code)

- if someone reduces another person to the condition of slavery;
- buys or negotiates someone for slavery proposes;
- this person can be sentenced from 5 to 15 years imprisonment.

*Criminal Association* (Article 299 from the Penal Code):

- if someone promotes or creates a group, organization or association with criminal intentions, the person can be sentenced from 1 to 5 years;
- the person who supports these kinds of groups can be sentenced from 1 to 5 years;
- the leaders of these kinds of groups can be sentenced from 2 to 8 years.

In some cases it is possible to use crimes like, "*To aid Illegal Immigration and Recruitment of Illegal Workmanship*" or "*Money laundering*" to punish the crime of trafficking of human beings.

#### 21.2.4 Other information

##### *Legal System and Specialized Competences*

The cases of trafficking of human beings for the purpose of sexual exploitation are investigated/prosecuted by the Criminal Investigation Police and the Public Prosecutor. No special units are solely dedicated to the investigation this type of crime.

The Portuguese Criminal Investigation Police divides the investigation of these cases into two subgroups: trafficking of human beings and pandering and trafficking of children. The Department against Organised Crime (*Direcção Central de Combate ao Banditismo*) investigates the first and a specific department created especially for child sexual abuse cases investigates the second.

In 2002, the Portuguese criminal police were granted special conditions for gathering evidence that have proven to be essential in the investigation of these cases. Some of the special investigatory powers include surveillance, telephone tapping, searches and victims' testimonies. New to the judicial system is the use of video/audio recording of witnesses that can be used later as evidence in a trial. In general, the law does not allow this form of evidence.

##### *Portuguese Prevention/intervention activities*

The police forces strategically organise several raids in nightclubs and bars. These raids are made with the participation of the different Portuguese police departments (Public Order, Criminal Investigation and Borders Control). These raids are made at a national level.

##### *Victims Support*

Portugal has a Victim's Protection Law.

### 21.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCE

#### 21.3.1 Sources of data on offences and offenders

The Portuguese Criminal Investigation Police (CIP) has an Integrated System of Criminal Investigation (SIIC) as its source for collecting data. It is an official and confidential electronic database.

The Criminal Investigation Police work under the Public Prosecutor's Office. During the investigation phase, there is a close relationship between the work done by the criminal investigators and the public prosecutor's activities. Because of this, the data collected in Integrated System of Criminal Investigation is both police and prosecution data.

### *Characteristics of the Portuguese database*

As stated, the CIP and the Judicial Offices are the two sources that provide information to be included in the database. The CIP Information Department is responsible for information analysis and related statistics.

The database collects information according to the case/criminal incident. The CIP's database only records data from the most serious offence related with the case. The other offences related to the criminal incident that are considered less serious, will not show up. This can be a limitation for analysis of the information.

In Table 38, it is possible to identify the most important variables recorded in the Integrated System of Criminal Investigation.

TABLE 38: VARIABLES IN THE PORTUGUESE INTEGRATED SYSTEM OF CRIMINAL INVESTIGATION

<b>Recorded Variables</b>	<b>Specifications</b>
- Judicial identification case number	
- Date of the investigation case	
- Date of the criminal incidents:	Hours and dates of the incidents
- Criminal investigation unit in charge	
- Related offences	
- Description of the incidents	
- Witnesses:	Name, gender and age
- Victims:	Name, gender, age and profession
- Offenders:	Name, gender and age, criminal and social history, nationality, related offences, profession, bank, accounts, vehicles, phones, weapons, physical, characteristics, aliases, identification documents
- Places related with the criminal activities:	Identification and classification of the locations (address and type- i.e. night-club)
- Telephones:	Identification of telephone numbers and telephone tapings
- Identification of all judicial procedures related to the investigation case:	Criminal investigation police and public prosecutors activities associated with the cases
- Vehicles:	Related with the case
- Bank accounts:	Related with the case
- Weapons	
- Explosives	
- Organized groups:	Related with the case
- Documentation:	Related with the criminal activities
- Criminal investigation case procedures:	Prepared by the criminal police investigator and by the public prosecutor

The criminal investigation police's Integrated System (SIIC) is 3 years old and is still being adjusted. Theoretically, it has the potential to identify the diverse components related to trafficking of human beings. However, in reality the majority of the criminal incidents of this nature have been introduced into the database as crimes of abduction. Therefore, it becomes difficult to select only those cases dealing with exploitation of women and children. In order to do this, it would be



necessary to read each case and recode the crime classification. Since trafficking of human beings is a relatively recent phenomenon it is still in the development stage in the terms of law enforcement.

### *21.3.2 Sources of data on victims of trafficking and sexual exploitation*

In Portugal, there are several official and non-official statistical data systems regarding criminal victimisation. However, they are not interconnected, which makes it very difficult to have an accurate perspective of the victimisation problem especially for crimes like trafficking of human beings.

## **21.4 THE TRAFFICKING PROCESS TO PORTUGAL**

### *21.4.1 The Phenomenon*

#### *Recruitment*

There are organised groups with some support (complaisant individuals) in the victims' countries of origin. These groups select countries with social and economic problems, like Brazil and in some cases Eastern European countries. They contact the victims personally and in the majority of the cases, they make job offers. In Portugal we have some cases where the women are aware that the contact and job offer is related to sexual activities (like when the work is for nightclubs and dancing) but not prostitution. The victims are selected according to age and gender: women between the age of 18 and 25, who have children, work problems and without family and/or economic support are the typical victim. The transfer to the foreign country is made with the agreement of the victim.

The organised groups send money from Portugal to the complaisant person in the mother country. That money is used to buy tickets for travel to Portugal, to arrange the necessary documents and to pay for the services of the complaisant person. They also give some money to the victims, but it is just enough to make a telephone call or to take some form of transportation upon their arrival in Portugal. The complaisant person contacts women from the interior of Brazil and offer them an opportunity to have a good job in Portugal. When she agrees, the liaison makes all of the necessary arrangements. The complaisant person supplies all the support necessary for the victim until the day of the departure to Portugal.

#### *Transportation*

Currently, in Portugal the main country of origin for trafficking in human beings for sexual exploitation is Brazil. The traffickers use several European cities as entrance points for the women being trafficked from Brazil. The main cities are Lisbon, Paris, Madrid and Munich.

The traffickers use several European cities as a way to avoid the controls in place at the Portuguese airport for incoming people and to avoid the controls instituted by the national authorities. The victim are flown from Brazil to Europe. Upon arrival, they use public transportation, taxis or personal cars to bring the victims to Portugal. They have complaisant individuals who are, in the majority of cases, hotel owners and taxi drivers. There is no registration of official cases in Portugal related to the corruption with police officials.

In the majority of cases, counterfeit documents are not used. The tactics of these kinds of criminal groups are to recruit women as tourists using legal procedures.

The transportation process lasts between two to four days. During this period, the women are not usually victimized.

### *Entrance*

The entrance points into the country are the Portuguese border and in some cases Lisbon's airport. There is no official registration of law enforcement corruption cases.

### *Exploitation*

The most usual form of sexual exploitation in Portugal is prostitution. The women are locked up in isolated places and their identification documents are seized. The criminal group hires individuals for surveillance and control of the women. The traffickers accuse the women of having a debt, which includes the travel and personal expenses (food, clothes,). The debt is very high, for example, the price of the plane ticket is € 600 but the women are charged € 2,500. They also have a punishment system, if a woman spends more than 20 minutes with a client she has to pay € 50 to the trafficker. Thus, women need to work several months in order to pay the debt. They suffer from social isolation, depression and anger. They attempt to escape back to their countries. Occasionally they try to find support from the clients but usually the clients inform the traffickers. In those cases, the women are subjected to physical punishments.

The exploitation occurs mainly in nightclubs and apartments, located mostly in the interior cities or near the border. The legal entrepreneurs are usually the leaders of the trafficking network.

The process of exploitation lasts, in general, three months. This is the legal period allowed for tourists to remain in Portugal. During that period, all the money earned by the women goes to pay the debt related to the transportation costs and the punishment system. Normally these women return to their country. When the exploitation process ends, they do not have any money so they often engage in prostitution again to earn money for their return to their home country. The estimated amount of money earned for each exploited person can vary between € 150 to € 400 per night. These amounts are related to the type of business and the social status of the clients (criminal cases investigated by the Portuguese Criminal Investigation Police in 2003).

#### *21.4.2 The Perpetrators*

The criminal groups that carry out these activities are small groups with some recruiters in Brazil or Eastern Europe and several individuals in Portugal. They work exclusively for one or two establishments, and the establishment owner can be the leader of the group. The individuals in Portugal serve as taxi drivers who do the airport service, pick up the women at other European airports and transport them to Portugal; and/or are in charged of working with lawyers and gathering information regarding the necessary arrangements to bring the women legally to Portugal. The recruitment and transportation phases are made through transnational contacts. Each Portuguese criminal group has contacts in the countries where they get the women (Brazil, Eastern Europe). The group manages the exploitation phase nationally.

These groups, generally, have a businessman, owner of a nightclub, disco, bar, etc., who controls the activities of the group. They are usually white males of Portuguese or Brazilian nationality and have a legal business related to “evening” entertainment. They use the legal business for money laundering the income derived from the sexual exploitation.

The estimated profit related with the exploitation phase is € 20,000/€ 25,000 per month (30 days/per six women) (criminal cases investigated by the Portuguese Criminal Investigation Police during 2003/2004).

#### *21.4.3 The Victims*

The main characteristics of the victims are that they are aged 18–25 years old, have 2 or 4 children, do not have any employment or any economic support (family) and live in rural areas or cities of the interior. They are not usually highly educated however, some cases, after being investigated by the Criminal Investigation Police, have found that some women have higher educational degrees (teachers, nurses and bank clerks). For the most part the women are not prostitutes in their own country. Currently the country with the highest recruitment cases is Brazil; however there are some cases looking at Eastern European Countries.

Vulnerabilities related to the absence of a visible possibility for better living conditions in their own countries are the main factors pushing victims into the traffickers' net. Usually they have children but they do not have a husband or other kind of relationship. They need to support their children, and at times, other members of their families. Some women come to Portugal expecting to find a good job and the opportunity to send money back to their families.

#### 21.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND AN ESTIMATION OF HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION

- It would be interesting to have all European countries agree on the types of crimes related to Trafficking of Human Beings and apply it as equally as possible in their legislation and judicial systems;
- it would also be of interest if in each country the code for these types of crimes were specific so that it would allow for easy detection upon the analysis of the databases,
- it would be equally appealing if it became possible to assess all European databases related to this matter.



## 22

SPAIN<sup>136</sup>

## 22.1 INTRODUCTION

The trafficking in human beings for the purpose of sexual exploitation is a relatively new phenomenon in Spain, and it is for this the reason that such behaviour has only recently been criminalised. Human trafficking is becoming an increasingly serious problem, and the Spanish police are paying increasingly close attention to the criminal 'rings' that bring illegal immigrants into the country. Most of these organisations operate in the labour market, but others introduce immigrant women for the purpose of sexual exploitation. Public opinion has been alerted by the media, and various, new and previously established, NGOs are working to help the victims of trafficking, giving them provisions and shelter. These organisations also help the women with the paperwork required to legalise their positions. In the case of sexually exploited women, these organisations help to convince them to report their traffickers/exploiters to the police.

At the same time, the methods used by the Spanish police to collect data on these offences have significantly changed in recent years; they are bound to change further in the near future. However, at present, the official data are those collected at police stations when victims lodge complaints. In 1998, Europol drew up and introduced a data collection form intended to gather national information on human trafficking and thereby enable comparative analysis of the phenomenon. Spain agreed to join the project and has substantially improved its data collection system. The *Guardia Civil*<sup>137</sup> drafts annual reports on human trafficking for the purpose of sexual exploitation based on the Europol form, although the *Cuerpo Nacional de Policía*<sup>138</sup> does not. In contrast, little information is available from judicial sources, due to the slowness of the justice system in Spain and the difficulty of gaining access to data.

This research study has afforded the Spanish partners in the project new insights into the problem of human trafficking: it was found that a great deal of information was available and that the phenomenon was much more varied than first thought. It also became clear that the availability of information depends on the co-operation of the persons and institutions that possess it, with some of them being more willing to disclose their data than others.

The results of the research in Spain are summarised below according to the format for the national report agreed to by the project partners.

<sup>136</sup> This section has been written by Cristina Rechea Alberola and Andrea Gimenez-Salinas Framis, *Centro de Investigación en Criminología, Universidad de Castilla-La Mancha, Albacete*.

<sup>137</sup> The Guardia Civil polices rural areas of the country and national borders.

<sup>138</sup> The *Cuerpo Nacional de Policía* polices urban areas.

## 22.2 CRIMINAL LAW RESPONSES

Criminal responses to the phenomena of trafficking in human beings for the purpose of sexual exploitation have changed in recent years. In 2000, the Penal Code included a general offence of trafficking in human beings (Article 318bis) and a specific offence of trafficking of human beings for the purpose of sexual exploitation (Article 188.2). A recent reform enacted on 29<sup>th</sup> September 2003<sup>139</sup> integrates the two offences in the same article (318bis). First, the situation before 2003 will be analysed, then the main changes introduced by the 2003 reform will be described.

### 22.2.1 Criminal law response before 2003

#### *a) The offence of trafficking in human beings*

Article 318bis of the new Immigration Law 4/2000<sup>140</sup> enacted on 11th January 2000, and entered into force in February of that year, introduced a new chapter into the Criminal Code entitled "Offences Against the Rights of Foreign Citizens".<sup>141</sup>

Article 318bis-1 stated that *"Those who promote, favour or facilitate the illegal trafficking of persons from, in transit through, or to Spain shall be punished with penalties of imprisonment from 6 months to 3 years and fines ranging from 6 to 12 months"*.

Aggravating circumstances are also foreseen.

Article 318bis-2 stated that *"penalties of imprisonment from 2 to 4 years and fines from 12 to 24 months shall be imposed on those committing the offences described in the previous paragraph with animus lucrandi and the use of violence, intimidation or deception, or by abusing a situation of need of the victim"*.

Article 318bis-3 stated that penalties corresponding to the upper half of those penalties foreseen in the foregoing paragraphs shall be imposed should commission of the offence *"jeopardise the life, health or integrity of persons or if the victim is a minor"*.

Article 318bis-4 stated that those who abuse their authority as law enforcement agents or public servants to commit any of the aforementioned offences shall be subject to the penalties mentioned above plus total disqualification from office for 6 to 12 years.

Article 318bis-5 established that the highest penalties foreseen in the foregoing paragraphs shall be imposed should the *"offender belong to an organisation or association, even temporarily, devoted to such activities"*.

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<sup>139</sup> Organic Law 11/2003 on special measures regarding public safety, family violence and social integration of the foreigners.

<sup>140</sup> Organic Law about rights and liberties of foreigners in Spain and their social integration.

<sup>141</sup> The chapter on "Offences against the Rights of Foreign Citizens" only consists of Article 318bis.

The illegal trafficking of persons is also an administrative offence as introduced by Law 4/2000, Article 50, which defines this administrative offence as behaviour to *“induce, promote, favour or facilitate, as part of an organisation with animus lucrandi, the clandestine immigration of persons in transit through or destined for Spain”*. The penalty is a fine of up to € 60,000 or alternatively deportation from Spain (Article 53).

Before 2003, only individuals could commit these crimes. Legal entities do not commit criminal offences under the Spanish Criminal Code. This general principle is cited by Article 31, which states in compliance therewith that *“those who act as directors, in fact or in right, of a legal person, or on behalf or in representation of others, shall be personally liable even though no conditions, qualities or relationships required by the criminal offence exist in order for that person to become liable, if such circumstances are fulfilled by the entity or persons on whose behalf or representation that person acts.”* The 2003 reform included Article 318 regarding legal entities.

#### *B) The offence of trafficking in human beings for the purpose of sexual exploitation*

The 1999 reform of the Spanish Criminal Code introduced the specific offence of sexual exploitation, namely “coercion into prostitution” (Article 188 of the Criminal Code). The second paragraph of Article 188 recognised human trafficking for the purpose of sexual exploitation as a criminal offence.

Article 188-2 of the Criminal Code punished with imprisonment for 2 to 4 years and fines ranging from 12 to 24 months *“those who directly or indirectly favour the entry, stay or exit of persons from Spain in order to exploit such persons sexually, by using violence, intimidation or deception, or by abusing a situation of superiority, or by exploiting the victim’s need or vulnerability”*.

*Article 188-3 outlines* penalties corresponding to the upper half of those penalties in the foregoing paragraphs as imposed on those who commit the offences mentioned in the foregoing paragraphs by abusing their authority, be they law enforcement agents or public officials.

Article 188-4 referred to *“under-age persons”* (i.e. minors) and establishes that highest penalties outlined in the foregoing paragraphs shall be imposed should the offence be committed against minors or persons of unsound mind for the purpose of introducing such persons to prostitution or to maintain them in that situation.

Article 188-5 stated that the above-mentioned penalties shall be imposed regardless of any other sanctions to be imposed for aggression or abuse committed against the prostituted person. Hence, the offence of human trafficking for the purpose of sexual exploitation must be punished separately from the offence of human trafficking and all individual offences (sexual aggression) committed in regards to the victim.





### 22.2.2 Criminal law responses after 2003

The reform has unified two different offences (318bis and 188.2) into one. The reform made trafficking in human being for the purpose of sexual exploitation an aggravating circumstance. The reform has also increased the penalties for these offences. After 2003, Article 318 and 318bis state that:

Article 318 – “When the facts detailed in the articles thereof are attributed to a legal person, the same penalty shall be imposed on the managers or staff in charge of the services responsible for the facts mentioned above, either by administrating or managing. The same penalty shall apply to those who, knowing the facts and able to prevent the actions, have not taken any measures in order to stop or prevent the offence. In these cases, the judge may decree further measures as stated in Article 129 hereof”.<sup>142</sup>

Article 318bis. 1 “*Those who directly or indirectly promote, favour or facilitate the illegal trafficking of persons from, in transit through, or to Spain shall be punished with penalties of imprisonment for four to eight years*”.

Article 318bis. 2. “If the purpose of the illegal trafficking or clandestine immigration sexual exploitation, they will be punished with penalties of imprisonment ranging from 5 to 10 years”.

Article 318bis 3 “The upper range of penalties shall be imposed on those whose behaviour falls into any of the paragraphs above with *animus lucrandi* or by using violence, intimidation, deception or abuse of a situation of superiority or special vulnerability of the victim, jeopardy of their health or personal integrity”.

Article 318bis 4. “Penalties established in the section above, plus total disqualification from office for 6 to 12 years, shall be imposed on those who abuse their authority as law enforcement agents or public servants”.

Article 318bis 5. “The upper range of penalties established in the foregoing paragraphs, plus special professional disqualification during the sentencing period, shall be imposed on offenders who belong to an organisation or association, even though it might be temporary, devoted to such activities”.

The upper range of penalties shall be imposed on a manager or staff in charge of such organisations or associations.

The judge may further decree one or several measures as foreseen in Article 129 for the offences described in the paragraphs above.

<sup>142</sup> Article 129.1 states that “The judge or court may impose the following penalties in the cases foreseen in this code, after hearing the company owners and legal representatives: a) Closure of the company or its premises, both temporarily or permanently. Temporary closure shall not exceed five years. b) Liquidation of the company or association. c) Stoppage of company activities for a term not exceeding five years. d) Prohibition of company activities or business operation of the kind under which the offence has been committed, encouraged or concealed. Such prohibition may be temporary or permanent. Temporary prohibition shall not exceed five years e) intervention in the company in order to protect workers and creditors’ rights, for the necessary term, which shall not exceed five years”. Article 129.2 states that “Temporary closure as stated in paragraph a) and stoppage as stated in paragraph c) above, may be decreed by the judge during the proceedings”. Article 129.3 establishes that “additional penalties foreseen in this article shall be aimed at preventing continuous criminal action as well as its consequences”.

Article 318bis-6 “Courts and Judges, considering the seriousness of the offence, its circumstances, as well as the offender’s condition and purpose, may impose penalties in the immediate higher level to those foreseen for the offence committed”.

### 22.2.3 Other information

There are two special law enforcement units principally responsible for the investigation of human trafficking rings, one for each national security force. The EMUME Central unit of the *Guardia Civil* is integrated with the central and provincial brigades of the judicial police and investigates offences against women and minors. The unit in the *Cuerpo Nacional de Policía* is the Foreigners and Documentation Police Division. There are several investigative units in the Foreigners and Documentation Police Division that deal with trafficking in human beings, each of them is specialised in a particular category of victim, i.e. women from Eastern Europe, Africa, Asia, or South America.

The *Guardia Civil* has carried out several police actions against human trafficking under the Service Guidelines 3/2000 of the Directorate General on the action to be taken against the trafficking in women and the prostitution of minors. These guidelines require frequent inspections to be made of clubs in all areas under the *Guardia Civil*’s jurisdiction (especially rural ones), without waiting for accusations to be made or the suspicion of offences to arise. The aim is to dismantle rings engaged in trafficking in women, especially by encouraging victims to bring charges. During these inspections, female officials of the police units for women and minors interview prostitutes, inform them of their rights and explain how they can take action against their exploiters. In this case, exploited women can benefit from Article 55 of Law 4/2000 and the Law on witness protection.

Since the beginning of 2001, units must be informed of any establishment in their jurisdiction where prostitution takes place. The number of rooms and reserved areas, as well as the number of women working in such establishments, either Spanish or foreign, must be estimated.

In regards to the victims, Article 55 of Law 4/2000 on Immigration (reformed by Law 8/2000 and now 59) provides benefits for the victims of trafficking who decide to give evidence against criminal organisations. Victims who agree to do so avoid expulsion and prosecution for illegal residence in the country. The Article also allows victims to choose between returning to their country of origin and obtaining a residence permit in Spain and/or a work permit. Law 4/2000 on Immigration also gives the victims of traffickers eligibility for the country’s witness protection programme instituted by Law 19/1994 of 23 December 1994, which provides various measures to protect witnesses. The personal data of victims may not be disclosed and procedures are laid down to prevent visual identification of victims. Article 3 of the Law establishes that the police, district attorneys and judges must ensure that no pictures or images of protected witnesses are taken. Any such material must be confiscated. The district attorney may ask for police protection for the victim throughout the legal proceedings against the traffickers should serious danger for the victim exist. Exceptionally, the victim may be issued with new identity documents and given economic assistance to change their address or job.

The witness may also request to be driven to court in an official vehicle and secluded in a reserved area with suitable protection.

## 22.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

### 22.3.1 Sources of data on data on offences

Information on the sources of data on trafficking in human beings for the purpose of sexual exploitation

#### *a) Sources of data on trafficking in human beings for the purpose of sexual exploitation*

Spain has one official database on the specific offence of trafficking in human beings for the purpose of sexual exploitation (i.e., coercion into prostitution – Article 188 of the Criminal Code). This database is maintained by the *Ministerio del Interior* and stores investigative information relating to each chapter of the Criminal Code.

The information contained in this database originates from the data collection forms compiled by the police forces (the *Cuerpo Nacional de Policía* and the *Guardia Civil*) when they become aware of a case of human trafficking, either because a report has been made or through their own actions. The data concern cases known to the police and the persons arrested prior to their committal to trial. The variables collected in relation to the offence are: date, time, place, type, classification of the offence (misdemeanour, felony, etc.), execution (attempted or committed), the means used to commit the offence (firearm, physical violence, psychological violence, intimidation, etc.), and *modus operandi*.

Other data are collected by the two police units that focus on human trafficking for the purpose of sexual exploitation. Each department processes these data separately with information arising from concluded investigations. The result is two different databases, with no co-ordination between them and no common basis. It was therefore not possible to compare the data obtained by these means and to conduct combined analysis. However, the following brief description of the activities of the two police units is possible.

*Cuerpo Nacional de Policía – Foreigners and Documentation Division.* The Foreigners and Documentation Division of the National Police is responsible for investigation of trafficking in human beings. The Division is organised into various investigative units, each specialised in a particular type of victim, i.e. women from Eastern Europe, Africa, Asia or South America. The Division uses the data collected during its investigations to compile a brief annual report on criminal offences such as coercion into prostitution (Article 188 of the Criminal Code), offences against workers' rights (which are covered by Article 313-1 of the Criminal Code), offences against the rights of foreign citizens (under Article 318bis of the Criminal Code), false documentation, and the falsification of residence permits. These data are therefore gathered when investigations have been completed. The data is divided between the number of rings identified and the number of arrests made.

*Guardia Civil – EMUME Central.* As said, the EMUME Central in the *Guardia Civil* is responsible, albeit not exclusively, for the investigation of human trafficking offences. Complete quantitative or qualitative analysis of the *Guardia Civil* data is forthcoming from research studies and solved cases. As requested of Europol, annual reports have been produced that contain data on the sex, age and nationality of offenders and their victims, as well as qualitative data on rings, their *modus operandi* and contacts in Spain since 1999. These data refer to completed investigations.

In regards to the judicial activity, the Ministry of Justice has a database that is of no use for analysis because it does not indicate separate offences.

*b) Sources of data on other offences to which courts can refer in punishing “trafficking in human beings for the purpose of sexual exploitation”*

Offence 1 – Article 318bis: *Offences against the rights of foreign citizens* (since 2000)

The data on this offence are also stored in the *Ministerio del Interior* database. The relevant information has been collected since 2000, the year when Article 318bis was introduced into the Criminal Code. The variables on which data are collected with regard to the offence are those contained in the information recording form.

### *22.3.2 Sources of data on offenders*

The *Ministerio del Interior* database – The sheet on arrested people collects information on the following variables: a) origin of the action, b) current or future proceedings, c) collaboration with other police forces, d) date of birth, e) address, f) nationality, g) participation, h) injuries, j) gender, k) marital status, l) employment status, m) education, n) residence, q) drug consumption (type, frequency, time of consumption), r) alcohol consumption, s) police record, t) conviction record (penitentiary, care centre, bail hostel, etc.), u) proposal for expulsion or rejection (only for foreigners), w) situation before and after the arrest.

However, it is impossible to determine whether an arrested person has simultaneously committed two or more crimes related to human trafficking because the database does not contain this kind of information. The only information available is the number of previous police arrests (recidivism). Even in this case, records are not kept on the kind of crimes that led to the previous arrests.

The *Cuerpo Nacional de Policía – Foreigners and Documentation Division* database – The *Cuerpo Nacional de Policía*, especially its Foreigners and Documentation Division, has gathered much more information on the trafficking in human beings for the purpose of sexual exploitation. Its data cover criminal offences such as coercion into prostitution, offences against workers’ rights, offences against the rights of foreign citizens, false documentation, and the falsification of residence permits. Information on traffickers relates to the number of rings identified and the number of persons arrested.

*Guardia Civil* database – Complete quantitative and/or qualitative analysis of the data available from the *Guardia Civil*, is forthcoming from studies and solved cases. Data on perpetrators refer to sex, age and nationality. Qualitative information on the rings, their *modus operandi* and contacts in Spain is also available.

### 22.3.3. Sources of data on victims

The *Ministerio del Interior* database – This provides detailed information on victims when it is compulsory for police forces to compile complaint sheets, as in the case of sexual offences against, coercion into prostitution (Article 188), trafficking and exploitation of minors, illegal detention and kidnapping. The data collected on victims include: category, gender, age, nationality, relationship to the perpetrator of the offence (father or mother, child, spouse/partner, other relative, work/school friend, casual acquaintance, other, none), injuries caused by the crime (no harm, non-serious harm, serious harm, death).

The *Guardia Civil* database – As said, since introduction of the Directorate General of the Police Service Guidelines 3/2000 on action against rings engaged in the trafficking of women and the prostitution of minors, systematic inspections are carried out in clubs without the need for accusations or suspicion that a criminal offence has been committed. These inspections yield data on victims. In particular, on the number, nationalities, genders, and ages of the prostitutes working in the clubs inspected. It is of the utmost importance to know the number, nationalities, genders, and ages of people working as prostitutes who report traffickers/exploiters to the police. The reports on trafficking produced by the *Guardia Civil* also contain data on the situations of victims in Spain, e.g. how rings have exploited them, the means of coercion used, etc.

## 22.4 THE TRAFFICKING PROCESS TO AND IN SPAIN

The information contained in this paragraph is based on the analysis of twenty-one cases of trafficking in human beings for the purpose of sexual exploitation investigated by the Spanish police during the years 1999, 2000 and 2001. The majority of these cases are investigative where the data originate from the investigations made by the police as part of criminal procedures. In some cases, investigations are nearing completion; in others, they have just begun. The research encountered difficulties in finding judicial cases in this matter because of the length of time that elapses before a court sentence (around 5 years). It was only possible to find out about cases in progress by consulting the information possessed by the police investigators.<sup>143</sup>

The research team decided to choose cases from the two national police bodies in order to obtain a representative sample of the situation in Spain. Six cases were provided by the *Cuerpo Nacional de Policía* (urban national police) and ten by the

<sup>143</sup> The information from the police is the same as that possessed by courts, but court decisions are not included here.

*Guardia Civil* (rural national police); the remaining five consisted of judicial cases. The information yielded by the *Cuerpo Nacional de Policía* cases was more detailed because access was given to all the files. The foreigners division of this police body centralises all investigations on Spanish territory into human trafficking and prostitution (most of them occurring in several provinces at the same time), and consequently possesses all the relevant dossiers. As for the *Guardia Civil*, its EMUME Central collects information on cases throughout the country, although investigations are carried out by the local office (*comandancia*) of the EMUME in the area where the case of human trafficking has been detected. The officers in charge of the investigation must send a brief report to the EMUME Central outlining the relevant data from the case.<sup>144</sup> The information collection began by consulting these briefs and then further information was obtained by asking the officers in charge of the investigation to complete the spreadsheets.

#### 22.4.1 The Phenomenon

The trafficking process is similar in all cases: a captor in the country of origin contacts the victim. The captor seeks to convince the victim of the economic advantages of working in Spain. In some cases, the victims are told the truth about the job awaiting them in Spain, but their captors lie about the employment conditions and assure them that after some weeks of work they will be able to repay the sums due. Sometimes captors do not tell the truth about the work that the victims will have to do in Spain, telling them that they will be employed as cleaners in hotels, childminders, etc. In other, more infrequent cases, the victims are kidnapped, brought to Spain and forced into prostitution.<sup>145</sup>

Captors always provide the documents and money necessary for the journey to Spain. They obtain passports,<sup>146</sup> invitation letters,<sup>147</sup> airline tickets, etc, and also give the victims approximately € 2,000 to ensure that they are not stopped by the police because they do not have enough money to pay for their holiday. This sum of money must always be repaid to the member of the organisation who meets the victims upon their arrival in Spain.

In exchange for these services, the captors tell the victims that the money advanced can be reimbursed in Spain after a few weeks of work.

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<sup>144</sup> Attempts have been made to construct a framework to comprise all information (*modus operandi*, etc.) on the cases of human trafficking for the purpose of sexual exploitation, but they have been unsuccessful.

<sup>145</sup> Case *Operación turquesa*.

<sup>146</sup> In some cases, and when a large ring is involved, victims are provided with false passports.

<sup>147</sup> 'Invitation letters' are letters signed by Spanish citizens inviting victims to come to Spain on holiday.

*a) The demand for human trafficking services*

When focusing on the characteristics of the trafficked women,<sup>148</sup> one must distinguish among their origins. Three main geographical areas of origin were identified in our twenty-one cases:

*Eastern Europe* – There were eight cases from Lithuania, Hungary or Romania, but the principal country of origin for the victims was Russia (three cases). The women were aged between 20 and 31.<sup>149</sup> The fee paid to the traffickers was always around € 6,000. In two cases, the debt was redeemed through the withholding of a percentage every month, even if the victim had completely repaid the sum advanced. In two cases, the debt was less substantial (about € 3,000) but the woman declared that she had been sold for the same price to another exploiter, so that she had to pay off twice the original debt.

*South America* – There were eight cases from South America. Colombia was the most common country of origin (five cases). The women were aged between 20 and 57, this last case being an exception; the eldest women were 30 years old on average. The price paid to the traffickers was between € 2,400 to € 6,000. The victims usually signed promissory notes for travel expenses in their country of origin. In one case, the victim had to pledge all her assets and obtain guarantees from all her family members in Colombia in order to ensure that her expenses were covered. The prices seem to be standardised for South American women. In some cases, it was noted that traffickers told the women that the debt was less than the sum demanded by the ring once the woman had arrived in Spain.

*Africa* – We came across two cases from Africa. The women were aged between 23 and 26. Notably, the sums paid by these women were eight times higher than those paid by women from other countries. In one case, € 48,100 was paid; in the other, the sum was € 36,000. These victims are the worst treated and the most severely exploited. In one case, a document committing the victim to the organisation was a contract whereby the woman undertook to repay the sum and swore that she would not default or report her treatment to the police. Default gave the ring the right to kill the woman or any member of her family.

No further information is available from police investigations regarding the victims of trafficking. Information about their cultural and socio-economic circumstances could be provided by the NGOs, which are in contact with the victims, are therefore able to create the more confidential climate necessary to obtain such data. However, the NGOs that were contacted do not record this kind of information, and when they possess it, they are reluctant to share it. In any event, almost all the victims are women in serious economic difficulties, living in poverty, with children to bring up on their own, or similar circumstances.

<sup>148</sup> We found only female victims. The *Guardia Civil* report cites a few cases of male victims, most of them are minors.

<sup>149</sup> It is very difficult to identify the number of victims trafficked per case. In general, we know the number of victims who have complained to the police, but we do not have information about the people trafficked by each organisation.



*b) The organised supply of human trafficking services*

There is not a great deal of information on the trafficking process, the number and characteristics of the persons operating in the countries of origin to entrap victims. Thus, it is difficult to identify the captors and it is even more difficult to apprehend them. In all cases, one or more members of the Spanish ring met the victims when they arrived in Spain. These persons transported the victims to clubs or apartments owned by the ring. In the latter case, the victims were then distributed among clubs. Occasionally a member of the ring travelled with the victims (by plane or by train) in order to keep them under control.

The routes for trafficking depend on the victims' countries of origin.

*Eastern Europe* – In all cases, the victims travelled to Barcelona with a stopover in Italy or Hungary. In most cases, the victims worked in locations situated on the Eastern coast of Spain. This explains why all the women travelled to Barcelona, given that it is closer to that coast than Madrid. In one case, the final destination was Madrid, but the victim also transited through Barcelona. In general, the women travelled by plane, only in one case did the victim arrive by road.

*South America* – There are two main routes from South American countries. The first involves travel directly to Madrid or somewhere else in Spain, as planned. The second route brings women into Europe through a Schengen country (France, Germany, etc.) other than Spain and then to Spain by car. As reported in one of the cases analysed, the first part of the journey was made by plane to Paris, where a member of the ring (the exploiter) picked up the victims and drove them to Spain.

*Africa* – These routes are the most arduous for the victims because they must walk long distances to places where they can find 'easy' transport to Europe, which is usually Morocco. Once in Morocco, they enter Spain illegally by crossing the Straits of Gibraltar at night in rubber dinghies.

When the victims arrive in Spain, they are always met by a member of the ring, who takes and keeps all their documents, as well as the money given to them by the ring before their departure. The ring member then transfers the victims to hotels, clubs<sup>150</sup> or apartments owned by the ring, where they will live or wait to be moved to a club. Taxi drivers sometimes collaborate with the rings by transporting victims to their destinations.

There is no information on the duration of the trafficking process. In one case, reference was made to a 10-day period elapsing between the first contact in the country of origin and the moment when the victim began her journey to Spain. Women from Nigeria may undertake journeys lasting several weeks. In all cases but two, logistical support was offered by the organisation, which was sometimes an international group with contacts in Spain that distributed the women among clubs associated with the organisation. In the other two cases, the exploiting organisation<sup>151</sup> consisted of Spanish citizens who brought the women into Spain

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<sup>150</sup> Clubs are places where the victims prostitute themselves (receive their clients) and also perform other services. However, the police have also found numerous victims working in hotels specifically used by the rings in order to evade the police inspections of clubs.

<sup>151</sup> In some cases, this is because investigations are ongoing thus, the police have not yet arrested all the suspects or have difficulties in apprehending the organisation's international members.

from their countries of origin after contacting their captors. In these cases, the networks were not organised groups but ones created and operated by club-owners seeking to profit from the sex market and who therefore introduced trafficked women into their clubs to exploit them as prostitutes. These club-owners contacted the persons able to recruit women in their countries of origin and traffic them into Spain. In one case, the Colombian girlfriend of a club-owner was used to attract her relatives to the club; in another, a Spanish club-owner contacted traffickers to bring women to his club.

### *c) The exploitation process*

When the victims are in Spain, sometimes they are sold to club-owners and sometimes they are exploited for the same trafficking organization. Nevertheless, it is difficult to determine whether or not traffickers and exploiters belong to the same organisation, and how they manage to negotiate with each victim jointly. Even more difficult is obtaining information on the cost of trafficking each victim. Only in one case was mention made of the sum earned by the captor for each victim trafficked (about € 25,000).

### *Modus operandi*

#### Living conditions

The women who contact the trafficking organisations are always misled by false promises. They agree to leave their countries because they are attracted to the prospect of legal employment in Spain, which will improve the living conditions of their families. Upon arrival in Spain, a member of the ring takes them to a hotel, club or apartment and informs them of the conditions for their stay in Spain. The debt they must repay for travel expenses (in most cases the debt to be repaid is higher than the price agreed) and the work they must do (provocative clothes are usually given to victims to make them start working immediately). The organisation also provides the victims with room and board, for which they must pay high prices (€ 15 for food<sup>152</sup> and € 48 for accommodation per day). In one case, a victim from Africa, was forced to pay € 600 per month for room and board.

The victims' work generally involves sexual relations with clients. They are obliged to "*alternar*"<sup>153</sup> clients and induce them to spend money on drink. In some cases, the ring obliges the victims to earn a certain amount of money: for instance, a woman from Africa had to earn between € 120 and € 270 per day.

Working conditions are harsh. In almost all cases, the victims must work seven days a week (from 6 p.m. to 3, 4 or 5 a.m.) even when they are sick. They are subjected to constant threats, abuses and beatings to ensure that they accept these conditions.

<sup>152</sup> They were usually allowed to have one meal per day.

<sup>153</sup> *Alternar* is the Spanish term for sleeping around. Clients come to the club to drink and talk to the women and sometimes to have sexual relations, but not always. Clubs earn money from drinks and other services.

### Control systems

When women make contact with the members of the rings, their names are immediately changed so that they will not be recognised while working in the clubs. The organisers also take away their personal documents to prevent their escape. The ring also moves victims from club to club so that they are not recognised by the police, and because clients normally want a variety of women.

The ring also offers the victims accommodation in order to keep them under control. In most cases victims are kept locked in the clubs or apartments where they live, without being allowed leave, and they are closely watched. *Mamis* – women (usually from the same countries of the victims) belonging to the ring – live with the victims and supervise them in the clubs, but some other member of the ring (waiter, assistant, guard, etc) is always present to keep watch on the women.

Members of the rings threaten the victims in various ways (e.g. captors in their countries of origin menace their families, their children, etc.) to ensure that they do not inform the police of their situation and do their work properly. In all cases, threats of violence or even death ensure that the victims work for the rings, pay the debt, accept its conditions, and do not report their situation to the police.

Intimidation takes various forms, according to the ring.

*Eastern Europe* – Members of these rings are extremely violent. They usually maintain control over their victims by employing physical violence and threats against their families to. Threats are carried out. In one case the ring set fire to the house of a victims' family, in another, they beat a woman who had to stitch her wounds herself because medical assistance was denied her.

*South America* – Members of rings threaten the families of the victims living in their countries of origin. The victims or their relatives have usually signed promissory notes in their countries to guarantee payment of their travel expenses, and victims accept their conditions because they know they must reimburse their debts.

*Africa* – Victims from these countries are very poorly educated and have strong religious beliefs. The rings are very violent and threaten them with voodoo rites. In one case, when the women arrived in Spain, criminals cut their hair and nails and took pictures of them naked. They then threatened the victims by telling them that they would use the pictures for voodoo rites. In another case, the victims signed their lives over to the organisation.

In almost all cases, the ring imposes penalties on the women if they engage in misconduct: arriving late, talking to clients, going to the kitchen alone, not coming to work during the weekends, etc. These penalties range from € 300 to € 900.

These control systems make it very difficult for victims to know their economic situation with the ring, and they enable the ring to extend the period of exploitation. The victims do not receive the money the clients pay to the club for their services. A club usually uses different coloured cards for each service, so that the women receive only these cards rather than money. These services are always closely controlled by members of the club (*mamis*, waiters, etc).

The rings also sell victims to other bosses so that the period of exploitation begins again. The rings also extort large amounts of money for the release of the victims (i.e. € 17,000).

#### Benefits

We do not have precise data on the benefits provided by rings, only suggestions.

Until the victims' debts have been fully repaid, regardless of the period, they do not receive any money. The ring provides them with the bare necessities for survival, and the victims are not informed of the amount of outstanding debt. The ring decides when the debt has been fully repaid and the victims are to be released. Sometimes, a ring forces its victims to pay a monthly percentage of their earnings, or a fixed sum, even if they have been released. In some cases, victims are re-sold to other bosses and must consequently pay the same debt twice in order to have their freedom.

In one case, the victim said that the clubs paid between € 7,200 and € 30,000 for each woman. In some cases, the victims said that they were able to earn between € 300 and € 600 per day, depending on the club and the day of the week.

There is little information about the duration of exploitation. In the cases surveyed, exploitation could last between one month and a year. In the only case in which information about the duration of exploitation was forthcoming, the victim had to work for one year to repay a debt of € 5,600 (50% of the profit went to the club and the other 50% to the ring).

Cases of exploitation were recorded throughout Spain – in the North, on the Mediterranean coast (Cataluña, Valencia, Alicante, Málaga) and in the central regions (Madrid, Castilla-La Mancha, Avila) – and were not concentrated in one particular area of the country.

In three cases, the exploiters did not seem to be organised. In such cases, the exploiters were a few people with no organisation. For example, the owner of a club and his companion benefited from contacts with the international rings and/or personal connections to bring women to Spain and exploit them.

Roles of the members of the rings are similar in all cases. There was a/the leader (of the ring), native captors who recruited the victims in their countries of origin, club-owners or managers (usually Spanish citizens) who asked for women to exploit. Traffickers transported and controlled the victims until they were distributed to the clubs, controllers, i.e. *madames* or *mamis* (generally from the same country as the victims) lived with the victims in the clubs and supervised them, and waiters, guards, etc., controlled the victims while they were at work.

#### 22.4.2 The Perpetrators

In almost half of cases, traffickers and exploiters belonged to the same organisation. Five cases consisted of international organisations with foreign members; in the remaining five cases, the members of the organisation were

Spanish citizens. The international organisations were based in Eastern Europe (two cases), Nigeria (two cases), and South America (one case). Only Spanish citizens were implicated in the remaining fourteen cases. Spanish citizens always work with foreigners, the former usually being club-owners who contact the organisation in order to obtain women for exploitation in their clubs.

The exploiters are not particularly old: between 22 and 51 years of age. Notably, the average age of the Spanish offenders was greater than that of their foreign accomplices. The members of international organisations were aged between 22 to 34.

#### 22.4.3 The Victims

The average number of victims per ring was seventeen, but the figures extrapolated from the cases analysed are not exhaustive. The police do not collect a great deal of data from victims, except in case of complaint. The number of victims disclosed is probably not very representative of the situation as a whole, and the total number of victims would seem to be higher. No precise data are available on the victims' characteristics (e.g. nationality) because the cases investigated by the *Guardia Civil* do not yield detailed information.

Victims are normally aged between 21 and 29, but there are also victims in their forties or fifties.

### 22.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND THE ESTIMATION OF THE HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION

The *Ministerio del Interior* database is quite complete but nevertheless general. The same datasheet is used for every offence, so that when a specific offence is analysed, characteristic and important data are always missing. The database relative to Article 188 of the Criminal Code (coercion into prostitution) contains specific information on the offence of human trafficking for the purpose of sexual exploitation.

This database has other shortcomings. First, it collects data on investigations that have not yet been completed, which may be very different at the end of the investigative process. Second, the information gathered on victims is not exhaustive. Third, very little information is collected on the *modus operandi* of the offence (although there is a very detailed spreadsheet for property crimes). One may therefore conclude that, although this database is a good instrument for the purposes of the *Ministerio del Interior*, it is of little use to this research because it affords little insight into the offences of interest.

The two police groups that investigate trafficking in human beings for the purpose of sexual exploitation follow different strategies. Information about *modus operandi*, threats, living and working conditions are available only if the victims have decided to report the crime to the police. Most of the court cases analysed were instituted as a result of a complaint by a victim. The methods used by the two

police bodies to persuade victims to complain are different. Some of the cases investigated by the *Guardia Civil* started from periodic inspections carried out in application of the new policy against human trafficking for the purpose of sexual exploitation (in compliance with the Service Guidelines 3/2000 of the Directorate General on actions against crime related to trafficking in women and the prostitution of minors). These guidelines require the police to make frequent inspections of clubs in each area under their jurisdiction (especially rural ones), rather than wait for accusations to be made or suspicion of offences to arise. The aim is to dismantle the trafficking in women rings mainly through the accusations made by the victims. During these inspections, female members of the police units for women and minors interview prostitutes, inform them of their rights and the procedure for taking action against their exploiters, and explain the benefits provided by Article 59 of Law 8/2000 on Immigration and the Law on witness protection. Since the beginning of 2001, these units must be know about any establishment in their jurisdiction where prostitution is practised. The number of rooms and reserved areas, as well as the number of women, either Spanish or foreign, working in such establishments must be estimated.

It is for this reason that the *Guardia Civil* database is much more complete than the official one maintained by the *Ministerio del Interior*. It stores both quantitative and qualitative data on the phenomenon. The *Guardia Civil* compiles an annual report following the Europol model, which includes all the above-mentioned data.

The *Cuerpo Nacional de Policía* seems to take a more passive approach, waiting until victims decide to complain. It does not have proactive measures with which to encourage complaints by victims, but instead works with the NGOs, whose role is to contact victims and persuade them to complain. In big cities (over which the *Cuerpo Nacional de Policía* has jurisdiction) most complaints are made through the promptings of NGOs (especially APRAM). However, the *Cuerpo Nacional de Policía* is not as thorough in its recording of data as the *Guardia Civil* and provides less interesting information.

In our view, the *Guardia Civil* and *Cuerpo Nacional de Policía* should create a common database so that data more closely reflect the phenomenon in both rural and urban areas of the country. The actions of the *Guardia Civil*, in rural areas, should be extended to the jurisdiction of the *Cuerpo Nacional de Policía* in urban ones, so that the data collected by each can be collated and analysed jointly, thereby enabling closer co-ordination in the fight against human trafficking.

We also consider it important that the NGOs should provide information and co-ordinate their services with the police. This would yield more and better information on the characteristics and demands of victims, help define the resources necessary to assist victims and create a climate of confidence which encourages complaints by future victims. These various forms of action are covered by Article 59 of Law 8/2000 on Immigration, which provides benefits for the victims of human trafficking who decide to bring charges against criminal organisations. Victims who decide to complain will avoid expulsion and prosecution for illegal residence in Spain. The Article also allows victims to choose either to return to their country of origin or to obtain a Spanish residence permit and a work permit. Law 19/1994 of 23 December 1994 on witness protection provides protection measures for witnesses. Nevertheless, even though Article 59 gives those victims protection if they decide to report the cases to the police no public assistance services are

provided for those victims and, consequently, the effective application of the Article is very difficult in practice.

As a consequence of our work in drafting this report, we believe that the main goal of the research should be to present the competent authority (the *Ministerio del Interior* in the Spanish case) with a datasheet comprising a new set of variables to be collected by police forces in the case of offences related to human trafficking for the purpose of sexual exploitation.

## 23

SWEDEN<sup>154</sup>

## 23.1 INTRODUCTION

In Sweden, prostitution is regarded as an aspect of male violence against women and children. It is officially acknowledged as a form of exploitation of women and children and constitutes a significant social problem, which is harmful to not only the individual prostituted woman or child, but also to society.<sup>155</sup>

The Swedish Government has long given priority to combating prostitution and human trafficking for sexual purposes. This objective is central to Sweden's goal of achieving equality between women and men, at the national level as well as internationally. However, gender equality will remain unattainable so long as men buy, sell and exploit women and children by prostituting them.<sup>156</sup>

On 26 April 1997, the Ministers of Justice and the Ministers for Equality within the European Union adopted the so-called Hague Declaration with guidelines for preventing and combating trafficking in women for sexual purposes. The Declaration contains recommendations for the work at both national and international levels. In view of this Declaration, the Government commissioned the National Police Board in December 1997 to be the national *rappporteur*. This task was later delegated to the National Criminal Investigation Department by the National Police Board. This task includes the collection of information about the extent of trafficking in human beings in Sweden and studying how this trade can be prevented and combated. In addition, it includes daily handling of intelligence concerning suspected criminal activities within this sphere, answering questions posed by the media and the public, compiling reports and supporting documents, arranging and participating in seminars, etc. The results of which are given to the Government on an annual basis.<sup>157</sup>

Apart from Sweden, only the Netherlands and Belgium have appointed national rapporteurs to their governments. The role of the national rapporteur is important and useful in regards to monitoring the progress within this sphere. Over the course of several years, the national rapporteur has developed a large network, both nationally as well as internationally, which consists of representatives from many different agencies and organisations that come in contact with issues related to trafficking in human beings both within and outside Sweden.<sup>158</sup>

This report was compiled by Transcrime, as part of a study for monitoring the international trafficking of human beings for the purpose of sexual exploitation in

<sup>154</sup> This section has been written by Vanessa Bopp, Transcrime, Joint Research Centre on Transnational Crime, *Università degli Studi di Trento/Università Cattolica del Sacro Cuore*, Trento–Milan.

<sup>155</sup> The following was taken directly from Regeringskansliet, *Prostitution and Trafficking in Women – Fact Sheet*, Stockholm, July 2004.

<sup>156</sup> The following was taken directly from Regeringskansliet, *op. cit.*

<sup>157</sup> This information was taken directly from National Criminal Investigation Department, *Trafficking in human beings for sexual purposes*, Situation report no. 6, January 1 – December 31, 2003, Stockholm.

<sup>158</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*



the EU Member States known as the STOP II Programme funded by the European Commission, Directorate General Justice and Home Affairs. Several Swedish reports were used as resources.

## 23.2 CRIMINAL LAW RESPONSES

### 23.2.1 *The offence of trafficking in human beings*<sup>159</sup>

In Sweden, human trafficking has attracted growing attention within a number of policy areas in recent years. Several government ministries are actively concerned with different aspects of trafficking in human beings and a number of initiatives have been taken to combat the problem. Today, government action against human trafficking and prostitution is a high-priority area. The issue has also received extensive media coverage.

Combating human trafficking was also a priority issue for the Swedish government during the Swedish presidency of the EU Council of Ministers in the first half of 2001. EU Member States agreed on a definition of the crime of human trafficking for sexual exploitation and forced labour as well as established new guarantees for trafficking victims. On 1 July 2002, new legislation on human trafficking came into force that broadened the scope for criminal prosecution and introduced a new offence: trafficking in human beings for sexual purposes (Chapter 4:1a of the Penal Code.)

To sentence a person for this crime it must, *inter alia*, be proven that this trade has taken place by use of undue means like unlawful coercion, misleading or other such unlawful means. However, several recent investigations have demonstrated that it can be very difficult to prove how someone has been recruited. The police have very little knowledge of what is going on. Existing evidence about the recruitment phase is often in the form of statements that are contradictory with no supporting evidence.<sup>160</sup>

Some examples of measures taken by Sweden in a range of policy areas to combat human trafficking in the national context are set out below. Experience obtained in these areas will help strengthen efforts in the sphere of international cooperation.

The Ministry of Justice is currently engaged in preparing the legislative measures needed for Sweden to comply with the terms of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The same process is under way in connection to the EU Framework Decision on Human Trafficking. The object of these efforts is to extend criminalisation to all forms of human trafficking including forced labour, and, where it does not involve cross-border operations.

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<sup>159</sup> The following information was taken from Ministry for Foreign Affairs, *Poverty and Trafficking in Human Beings, A strategy for combating trafficking in human beings through Swedish international development cooperation*, Stockholm, 2003.

<sup>160</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*

The parliamentary Committee on the Reception of Close Relatives recently published its report: *Smuggling of Human Beings and Victims of Human Trafficking* (SOU 2002:69). The government anticipates that a bill aimed at strengthening protection for victims and contributing to more effective prosecution of offenders will soon be ready for submission to the Riksdag (the Swedish parliament). The proposal will also contain provisions on health, social and psychological support for victims.

The Ministry of Industry, Employment and Communications, Division for Gender Equality, seeks to ensure that women and men enjoy the same rights and opportunities in practice as well as theory as part of the government's policy on gender equality. Issues relating to male violence against women, prostitution and human trafficking in Sweden and its immediate vicinity have attracted widespread attention. At a conference entitled *Women and Democracy* held in Vilnius, Lithuania, in June 2001, Sweden's Minister for Gender Equality Affairs proposed a Nordic Baltic collaboration featuring joint and national campaigns against trafficking in women. The project, which was concluded in 2002, had the support of the countries' ministers of justice. The campaign committee submitted recommendations on further cooperation at a ministerial meeting in the spring of 2003.

In the foreign policy sphere, Sweden, Thailand and the Philippines took a joint initiative to intensify cooperation against trafficking in women and children between Asia and Europe. In May 2001, delegates at the ASEM ministerial meeting in Peking welcomed the announcement of an Action Plan focusing on preventive measures, law enforcement and support for victims of human trafficking. Sweden is seeking to ensure implementation of the Action Plan by addressing different aspects of the problem. In October 2001, the Swedish Ministry for Foreign Affairs organised a seminar in collaboration with UNIFEM and ESCAP to highlight the need for a human rights approach and a gender equality perspective when analysing the causes of and designing preventive measures against trafficking in human beings. A corresponding project aimed at placing human trafficking on the political agenda was initiated as part of the Africa-EU dialogue. The endeavour, in which Sweden has played a proactive role, is expected to lead to the adoption of an action plan against human trafficking at the next Africa Europe summit.

In February 2003, Sweden organised a conference on the responsibility of the Baltic Sea states for unaccompanied child refugees, including children who have been or risk becoming victims of human trafficking in the region. The declaration by the Barents Euro-Arctic Council in Kirkenes in 2003 contained an undertaking by the Prime Ministers of Denmark, Finland, Iceland, Norway, Russia and Sweden to join in a common endeavour to stop human trafficking in the Barents region.

### *23.2.2 The offence of trafficking in human beings for the purpose of sexual exploitation*<sup>161</sup>

In the legislation on gross violations of a woman's integrity (*Kvinnofridslagstiftningen*), the Swedish Government and *Riksdag* (the Parliament) defined prostitution as a form of male violence against women and children. Since January 1, 1999, purchasing – or attempting to purchase – sexual services has constituted a criminal offence punishable by fines or up to six months

<sup>161</sup> The following was taken directly from Regeringskansliet, *op. cit.*

imprisonment. The women and children who are victims of prostitution and trafficking do not risk any legal repercussions. Prostituted persons are considered the weaker party, exploited by both the procurers and the buyers. It is important to motivate persons in prostitution to attempt to leave the profession without risking punishment. By adopting these measures, Sweden has shown the world that it regards prostitution as a serious form of oppression of women, and that efforts must be made to combat it.

Under the Act, "Prohibiting the Purchase of Sexual Services" (1998:408), a person who obtains casual sexual relations in exchange for payment shall be sentenced – unless the act is punishable under the Swedish Penal Code – for the purchase of sexual services to a fine or imprisonment for at most six months. Attempt to purchase sexual services is punishable under Chapter 23 of the Penal Code.

The offence comprises all forms of sexual services, whether they are purchased on the street, in brothels, in so-called massage parlours, from escort services or in other similar circumstances.

Since the Act came into force, there has been a dramatic drop in the number of women engaged in street prostitution, according to information provided by the police and social services. Criminalization has also meant that the number of men who buy sexual services has fallen, as has the recruitment of women into prostitution. According to The National Criminal Investigation Department, the Act deters traffickers from establishing themselves in Sweden.

Public support for the law is widespread and growing. Opinion polls conducted in June 1999, and again two years later by SIFO, an opinion and social research consultancy firm, showed a significant rise – from 76% to 81% – in the number of people in favour of the Act. The proportion of respondents who thought the Act should be repealed shrank from 15% to 14%, while the percentage of 'don't knows' fell by almost half. A third survey carried out in October 2002 confirmed that support for the Act that Prohibits the Purchase of Sexual Services remains strong; with 8 out of 10 Swedes in favour.

### *Procuring*

According to Chapter 6, section 8, of the Swedish Penal Code, anyone who promotes, encourages, or improperly exploits, for commercial purposes, casual sexual relations entered into by another person in exchange for payment is guilty of a criminal offence and shall be sentenced to imprisonment for at most four years for the offence of procuring. If the crime is aggravated, imprisonment for at least two and at the most six years shall be imposed (gross procuring, Chapter 6, section 9). Attempt, preparation and conspiracy to commit procuring or gross procuring, as well as failure to reveal such crimes are also criminalized.

Promotion can take various forms: examples include operating a brothel, letting premises for purposes of prostitution or helping a buyer find prostituted persons.

Criminal responsibility for the crime of trafficking in human beings for sexual purposes entered into force on July 1, 2002. Before then, cases of trafficking in human beings for sexual purposes were prosecuted under the procuring provisions,

or, depending on the individual case, under the provisions on kidnapping, unlawful deprivation of liberty, placing a person in a distressful situation, coercion, or sexual exploitation.

### *23.2.3 Other offences*

The Ministry of Health and Social Affairs coordinates the Swedish governments' work on the ratification of the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of children, Child Prostitution and Child Pornography. The government has drawn attention to the special problems arising in connection with the care of sexually exploited children in Sweden. A working group has been instructed to draw up an inventory of current data about the sexual exploitation of children in Sweden by 2004.<sup>162</sup>

The Council of the Baltic Sea States has set up a special Office for Child Affairs with the task of further developing and supporting efforts against the sexual exploitation of children in the region.<sup>163</sup>

Since 1998, a cooperative project, with financial assistance from Sweden and Norway, has been addressing issues relating to the sexual exploitation of children. The project was conceived at the first World Congress against the Commercial Sexual Exploitation of Children, held in Stockholm in 1996. The project website provides a platform for interactive cooperation between child specialists in the region.<sup>164</sup>

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<sup>162</sup> The following information was taken from Ministry for Foreign Affairs, *op. cit.*

<sup>163</sup> The following information was taken from Ministry for Foreign Affairs, *op. cit.*

<sup>164</sup> The following information was taken from Ministry for Foreign Affairs, *op. cit.*

### 23.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

#### 23.3.1 Sources of data on offences

The National Criminal Investigation Division is largely responsible for information on trafficking in human beings. Currently, planning is underway to facilitate a better organization of information from local police agencies in regards to information collected on a case by case basis from the several different offences in which a victim, trafficker, or recruiter may be arrested. The National Police Board also retains information on human trafficking, and trafficking for sexual exploitation, as it was appointed in 1997 to be the national rapporteur.<sup>165</sup>

In April 2003, a pilot project focusing on the coordination of efforts by authorities and organisations with respect to trafficked persons in Sweden was initiated. The purpose of the project was to improve the handling of cases concerning trafficking in human beings and the support offered to trafficking victims. One way of doing this was through the development and implementation a plan of action for coordinated handling of cases concerning trafficking in human beings that promotes the human rights of the victims and addresses their need for support and advice, protection, housing, health care, legal help and support before their return to their country of origin. The project works by coordinating the efforts of authorities and organisations for trafficked persons and by the internal development of processes at respective authority, where problems and needs are identified and routines are developed. The project has also engaged a large number of separate organisations and other social actors in Stockholm in order to develop support in the form of housing, human support, legal support, etc. Among these organisations are, for instance, Women's Refugees, the Stockholm Foundation for the Protection of Young Women, the Church of Sweden, Caritas, the Swedish Red Cross, the Lithuanian Association, etc.<sup>166</sup>

The National Police Board has county contact persons in the police authorities in Sweden who work with crimes concerning trafficking in human beings for sexual purposes, prostitution, child pornography and violence against women and children. The National Police Board arranges an annual conference for these county contact persons to exchange experiences and to be acquainted with new information within the different spheres.<sup>167</sup>

#### 23.3.2 Sources of data on offenders

Sweden extends funding to NGOs engaged in combating human trafficking. At the international level, support has been allocated to the Anti-Slavery programme in West Africa. Swedish NGOs receiving assistance include Rädda Barnen (Save the Children), which supports a number of programmes and projects in Europe and Asia, and the *Kvinna till Kvinna* and Women's Forum Foundations (*Kvinnoforum*),

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<sup>165</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*

<sup>166</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*

<sup>167</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*

which mainly operate in the Balkans and the Baltic countries. *Nettverk I Nord*, created to combat prostitution and trafficking in women in the northern part of Sweden, Norway, Finland and north-western Russia has received Sida funding for a major information project against trafficking in women in the region.<sup>168</sup>

### 23.3.3 Sources of data on victims of trafficking and sexual exploitation<sup>169</sup>

Data on victims is gathered through local police reports, as well as the agencies and/or NGOs that the victim uses for rehabilitation. Information available in 2003 by the police is listed below:

TABLE 39: NUMBER OF REPORTS MADE CONCERNING TRAFFICKING IN HUMAN BEINGS FOR SEXUAL PURPOSES AND THE DISTRIBUTION IN THE COUNTRY IN 2003

County	Number of reports
Stockholm	6
Södermanland	1
Kronoberg	1
Skåne	1
Västra Götaland	9
Örebro	1
Norrbottn	2
Total	21

Procuring/grave procuring

Sentences

It is difficult to compile statistics of procuring and grave procuring as cases of procuring where foreign women are the victims have the same criminal code as "Swedish" cases of procuring.

<sup>168</sup> The following information was taken from Ministry for Foreign Affairs, *op. cit.*

<sup>169</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*

TABLE 40: NUMBER OF REPORTS MADE CONCERNING TRAFFICKING IN HUMAN BEINGS FOR SEXUAL PURPOSES IN 2003

Year	Attempted procuring	Complicity in procuring	Procuring	Grave procuring	Persons
1999			1	1	2
2000			2*	6	9
2001	1				1
2002		1	3	1	5
2003		1	2	3	7
Sum Total	1	2	8	11	24

\*In one of the cases a sentence for grave procuring was pronounced in the District Court and this was changed in the Court of Appeal to procuring of the normal degree.

### 23.4 THE TRAFFICKING PROCESS TO SWEDEN

#### *The Phenomenon*

#### *Recruitment*

Information on the recruitment process is derived from tips received by the National Criminal Investigation Department, concerning women primarily from Estonia, Lithuania, Russia and Poland. According to police reports and investigated cases, it appears that recruiters have lured their victims from the aforementioned countries, where the economic circumstances are less than rewarding, forcing these women to look abroad in the hopes of making more money, and sending it home to their families. Sometimes the women know they will become a prostitute, and other times the women think they will be working in a restaurant or in some cases, stay at home nurses. Women are offered better working conditions and higher wages than in their native country. Often, the women do not consent to work as a prostitute, and throughout the trafficking chain, the women attempt to resist transfers. However, the transfers are usually forced with various forms of coercion such as abduction, rape, threats of hurting loved ones in the native country, and even the use of drugs to sedate the women and ease the transfer process from one trafficker to the next. Currently, the National Criminal Investigation Department gathers recruitment information from offenders and victims who have been taken into custody.

#### *Transportation and Entrance*

The transportation involved from Estonia, Lithuania, Russia, and Poland varies. Geographically, Sweden is bordered by bodies of water. Access to the country generally entails a ferry or car ride. The places involved are not restricted to the large cities, as police reports have cited numerous cases in small towns as well. Police surveillance has documented pimps/traffickers driving women around to push their services. Women enter the country legally, and then stay illegally to work

as prostitutes. There are other cases where the women enter illegally with a companion on their ferry or car ride during the initial penetration of the borders. There have been cases where counterfeit documents replaced original passports. The transportation process varies from country to country, and the forms of exploitation and victimisation during the transportation varies from trafficker to trafficker but have included rape, house arrest, and women providing other sexual acts.

### *Exploitation*

Exploitation usually entails prostitution. This is the most widespread form of exploitation, particularly because prostitution is illegal in Sweden. Complaisant persons likely to aid and abet the women are brothel owners, taxi drivers, and hotel owners/operators. Women are forced to work to usually pay back some type of debt to the trafficker, who incurred the original cost of bringing the woman to Sweden. The exploiters, like the traffickers, often threaten the lives of the women themselves, or the lives of their families, should they fail to cooperate with the exploiter. Exploitation occurs on the street, in apartments, and in taxis. Advertisements and brothels help to facilitate exploitation. Ads over the internet and newspapers attract men. In brothels where women do not offer such advertisements, the contacts are made to facilitate business after the work in the brothel, at a separate location. It is assumed that there are contacts between traffickers and legal entrepreneurs, especially to facilitate the renting of apartments for the activities, as well as providing bars and brothels for another place of contact with the customers. Finally taxi drivers are used a place to provide sexual services when an apartment is not available.

The duration of the exploitation process is not known. It is known that women are told that they need to pay back a debt incurred for the transportation and lifestyle, but this amount can be stretched over a long period. It is also assumed that the traffickers keep some of the money and send a portion of it through their chain of traffickers, transporters, and legal entrepreneurs.

Figures for money earned by the women vary. Independent research has shown that women generally charge more for sexual intercourse without a condom. Sexual intercourse can range from 500–700 SEK (about € 55 – € 80. For apartment prostitution, a client can expect to pay somewhere in the range of 1000–1500 SEK (€ 110 – € 165). Oral acts range from 200–500 SEK (€ 22 – € 55).

### *The Perpetrators*

The criminal activities mentioned are carried out by single individuals who usually belong to a larger network comprised of actors within Sweden, and within countries from which the women are recruited. Sometimes, the women work for a female pimp, who was at one point a prostitute herself; however, she is usually part of a larger network in order to gain new and fresh women from abroad. In one particular case, the female pimp had rented apartments all over the city and helped educate the sex workers in terms of what they were to say and how they were to perform for



their clients. It is difficult to convict the pimps for forced prostitution, or trafficking of women because the women have to testify against their pimp, and the links leading up to a conviction have to point to some wrongdoing by the perpetrator. Oftentimes, it is difficult to convict the perpetrator because on paper, there has been no illegal activity. Surveillance and tips from the communities have often been the keys to convictions and prosecutions.

The typical procedure for trafficking in human beings is that the trafficker uses “other such unlawful means” rather than unlawful coercion or misleading. For instance, “other such unlawful means” may be the exploitation of a person that is in an especially precarious situation without any actual options and for this reason is very vulnerable. For unlawful means to be comparable with unlawful coercion and misleading, the circumstances must be such that the victim did not have any other real or acceptable option than to submit to the will of the offender. A connection between cause and effect must exist between the unlawful means and the measure that has contributed to the control over the victim.<sup>170</sup>

It is difficult to determine the profit made by the criminal groups involved because the size of the prostitution rings differ in terms of the amount of women working, and the amounts that women charge. In addition, the numbers of the traffickers, handlers, and cohorts vary in size, and all share in the funds channelled from the women. Finally, it is difficult to estimate if all of the funds are derived from the prostitution of the women, or if some of the money comes from trafficking other goods like drugs.

### *The Victims*

Characteristics of the women differ. Generally, the women come from Estonia, Lithuania, Russia, and Poland. Fewer women come from Asia and Africa. The women who come from Eastern European countries usually have less than desirable social and economic conditions, and are usually attracted to work as a sex worker, or misled and then transformed into a sex worker. The primary reason for this is that they believe they can make more money than in their native country, and eventually send it home to their families to aid in the survival of the family. The age of the women varies, but usually falls between the ages of 18 and 35. It is not known how much the women have to pay their traffickers, but most victims are told they have incurred a debt for the trafficking after their arrival in Sweden. They are then expected to pay this debt back to the trafficker for their freedom. It is not known if trafficking in human beings is the primary business of the traffickers.

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<sup>170</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*

### 23.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND AN ESTIMATION OF HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION<sup>171</sup>

There is still a need to develop contacts and routines within the police intelligence service. The recently created “new criminal intelligence service” is expected to satisfy this need. Intelligence information is time and context sensitive and must be distributed to the correct person as soon as possible. It is of critical that there are contact persons in the intelligence section of all the police authorities and that these contact persons get intelligence and information on what is occurring at the local level. This information must also be sent to the intelligence service at the National Criminal Intelligence Department on a regular basis. It is also important for the National Criminal Investigation Department to have a national view of the situation. This can prove to be a great advantage with respect to efficiency and the ability to provide support and coordinate local activities.

The number of questions asked by the police authorities to the National Criminal Investigation Department about how to detect and investigate crimes of trafficking in human beings is steadily increasing. Experiences in different investigations during the year demonstrate a wish to have more knowledge related to the handling of these cases. Occasionally, cases of trafficking in human beings are initially handled as cases concerning foreigners, a fact that may have devastating consequences for the continued investigation and legal process. Decisions on deportation are, as a rule, carried out immediately. Possible crimes like trafficking in human beings or procuring must be investigated first and then it can be decided whether a person shall be turned away or not. At the National Criminal Investigation Department, together with the police authorities, attempts are being made to provide case-officer support for the police authorities with respect to combating trafficking in human beings.

A large portion of the selling of sexual services takes place on the Internet in Sweden as well as in other countries. This is a result of the developments in technology and the use that the sex industry makes of the latest technological aids in order to distribute their activities. If purchasers of sex can find the women that are sold via the Internet, so can the police. The police should become more informed and provided the resources to be able to follow the development of prostitution on the Internet.

The requirement in the legislation relating to trafficking in human beings for the use of unlawful means for the carrying out of the trade should be removed. If this is not accomplished, very few cases of trafficking in human beings will be able to be proven and will instead be judged as procuring/grave procuring, a fact that will result in significantly shorter terms of punishment. Investigations and criminal proceedings should be directed against the principal actors behind the trafficking and not against the victims' actions or situation. In accordance with this, the “agreement” of the victim to the exploitation should be of no significance.

There is a necessity for concrete and coordinated efforts to support victims of trafficking in human beings. There is always a need for suitable solutions related to where trafficking victims can stay during the investigation period as well as for

<sup>171</sup> This information was directly taken from National Criminal Investigation Department, *op. cit.*

other support in the form of for instance work or other activities. The social support is always difficult to provide and is mostly solved on a case-by-case basis and sometimes thanks to personal contacts between police officers and social workers. In most municipalities, no model exists of how best to take care of trafficking victims. Policies should be established between the social services and the police authorities in order to facilitate the solution of these problems at a local level. The committee on individual safety has recently submitted its final report "A national programme for individual safety" – SOU 2004:1. This national organisation has, among other things, proposed models of measures to be taken, made suggestions for legislative amendments and supports increased cooperation of authorities. These have been proposed to be included in the individual safety programme to facilitate and improve the safety of, above all, seriously threatened individuals.

It is important that Swedish law enforcement agencies are allowed to use working methods that are comparable to those of other countries and that are necessary for international cooperation. In August 2003, The Committee on the development of the administration of justice, BRU, submitted its fifth progress report (Increased Efficiency and Rule of Law in Combating Crime, SOU 2003:74) to the Government. The committee proposes, *inter alia*, a regulation related to the collection of evidence for the police and their ability to use people with protected identities.

To improve the possibilities of the police to detect and investigate crimes of trafficking in human beings, attention should be paid to these issues during basic training at the Police Academy.

## 24

THE NETHERLANDS<sup>172</sup>

## 24.1 INTRODUCTION

The Netherlands presents an interesting case study in examining the crime of trafficking of human beings for the purpose of sexual exploitation. Often times, trafficking of human being for the purpose of sexual exploitation is mixed with prostitution. Since October 2000 in the Netherlands, the organisation of prostitution is legal, if the brothel owner has a (municipal) licence. As a result, brothels are no longer illegal, and the government can better control legally run sex clubs. In 1911 a ban on trafficking for the provision of prostitution was codified. In 2002, this was changed to address trafficking for the provision of all sexual services. In order to work in a legally operated brothel, only persons with a valid residence permit can work as a prostitute. Thus, large groups of women who are not permitted to work in a brothel (legally) remain.

Trafficking cases are investigated by several different law enforcement branches and prosecutors, differentiated by normal, regional, police, and often by specialized youth or vice teams. Cases that cross regional boundaries are dealt with by super-regional teams composed of police officers from the regional police departments involved. In executing the cases on all levels, the police are directed by the public prosecutor. The data presented in this report are based on the analysis of official sources of criminal police records and interviews carried out among criminal investigators that have experience in cases of trafficking of human beings.

The government of the Netherlands has appointed a National Rapporteur on Trafficking in Human Beings. The National Rapporteur is an independent official whose function is to contribute to the government's fight against trafficking in human beings. For this purpose the Rapporteur produces annual reports on developments and trends in (the fight against) trafficking in human beings and measures to combat it. She is authorised to inspect individual criminal files and official police reports for the purpose of her mandate. A staff of three assists the National Rapporteur.

The appointment of the National Rapporteur is a result of agreements made by the Justice Ministers and Ministers of Social and Emancipation Affairs of the European Union at a conference held in 1997 on trafficking in human beings. The Netherlands was one of the first countries to appoint a Rapporteur. The conference revealed the need to invest in research regarding the scale and nature of this crime. Such information is crucial to the fight against trafficking and its prevention. It has been found that the information is scattered and is not usually collated for policy making purposes. The data and information collected by the National Rapporteur comes not only from criminal investigations but also from bodies other than the

<sup>172</sup> This section has been written by Vanessa Bopp, Transcrime, Joint Research Centre on Transnational Crime, *Università degli Studi di Trento/Università Cattolica del Sacro Cuore*, Trento–Milan and revised by Andrea Di Nicola, Transcrime, on the basis of information provided by the Dutch National Rapporteur on Trafficking in Human Beings and commented by the Bureau of the Dutch National Rapporteur (The Hague).

police and the criminal justice authorities. Examples are data supplied by NGOs and health care and welfare institutions. Following an evaluation, it will be decided whether the mandate of the National Rapporteur should be extended to include all forms of trafficking in human beings.

This report was compiled by Vanessa Bopp and Andrea Di Nicola, based on information provided by the Dutch National Rapporteur in the response to three questionnaires as part of a study for monitoring the international trafficking of human beings for the purpose of sexual exploitation in the EU Member States. This project, known as MON-EU-TRAF II is funded by the European Commission, Directorate General Justice and Home Affairs, under the STOP II Programme. A draft version of the report was commented on by the Bureau of the Dutch National Rapporteur.

## 24.2 CRIMINAL LAW RESPONSES

### *24.2.1 The offence of trafficking in human beings*

Originally, a provision forbidding trafficking in women (adults and minors) for prostitution purposes was introduced in the Penal Code in 1911. In 1927, this Article was amended to include male children. In 1994 the sex neutral term trafficking in human beings was introduced, also in order to include trafficking of adult males for prostitution purposes. In October 2000, the penal provision was amended by including profiting from trafficking, as well as forcing someone to hand over the earnings from his or her prostitution. These amendments were in fact a codification of jurisprudence. The latest amendment of the penal provision occurred in October 2002, at which time the scope of the article was broadened from trafficking for prostitution purposes to trafficking for the provision of all forms of sexual services. Currently, Article 250a Penal Code<sup>173</sup> addresses bringing

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<sup>173</sup> Section 1

Any person who:

1. by force or some other physical act, by threats of violence or of any other physical act, by misuse of authority arising from the actual state of affairs or by deception, induces another person to make him/herself available for the performance of sexual acts with or for a third party for remuneration or, under the said circumstances, takes any action which he or she knows or may reasonably be expected to know will result in that other person's making him/herself available for performing those acts;
2. recruits, takes with him or her or abducts a person with a view to inducing that person to make him/herself available for performing sexual acts with or for a third party for remuneration in another country;
3. induces another person to make him/herself available for performing sexual acts with or for a third party for remuneration or takes any action which he or she knows or may reasonably be expected to know will result in that other person making him/herself available for performing those acts when the other person is a minor;
4. wilfully profits from sexual acts of another person with or for a third party for remuneration, while he or she knows or must reasonably assume that that other person is making him/herself available for performing those acts under the circumstances referred to in paragraph. 1;
5. wilfully profits from the sexual acts of another person with or for a third party for remuneration, if the other person is a minor;
6. forces another person by violence or some other physical act or threat of violence or other physical act or by misuse of authority arising from the actual state of affairs or by deception to profit from the proceeds of his or her sexual acts with or for a third party shall be guilty of trafficking in persons and as such is liable to a term of imprisonment not exceeding six years and a fifth category fine\*, or either of these penalties.

and holding minors in any form of sexual services and the sexual exploitation of adults (in the sense of forced or involuntary provision of sexual services), the transportation of a person (whether consenting or not) over a national border with the intention of bringing him or her into the sex industry in another country, as well as profiting from these situations. Also forcing someone to render his or her earnings in the sex industry is covered by article 250a Penal Code.

For 'simple' trafficking (a term not used in the Penal Code, but meaning trafficking without aggravating circumstances) the penalty is imprisonment for a maximum of 6 years and/or a fine of maximum € 45,000.

When the crime is committed in relation to a minor of less than 16 years of age or by two or more persons in co-operation, or when it causes serious physical damage the punishment is imprisonment of maximum 8 years and/or a fine of maximum € 45,000.

When the crime is committed by two or more persons in co-operation and causes serious physical damage or is committed in relation to a minor of less than 16 years of age the perpetrators can be imprisoned for a maximum 10 years and/or given a fine of maximum € 45,000.

In accordance with Article 251 Penal Code, when convicted for a crime under Article 250a Penal Code, deprivation of certain rights (e.g. holding a public civil function, the right to vote or to run for public office and being a lawyer) is possible. When the crime of Article 250a Penal Code is committed during the execution of a profession, deprivation of the continuing to work in that profession is also possible (Article 251, Paragraph 2 Penal Code).

Legal entities can be held liable for the offence according to Article 51 of the Penal Code (stating that crimes can be committed by natural and legal entities). The maximum penalties of 6, 8 and 10 years may be increased by a maximum 1/3 (one-third) of that punishment in those cases where the crime of trafficking is committed together with another crime (e.g. criminal organisation or rape). This is also applicable to those instances where the act of trafficking is committed several times (e.g. against several victims) or when a civil servant, by committing the crime, violates a specific official duty or uses the power or the opportunity of his position to commit the crime.

The current trafficking provision (Article 250a) in the Penal Code is still limited to trafficking for sexual exploitation. The Dutch Penal Code does not yet have a provision criminalising labour, other forms of exploitation, or the removal of human organs. An amendment to the Penal Code to this end is currently pending in

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#### Section 2

The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine\* or either of these penalties:

1. trafficking in persons by two or more persons acting in concert;
2. trafficking in persons with respect to a person who is under the age of sixteen;
3. trafficking in persons if force or some other physical act as referred to in paragraph 1 results in serious physical injury.

#### Section 3

Trafficking in persons by two or more persons acting in concert under the circumstances referred to in Section 2, Paragraph 2 or 3, shall be punishable by a term of imprisonment not exceeding ten years and a fifth category\* fine or either of these penalties.

\* A fifth category fine is a fine of maximum € 45,000.00

Parliament. When this amendment enters into force, there will continue to be one trafficking provision, covering all forms of trafficking mentioned in the UN Palermo protocol. In the redaction of that provision, only where necessary, a distinction between sexual exploitation, labour exploitation and the removal of human organs will be made. In addition to the already mentioned aggravating circumstances, two new aggravating circumstances will be added: when the trafficking results in serious physical damage or danger to the life of another person is to be feared, the maximum punishment is 12 years imprisonment and/or a fine of a maximum € 45,000. When the trafficking causes death, the maximum punishment is 15 years imprisonment and/or a fine of a maximum € 45,000. The aggravating circumstances relate to all forms of trafficking, without making a distinction between sexual and labour exploitation, and the removal of organs. The amendment is expected to enter into force in the fall of 2004.

#### *24.2.2 The offence of trafficking in human beings for the purpose of sexual exploitation*

The current Dutch law only has a provision addressing trafficking for sexual exploitation. Once the amendment that includes all (other) forms of labour exploitation and the removal of human organs enters into force, a single trafficking provision that covers all the issues will be in place. Where necessary, this provision will distinguish between the different forms of trafficking. The Penal Code will then no longer have a specific provision on trafficking for sexual exploitation. The original provision was introduced in 1911, with amendments in 1927, 1994, 2000, 2002 and (upcoming) 2004. The penalties range from 6 to 10 years, and after the 2004 amendment, up to 15 years. These crimes can be committed by natural and legal entities. The legislation provides for an increase of the maximum penalty of 6, 8, and 10 years (after 2004, possibly 12 to 15 years) with 1/3 of that penalty, under the above-mentioned circumstances.

#### *24.2.3 Other offences*

In theory, there are other offences in the criminal system that judges can use to punish the behaviour of “trafficking of human beings for the purpose of sexual exploitation”. The many circumstances that enable trafficking for sexual exploitation could be punished under the provisions related to slave-trade (Article 274 Penal Code) or abduction (“theft of people”; Article 278 Penal Code). In practice, however, this is not very likely and according to the Bureau of the Dutch National Rapporteur on Trafficking in Human Beings, these articles have not been used very frequently for punishing this type of crime. Nevertheless, should it happen, it would likely not be possible to distinguish the trafficking cases from the slavery or abduction cases in the existing databases. This is because the specific elements that constitute an explicit trafficking case would not be recorded. Therefore, the trafficking cases dealt with under other provisions can not be retrieved. In practice, trafficking cases are sometimes dealt with as cases of human smuggling, but this is of course not a comparable alternative, because smuggling is in substance a different crime.

#### 24.2.4 Other information

Programmes exist to protect victims who decide to report traffickers. A victim friendly approach is used as much as possible. It starts with the police, who, after the victim has been given a certain time to consider reporting the crime (reflection period), will take down a statement and draw up a report. Usually a series of additional interviews follows, during which the victim will be informed of the results of the investigation thus far.

In the Netherlands, the so-called B9 regulation (a chapter in the Aliens Act, which means that the regulation is only applicable to aliens) provides the opportunity to offer (possible) victims of trafficking a three month reflection period to consider reporting the crime to law enforcement authorities. During this time deportation of the alien is suspended and shelter, psychological, medical and legal assistance are offered to the victim. Upon reporting the crime, the victim is offered a temporary residence permit for the duration of the criminal proceedings in factual instance (first instance and appeal). During that period the victim receives shelter, a financial grant for the costs of living, and medical and legal assistance are available to the victim. Once the criminal proceedings have ended, or when the victim does not want to cooperate with the law enforcement authorities, the victim has to leave the country, unless she is granted a permanent residence permit on 'humanitarian' or other grounds (i.e. family reunification or asylum). In practice, this happens in very few cases. Witnesses of trafficking are offered the same possibilities, except they are not granted a reflection period. Furthermore, temporary residence to witnesses is only offered for as long as the prosecution department deems their presence in the country necessary. In addition, possible victims of trafficking who have not actually worked in the Dutch sex industry are not offered the reflection period. The B-9 regulation does not currently allow the victim and witness to work while being recipients to its benefits. This, however, will change in the near future based on the recent EU directive addressing short-term residence permits.

The normal regional police deal with trafficking cases on the local and regional level, typically these are specialised youth or vice teams. Each regional police department has a specialised officer for trafficking cases who is involved in the investigation as well. Trafficking cases that surpass regional boundaries are dealt with by so-called super-regional teams, which are composed of police officers from the regional police departments involved. Cases of international organised crime are dealt with by the, recently established, national crime squad. Transnational trafficking in human beings is part of their mandate.

In executing their criminal law duties, the police are directed by, and working under the heading of a public prosecutor. On the regional and supra-regional level, this is a public prosecutor working in the most involved regional prosecutions' department. On the national level (the direction of the national crime squad), there is a special national prosecutor for human trafficking. At each of the regional prosecutions' departments, there is a prosecutor who focuses on human trafficking cases. In some regions, this special prosecutor deals with all trafficking cases, in other regions he merely serves as a regional coordinator and expert, whilst the trafficking cases can be dealt with by any of the prosecutors.

The existence of proactive law enforcement policies depends on what is considered a pro-active law enforcement policy. In the Netherlands, a brothel can be run legally



if one has a local government (municipal) licence. In order to get such a licence, certain conditions must be met, such as not working with minors or non-consenting adults. Employing these groups of people would be trafficking in human beings. Furthermore, working with illegal aliens is forbidden. In order to check whether the licence criteria are met, administrative controls take place. In practice, in most municipalities the police mandate these controls. From these prostitution controls, the police gain valuable information on the occurrence of trafficking, both in the legal and illegal (none-licensed) sector.

While carrying out their criminal law duties (e.g. investigating trafficking cases) the police may (under strict conditions) make use of witnesses and informants in order to gather information. Furthermore, the immigration police organise raids to detect persons illegally residing (and/or working) in the Netherlands on a regular basis. Such raids have also been held in prostitution areas. The primary goal of these raids is to find people who are in the country illegally, not to find rings of exploitation of illegal aliens. However, according to the B9-regulation (see above for a more detailed description) the facilities and services should be offered immediately once the police are confronted with a possible victim of trafficking. This is especially true during raids in prostitution areas; hence, the police should be aware of and alert to possible trafficking victims and offer them the proper facilities, instead of treating them as illegal aliens. In a recent policy document on illegality, this is outlined as a precondition to any activities towards illegal aliens, including raids. Given all of the activity that law enforcement officials engage in to discover and protect illegal aliens and trafficking victims, it could be said that the Netherlands has a pro-active law enforcement policy.

No major reforms in laws and regulations, specifically dealing with sexual exploitation, are envisaged. However, several policy oriented developments can be mentioned. Fighting trafficking has been defined as a priority for police and prosecutors in the years to come. The issue of return and reintegration of trafficking victims will be a specific point of attention during the current EU presidency of the Netherlands. The B9 regulation will be amended to include the possibility to work and an expert meeting was recently held to discuss and improve the efficacy of the regulation in practice. Part of the discussions sought to outline what the parties (i.e. state agencies and NGOs) involved in the execution of the B9 regulation could do to help the victim in gathering evidence to prove that she is put at risk upon return to her country of origin. This proof is important in order to get a permanent residence permit after the B9 period. During the application of the illegal aliens' policy, the possible occurrence of victims of trafficking will get special attention.

Other important and interesting facts related to the criminal justice system in the Netherlands include the following:

The Netherlands has a long history in addressing the problem of trafficking in human beings; specifically in regards to sexual exploitation (penal law dates from 1911). Over the course of time, a practice has been established to deal with these cases. Without going into great detail, please find below a list of achievements and good practices in this regard. The list that follows mentions some shortcomings in the Dutch approach as well.

Some achievements/good practices:

- The appointment of a national (co-ordinating) public prosecutor in the field of human trafficking.
- The presence of specialised public prosecutors on human trafficking in all regional prosecutions' departments.
- The existence of a national project consisting of police experts on trafficking and prostitution issues, who regularly meet.
- The regular gathering of police officers to address operational questions with regard to trafficking in human beings.
- The appointment of the Dutch National Rapporteur on Trafficking in Human Beings.
- The facilities, assistance and aid provided by the B9 regulation to victims and witnesses of trafficking.
- The existence and use of a list by law-enforcement agencies, outlining possible signs that could be indicative of the presence of trafficking victims.
- The state financing of the NGO Foundation against Trafficking in Women (STV) and many other NGO's.
- The state financing of the international victim-assistance and protection project La Strada.
- The presence, within the Immigration and Naturalisation Office, of regional contact-officers on trafficking in human beings.
- The installation of a multi-disciplinary monitoring group on the effects of the lifting the ban on brothels.
- The inclusion of a paragraph on victims of trafficking in the policy document on illegal aliens.

Some shortcomings:

- The lack of a formal national structure to co-ordinate the realization or follow up of anti-trafficking initiatives (National Action Plan).
- The fact that the application of the B9 regulation is linked to victim and witness cooperation with the law-enforcement authorities.
- The fact that the category of victims who did not yet work in Dutch prostitution is excluded from the reflection period.
- Not enough attention has been given to the issues of return and reintegration for the victims who (have to) return to their country of origin.

## 24.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES

### 24.3.1 Sources of data on offences

An important source of information is a national database from the Public Prosecution Service (PPS). The data are gathered from and provided by the 19 District Public Prosecution Services. PPS furnishes the statistics. The counting unit in the PPS system are individual cases sent to the Public Prosecutor, which may contain several offences for each offender and/or cases brought before the judge. The PPS database includes several types of data: police data (when the criminal trial has not started), prosecution data (when the criminal trial has already started) and

conviction data (when a conviction is issued). Variables that are recorded by the PPS include date and place of offence, type of offence, the offenders' date and place of birth, dates of the different steps in the legal procedure, decision by the Public Prosecutor, and decision by the judge. The counting rules used are the number of cases against a person, which could include several offences. Several separate cases involving the same person can be included in the system.

Only offences for which principle charges are brought against the defendant are included in the data system; offences with alternative charges are not included. Furthermore, if principle charges are brought for several offences, only the first offence is included for certain, other offences may or may not be included, depending on the meticulousness of the person who entered the data in the system.

The possible offences judges can use to punish the behaviour of "trafficking in human beings for the purpose of sexual exploitation" are as follows:

Offence 1:

Trafficking in human beings (for sexual exploitation); Article 250a, Paragraph 1 Penal Code;

Offence 2:

Trafficking in human beings (for sexual exploitation under aggravating circumstances); Article 250a, Paragraphs 2 and 3 Penal Code;

Offence 3:

Slave trade (the selling and buying of people as slaves, which might include exploitation and repression of people); Article 274 Penal Code;

Offence 4:

Abduction ('theft of people': transportation of a person across a border in order to put him/her under the power of another person or to place him/her in a vulnerable position); Article 278 Penal Code.

Because only those cases charged under Article 250a Penal Code are, without a doubt, trafficking cases for the purpose of sexual exploitation only data related to those cases are mentioned below.

#### *24.3.2 Sources of data on offenders*

Data collected in the PPS system on the offenders include sex, age, and date and country of birth. From 1998 to 2002, most violators of 250a Penal Code were male (78%). In 2002, the mean age was 31. In 81% of the cases registered in 2002, the perpetrator's age ranged from 18 to 40 years of age, and 34% were between the ages of 18 and 25. From 1998 to 2002, 80% of the offenders were between the ages of 18 and 40, and 31% were between the ages of 18 and 25. During that period, 25 underage suspects (4%) were recorded.

An IOM (International Organisation for Migration) research on infiltration (e.g. interfering with the work of anti-trafficking organisations for the purpose of furthering the criminal objectives of the traffickers) in several EU countries, not only the Netherlands, reveals that a considerable number of law enforcement officials direct professional experience with infiltration in their organisation. An even larger number of law enforcers indicated to have indirect experience of infiltration.

In a number of trafficking cases under investigation by the police in 2002, it was calculated that the total amount of money 'earned' by the 13 traffickers involved was € 1,500,000.00. The average per trafficker was € 115,000.00. Comparable figures for preceding years are € 167,000.00 (1998); € 80,000.00 (1999); € 105,000.00 (2000) and € 211,000.00 (2001). These figures only represent those cases in which a financial research has been done; thus, the amounts do not reflect average profits for trafficking cases in general.

The PPS database shows that trafficking in human beings is usually committed in combination with other crimes. Frequently occurring crimes when looking at trafficking between 1998 and 2002 are facilitating the entrance of an illegal alien into the country, (accessory in or attempted) rape, possession of weapons and (accessory in or attempted) deprivation of liberty. Further, crimes such as drugs offences, making and using false travel documents, maltreatment and threatening/intimidation regularly occur in combination with trafficking. There seems to be a rise in the making and use of false travel documents. In most instances of trafficking, there was a link with other criminal offences. These offences include (in order of descending occurrence): violence, false and/or stolen documents, drugs, weapons, theft, and money laundering and financial crimes.

### *24.3.3 Sources of data on victims of trafficking and sexual exploitation*

In the national Public Prosecutors Dataset does not collect information on the victims. There is, however, an official confidential database called the Central Registration of Victims of Trafficking maintained by the Foundation against Trafficking in Women (STV). STV is a non-governmental organization with a separate budget for this task. According to the B9 regulation (special regulation offering reflection period and temporary residence permit to alien victims of trafficking), the police have to report every victim they encounter to the STV. Until recently, STV information was recorded by hand. Now a computer registration system is in use. There is also an official and confidential database maintained by the Immigration and Naturalisation Services (INS) concerning B9 requests and grants.

Until 2003, STV collected information on the victims' sex, age, and country of origin. Once the computer system was installed the data collection expanded to include information on language, children, travel documents, place of residence, prostitution sector in which the exploitation took place, age when recruited, what kind of promises were made, legal assistance in the Netherlands, B9 requests and grants, as well as the sex, age, and country of origin of the applicants. In addition, data is collected on requests for financial compensation, whether the victim is in the Netherlands, and if not, the reason for their return. Information regarding any type of return assistance are also recorded.

In an attempt to roughly estimate the total number of victims in the Netherlands in 2000, Van Dijk estimated the following:

1. Not all victims that come in contact with the police are recognised as being a victim of THB. The percentage of illegal prostitutes arrested who are sent back to their country of origin before a human trafficking investigation can be started, is often estimated to be 75%. In this calculation, it was assumed that of all victims only 25% come in contact with a police-officer who checks if he/she is a victim of THB (in other words, 25% of the victims get the chance to report the crime of THB).
2. Of the victims who get the chance to report the crime of THB, it was calculated that 24% were willing to report. This figure is the result of the total number of victims registered by the STV between 1997 and 1999 and the total number of victims of THB that reported the crime of THB in that same period.

In 2000, 203 victims reported the crime of THB. Following the assumption that 24% are willing to report, this means that  $(20300:24=)$  846 victims encountered the police and got the opportunity to report. As stated in the first assumption, only 25% get this chance. Following this assumption it would mean that  $(84600:25=)$  3384 or approximately 3500<sup>174</sup> victims came in contact with the police in the year 2000. This is about one-fifth of the estimated total number of prostitutes in the Netherlands. Importantly, this number does not include victims who did not come in contact with the police (amongst those are Dutch victims as well). However, not all illegal prostitutes who are sent back to their country of origin are trafficking victims.

## 24.4 THE TRAFFICKING PROCESS TO THE NETHERLANDS

### 24.4.1 The Phenomenon

Information from two sources was used for the following section:

- the BNRM study of police investigations;
- a case study research project completed by Hopkins and Nijboer that included interviews and analysis 80 cases gathered between 1993–2002 (EU HippokratesJAI/2001/HIP023).

Recruitment is organised by traffickers making false promises to the women. Frequently, work promises are made, regarding better working conditions as a prostitute, but often these promises include work outside the sex industry. Some victims are forced or kidnapped (14%), some are involved in 'relational enslavement' (4%). Recruiters are mainly men from the same country as their victims; however, in 21% of the cases a female recruiter was involved. Initial contact often occurs through acquaintances (27%), relatives (12%), or places of entertainment (10%). Departure and transportation quickly follows the recruitment stage. In nearly 70% of the cases, for which this is known, departure was within a week after recruitment.

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<sup>174</sup> The original figure of 3384 was rounded for calculation and discussion purposes.

In 56% of the successfully completed police investigations concerning trafficking in human beings, recruitment took place in the country of origin of at least one of the suspects.

Trafficking routes and cities involved in those cases investigated by the police show that victims typically entered over land between 1998 and 2002. In 65% of the cases at least one of the victims entered via Germany, and in 24% at least one of the victims entered via Belgium. In 20% of the cases at least one of the victims arrived by air, through Schiphol Airport. There is no information available on geographical loopholes. Usually traffickers move their victims by plane and over land (using a car, bus, or train). According to the police, in 30% of the police investigations into transborder trafficking between 1998 and 2002, facilitators provided false or falsified documents for the trafficking process. These facilitators are generally from different criminal groups. No additional information is available on the use of complaisant persons who aid and abet the trafficking process or the amount of corruption of police officials

Counterfeited documents are used to secure entry into the Netherlands; however, the percentage of cases wherein one or more suspects use counterfeit documents has decreased. During 2002, a false passport was detected in about 40% of the cases. These passports were from Greece (6 cases), Bulgaria (3 cases) Nigeria (2 cases) Lithuania (2 cases), Italy and the Netherlands (one each). Furthermore, look-alike passports that have been borrowed or rented are sometimes used. Counterfeit visas are also used to a limited extent.

As for the duration of the transportation process, no information is available. However, In 43 of the 80 cases involved, the victim remained in another country before arriving in the Netherlands. In 55.8% (24 out of these 43 cases) the victim was forced to engage in prostitution in the other country. No information is available on the transactions during the journey.

The entrance points into the country are usually along the border with Germany, to a lesser extent the border with Belgium and Schiphol airport. Being a Schengen country, the Netherlands has open borders with Belgium and Germany, thus access is granted upon arrival to the Netherlands from either of those countries.

Victims enter the country using numerous illegal and legal methods. In 34% of the successfully concluded transnational trafficking cases between 1998 and 2002, the victims were recruited in a country without a visa obligation for the Netherlands, in 33% in a country with a visa obligation and in 33% in a country with or without a visa obligation (the visa obligation was abolished during the research period). Between 2000 and 2002, the percentage of the police investigations in which the victim(s) came from a country with a visa obligation and travelled with a valid visa varied from 73% in 2000, to 35% in 2001 and 25% in 2002. The percentage of these investigations in which the victim(s) travelled without a valid visa increased from 18% in 2000, to 61% in 2001 and to 50% in 2002. Counterfeit visas were used in 25% of the investigations in 2002. The number of legal or illegal border crossing differs each year but seems to be rising.

Due to the nature of Dutch prostitution legislation, there are various prostitution branches. Until the 1st of October 2002, the Dutch trafficking provision only addressed trafficking for prostitution purposes. From that date on, the trafficking provision covered exploitation for all sexual services. Since this is a relatively recent

legal amendment, information available on the forms of sexual exploitation is limited to forms of prostitution (and not to other forms of sexual exploitation). Of the 158 successfully completed police investigations between 1998 and 2002, the prostitution forms included window prostitution (85 cases), brothels/clubs (81 cases), escort services (26 cases) and street prostitution (28 cases). It is important to note, however, that an investigation can cover various forms of prostitution; thus, the figures do not add up to 158. In 2002, trafficking for purposes of sexual exploitation was also discovered in Turkish cafés (2 cases) and in a massage parlour (1 case).

Traffickers use various methods to put and keep pressure on their victims. In looking at the 158 previously mentioned a pattern of violence, threats of violence and other ways to control the victim can be found. In 81% (128 cases) the victim was threatened with physical violence, however in 69% (109 cases) physical violence against the victim was actually used. Threats were also directed at people close to the victim, in 33% (52 cases) the traffickers threatened to reveal the victim's work in prostitution, while in 41% (64 cases) there was a threat of violence against the victim's family. Other forms of control varied, for instance, in 53% (84 cases) the victim's passport was taken, in 8% (13 cases) voodoo was used, in 53% (82 cases) a (fictitious) debt was imposed on the victim and in 69% (109 cases) the victim was locked up or being watched. In a growing number of cases (in total 41% or 65 cases between 1998 and 2002), the traffickers use fake love to make their victims engage in prostitution (relational enslavement). This happens more often in cases of intra-border trafficking as opposed to transborder trafficking cases.<sup>175</sup> In addition to many of the previously mentioned forms of pressure, force or coercion, methods used by traffickers include not paying the victim at all for the work done, not returning identity papers to the victim and selling the victim (without her consent) to another person.

In regards to how the exploited people relate to their exploiters, available information, literature reviews and contacts with victim assistance organisations suggest that there is a continual increase in so-called "lover-boy" cases. These are cases in which young women are courted and then their emotional dependency is abused and they are gradually brought into prostitution. It is then that their 'lover' (trafficker) acts as their pimp. Thus, the recruiter and exploiter are the same person. Concerning the relation between the victim and the recruiter (not necessarily the exploiter), 50% were strangers to the victim, 17% were acquaintances, 12% were partners, 6% (good) friends and 4% family. The remaining relationships were classified as "unknown" or "other".

Exploitation can occur through window prostitution, clubs, escort service and street prostitution. Between 1998 and 2002, window prostitution was involved in 54% of the successfully completed police investigations concerning trafficking in human beings, while 51% involved clubs/brothels, 18% were escort services and 17% involved street prostitution.<sup>176</sup> The exploitation usually takes place in several cities. It is a general characteristic of the crime that the victims are regularly moved to other locations, in order to prevent law enforcement detection. In cases of intra-

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<sup>175</sup> Please note that different methods can be used against one victim, thus figures do not add up to 158 (100%).

<sup>176</sup> Categories are not mutually exclusive. Percentages may add up to more than 100%.

border trafficking, victims are not moved to another location as frequently. No detailed information is available on the municipalities involved.

Contacts between traffickers and legal entrepreneurs occur in 10% of the cases. The percentage refers to entrepreneurs in the legal sex businesses who have been arrested for suspicion of trafficking in human beings. Of the successfully completed police investigations concerning trafficking in human beings in 2002, the names of 136 people who run a sex business appeared. Most of them (73%) had a license that allows them to run a sex business. Importantly, however, operating without a license is not necessarily indicative of malicious intent but could also have administrative difficulties. According to the police, of the 127 persons out of the group of 136 on whom information is available it was found that 75 had knowledge of the fact that trafficking was occurring, yet they were not actively involved in the trafficking themselves. Only a few (3 of 127) were actively involved, in the sense that they recruited or exploited a victim themselves, thus gaining financial profit.

The duration of the process from the country of origin until the victim enters the reception centre is about one year. This includes the transportation stage. There is no information available on possible correlations between the length of the exploitation process and the cancellation of a debt. No information is available on the figures regarding the money earned for each exploited person.

#### *24.4.2 The Perpetrators*

From the research conducted on the completed police investigations it appears that trafficking activities can take on many organisational forms. These forms include 1) the soloist: one person operating alone; 2) the isolated criminal group: a group of minimum 2 and maximum 5 members, covering the total trafficking process (from recruitment to exploitation), that has no demonstrable contacts with other groups involved in trafficking and 3) the criminal networks: these involve at least 6, but often more members, among whom a clustering of tasks in the trafficking process occurs. Of the 156 out of the 158 successfully completed police investigations (for 2 investigations the organisational form was not retrieved) between the 1998 and 2002, 41 (26%) was perpetrated by a soloist, 35 (22%) involved an isolated group and 80 (51%) were carried out by a network. In 2002, there has been a rise in the number of investigations related to isolated groups and soloists, and a decline in investigations involving networks. In regards to the arrested suspects during the research period (1998–2002), 74% were part of a network, 16% were members of an isolated group and 10% were soloists.

The division of tasks within each of the organisational categories has not been studied. However, in a partial research of 61 completed police investigations in 2000 and 2001, the different tasks and roles of the suspects involved were identified. In 39% of the cases, the suspects recruited the victims, in 26% the suspects arranged the transportation to and from the Netherlands and in 92% the suspects were involved in the actual exploitation of the victims. The latter figure includes tasks such as pimping, transportation to and from the working location,



keeping an eye on the victim, arranging housing and financial affairs, using violence against the victim and entering into a marriage of convenience.<sup>177</sup>

A project on organised crime conducted by the Research and Documentation Centre of the Dutch Ministry of Justice, showed that in trafficking cases suspects often make use of repeated money transfers to other countries to channel their criminal profits. These transfers hamper the tracing of money by the law-enforcement officials, thus making it more difficult to confiscate the criminal proceeds.

#### *24.4.3 The Victims*

The victims share a number of characteristics. Research on the social background of the victims shows that the vast majority of them were not married at the time of their recruitment. The majority of the victims lived with parents or family, sometimes with a partner. The average standard of living at the time of recruitment was described as at or below poverty level by nearly three quarters of the victims. Of the victims on whom it is known, about two-thirds had previous work experience, mostly jobs in hotels, catering, factories, the entertainment industry or prostitution. Nearly 60% of the victims had a job at the time of recruitment, 30% of them worked as a prostitute. The victims ranged from highly educated to hardly any formal education. Detailed data on educational background are not available. 40% of victims (on whom information is available) did not grow up with a father. In those cases where a father was around, in more than half of them the relationship between the victim and the father was non-existent, bad or shallow. Sometimes maltreatment or sexual abuse occurred. In nearly 80% of the known cases, the victims were raised by their mother and that relationship was mostly good, yet maltreatment by the mother also occurred. Finally there seems to be a slight tendency for victims to originate from bigger cities as opposed to rural towns.

The three most common countries of origin between 1998 and 2002 (in order of descending importance) are the Netherlands (45 investigations), Bulgaria (30 investigations) and Nigeria and the Russian Federation (16 investigations). For the year 2002, the ranking is Bulgaria (20 investigations), the Netherlands (16 investigations) and Poland (7 investigations).

Motivating factors for pushing the victims into the traffickers' net mainly derive from economic interests. Lack of means to survive and the wish to earn (more) money for themselves or their family is the prime motivating factor. Furthermore, lack of opportunities in the country of origin, bad work conditions and problematic family relations, as well as a sense for adventure, are commonly named as factors push the victims into this line of work.

In regards to the nationality of the traffickers versus the nationality of the victims, in 52% of the 42 police investigations into transnational trafficking cases during 2000 and 2001, victims were recruited in the country of origin of one or more of the suspects involved. A certain relationship between the nationality of the

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<sup>177</sup> Since suspects can perform several tasks, these figures do not add up to 100%.

trafficker and the nationality of the victim can be concluded from this. When only the police investigations, in which the recruiters were also arrested, are taken into consideration, the number of victims recruited in the country of origin of one or more of the suspects, increases to 56%. In 26 of the 54 known cases (48%) exploiters were of the same nationality as the victim. In 13% (7 out of 54) other nationalities were involved and in the remaining 21 cases (39%) the exploiters were of a different nationality.

#### **24.5 COMMENTS AND SUGGESTIONS ON METHODS FOR DATA COLLECTION AND AN ESTIMATION OF HUMAN TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION**

A key element to a successful counter-trafficking strategy is knowledge. Knowledge is power and without it one is unable to know how to approach and tackle the problem. Therefore, solid research and analysis provides the basis for an effective anti-trafficking policy and practice. This includes information on perpetrators, *modus operandi*, victims, but also general themes like legislation, governmental policy and important developments. Both qualitative and quantitative information is needed. In this respect, the existence of a National Rapporteur found in the Dutch example or a similar institute could be worthwhile and important. A rapporteur functions as an expertise centre and an important source of information, not only for the government, but also for other stakeholders interested in the fight against trafficking.

When more countries have a national rapporteur or a similar functionary, they could aggregate the national information to form a higher supra-national level. This could be the basis for a truly international approach to the trafficking problem. This 'bottom-up strategy' is preferred to a system in which one uniform international model of data gathering is imposed by a supra-national rapporteur. EU countries differ tremendously in many ways (trafficking laws, police organisation, NGO's, facilities for victims etc.) and imposing a uniform international model would lead to general findings.



## 25

UNITED KINGDOM<sup>178</sup>

## 25.1 INTRODUCTION

*Background*

This report is part of the project MON-EU-TRAF II: A Study for the monitoring the International Trafficking of Human Beings for the purpose of sexual exploitation in the EU Member States (II). This project aims to:

- Improve statistical data and the qualitative sources of information on the trafficking in human beings for sexual exploitation in the 15 Member States;
- Quantify this criminal activity in the 15 EU Member States;
- Suggest ways of preventing this criminal activity throughout the EU.

Migration to the UK from poorer, less-developed, disadvantaged or troubled areas of the world to more stable and affluent countries is a global phenomenon, one that is centuries old. The difference in recent years is the scale on which it is taking place. This is both the result of continued economic growth in the United Kingdom, which at present is faster than in many other countries and long-term demographic decline in the UK where the total period fertility rate for females has been below replacement level for many years. Both these factors have lead to a larger number of job opportunities, especially in London and the South East of England.

It is also due to the continued political and economic unrest in many countries abroad: the increased growth in population: and the fast spread of further and higher education abroad. This has lead to many economies having more qualified people than jobs available in their countries, naturally causing them look abroad to better their job prospects. For many people, whether they are qualified or not, London remains the preferred destination. As well as the possibility of work, in whatever sector, there is also the attraction of speaking English. Many countries, maybe most, teach English as a second language, so that an immigrant who has a few hundred words of English will find it easier to settle down in London rather than, say, in Rome, where s/he may know no Italian at all.

Moreover, many jobs in the UK are in sectors of the economy where native British people are unwilling to participate, because of either low wages or the circumstances surrounding the job. Thus, there are shortages of workers in many sectors, such as public sector work in health and education: agricultural workers: and the construction industry. Native British workers are also less likely to become involved in sectors of the economy that involve illegal or semi-legal activities, such as drug trafficking, prostitution, or illegal gambling.

<sup>178</sup> This section has been written by Linda Millar, Home Office Research, Development and Statistics Directorate, RDS Communications Development Unit, London.

In economic terms, this has created a market for people to fill jobs in the UK. In the more formal sectors of the economy, such as public sector employment, jobs are filled on an extremely formal basis, with recruitment drives abroad: in sectors of the economy such as agriculture, less formal structures exist, and considerable illegal immigration is involved. In the illegal or semi-legal service areas, such as prostitution, the market is filled much more informally, partly by women changing status: e.g. from student to prostitute or by informal personal immigration from other countries: e.g. to visit relatives.

However, when the market for services such as prostitution becomes larger, the supply mechanism itself becomes more structured. In parallel with recruiting drives for nurses and doctors run by the government, organised crime bosses see the likelihood of considerable profits from the trafficking of workers to these semi-legal services. The recruitment in supply countries is relatively straightforward, because many women abroad are unable to make the journey to the UK unaided and they are prepared to pay considerable sums for the chance to live in the UK.

There has always been a market for criminals to facilitate those that need help to pass through or around whatever controls are in place, by providing corruptly obtained, forged or stolen travel documents, or a secure means of transportation, or fraudulent sponsor so that visitor or resident status can be officially obtained. There is considerable anecdotal evidence of the malign impact that organised crime and its human trafficking activities have on the social environment in which it operates.

The law on prostitution is covered in the criminal justice paragraph of this report. The semi-legal nature of the prostitution industry in the UK, for example its lack of any registration or health check, means that the police in the UK often turn a blind eye to prostitution. They tend to only intervene when the activities of prostitutes become disturbing to the local population, or there is evidence of intimidation, violence or brutality by the gang leaders towards the prostitutes themselves.

The London area (the Metropolitan Police District) is undoubtedly the principal target area for both organised crime groups and illegal immigrants within the UK (see Metropolitan Police Authority, 2003). London has a large number and wide diversity of groups within its 8 million inhabitants, many of whom concentrate demographically in visible communities. It is estimated from the 2001 Census that around 25% of the population of London are ethnic minorities. Although many of these people were born in Britain and/or have British citizenship, they still maintain many links with, and have many relations living abroad. Many London communities contain both illegal immigrants and organised facilitators/traffickers. A key feature is that often, in practice, perpetrators and victims come from the same communities.

As the communities that have arrived in the UK in the last 40 years are still under represented in the make up of the London Police service (3), it is not surprising that both the perpetrators feel safe in their criminal activity and the victims are unwilling to approach the police, who they see as being unsympathetic to their plight. The recent development of a new type of police, the Community Support Officer, who is both more visible on the streets and more representative of the general community, is likely to improve this situation during the next few years.

The picture of organised criminal involvement in immigration, and the consequent availability of statistics, is much less well developed, than in other areas, such as drug trafficking. However, as the Home Office has become more concerned about immigration, especially due to the Iraq War, the concern about terrorism and public pressure resulting from increased flows resulting from the enlargement of the EU in May 2004, more controls have been introduced on immigrants and the opportunities for serious and organised criminal to profit from would-be migrants have increased. So have the opportunities to exploit migrants as cheap labour, including in supporting criminal roles.

Although statistics are lacking, it is thought that the numbers trafficked, rather than facilitated, are relatively small. In London, trafficking victims have come principally from the Balkans, the Baltic States (although this will effectively cease after 1 May 2004) and Thailand, with a growing number from North and West Africa and South East Asia, including Vietnam and Cambodia. Some of those trafficked will be employed in sweatshops or in unskilled jobs, but a proportion will have been trafficked to work in prostitution.

In London it appears that foreign prostitutes, especially from the Balkans, the former Soviet Union, and the far East, especially Thailand, now dominate the 'off-street' vice trade. There are indications that criminals from the Balkans, especially ethnic Albanians, are seeking to gain control of the trade, particularly by taking over ownership of (unofficial) brothels and saunas and are prepared to use violence. This has led to a massive growth in off-street 'brothels'. Some of the issues are reflected in high incidence of kidnappings, which have been identified by the Metropolitan Police.

Serious and organised criminals exploit illegal immigrants in London, many are from eastern Europe and in particular the Baltic States, as cheap labour in packaging, catering, cleaning and on production lines.

Chinese organised crime in London controls significant numbers of illegal immigrants, traditionally working in restaurants in big cities but who are now being displaced elsewhere in the illegal labour market, including seasonal employment in agriculture. Chinese Snakehead groups are active in trafficking women for the vice trade in London.

Though small, the number of unaccompanied minors arriving in the UK from West Africa is a growing concern. Intelligence suggests that some children, as young as eight, are used as domestic servants by some West African families in the UK, while others have been sent via the UK to continental Europe to work as prostitutes.

A significant proportion of low-level crime in London is attributed to Albanian and Kosovar Albanian criminals. It is believed that 5–10% of ethnic Albanian asylum applications are from women claiming to have been trafficked for the vice trade and often subjected to extreme violence by their "masters" as a means of control.

### *The extent of trafficking*

There are no reliable estimates of the scale of organised immigration crime within the UK or the EU as a whole. One indication of the scale of the problem is the

number of people detected trying to evade border controls. This has risen from 3,300 in 1990 to over 47,000 in 2000 – although this partly reflects the increasing effectiveness of the Immigration Service. It is estimated that organised criminals were behind around 75% of these cases. It is unknown how many involved, or would have involved, exploitation.

In the same way, trafficking in women for the purposes of sexual exploitation cannot be measured by traditional forms of data collection or social research. There are currently no accurate estimates available either nationally or internationally. The Home Office examined the problem as far back as 2000, when research identified 71 women known to have been trafficked into prostitution in the UK in 1998. (Kelly & Regan, *Stopping Traffic*, 2000.) Most of the remainder of this paragraph is drawn from their work.

The authors also argued that there was a hidden trafficking problem several times greater than they could currently document with any certainty. Using various data they estimated that there may have been between 142 and 1420 women trafficked into the UK during 1998. Building on this estimate, if we now assumed that perhaps a thousand women are trafficked into the UK for the sex trade each year and each woman worked in the sex industry for an average of 5 years this would imply that around 5,000 prostitutes at any one time exist who had been trafficked.

Trafficked women are found in off-street locations. Information on their origins, the sending countries, recruitment patterns, routes used by traffickers and links to other forms of criminal activity were also covered in the Kelly & Regan research. They found that there appears to be four patterns of recruitment of women:

- complete coercion through abduction or kidnapping;
- deception by promises of legitimate employment;
- deception through half truths, such as that they will be employed in the entertainment industry, dancing or even stripping.

Whilst some women are fully aware that they are going to work in prostitution, they are unaware of the extent to which they will be indebted, intimidated, exploited and controlled.

Women who are recruited through the last three of these methods are led to believe that they can travel to a rich country and earn large amounts of money in a short space of time, which they can then use to move themselves and their families out of poverty and despair (Konig, 1997; IOM, 1999).

Kelly & Regan found two common methods of recruitment used in Central and Eastern Europe:

- adverts in the media for well paying jobs abroad, through a (possibly bogus) employment agency;
- approaches by young men to young women in clubs and bars where they are offered the possibility of making a lot of money.

One of the most compelling attractions for these young women is the promise of their own accommodation, which represents a level of independence unthinkable in their own country (Escaler, 1998).

Kelly and Regan found that the traffickers vary in nature. At the level of recruitment and local organisation they reflect some of the patterns familiar in prostitution with respect to pimps; some are family members or friends, others encourage young women to believe they are their boyfriend, still others are small groups of 'enterprising' individuals who have recognised how lucrative trafficking can be. Finally there are larger scale organised groups which may or may not be connected to other forms of organised crime (Barnardo's, 1998; Kelly et al 1995).

The Home Office Organised Crime Notification Scheme also suggested links between international networks that traffic drugs, money and human beings. It was less clear whether (and if so, how) the smaller scale operations connect to more organised groupings – for example, do successful enterprising individuals expand their operations and move into the organised crime frame, are they absorbed into existing networks, or are they perceived as threats by established groups? The scale of organised crime, and its involvement in trafficking human beings, has become an acute concern in many European countries (IOM, 1999).

Kelly and Regan went on to say that, it was rare for women to be trafficked into the UK through entirely illegal methods, such as being smuggled in trucks and lorries. Entry into the UK typically involves women presenting themselves at ports of entry with variations of legitimate and illegitimate documentation (a real or false passport, a legitimate or forged visa, or one that is legitimate but has been obtained falsely).

A male English-speaking escort, posing as a husband/boyfriend/relative, accompanies most trafficked women. Some arrive directly by plane, if it is a long haul journey, such as from Thailand or Africa. Alternatively, a European 'bridgehead' may be used, with a flight to a large European hub such as Paris, Frankfurt or Amsterdam. Sometimes a legitimate visa for a third European country is used, and a seat is booked on a connecting flight, which is not taken. Some women are instructed to use the delaying tactic of applying for asylum on arrival.

On arrival in the UK, the woman is transferred from the trafficker to a brothel owner or pimp. False papers will be taken back by the trafficker at this point, and the woman's passport handed over to the person to whom she is now indebted and who has 'paid' for her. It is now that many women discover the extent to which they have been deceived and their hope of a good job to pay off their transportation costs rapidly fade. If they protest their treatment, a series of threats will be made to friends and family, or physical and sexual violence will be used on the woman herself.

Finally, Kelly and Regan made many recommendations for action by the police and the government, and in developing a common understanding. Not all these have been acted upon in the UK, but they all remain valuable suggestions regarding the actions needed by all governments and are repeated in the box below.



*Recommendations for action on the trafficking in women for sexual exploitation in the UK (Liz Kelly & Linda Regan, Home Office Police Research Paper 125, HO 2001)*

*Develop a common understanding*

- Increase awareness of trafficking in women and the violations of human rights involved.
- Increase awareness of coercion within prostitution.
- Increase knowledge of prostitutes' customers - understanding the market demand.
- Conduct research on women's experience of trafficking.
- Capacity building of Non-Governmental Organizations in the UK and internationally.

*Challenges for the police*

- All forces should undertake simple intelligence gathering on off-street prostitution with particular attention paid to the presence of foreign women.
- Police Chiefs should publish their guide to investigation of trafficking of women for use in all forces outlining the pro-active approach, how to conduct investigations/gather intelligence.
- Increased attendance at the vice conference from forces where prostitution is not considered a priority.

*Responsibilities of the government*

- Home Office guidance on trafficking in women as both a human rights and serious crime issue.
- The potential tension at policy level between the police and immigration service should be addressed.
- The Foreign and Commonwealth Office (FCO) and Department for International Development (DFID) to increase their stress on the importance of securing economic opportunities for women.

Both the FCO and DFID should consider developing long-term sustained prevention campaigns in the sending countries most linked to trafficking into the UK.

- The police and immigration service would benefit from stronger links with NGOs in sending countries.
- The government should undertake development work to ensure that a well-resourced NGO providing support and advocacy to trafficked women exists in the UK within the next eighteen months.
- Consideration should be given to the creation of a crime of 'sexual exploitation', where proving the offence would require showing that a sexual act took place and that someone else benefited from it in monetary terms or in kind. The recently enacted Criminal Code Amendment (Slavery and Sexual

Servitude) Act in Australia contains offences that might be considered in this context.

- Consideration of trafficked women to have the right to sue their exploiters (this would necessitate being given leave to stay for at least the period of the legal case).
- Coerced prostitution involving a vulnerable person (a child, foreign national, disabled person) could carry enhanced penalties.
- The pro-active, human rights based, police response should be promoted at European and international levels.
- The possibility of creating an interim change whereby trafficking is understood as an aggravating factor in living off immoral earnings cases, justifying consideration for the maximum sentence, should be considered.

#### *International dimensions*

- Both the EU and COE have encouraged Member States to establish national multi-agency co-coordinating bodies, responsible for developing and monitoring responses (NCIS fulfils this role in the UK, collecting data and monitoring all serious and organised crime).
- One task of such a group would be to ensure useful data are collected (such as separating data on 'illegal immigration' and trafficking), and provide regular updates for national and international audiences (NCIS report annually to the Europol situation report).
- The COE concluded a five-year exploration of trafficking with proposals that each country form a pro-active unit to investigate trafficking and prosecute traffickers, and that prostitution laws target customers and organisers.

The government published a white paper, *Secure Borders, Safe Haven*, in 2002 (Home Office (2002)). This defined the problem, distinguishing between people smuggling and people trafficking. Illegal working is defined in this context as:

- working by people who are in the UK illegally, or by those in the UK legally who have no right to work here.

Exploitation – whether of illegal or other workers – is harmful, not only for the victim, but also undermines our National Minimum Wage and labour standards. Both people trafficking and smuggling usually involves illegal employment, and trafficking always involves exploitation. Thus, successful action against illegal working and exploitation is not only desirable in itself, but will also reduce incentives for organised criminals to bring people to the UK.

The government's proposals address victims of exploitation acknowledging that people arriving in the UK illegally form a disparate group. Some are willing customers; a few, particularly those working as prostitutes, are brought to the UK and forcibly exploited to provide labour or services. It goes on to state that 'We need to offer such victims particular support so that they can escape their circumstances and recognise that they may be able to help law enforcement against organised criminals.' The commitment to victims is that '... we shall, where necessary, make special arrangements for their protection. We will work with the voluntary sector to put the necessary arrangements in place.'

## 25.2 CRIMINAL LAW RESPONSES

### *The Legality of human trafficking*

The UK abolished trafficking in slavery in the first part of the 18th century. However, no specific laws against human trafficking were introduced, the assumption being made that the various immigration authorities would ensure that such people did not have the chance to arrive in the UK because they would be turned away at the borders.

However, in the latter part of the 20th century, the UK had increasingly stricter laws regarding citizenship and against illegal immigration. This was a response to the successive waves of new immigrants following the end of the British Empire in the 1960s. These people were mainly economic migrants from what was then called the New Commonwealth, which was a euphemism for Black people.

For many years, successive UK governments relied on the prostitution laws against procurement, despite their being out of date and rarely enforced. For example, these laws include section 22 of the 1956 Sexual Offences Act which outlawed procurement of a woman to be a 'common prostitute' or frequent a brothel: section 24, which outlawed detaining a woman in a brothel for the purpose of prostitution: and many other laws making it an offence to benefit financially from prostitution.

The first law against 'people trafficking' as such was section 8 of the 1996 Immigration Act, which made it an offence for employers to knowingly or negligently employ people who have no permission to work in the UK. The maximum penalty that can be imposed under this act is £5,000 for each illegal employee. Employers can establish a defence by proving they saw work entitlement documents that they believed to be genuine. Section 8 did not work, as the wide-ranging nature of the documents specified by the governments made defence against this offence straightforward. The number of successfully prosecuted employers was minimal.

In its 2002 White Paper on Immigration: Secure Borders: Safe haven Home Office (2002), the UK government recognised that a comprehensive approach to organised immigration crime had to include having appropriate legislation, and promised to create laws against people trafficking for both labour and sexual purposes. In parallel with that, the UK government pressed for international agreement in this area, in particular pressing for the protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against Transnational Organised crime (2000).

Subsequently, the UK signed the EU framework decision on trafficking for labour and sexual exploitation, which committed it to introducing criminal sanctions covering these activities by the summer of 2004. The UK has acted to meet these commitments, by introducing measures to tackle trafficking for prostitution and sexual exploitation. First, the Nationality Immigration and Asylum Act 2002 was introduced as a stopgap measure. More comprehensive offences covering trafficking into and out of and within the UK for all forms of sexual exploitation were then included in the Sexual Offences Act, 2003. In response to increasing concern about trafficking for forced labour, slavery and removal of organs a new

offence has been introduced in the Asylum and Immigration (Treatment of Claimants, etc.) Bill 2003, which is scheduled for its final reading in the House of Lords July 6th, 2004.

### *The legality of prostitution*

Prostitution – exchanging participation in sexual activities for money or other goods – has always been legal in the UK.

However, British governments have always placed many obstacles in the way of prostitutes actually carrying out their activities:

- first by ensuring that many of the activities that are often associated with prostitution are illegal;
- second by making minimum intervention to regulate the vice industry: e.g. by regulation or licensing: by setting standards for health, protection against exploitation, either by their controller or their client, protection for the general population, etc.

Thus, although prostitution is itself legal, soliciting for the purpose of prostitution is illegal, being known as a prostitute enables the law to treat you more harshly; brothels are illegal; and controlling and living off someone else's earnings from prostitution is also an offence.

The net effect of a century or more of legal prostitution combined with a growing number of illegal activities associated with prostitution, has lead to a confused situation, which can be readily exploited by organised criminals.

What has never been in question is that there is a ready market for prostitution, especially in large cities, and that the clients of prostitutes are unhappy about the likely illegal consequences for the women involved in supply-side of the market.

The position changed most on the 1 May 2004 when the 2003 Sexual Offences Act came into effect. The main changes are:

- as far as street prostitution is concerned, the law is now gender neutral so that for example, men will come under the existing soliciting laws and women the kerb-crawling laws;
- some penalties have been increased: e.g.

For owning or running a brothel;

Controlling and gaining from someone else's prostitution;

- some new offences have been introduced: e.g. it is now illegal to pay a 16 or 17 year old for otherwise legal sex: or to 'groom' people under 18 for sex;
- trafficking for sexual exploitation is now illegal (see paragraph below).

It is clear that the main aim of the authorities is not to prosecute prostitutes at all costs, as can be seen from the (published) advice of the Crown Prosecution Service to its prosecutors:

Extract from the Code for Crown prosecutors, 2003:

*At all times, [prosecutors] should bear in mind the following general objectives of the legislation involving prostitution, namely:*

*To keep prostitutes off the street to prevent annoyance to members of the public;*

*To prevent people leading or forcing others into prostitution;*

*To penalise those who organise prostitutes and make a living from their earnings;*

*Generally the more serious the incident the more likely that a prosecution will be required;*

*The age of the prostitute and the position of those living off the earnings will clearly be relevant;*

*When considering a child accused of prostitution [...] the child should generally treated as a victim of abuse. The focus should be on those who exploit and coerce children. Only where there is a persistent and voluntary return to prostitution and where there is a genuine choice should a prosecution be considered.*

This means that the only real legal and safe forms of prostitution are those where the prostitute keeps off the streets and shares her earnings only with her own family, as a matter of her own choice. This effectively means that any immigrant who works in the sex industry in the UK is likely to be working illegally.

*Other information*

#### *Smuggling and Trafficking*

The government published a white paper, Secure Borders, Safe Haven, in 2002 (Home Office (2002)). This first defined the problem, distinguishing between people smuggling and people trafficking, as in the box below.

##### *People Smuggling is defined as*

- the facilitation of illegal entry; entering the UK in breach of immigration law, either secretly or through deception. Those who are smuggled are invariably complicit and are effectively customers availing themselves of the smugglers' services. This can be a simple business transaction between the criminal and the illegal entrant. But in other cases, the criminal deceives their customer by exaggerating their prospects in the UK and demands a very high price. The customer may spend their life savings on a dangerous journey that merely leads to their immediate removal.

##### *People trafficking is defined as*

- transporting people in order to exploit them, using deception, intimidation or coercion. Those who can truly be described as trafficking victims have usually been treated as little more than a commodity. The exploitation may take the form of bonded labour or servitude that violates their legal or human rights. It

may be commercial sexual exploitation. It is often accompanied by violence, or threats of violence, against the victim or their family. The victim may agree to a deal that includes entry into the UK and work on arrival. They then find that their wages are largely diverted to pay off 'debts' to the criminals, and that they have been deceived as to the nature and conditions of the work. Trafficking usually involves a breach of immigration law – either illegal entry, or overstaying. When it does, it can make the victim more vulnerable because they are reluctant to seek help.

*Illegal working is defined in this context as:*

- working by people who are in the UK illegally, or by those in the UK legally who have no right to work here.

Exploitation – whether of illegal or other workers – is harmful, not only for the victim, but also undermines our National Minimum Wage and labour standards. Both people trafficking and smuggling usually involve illegal working, and trafficking always involves exploitation. Thus, successful action against illegal working and exploitation is not only desirable in itself, but will also reduce incentives for organised criminals to bring people to the UK.

#### *Measures to protect victims*

A pilot project, known as the Poppy Project, which aims to help women trafficked for prostitution to escape their circumstances, has been set-up as part of a joint initiative between the Home Office and Eaves Housing – a London based charity. The scheme, which provides safe accommodation and special support services, includes women who have been brought to the UK; worked as a prostitute in the last 30 days (in the UK) and been forcibly exploited. Additionally, the women must be aged 18 or over, have come forward to the authorities and be willing to co-operate. Because of the project, valuable intelligence has been collected on traffickers and the trafficking process. The scheme has subsequently received additional Home Office funding to continue for another year to March 2005.

The Trafficking Toolkit is a best practice guide for officials such as immigration officers, police and others who are likely to come into contact with the victims of trafficking. Designed to raise awareness of the differences between People Trafficking and People Smuggling and to help those concerned to treat trafficking victims fairly, the toolkit aims to:

- suggest ways in which enforcement officers may be helped to: identify traffickers; obtain better evidence; bring successful prosecutions against the traffickers;
- help those with child protection responsibilities to understand the particular requirements of trafficked children;
- focus on practical measures to address the scale of trafficking in the UK, the needs of victims and how to ensure effective multi-agency co-operation at a local level.

### *Proactive law enforcement initiatives*

Within the UK, the operational response to organised immigration crime, including people trafficking, has been through Reflex. Established in May 2000, Reflex is a multi-agency taskforce, which draws on the specialist expertise of a range of agencies including, police, intelligence and security services, immigration, Crown Prosecution Service and Government departments. It aims to produce a response that is intelligence led, able to recognise and tackle the nature of the criminality behind organised immigration crime and based on strong teamwork with European and international partners to tackle the problem at both its source and destination. Reflex has focused on a disruption strategy, which acknowledges that disruption is most effective when it occurs as close to source as possible. It also places emphasis on the importance of the financial investigations that are crucial to success.

### **25.3 AVAILABLE OFFICIAL AND CONFIDENTIAL SECONDARY SOURCES**

The principal official databases holding information on offenders and offences are the Police National Computer (PNC), the Offenders Index and the Courts Database.

The PNC is a confidential database containing extensive data on criminals, vehicles and property, it is available 24 hours a day, all year round and information can be accessed in a matter of seconds, through more than 10,000 terminals in police forces across the country. The PNC is accessed through a secure network and all transactions are logged for audit and data protection purposes.

Since it was introduced in 1974, the system has grown to embrace many technological advances, incorporating advice from the government and policing bodies, as well as from in-house and industry technical experts. It has developed from a record keeping service to a sophisticated intelligence tool.

A number of criminal justice partners are linked to the PNC, giving them access to the information held in the computer. They include the 'Jurors' link, which allows crown courts to check whether a proposed juror has a criminal record; the Criminal Records Bureau (CRB), which allows checks to be made, through PNC, on individuals applying to work with children or other vulnerable people and; the Forensic Science Service's (FSS) DNA database which links to the PNC allowing users to update the national DNA database on an individual's DNA status.

On-going PNC developments include, the Violent and Sex Offender Register which will have direct links with corresponding PNC records; Comparative Cases that will allow force analysts to access to the new Crimelink information system through the PNC and; the PNC Link with the Schengen Information System (SIS) – a Europe-wide data system designed to allow criminal information and enforcement activities to be shared by participating countries. The link will be enabled through the Sirene UK bureau. UK officers will receive SIS alerts from their checks on the PNC when dealing with a number of issues.

The Offenders Index (OI) is a confidential Home Office Database that holds information on convictions for individuals. Data from the courts related to court appearances is added to the Offenders Index on a quarterly basis. Where an individual has a previous court sentence, information on the new sentence is added to the criminal history for that individual. Currently, 7.3 million offenders are listed on the OI, who have had 16.6 million court appearances and 29.1 million standard list offences since 1963.

Only court sentences and those for 'standard list' offences are covered. Standard list offences include all 'indictable only' and 'triable either way' offences and some of the more serious 'summary' offences such as common assault and driving whilst disqualified or under the influence of drugs or alcohol. Data on individual cases is only available to bona fide researchers evaluating programmes of intervention with offenders.

The Courts database is run by the Crown Prosecution Service (CPS), it contains case summaries, and case up-dates and can be searched by offence category.

Until the Nationality, Immigration and Asylum Act, 2002 came into force, sexual exploitation of trafficked individuals was mainly dealt with under the prostitution laws. Many of these laws dealt with procurement, for example, section 22 of the 1956 Sexual Offences Act, which outlawed procurement of a woman to be a 'common prostitute' or frequent a brothel and section 24, which outlawed detaining a woman in a brothel for the purpose of prostitution. In addition, there were a number of other laws making it an offence to benefit financially from prostitution.

As charges begin to be brought under the new Anti -Trafficking legislation, it will become possible to search existing, official databases for information on these offences. In addition, the CPS are currently setting up a new 'Compass' database that will hold information from the courts on trafficking offences and offenders. The system is due to come on-line later this year.

## **25.4 THE TRAFFICKING PROCESS**

### *25.4.1 The Phenomenon*

#### *Recruitment*

Traffickers use a number of methods to recruit migrants into the vice trade. Most involve some form of deception, and exploit the lack of opportunities open to women in source countries. Traffickers may recruit women by advertising job opportunities in the EU, or the chance to marry a resident of a developed country. Other victims are knowingly recruited into the sex trade, but are unaware of the conditions under which they will be forced to work. Some trafficking victims are kidnapped, usually in the Balkans and Former Soviet Union, but this is less common.



*Transportation and trafficking routes*

Traffickers transport their victims in two ways. Victims may be moved directly to their ultimate destination, beginning their work as prostitutes only when they arrive, or in stages, in which case they are exploited at each stage. The former usually travels in small groups accompanied by a minder who hands them to their eventual employers, while those trafficked in stages are sold, with their debts, from one criminal group to another. This multi-stage approach appears more common in the Balkans, with the women exploited within the region, then moved via Greece and Italy, through Germany to North West Europe, including the UK. Given that those women who are trafficked directly are often unaware of the true nature of their situation until they reach their destination, most willingly cooperate with the traffickers. Those trafficked in stages will have already been subjected to violence and coercion and will be unlikely to risk protesting at border controls. In neither case do the traffickers need to exercise close control over the women in transit, or restrict themselves to clandestine methods of crossing borders. In practice, traffickers use the same methods as facilitators in order to move their victims across borders.

Some illegal immigrants arrive in the EU by air, either directly from their country of origin or, more likely, from a third country. However, many make the final leg of the journey overland, or by a short sea crossing, from countries bordering the EU. Although the options for precise routes, methods and timings are almost unlimited, much as they are for transporting drugs, five broad patterns of movement into the EU remain in use: from Moscow through the Baltic States, Poland, the Czech Republic, to Austria or Germany; from the Ukraine through either Poland, Slovakia, Hungary or the Czech Republic to Austria or Germany; from the Middle East or Turkey to Greece or Italy; from North Africa to Spain or Italy; and from Turkey through the Balkans to Italy or Austria.

Given the fluidity with which they can be used and the responsiveness of organised criminals to law enforcement activity, the relative importance of these five broad patterns of movement and specific routes within them is difficult to judge. Because of the range of options, focusing on routes may be less productive for law enforcement than concentrating on specific nexus points, where routes converge and where illegal migrants congregate before being moved on. The overall picture is patchy, but Istanbul, Moscow, Kiev, Prague, Budapest, Sarajevo, and Belgrade stand out as nexus points for migrants looking to enter the EU. Several international initiatives in the Balkans are currently underway aiming to disrupt illegal migration.

Once in the EU, it is relatively easy for migrants to move towards the UK, due to the lack of border controls between EU Member States. Until recently, the Red Cross Centre at Sangatte attracted migrants preparing to cross the English Channel to the UK. Since the Centre's closure some migrants have been displaced to other ports in Northern France and Belgium. Brussels has emerged, possibly in partial consequence of the closure of Sangatte, as a more important EU nexus point for routes to the UK. Meanwhile, the strategic location of Calais means organised criminals continue to move migrants through its port to the UK.

The Irish Republic can be seen as a 'back door' to enter the UK, exploiting the Common Travel Area agreement. Since there are no immigration controls on the

border between the Irish Republic and Northern Ireland, arrivals in the Irish Republic can claim asylum there, then travel unhindered to Northern Ireland and claim asylum again in the UK. This route has been identified as a significant one for migrants to move in both directions between the two countries; it has been estimated that several thousand migrants may travel in each direction every year. The Irish Republic has amended its legislation to allow some controls on passengers arriving from the UK. As a result, migrants tend to travel to the UK directly from the Irish Republic by either air or ferry, returning via Northern Ireland by exploiting the unmanned land border.

Victims often arrive by ferry at major seaports as car or foot passengers. There is anecdotal evidence to suggest that, in the case of children, the victims are made to look like part of a family group with the traffickers posing as parents or older relatives. Additionally, the widespread availability of low-cost flights provides facilitators with another relatively cheap method of transporting migrants to the UK. These flights often use smaller airports further from the big cities and may be perceived by facilitators as a less risky option given the controls in place at larger airports. Clandestine entry remains a major method for facilitators to bring people into the UK.

#### *Corruption of Public officials*

A small proportion of corrupt solicitors and immigration advisors in England and Wales play a significant role in the facilitation process by fraudulently completing asylum or work-permit applications for clients

#### *Counterfeit documents and modus operandi of criminals*

One consequence of more effective border controls in the UK has been a marked rise in the use of false documentation. In some cases, false documentation may need to be merely good enough to pass through embarkation controls, where staff have little time to check documents prior to boarding, and where there is a wide array of possible documentation. Illegal migrants who arrive in the UK by air use false documentation to embark on the flight. The migrant then disposes of the document (or passes it to the facilitator for recycling) before arrival in the UK. In some cases, migrants will attempt to enter the UK using false documentation. However, this is less prevalent, as the documentation would need to be of a much higher standard. The different methods suggest awareness by facilitators who supply documentation of immigration policies and practices, for example on repatriation. This idea is reinforced by evidence that some arrivals are coached or have crib sheets with the answers most likely to get them through controls. Others are furnished with names of solicitors to be contacted if they are stopped.

Serious and organised criminals have many uses for false documents beyond facilitating illegal immigration, for example to support drug trafficking. Some organised criminals develop the capability to produce false documentation themselves while others buy them from specialists. Bangkok is recognised as a centre for forgery, but false documents are produced throughout the world,

including in Albania, Singapore, Bulgaria, Greece and Poland, as well as in the UK itself. False documentation is also provided to illegal entrants in order to allow them to work once in the UK.

Facilitators provide 'genuine documentation' which is obtained fraudulently to migrants. The migrants can then enter the UK with 'legitimate' visas or clearances, and may then overstay. A common method is to obtain a student visa by signing up to a course. In some cases, the courses are genuine, but the student does not attend them. In others, the college is complicit in the activity. Alternatively, organised criminals set up bogus 'colleges' merely to provide migrants with documentation to obtain visas.

Obtaining a bogus marriage to a UK citizen is an additional method designed to acquire documentation in order to enter and remain in the UK by deception. Various nationalities exploit this method, and migrants are often supplied with packages of false documents in order to support their claims. Another trend is the abuse of legitimate entry by migrants from EU Accession states. Citizens of these countries are entitled to enter the UK legally for visits or other purposes. However, some abuse the process either by working in breach of their conditions of entry or overstaying their leave to enter in order to work illegally, or by abusing the process whereby they are allowed to stay and work if they are self-employed. This method appears to be prevalent among migrants from Poland and the Baltic States.

### *Exploitation*

Most of the information available relates to women trafficked for prostitution in the off-street sector. Some trafficking victims have disclosed that unwanted exposure to pornography had been part of their trafficking process, either because it was used to groom them for prostitution, or used prior to/during rape, or used in the flats/parlours and saunas in which they were prostituted.

Once recruited, traffickers control their victims by a variety of means. Violence is widespread and debt-bondage is used to control both sweat-shop labourers and trafficked prostitutes. Organised criminals also exert control over trafficked migrants by removing and retaining any identity documents. This normally occurs at the recruitment stage, but traffickers in the UK routinely strip migrants of any documents that they still have. Where false documents are supplied to facilitate border crossing, these will be retrieved immediately after the border has been crossed. It is common for identity documents to be carried by people in source countries as a routine part of daily life. Without such documents trafficked women may consider themselves as having no identity, which increases their fear of detention and imprisonment, should they be discovered. Traffickers routinely encourage such perceptions to prevent the women from approaching the authorities.

In the case of women trafficked for prostitution, there are increasing reports of extreme forms of coercion, usually involving physical abuse and rape by the traffickers. Violence, whether implied or actual, is common, and likely to be ever-present from the point when the woman begins working as a prostitute. Some victims are forced to become addicted to hard drugs such as heroin to make them dependent on the drugs and the trafficker

Threats of violence are not only made towards the victim, but also towards their family back home. In order for the victim to protect their family (and it may be that they have children) they go along with the traffickers demands:

- in the case of victims from Africa, there is evidence to show that voodoo is used to control the children/women. In this incidence, the victim is made to undergo a ritual before leaving the sending country and they are told that if they tell anyone about the traffickers the curse will be enacted. This will result in themselves and their family dying. The only way the curse can be lifted is to pay back the money that they have 'borrowed' to come to the UK. In some cases, this has been between £ 20,000 and £ 40,000;
- the way in which exploited people relate to their traffickers appears to depend on the way they have been trafficked. In many of the cases, relating to Eastern European children/young people/women a relationship is often created before the individual is trafficked and they are told that they will be coming to the UK for a new life or to get married. This builds emotional bonds between the trafficker and his victim and makes it far harder for her to leave. There are many similarities with victims of domestic violence.

In the case of the African girls, while they are usually trafficked by men of a similar ethnic origin, they do not tend to be in a girlfriend/boyfriend relationship with their trafficker. In cases where there was a sexual relationship before coming to the UK, this has been as prostitute/client.

#### *Duration of Exploitation*

This depends entirely on the situation and whether or not the victim is able to escape. Little is known about what happens to the victims when they are no longer needed or are too ill to work. In several known cases, the exploitation process has continued regardless of how much money was paid back.

Money earned from each exploited person depends entirely on the individual and the situation. It is not uncommon to hear of cases of women/girls having to see up to 30 to 40 clients a day. In a recent court case, one of the women who testified had earned well over a £ 100,000 in the previous year. The following information relates to specific cases of women who have been supported by the POPPY Project.

TABLE 41: EARNINGS OF PROSTITUTION

Individual	Earnings	Individual	Earnings
1	£ 200 per day	4	£ 900–£ 1,000 per day
2	£ 300–£400 per day	5	£ 405,000 made over 27 months
3	£ 500 per day	6	£ 13,000 in three months

Women typically hand over most if not all of the money they earn.

#### 25.4.2 The Perpetrators

Numerous groups are involved in trafficking into the UK, and control of victims within the UK. Eastern European (mainly Balkan and Former Soviet Union) and South East Asian (Chinese, Thai etc) groups are involved in trafficking for sexual exploitation, West African groups are involved in trafficking for both sexual and labour exploitation.

Different *modus operandi* exist for different groups. Most immigration crime groups are relatively small and flexible, operating through contacts rather than rigid structures.

Whether trading in people, drugs or other commodities, serious and organised criminals are adept at exploiting any weaknesses in transport systems and border controls. Facilitators have shown flexibility and speed in responding to law enforcement efforts to combat them, changing routes and methods to avoid enforcement hotspots and counter improved detection capabilities. Clandestine facilitation remains the most common method of facilitating illegal migrants across borders. Migrants are simply hidden in a vehicle and driven across the border. The scale ranges from a single migrant in the boot of a car, to a large number concealed in hidden compartments in lorries.

Organised criminals involved in both smuggling and trafficking make extensive use of bribery and corruption to support their activities. They exploit border guards, police and customs officers, and a range of political and official contacts in order to be allowed to operate unhindered. Criminals also collude with professionals, including workers in the legal sector, in order to assist their illegal activity. The cost of facilitation reflects the type of service provided, the route and method used, and the destination. Unless full payment is made in advance, debts are incurred along the route. Some illegal migrants arriving in the UK have been in transit for months or even years, spending time working off their debts at each stage.

Trafficking in human beings is generally a core business, however, many organised criminals involved in immigration crime are also involved in other serious criminal activity, for example Class A drug trafficking, and excise and VAT fraud. This cross-sector criminal activity is to be expected, as capabilities needed to facilitate illegal immigration into the UK are similar to those required to import any illicit commodity. It appears that illegal migrants and other commodities are not regularly

smuggled together, although this has occurred in some cases. There is also evidence that Jamaican organised criminals use illegal migrants as drug couriers.

The requirement for fraudulent or false documentation in connection with immigration crime also lends itself to related areas of criminality such as benefit and revenue fraud. Organised criminals have also made fraudulent applications to government agencies in order to obtain documents, including passports, to allow migrants to enter the UK. Some reports suggest that minors may be brought into the UK in order to facilitate benefit fraud, but there is little evidence of this.

#### *25.4.3 The Victims*

War, conflict and political upheaval are major factors pushing people into the 'traffickers nets'. These and situations such as major epidemics, for example the AIDS epidemic in Africa, may leave many female 'heads of households' with large numbers of economic dependants or may leave large numbers of orphans or street children.

Poverty, unemployment, poor education and lack of opportunities are also contributory factors. For example, parents may agree more readily to let their children go with a trafficker in the hope of a 'better life' or may simply sell them to traffickers for money; usually it is the girls who are sold first due to gender discrimination

Family break down and situations that lead to instability within the family have also been cited as 'push' factors, this is particularly the case in Eastern Europe. Furthermore, individuals who have previously been subjected to physical violence and sexual or other forms of abuse, either within the family or elsewhere, are thought to be more susceptible to trafficking as are those who have previously been employed as sex workers.

Additionally, the case of 'cultural placements' leaves children vulnerable to trafficking. This situation usually applies to African children who are sometimes placed with extended family or families other than their own. While the majority of such placements are beneficial to the child, providing them with better educational or employment prospects, they are also open to exploitation usually in the form of domestic servitude. A major problem in this regard is that it is relatively easy for the child to escape the attention of the authorities as they appear to be one of the family. Finally, some victims are abducted, but this appears to be relatively rare

Victims are often of the same nationality or from the same geographic region as the traffickers. However, some women are known to have been trafficked by people of more than one nationality and there have been a number of cases where with African females have been trafficked by white males.

The following examples of how much the women have to 'repay' are taken from women participating in the POPPY Project:

TABLE 42: DEBT OF THE VICTIMS TOWARDS THEIR EXPLOITERS

Country of origin	Debt	Country of origin	Debt
Moldova	£ 20,000	Lithuania	Several thousand
Thailand	£ 23,000	Moldova	£ 7,000
Nigeria	£ 40,000	Moldova	£ 7,000
Lithuania	£ 4000	Moldova	£ 7,000

Not all women know how much they owe. Most women had to 'repay the debt' from their earnings in prostitution – some were not able to keep any of the money they earned.

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**ANNEX A**

**SPREADSHEETS**



## DEFINITION USEFUL FOR THE COMPILATION OF THE SPREADSHEETS

**Working definition of “trafficking of human beings for the purpose of sexual exploitation”:** “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. [...]” (United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime*, art. 3) and/or “the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where: (a) use is made of coercion, force or threat, including abduction, or (b) use is made of deceit or fraud, or (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or (d) payments or benefits are given or received to achieve the consent of a person having control over another person [...] for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography” (Council of the European Union, *Council Framework Decision on Combating Trafficking in Human Beings* (2002/629/JHA), Brussels, 19 July 2002).<sup>179</sup>

**Working definition of “organised crime group”:** “a structured group of three or more people, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit” (2000 United Nations Convention against Transnational Organised Crime, art. 2). “*Serious crime*” means “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (2000 United Nations Convention against Transnational Organised Crime, art. 2).

**Working definition of “data-base”:** source of information collecting data in a standardised way.

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<sup>179</sup> The concept of trafficking in human beings is different from the concept of *smuggling of migrants* which is defined by art. 3 of the UN's *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* as: “The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” For the purpose of the present research this kind of crime is not be taken in account.

## 1 – MODEL SPREADSHEET 1 TO MONITOR AND ANALYSE CRIMINAL LAW RESPONSES IN THE FIELD OF TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION

*Aim:* model spreadsheet 1 aims at monitoring and analysing criminal responses to trafficking in human beings for sexual exploitation in the EU Member State considered. This spreadsheet is propaedeutic to spreadsheets 2 and 3, since proper understanding and improvement of data collection procedures on a criminal phenomenon is impossible without cognition of its criminal law definitions. Criminal law and criminal procedure, in fact, may radically condition the way in which a criminal phenomenon is perceived and related statistical data are collected and stored in a given country.

*Organisation of the spreadsheet:* the spreadsheet asks the expert to provide information on the specific offence of trafficking in human beings/trafficking of human beings for the purpose of sexual exploitation (sections 1.1 and 1.2); the other offences judges can use to punish the behaviour of trafficking of human beings for the purpose of sexual exploitation (section 1.3); other issues relative to the criminal system and the trafficking in human beings/trafficking of human beings for the purpose of sexual exploitation (section 1.4).

*Methodology for the compilation of the spreadsheet 1:* the requested information can be obtained from directly the criminal code/criminal legislation of your country and/or from interviews with public prosecutors, magistrates and law enforcement officials. In all cases, it is essential to specify sources of the information and how it has been obtained.

### 1.1. SPECIFIC OFFENCE OF “TRAFFICKING IN HUMAN BEINGS”

1. Does a specific offence on the “trafficking of human beings” exist in your country?

☐

*If yes,*

When was it introduced?

☐

What are the penalties?

☐

Can legal persons be liable for this offence?

☐

Are there other increased penalties for other aggravating circumstances (for instance increased penalties if the offence is committed by an organised group)?

☐

Is there any increased penalty if the trafficking of human beings is committed "with the purpose of sexual exploitation" or is there a specific offence in this case?

☐

## 1.2. SPECIFIC OFFENCE OF "TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION"

2. Does a specific offence on the "trafficking of human beings for the purpose of sexual exploitation" exist in your country?

☐

*If yes,*

When was it introduced?

☐

What are the penalties?

☐

Can legal persons be liable for this offence?

☐

Are there increased penalties in some aggravating circumstances (for instance increased penalties if the offence is committed by an organised group)?

☐

### 1.3. OTHER OFFENCES

3. Are there other offences in your criminal system which judges can use to punish the behaviour of “trafficking of human beings for the purpose of sexual exploitation” (i.e. slave-trade, servitude)?<sup>180</sup>

☐

### 1.4. OTHER INFORMATION

4. Do programmes exist to protect victims who decide to report traffickers/their exploiters (for instance, issue of stay permits and protection)?<sup>181</sup>

☐

5. Which prosecution/law enforcement agencies investigate/prosecute cases of trafficking in human beings? Are there special investigative/prosecution units?<sup>182</sup>

☐

6. Are there any proactive law enforcement policies?<sup>183</sup>

☐

7. What criminal reforms are planned in your country in the field of trafficking in human beings for the purpose of sexual exploitation (also on the basis of the current international debate at UN and EU levels)?<sup>184</sup>

☐

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<sup>180</sup> Please reply to this question, whether in your country there exists a specific offence of trafficking in human beings/trafficking of human beings for the purpose of sexual exploitation (questions 1 and 2) or not.

<sup>181</sup> This is the case in some EU Member States, such as Belgium, Italy and the Netherlands.

<sup>182</sup> In Italy, for instance, this is the case of the *Direzione Nazionale Antimafia* (a prosecution office specialised in organised crime cases) which has trafficking in human beings as part of its mandate.

<sup>183</sup> In Spain, for instance, the police make raids in night-clubs in order to control possible illegal activities related to trafficking for sexual exploitation.

<sup>184</sup> Please, answer this questions only if there are concrete possibilities of forthcoming new legislation on trafficking in human beings (for instance, because of a forthcoming ratification of the “UN Protocol” or there are bills pending in the Parliament that are likely to be approved).

8. Please, add any other comment that you think might be interesting in relation to the criminal system of your country and “trafficking in human beings for the purpose of sexual exploitation”.



## 2 – MODEL SPREADSHEET 2 TO MONITOR AND ANALYSE THE EXISTENCE, AVAILABILITY, TYPOLOGY (OFFICIAL AND CONFIDENTIAL) OF SECONDARY SOURCES ON TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION

*Aim:* model spreadsheet 2 aims 1) first of all, to understand the way in which statistical information is collected and stored or, in other words, to review the availability and adequacy of existing statistical data on human trafficking; 2) and, once the organisation of the sources of information is understood, to have some possible figures about the phenomena. As a result, when answering the questions in this spreadsheet, please provide detailed information about the existence, availability, typology of (official and confidential) secondary sources and on the ways in which these are organised. Only then, please, provide some data. The main goal of this spreadsheet is to learn about the ways used to collect statistical information on trafficking in human beings especially with the purpose of sexual exploitation.

*Organisation of the spreadsheet:* section 2.1. concerns secondary data sources related to offences which judges use to punish the behaviour of “trafficking in human beings for the purpose of sexual exploitation”, section 2.2. and 2.3 respectively concern secondary data sources on offenders and victims of such crimes.

*Methodology for the compilation of spreadsheet 2:* the requested information can be obtained in different ways: by identifying secondary sources on trafficking in human beings for the purpose of sexual exploitation through interviews with public prosecutors, policemen, ministry officials, statisticians, social operators; by looking up the available databases directly; by studying extant literature, etc. Also in this case, it is essential to specify the source of the information and the how it was obtained.

Please consider that in spreadsheet 2 we are only interested in national and institutional data sources (i.e. excluding for example NGOs and local data sources).

### 2.1. SOURCES COLLECTING DATA ON OFFENCES

1. Please, list below the possible offences judges can use to punish the behaviour of “trafficking in human beings for the purpose of sexual exploitation” (i.e.: specific offence of trafficking in human being for the purpose of sexual exploitation; specific offence of trafficking in human beings with possible aggravating circumstances for the crime being committed with the purpose of sexual exploitation; specific offence of trafficking in human beings; slave-trade, servitude, etc.)

Possible offences:

Offence 1 (please specify)	Offence 2 (please specify)	Offence 3 (please specify)	Offence 4 (please specify)	Offence 5 (please specify)	Offence 6 (please specify)
-------------------------------	-------------------------------	-------------------------------	-------------------------------	-------------------------------	-------------------------------

2. Do any database/s exist with standardised information related to these offences? If yes, please report for each its name, typology (i.e. official or/and confidential database), nature (i.e. electronic or other format database) and any further information.

Related databases:

Offence 1 Database/s	Offence 2 Database/s	Offence 3 Database/s	Offence 4 Database/s	Offence 5 Database/s	Offence 6 Database/s

3. In relation to each of the above mentioned database/s (question 2), what is the type of data collected?

- a. Police data (when the criminal trial has not started)
- b. Prosecution data (when the criminal trial has already started)
- c. Conviction data (when a conviction is issued)
- d. Other

4. In relation to each of the above mentioned database/s (question 2), what is the source (police, judicial offices, other)? Please, specify.

which authority/office furnishes the statistics (i.e. Minister of Interior, Criminal Police, National Institute of Statistics, etc.)?

5. In relation to each of the above mentioned database/s (question 2), which is/are the counting unit/s (i.e. offence, case, decision, others)?

what variables are recorded (i.e. time, place, seriousness, others)? *Please, enclose the model framework used to record the information*

what are the counting rules (e.g. how are multiple offences, continuous or serial offences, offences committed by two or more offenders etc, counted?)

6. Please feel free to add any comments you like in relation to the information that may be useful and not surveyed by this spreadsheet, and to add further suggestions...

## 2.2. SOURCES COLLECTING DATA ON OFFENDERS

7. In relation to the database you mentioned in section 2.1., please list below what variables (sex, age, nationality, previous criminal convictions, etc) are collected about the traffickers or, more generally, the offenders. If feasible, please enclose the model framework used to record the information.

	Database 1	Database 2	Database 3	Database 4	Database 5
Variables collected					

8. If applicable, please provide us with the raw data about traffickers or, more generally, the offenders over the last six years (1998–2003), by reporting their total number and possibly the breakdowns of this figure by the variables collected (how many offenders are male/female, citizen/non citizens, etc.). *Please, use the following tables or, if feasible, attach some tables, specifying nationality and sex.* If any changes in law or policy settings (new offences, different definitions, different classifications, new regulations, new priorities etc.) have been introduced during this period, the length and/or the time comparability of the time series could be affected. So, if this is the case, please mark the breaking year (the year in which changes took places) with a special tag (\*) as a reminder and add some explanatory notes on the changes introduced.

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Offenders	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

9. Other. Please feel free to add any comments you like in relation to information that may be useful and not surveyed by this spreadsheet, and to add further suggestions.

### 2.3. SOURCES COLLECTING DATA ON VICTIMS OF TRAFFICKING AND SEXUAL EXPLOITATION

10. In relation to the database/s you mentioned in section 2.1 (question 2), list below the variables (sex, age, nationality, previous occupation, educational level, etc.) collected about the victims of trafficking and sexual exploitation. If feasible, please enclose the model framework used to record the information.

	Database 1	Database 2	Database 3	Database 4	Database 5
Variables collected					

11. Do any other database/s exist with standardised information on victims of trafficking and sexual exploitation?

11.1 If yes, please, report for each of them its name, typology (i.e. official or/and confidential database), nature (i.e. electronic or other format database), the type of data stored (i.e. police, prosecution convictions, others), the source of the data (i.e. police, judicial offices, other administrative others), the authority furnishing the data (Minister of Interior, Criminal Police, National Institute of Statistics, etc ) and any other information.

11.2 If yes, in relation to the complementary database/s you mentioned above, please list below the variables (sex, age, nationality, previous occupation, educational level, etc.) collected about the victims of traffic and sexual exploitation. *If feasible, please enclose the model framework used to record the information.*

	Database 1	Database 2	Database 3	Database 4	Database 5
Variables collected					

12. If applicable, please provide us with the raw data about the victims over the last six years (1998–2003) by reporting their total number and if possible the breakdowns of this figure by the variables collected (how many victims are male/female, citizen/non citizens, etc.) *Please, use the following tables or, if feasible, attach some tables, specifying nationality and sex.* If any changes in the law or policy settings (new offences, different definitions, different classification, new regulations, new priorities, etc.) have been introduced during this period, the length and/or the time comparability of the time series could be affected. So, if this is the case, mark the breaking year (the year in which changes took places) with a special tag (\*) as a reminder and add some explanatory notes on the changes introduced.

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

Database:  
Offence:

Year	Victims	
	Total	Non-citizens
1998		
1999		
2000		
2001		
2002		
2003		

13. Has any attempt been made to estimate the number of victims of trafficking and sexual exploitation in your countries? If yes, please give information on the volume and the basis of the estimates.

14. Other. Please feel free to add any comments you like in relation to information that may be useful and not surveyed by this spreadsheet and to add other suggestions...

### 3. MODEL SPREADSHEET 3 TO MONITOR AND ANALYSE THE TRAFFICKING PROCESSES

*Aim:* Spreadsheet 3 aims at monitoring and analysing the trafficking for sexual exploitation process to each EU Member State, from the recruitment phase to the exploitation phase, by acquiring relevant qualitative and quantitative information.

*Organisation of the spreadsheet:* spreadsheet 3 asks the expert to provide information on the criminal activities themselves (section 3.1), the traffickers (section 3.2) and the victims (section 3.3). This is in order to acquire knowledge about the features of the illegal activity of trafficking in human beings for the purpose of sexual exploitation, and to collect relevant comparable information.

*Methodology for the compilation of the spreadsheet 3:* with reference to his or her own country, each national expert should answer the following questions on the basis of his or her personal experience, information from recent investigative/judicial cases, recent literature, informal contacts with investigators, prosecutors, and other key figures in the field in his or her country. Information from press reports (newspaper and magazines) should not be included. *Each expert is asked to identify and describe the most common and recent situation and trends.*

#### 3.1. TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION (THE PHENOMENON)

In this section please describe how trafficking operations to your country take place with reference to the *modus operandi* of each single phase (i.e. recruitment, transportation, entrance and exploitation).

##### Recruitment

1. What kinds of methods are used to recruit victims and how do they come into contact with them (e.g. job agencies, ads in newspapers, marriage promises, etc.)? Are the victims selected according to some specific rules (gender, beauty, age, etc.)? What kinds of promises are made to potential victims? Is the transfer agreed upon between the victim and the trafficker or is it forced? If it forced, what kind of coercion is used (e.g. kidnapping, abduction, slavery, sales of persons, etc.)?

2. How is the recruitment phase organised?

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## Transportation

3. What are the trafficking routes and the cities involved?

4. What are the exploited geographical loopholes and why?

5. What kinds of transport are used by traffickers to move victims (e.g. public transport, cars, boats, etc.)?

6. Do criminals make use of complaisant persons who aid and abet the trafficking operations, provide food, lodging, transport means, etc. (for instance, hotel owners, taxi drivers, private citizens)?

7. Is this phase marked by episodes of corruption of police officials?

8. Are counterfeited documents used? If yes, can you provide some more information about the types of documents and the *modus operandi* of criminals?

9. How long does the transportation process last? Are there any forms of exploitation or victimisation during transportation?

10. Are the victims bought and sold by different criminal groups during the journey? At what price?<sup>185</sup>

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<sup>185</sup> If feasible, please provide data concerning the nationalities of the victims and the traffickers.



### Entrance

11. Which are the entrance points into the country?

12. How do victims enter the country (legally, illegally)? Are counterfeited documents used or law enforcement official corrupted?

### Exploitation

13. What are the most widespread forms of sexual exploitation in the country (e.g. prostitution, pornography, etc.)?

14. How does the exploitation phase take place? What kinds of methods are used by exploiters to force victims into their work?

15. How do the exploited people relate to their exploiters (e.g. socially, emotionally, etc.)?

16. Please identify where the exploitation mainly occurs (e.g. night-clubs, apartments, streets, etc.).

17. In which cities of your country and why?

18. Do contacts exist between traffickers and legal entrepreneurs? If yes, please describe.

19. How long does the process of exploitation last? Please specify whether the exploitation process is related to the cancellation of the debt run up for transportation or not.

20. Do you have any figures regarding the money earned for each exploited person?<sup>186</sup> Please specify the basis of this estimate.

### 3.2. THE AUTHORS

21. Are the above mentioned criminal activities carried out by single individuals or by criminal groups?

22. Which (national or transnational) organised criminal groups are involved in the various phases and/or in the entire trafficking process? Does a single criminal organisation control the entire process of trafficking for sexual exploitation or do collusion/alliances/relationships among different criminal organisations exist in order to manage the different phases (for instance two criminal groups, one controlling the recruitment phase and the other one the exploitation phase)?

23. What are the characteristics of the criminal groups involved (ethnic, hierarchical, flexible, etc.)?

24. How are tasks distributed within single criminal groups or among different criminal groups?

25. Are there mechanisms put in place by these criminal groups to avoid controls by law enforcement or to escape justice? In other words, what methods are used by traffickers to reduce the risk of being detected, arrested, convicted and of having their assets confiscated?

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<sup>186</sup> If feasible, please provide data concerning the nationalities of the victims and the traffickers.

26. Do you have any estimates of the profit made by the criminals groups involved earned? Please specify the basis of this estimate.

27. Do criminal organisations involved in the trafficking industry commit other criminal activities along with the trafficking of human beings? Is trafficking of human beings their core business?

### 3.3. THE VICTIMS

28. What are the characteristics of the victims, beyond gender and age (urban or rural origin, previous occupation, educational level, relationship with traffickers)? Please rank in descending order of importance the three most important countries of origin.

29. In your opinion, what are the main (objective and subjective) factors pushing victims into the traffickers' net?

30. Are the victims the same nationality as their traffickers?

31. How much do victims have to pay to their traffickers? To whom do they pay or with whom do they get into debt? Do they pay at the destination? Is the exploitation a way of re-paying the debt incurred in order to get to the destination countries?

32. Please feel free to add any other relevant information you think might be interesting to know about victims.

