



Trafficking in Human Beings from a Gender Perspective Directive 2011/36/EU

European Implementation
Assessment

STUDY

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Authors: Amandine Scherrer and Helmut Werner
Ex-Post Impact Assessment Unit
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Trafficking in Human Beings from a Gender Perspective

Directive 2011/36/EU

European Implementation Assessment

In April 2015, the European Parliament's Committee on Women's Rights and Gender Equality (FEMM) notified the EP Conference of Committee Chairs about its intention to draw up a report on the implementation of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective. Catherine Bearder (ALDE, United Kingdom) was appointed rapporteur.

Implementation reports by EP committees are routinely accompanied by European Implementation Assessments, drawn up by the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament's Directorate-General for Parliamentary Research Services.

Abstract

Trafficking in human beings (THB), in all its forms, is a serious crime affecting fundamental rights, health, social life, economy and justice. THB knows no boundaries and most reported victims are female EU nationals from Central and Eastern Europe. THB can be tackled effectively only through a coherent approach at the levels of legislation and executive powers and through strategic policy-making. Proper investigation and prosecution are important and enhance victim protection and assistance as well as prevention. However, taking into account the gender dimension of THB is essential to ensure adequate support for the victims as well as effective prevention. The 2011 EU Anti-Trafficking Directive represents a landmark piece of legislation in that respect.

The Ex-Post Impact Assessment Unit of the European Parliament has asked several groups of experts to analyse the implementation and application of the Directive, from a gender perspective, in 12 Member States: Bulgaria, Cyprus, Finland, Germany, Greece, Ireland, Lithuania, the Netherlands, Romania, Sweden, the UK and Spain. The contributions received point to an uneven implementation of the Directive's requirements across the EU Member States.

The findings emphasise the need to improve the identification of victims, which is key for granting them protection, to establish better training on the gender aspects of the different forms of human trafficking for front-line officers, to enhance cooperation between public administration and competent NGOs, and to expand prevention via public awareness campaigning.

AUTHORS of the introduction:

Amandine Scherrer and **Helmut Werner**, Ex-Post Impact Assessment Unit

The **research papers** contained in this study have been written, at the request of the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (DG EPRS) of the European Parliament, by:

- **Denise Charlton** and **Nusha Yonkova**, on Ireland;
- **Josie Christodoulou**, on Cyprus and Greece;
- **Ryszard Piotrowicz**, **Bärbel Uhl**, **Klara Skrivankova**, **Marjan Wijers**, on Germany, Lithuania, the Netherlands, Romania, Sweden and the UK;
- **Venla Roth**, on Finland;
- **Genoveva Tisheva** and **Nusha Yonkova**, on Bulgaria;
- **Viviana Waisman** and **Gema Fernandez Rodriguez de Liévana**, on Spain.

RESPONSIBLE ADMINISTRATORS

Amandine Scherrer and Helmut Werner, Ex-Post Impact Assessment Unit

To contact the Unit, please e-mail EPRS-ExPostImpactAssessment@ep.europa.eu

ABOUT THE PUBLISHER

This paper has been compiled by the **Ex-Post Impact Assessment Unit** of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services of the Secretariat of the European Parliament.

To contact the Unit, please email EPRS-ExPostImpactAssessment@ep.europa.eu

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ACRONYMS

CEPOL	European Police College
EASO	European Asylum Support Office
EIGE	European Institute for Gender Equality
EU ATC	EU Anti-Trafficking Coordinator
EU MS	EU Member States
Eurojust	EU agency for judicial co-operation in criminal matters
Europol	European Police Office
FRA	Fundamental Rights Agency
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders
NGOs	Non-Governmental Organisations
OCGs	Organised Criminal Groups
TCN	Third Country Nationals
THB	Trafficking in Human Beings

INTRODUCTION

1. General Context of the assessment

When the European Parliament's Committee on Women's Rights and Gender Equality (FEMM) undertook to draw up a report on the implementation of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective, the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament's Directorate-General for Parliamentary Research Services, was called upon to provide a 'European Implementation Assessment' on this Directive.

1.1. The gender dimension angle and the scope of the assessment

The approach adopted for this assessment consisted of gathering expertise in the fight against trafficking in human beings (THB) and in the protection of its victims, with a focus on the implementation to date of the Directive. For the purpose of the study, six research papers were commissioned, covering twelve Member States (MS) (Bulgaria, Cyprus, Finland, Germany, Greece, Ireland, Lithuania, the Netherlands, Romania, Spain, Sweden and the United-Kingdom).

Our objective was to provide an assessment of the implementation of the Directive in representative subsets of MS, i.e. small-big, east-west, north-south, but also those considered as source, target and/or transit countries of THB. Furthermore, the selected sample accounts for various forms of trafficking experienced in the EU: sexual exploitation, labour exploitation, domestic servitude, forced begging, forced pickpocketing, sham marriages, organ harvesting, and selling of babies.

All experts selected are very familiar with the European legal framework as well as the respective national laws. All are dedicated to, and aware of, the need to consider gender aspects in order to be able to meaningfully address the different forms of THB. Furthermore, by choosing different groups of authors we received assessments based on different approaches – something which is not without importance, given the controversial debates amongst experts on the libertarian *vs.* abolitionist approaches towards prostitution.¹

When considering the gender dimension of the Directive, the research papers assessing its implementation underline in particular the difficulties of identifying victims of trafficking, as well as the uneven level of protection and assistance offered to them, including in criminal investigations. The key findings of this set of research papers are presented in Section 5, and the research papers themselves can be found in the Annexes.

¹ On the libertarian and abolitionist approaches see Venla Roth 2016, chapter 3.1.

1.2. The provisions of the Directive

Article 2 of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims provides a comprehensive definition of THB which covers many forms of trafficking:

‘Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, ‘child’ shall mean any person below 18 years of age’

The Directive is recognised to be an important piece of legislation, which adopts a holistic approach to THB with a strong gender focus. The European Parliament has repeatedly stressed the need to tackle THB effectively.² According to its Article 22, the Directive was to be transposed into national law by 6 April 2013. Thus, three years after this deadline for transposition, its implementation can now be reasonably assessed.

The Directive stipulates in its Article 23(1) that:

‘The Commission shall, by 6 April 2015, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Article 18(4), accompanied, if necessary, by legislative proposals.’

² e.g. European Parliament resolution of 10 February 2010 on preventing trafficking in human beings ([T7-0018/2010](#)); European Parliament legislative resolution of 14 December 2010 on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA ([COM\(2010\) 0095](#), [2010/0065\(COD\)](#), [T7-0471/2010](#)); European Parliament resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women (2013/2004(INL), [P7_TA\(2014\)0126](#)).

With that in mind, the Commission has commissioned an external contractor to conduct a compliance study for this Directive. The final results of the study have been announced for 'the fourth quarter of 2016'. This assessment does not, therefore, seek to prejudge in any way the findings of the Commission in that respect.

2. The different forms of human trafficking

In February 2016 Europol published its Situation Report on 'Trafficking in human beings in the EU',³ showing that human trafficking for the purpose of sexual exploitation is the most reported form of trafficking in human beings (THB) in the EU and that most reported victims are female EU nationals from Central and Eastern Europe. The report underlines that, in most cases, THB is driven by seemingly economic mechanisms of demand and supply, and that 'push', 'pull' and 'facilitating' factors keep THB growing. The report also emphasizes a strong involvement of Organised Crime Groups (OCGs):

- 90% [of Europol contributions received from the MS] concerned THB for sexual exploitation
- 5.6% concerned cases of labour exploitation
- 1.9% concerned forced sham marriages
- 0.3% concerned forced criminality and begging
- Of all contributions, 1.9% involved trafficked minors, most of whom were young girls forced into prostitution and children forced to beg and commit property crimes.

However, as nuanced by Venla Roth in her paper: *'Although organised crimes groups can be involved, human trafficking is often carried out by the victim's family members, friends, relatives, boyfriends, husbands and ordinary employers. This close relationship between the victim and the perpetrator is an instrumental part of the dynamics of human trafficking, which, in fact, resembles that of domestic violence and other forms of gender-based violence.'*

Human trafficking, as shown by the related statistics,⁴ is an enduring phenomenon that affects all the EU Member States and has both internal and external dimensions.⁵

2.1. Sexual exploitation

THB for the purpose of sexual exploitation is very significant, not only in terms of numbers of victims, but also in terms of the severity of the moral and psychological (as well as physical) traumas it involves. Venla Roth argues that *'human trafficking is seldom a question of momentary deals but rather a process of exploitation and submission in which the perpetrator gradually deprives the victim of her sexual self-determination, bodily integrity and freedom by humiliating and manipulating the victim and subjecting the victim to his/her will. In reviewing cases of human trafficking for sexual exploitation discovered in Finland, the victims are*

³ Situation [Report](#), Trafficking in human beings in the EU, Europol, February 2016.

⁴ Eurostat, Trafficking in Human Beings, 2015 Edition.

⁵ See: OECD Report, [Illicit Trade](#), April 2016, Chapter 2, Trafficking in persons

under the control of the offenders despite leading apparently normal lives. The victims have not realistic possibility of discontinuing the exploitative activity, to protect themselves or to seek help. Experts in psychiatry and traumatised giving evidence on the dynamics of exploitation have explained this by various psychological phenomena, which are, in fact, very similar to those of intimate partner violence or other forms of sexual violence and abuse. In order to overcome this problem in victim identification, more attention should be paid to the psychological means of exploitation both in legislation and in practice.'

It is therefore not surprising that much of the focus has been put on this form of trafficking. However, the ways in which THB for the purpose of sexual exploitation is tackled vary widely across the EU and continue to be the subject of heated debates, particularly on how to address demand reduction.

Some argue that criminalising the purchase of sex results in a decrease in trafficking. In November 2015, Detective Sergeant Jonas Henriksson from Stockholm explained to the FEMM committee the approach and methods of the Swedish police for getting hold of both traffickers and buyers of sex. He argued that, thanks to the Swedish legal tools available (criminalisation of the purchasing of sex), the police works effectively and efficiently, contributing to a decrease in human trafficking for sexual exploitation. Manfred Paulus, a former German principal police commissioner and expert on THB at international level, deplores the increase in the number of registered victims of THB between 2008 and 2010 (23 623 in the EU), despite a decrease in the number of convicted perpetrators.⁶ As an explanation, he refers to a 2012 study,⁷ conducted by the Universities of Göttingen and Heidelberg, according to which the legalisation of prostitution results in an increase in demand and, therefore, an increase of 'human trafficking inflow'.

However, recent debates in France over the criminalisation of the purchasing of sex have shown once more that positions are polarised on this matter, the French 'Défenseur des droits' (the equivalent of a national human rights ombudsman), along with some NGOs working with victims of trafficking, openly opposed to prohibition (in the sense of penalising the purchasing of sex), arguing that far from protecting the victims, this could increase their vulnerability to further violence and exploitation. The Défenseur also pointed to the Swedish model, arguing that there are no reliable statistics to show a correlation between prohibition and a decrease of trafficking for sexual exploitation.⁸

As recalled by Venla Roth, the debates between abolitionists (who support the criminalisation of purchasers of sex) and libertarians (who support the legalisation/decriminalisation of prostitution), have been a long lasting point of contention and have often led to compromise in international legislation, such as the UN Trafficking Protocol. She underlines, however, that '*a large proportion of the victims of human trafficking subjected to sexual exploitation have knowingly entered prostitution and some of them have also sold sex before and some of them continue to sell sex after the criminal procedure.*' This raises significant challenges, including as regards the identification of

⁶ Paulus M., *Organisierte Kriminalität Menschenhandel*, Ulm 2014, p. 40; Paulus refers here to the 2013 Eurostat report on HT and states that the real number of HT victims in Europe is a multiple of the number of the registered victims.

⁷ Cho, S.-Y., Dreher, A. and Neumayer, E., [Study](#) 'Does Legalized Prostitution Increase Human Trafficking?', Economics of Security Working Paper 71, DIW Berlin, June 2012.

⁸ Défenseur des droits, [Avis n°15-28](#) du 16 décembre 2015 sur la proposition de loi n°3350 visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées.

victims of trafficking, and opens up the question of the legal boundaries between so-called voluntary and involuntary prostitution. The research papers gathered for the purpose of this assessment on that matter converge in identifying real difficulties in ensuring proper identification of victims of THB and strongly argue for a need to ensure better training for officials likely to come into contact with victims, which would include stronger gender-sensitive components.

2.2. Other forms of trafficking and the gender perspective

The focus on sexual exploitation should not, however, underestimate the scale of other forms of THB across the EU. In particular, the research papers accompanying this assessment mention many instances of labour exploitation, domestic servitude, forced begging, forced pickpocketing, sham marriages, organ harvesting, and selling of babies. Moreover, the current refugee crisis has made the issue of trafficking even more relevant and raises significant challenges, including the blurring of the distinction between trafficking and smuggling, and increased risks of those fleeing violence becoming victims of traffickers and smugglers.⁹

All victims of trafficking suffer from various traumas and face significant difficulties to be recognised as victims, to be provided with assistance and to be reintegrated in society. The Directive, which is victim-centred, is thus critical to ensure consistent and effective responses across the EU. The gender dimension of the Directive is also crucial, since women and men can have very different experiences of trafficking. In that respect, Piotrowicz *et al.* provide insightful examples illustrating how gender can increase an individuals' vulnerability to trafficking, from the perspective of both women and men. The research papers furthermore underline growing and emerging forms of trafficking that affect women and men differently. Labour exploitation, for instance, is a growing phenomenon that affects mostly men. In addition, it is noted that protection offered to male victims of trafficking is often very scarce: even with regard to trafficking for the purpose of sexual exploitation, a number of the papers regret that, in most cases, no shelters are provided for male victims.

2.3. Child victims

Eurostat 2015, based on data for the period 2010-2012 from 17 MS, found that, of all registered victims, 2% were aged 0-11 years and 17% aged 12-17 years, of whom over 1 000 child victims trafficked for sexual exploitation. The number of registered victims is certainly only the tip of the iceberg, since children are more likely to escape proper identification as victims. In April 2016, Europol reported on about 5 000 disappeared refugee minors in Germany and 10 000 in all MS. There are growing concerns that a substantial number of them may become exploited.¹⁰

⁹ Voronova, S., Radjenovic, A., The gender dimension of human trafficking, EPRS [Briefing](#), European Parliament, February 2016.

¹⁰ The issue of missing under-aged migrants is currently widely discussed at the European Parliament. Representatives of Europol, the FRA and the NGO Missing Children were invited to present the situation at the LIBE Committee on 21 April 2016. Missing Children recently published a [Handbook](#) for professionals working with unaccompanied migrants. See also EPRS [blogpost](#) on the issue.

According to Article 2.6 of the Directive, any person below 18 years of age is considered a 'child'. Under EU law and the law of all MS, the purchase of sex with a child is illegal as are, in fact, all types of human trafficking of children and minors.

As pointed out above, THB for sexual exploitation is very significant in terms of the severity of the moral and psychological trauma it causes - even more so when it comes to the trafficking of children for sexual exploitation. But trafficking of children for other types of exploitation also represents serious crime. This includes trafficking of children for criminal acts such as pickpocketing, burglary and robbery, for organ harvesting but also for begging and labour. The severity of trafficking of children is reflected in several recitals of the Directive and in special rules concerning the definition of THB (Article 2.5 and 2.6), the penalties (Article 4.2(a)), the prevention (Article 18.2) and protection (Articles 13 to 16).¹¹

The research papers which are the basis of this assessment give accounts of particularly difficult situations for women and children. According to Waisman and Fernández *'women are often forced to give up their children or forced to cross borders with other women's children, as per the orders of the mafias'*. Tisheva and Yonkova report that *'Bulgarian women and children are subjected to internal as well as external sex trafficking in Europe, Russia, the Middle East, and the United States. (...) Apart from sex trafficking, other forms encountered in Bulgaria and/or by Bulgarian citizens are labour trafficking, forced criminal activities, organised begging and trafficking of pregnant women for baby selling. The newer forms of human trafficking, such as forced begging, forced pickpocketing and selling of babies are usually problems linked to the lower socio-economic status of the sizeable Roma community in Bulgaria. Victims of these crimes are predominantly women and children of Roma ethnicity.'* Roth estimates the number of trafficked children in Europe to be tens of thousands. Charlton and Yonkova emphasise that statistics in Ireland for the period 2009 to 2014 show that 30% of the (recognised) trafficking victims are children.

3. The objectives and transposition of the Directive

3.1. The objectives and its historical framework

The aim of the 2011 Directive was to ensure a more coherent EU framework for tackling human trafficking and to address the existing loopholes in the international legal framework in that field in order to protect its victims in the MS. The Directive was particularly intended to replace the Framework Decision 2002/629/JHA on combating trafficking in human beings, which was seen as particularly weak in addressing the issue of assistance to victims.

The 2009 Commission Impact Assessment accompanying the proposal for a directive (i.e. Directive 2011/36/EU) on human trafficking repealing the Council Framework Decision

¹¹ It should be noted that [Directive 2011/92/EU](#) on combating the sexual abuse and sexual exploitation of children and child pornography suggests in its recital 7: *This Directive should be fully complementary with Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.*

2002/629/JHA,¹² underlined the need for such an instrument. The Impact Assessment refers in this respect to the Commission's 2006 report on the implementation of the Framework Decision 2002/629/JHA.¹³ This found that, despite a satisfactory level of transposition of the Decision's requirements by the MS, this was insufficient to implement a comprehensive policy at EU level, in particular in the following areas: effectiveness of law enforcement activities aimed at detecting and prosecuting trafficking; victims protection and assistance; monitoring of trafficking trends and anti-trafficking policy.¹⁴

In addition, the 2000 UN Palermo Protocol¹⁵ (ratified to date by all MS, as well as the EU) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (ratified by all MS except the Czech Republic) - the key international legal instruments in the field of THB - allowed for reservations in crucial areas such as extraterritorial jurisdiction.¹⁶

The 2002 Decision and the international instruments available therefore seemed inadequate to guarantee that criminals were brought to justice, that victims received adequate assistance, protection and compensation, and that proper monitoring of the situation was ensured.¹⁷

Thus, the overall operational objectives of the 2011/36/EU Directive were to facilitate the prosecution of trafficking, to protect victims' rights and to prevent trafficking. The Directive adopted an 'integrated, holistic, and human rights approach to the fight against trafficking in human beings' (Recital 7). It also takes into account the gender dimension in THB, gender occupying a prominent place in the Directive. As noted by Charlton and Yonkova (2016), the Directive

'has a well expressed gender awareness dimension. It recognises that this is a gender-specific phenomenon, affecting women and men in different ways as they are trafficked for a different purpose and have separate experiences. The Directive obliges member states to attend to victims with special needs. Such special needs, in particular, may derive from the victim's health, disability, mental or psychological disorder, case of pregnancy, and/or serious forms of psychological, physical or sexual violence. Attending to such special needs is an acknowledgment of the particular harm experienced by female victims of trafficking.'

In principle, the Directive was a welcome step in the enhancement of an EU wide and coherent policy, taking into account the gender dimension of trafficking.

¹² EC [Impact Assessment](#) accompanying the proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, SEC(2009) 358, p. 11.

¹³ [COM\(2006\) 187](#)

¹⁴ Report based on Article 10 of the Framework Decision 2002/629/JHA, COM (2006) 287 Final.

¹⁵ [Protocol](#) to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000.

¹⁶ EC [Impact Assessment](#) accompanying the proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, SEC(2009) 358, p. 11.

¹⁷ Ibid., pp.11-12.

3.2. The transposition

The Directive was to be transposed into national law by 6 April 2013.¹⁸ To date, apart from Germany (which has not yet notified the Commission of full transposition, but has informed of legislative actions tabled) and Denmark (which opted out), all the MS have notified the Commission of the full transposition of the Directive.

Concerning Germany, Piotrowicz *et al.* confirm that a parliamentary procedure to transpose the Directive is under way, based on the draft law (BT-drs 18/4613) as set forth by the German government in April 2015. The draft law proposes to enhance the criminal code on human trafficking with the elements 'exploitation of criminal activities', 'forced begging' and trafficking for the purpose of 'removal of organs'. In addition, the Federal Ministry of Justice and Consumer Protection announced a proposal to amend the criminal law significantly in order to amend the penal code on human trafficking in line with international standards.

However, as described in the research papers gathered for the purpose of this analysis and as compiled in Section 5 below, even in the MS which have in principle implemented the Directive's requirements, its effective implementation on the ground appears uneven. This is particularly true when one takes into account its gender dimension, despite the fact that this is an important element of the Directive as stipulated in its Article 1. The research papers in particular highlight significant challenges for ensuring early identification of victims, which is a prerequisite for giving them support, assistance and protection. Even if these challenges are the result of various shortcomings often dependent on specific national contexts (inadequate training of frontline officers, insufficiently funded programmes, priority given to prosecution over protection, absence of referral mechanisms), the authors agree on the fact that a lack of gender approach in the fight against THB prevents the victims of THB to be recognised as such and prevent them from receiving adequate support and assistance.

3.3. Follow-up on compliance

According to the findings of our assessment, the European Commission, as 'Guardian of the Treaties', has yet to verify in depth the compliance of the MS in terms of application of Union law, according to Article 17(1) of the Treaty on European Union. It has at its disposal the tool of infringement action under Article 258 of the Treaty on the Functioning of the European Union. In May 2013, a month after the transposition deadline, the Commission opened thirteen infringement procedures based on non-communication. In November 2013, the Commission sent four Reasoned Opinions as part of infringement proceedings for non-communication to Spain, Luxembourg, Italy and Cyprus. As mentioned above, to date only Germany has not yet transposed the Directive.

The 2014 Commission mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings¹⁹ considers the following:

¹⁸ The current situation of [transposition](#) of this Directive can be seen under the NIM tab (National Implementation Measures) in the Eur-Lex record of this Directive.

¹⁹ European Commission Staff working document, Mid-term [report](#) on the implementation of the EU strategy towards the eradication of trafficking in human beings, SWD(2014) 318 final, 17.10.2014.

'The milestone Directive 2011/36/EU on preventing and combating THB and protecting its victims is the first act at EU level to address THB in a comprehensive and integrated way, focusing equally on the protection of victims, the prosecution of traffickers and the prevention of the phenomenon in the first place.'

The Commission furthermore assured that it 'is currently analysing the information received and will report in 2015, in accordance with Article 23 of the Directive, on the state of transposition across all Member States.' As underlined above, this report has not yet been published, and is expected later this year (2016).

Such reporting and follow-up action is of particular importance in the area of the fight against THB and for the protection of its victims. In the absence of a coherent implementation of all elements of the Directive in the MS, the perpetrators of THB will continue to exploit legal loopholes, as well as any lack of decisiveness in the area of prosecution, to the detriment of the victims. Furthermore, protection of the victims can be assured only by coherent implementation of dedicated mechanisms and the effective application of protection and prevention measures.

This Directive would in fact be a landmark piece of legislation, at international level, for effectively fighting against THB and for effective protection of the victims, if it were fully implemented and diligently applied by all actors in the field: legislators, judges, prosecutors, police and public administrations. Proper training of all these actors is key, as are preventive awareness raising campaigns.

At the genesis of this Directive, the European Parliament played an important role by insisting on the comprehensive, holistic and human rights approach, focusing on the protection of the victims. From the contributions received for this assessment, it appears that the framework of this Directive is indeed already very sound but that it needs to be applied in practice.

4. Related EU actions and approach against human trafficking supporting the Directive

4.1. The EU Anti-Trafficking Coordinator

The establishment of an EU Anti-Trafficking Coordinator (EU ATC) was provided for by the Stockholm Programme (setting out the EU priorities for the area of justice, freedom and security for the period 2010-14), which was adopted by the Council in December 2009.²⁰ Directive 2011/36/EU further elaborated on the mandate of the Coordinator, which consists of (Recital 29):

'improving coordination and coherence, avoiding duplication of effort, between Union institutions and agencies as well as between Member States and international actors, contributing to the development of existing or new Union policies and strategies relevant to the fight against trafficking in human beings or reporting to the Union institutions.'

²⁰ See: The [Stockholm Programme](#) - an open and secure Europe serving and protecting citizens, 2010/C 115/01, Section 4.4.2. on trafficking in human beings: 'The European Council therefore invites the Council to consider establishing an EU Anti-Trafficking Coordinator (EU ATC) and, if it decides so, to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated Union policy against trafficking in human beings.'

This mandate requires improved exchange of information between the MS and the EU Coordinator. The Directive provides for the following on this matter:

- Article 19 requires the MS to adopt necessary measures to establish national rapporteurs or equivalent mechanisms: *'The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.'*
- Article 20 underlines that Member States will facilitate the tasks of the anti-trafficking coordinator, by transmitting all relevant information.

According to the Directive, the ATC was thus to rely partly on EU National Rapporteurs' inputs.

As recalled on the EC ATC website,²¹ an informal EU network of National Rapporteurs or equivalent mechanisms was set up by the Council Conclusions, adopted on 4 June 2009.²² In line with the newly adopted Directive 36/2011, the National Rapporteurs are responsible for monitoring the implementation of anti-trafficking policy at the national level and 'play a key role in data collection on trafficking in human beings at national and EU Level'.

However, despite the importance of the role of these rapporteurs in ensuring better monitoring of human trafficking in the EU, implementation of the Directive is uneven across the EU. The Commission website contains details of the various set-ups of National Rapporteurs or Equivalent Mechanisms.²³ Although all MS have designated contact points involved in THB and participating at the meetings of the EU Network, the status and structure of the National Rapporteurs or equivalent differs widely across the MS: from independent coordinator and rapporteur (The Netherlands, Finland), to representatives of the Ministry of the Interior (Poland), Justice (Ireland) or of the Department for Equal Opportunities (Italy).

Moreover, as regards the gender dimension of trafficking, the research papers gathered for the purpose of this analysis underline discrepancies in the implementation of monitoring of gender dimensions at the MS level as required by Article 19 of the Directive. For instance, Piotrowicz *et al.* note that while in some MS (UK, The Netherlands) data related to trafficking are disaggregated by age and gender, the gender dimension is rarely treated as a separate issue. In other MS, such as Lithuania, no specific data related to THB are available. According to Christodoulou, a gender approach is completely missing in the implementation of the Directive in Cyprus and Greece.

²¹ European Commission website [EU Network of National Rapporteurs or equivalent mechanisms](#), accessed on 25 April 2016.

²² Council [conclusions](#) on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings, 2946th Justice and Home Affairs Council meeting, Luxembourg, 4 June 2009.

²³ [European Commission website](#) checked on 29 April 2016.

4.2. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

As an addition to the Directive and to the establishment of the EU ATC, the Commission adopted in 2012 the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.²⁴ The strategy was elaborated to support the transposition and implementation of Directive 2011/36/EU, bring added value and complement the work done by governments, international organisations and civil society in the EU and third countries.

The implementation of the strategy is monitored by the EU ATC and identified five priorities for the EU:

- Identifying, protecting and assisting victims of trafficking
- Stepping up the prevention of trafficking in human beings
- Increased prosecution of traffickers
- Enhanced coordination and cooperation among key actors and policy coherence
- Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

For each one of these priorities, the Commission committed itself to develop various tools to support MS. In its 2014 mid-term report on the implementation of the EU strategy,²⁵ presented at the European Parliament in December 2014 by the EU ACT Myria Vassiliadou, appointed in 2010, the Commission reported back on some of these tools.

In relation to data collection taking into account the gender dimension of THB, the mid-term report states that:

‘For the first time at EU level, the Commission collected statistical data on THB. In line with the EU Strategy, a Eurostat working paper on THB was published in April 2013, which includes data for 2008-10 on the total number of victims disaggregated by gender, age, form of exploitation, citizenship, and type of assistance and protection received. This is a working paper looking at statistical data as gathered and submitted by national authorities. In this respect, it is a unique undertaking in this field at EU level. The paper also includes statistics on suspected, prosecuted and convicted traffickers disaggregated by gender, citizenship and form of exploitation. (...) Applying lessons learnt from the first data collection exercise, Eurostat has compiled data for 2010-12 and its second THB working paper is being published alongside this report. The paper is based on the questionnaire asking Member States for more specific information, including breakdowns of victims’ and traffickers’ ages, different sectors in which THB takes place, etc. (...) Encouraging progress has been achieved in terms of availability of data. The second working paper reaffirms the need for further improvement, as more comprehensive and comparable data will allow for a

²⁴ [Communication](#) from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, COM(2012) 286 final, 19.6.2012.

²⁵ European Commission Staff working document, Mid-term [report](#) on the implementation of the EU strategy towards the eradication of trafficking in human beings, SWD(2014) 318 final, 17.10.2014.

more accurate assessment of the nature of the problem, as well as more accurate conclusions at EU level.'

The Commission furthermore committed to develop knowledge on the gender dimensions of human trafficking, including the gender specificities of the way men and women are recruited and exploited, the gender consequences of the various forms of trafficking and potential differences in the vulnerability of men and women to victimisation and its impact on them. In 2016, the EC released a study on that perspective,²⁶ which addresses the following issues: victim assistance, demand reduction, JHA agencies, emerging cyber technology.

As regards the JHA agencies, even though the study underlines some real improvements in taking into account THB in coordination and training, *'the gender perspective remains unevenly embraced'* within JHA agencies. FRONTEX, for instance, the role of which includes the identification of victims of trafficking, adopts a gender-neutral language. Furthermore, according to the study, the identification of potential victims emerges as neither a priority nor a practical possibility.²⁷ Europol, despite recognition of the importance of a gender perspective in law enforcement, fails to make clear if and how this translates into anti-trafficking operations.²⁸ CEPOL training in the area of trafficking in HB does not at present have an explicit gender dimension.²⁹ EIGE does not incorporate trafficking data in its Gender Equality Index.³⁰ Eurojust does not specifically thematise gender issues.³¹ In contrast, EASO is reported to be the only JHA agency involved in the issue of trafficking to have deployed specialised officers focusing on gender.³²

As an addition, the study noted that EU policy to eradicate trafficking in human beings could be *'more deeply embedded in the wider strategy of the EU, especially the fuller implementation of its gender aspects. This includes the strategies on security, equality between men and women, economic growth, cybersecurity, migration and external relations'*.³³

²⁶ [Study](#) on the gender dimension of trafficking in Human Beings, Final Report, European Commission, DG Migration and Home Affairs, 2016.

²⁷ Ibid., p. 145.

²⁸ Ibid., p. 148.

²⁹ Ibid., p. 150.

³⁰ Ibid., p. 151.

³¹ Ibid., p. 149.

³² Ibid., p. 150.

³³ [Study](#) on the gender dimension of trafficking in Human Beings, Final Report, European Commission, DG Migration and Home Affairs, 2016, p. 11.

5. Presentation of key findings

The following sections present the key findings gathered from the research papers, with a focus on the articles of the Directive which are of particular relevance from a gender perspective.

5.1. Transversal issue: the identification of victims and gender dimensions monitoring

As regards the identification of victims of THB, Articles 10, 18 and 19 of the Directive cover the early identification of victims (Article 10), the training for officials likely to come into contact with victims (Article 18) and the establishment of national rapporteurs or equivalent mechanisms to carry out data collection and assessments of trends in THB (Article 19).

Most MS under scrutiny show low numbers of identified victims. However, this does not necessarily reflect the realities of trafficking, but rather the challenges the authorities are facing in identifying victims, as well as the challenges faced by victims to be recognised as such. As a result, many of the victims of THB are never identified and referred for assistance, let alone compensated and redressed. Furthermore, the low numbers of identified victims often lead to the assumption that trafficking is a marginal phenomenon. As noted in the research papers:

- Some MS do not have formalised indicators for authorities to identify trafficked persons. Furthermore, even though operational indicators have been developed to assist the identification process based on international standards in some MS, there is a general lack of training for frontline officers that takes into account the gender specificities of THB.
- Third countries nationals (TCN) in particular who are victims of THB escape proper identification. TCN are often deported without a screening process that could identify them as victims.
- In the MS under scrutiny, formal identifications by state authorities often require cooperation of the victims in the investigation. This means that there is a danger that victims who do not wish to cooperate with the law enforcement authorities, often because they fear revenge of traffickers and retaliation from the 'milieu', will be missed.
- In most of the EU MS, there are significant gaps in identification of victims of trafficking for labour exploitation, who are predominantly male.
- In some MS where a referral mechanism exists, such mechanisms have been criticised for some shortcomings, including the quality of decision-making. Furthermore, efforts to better coordinate the fight against THB are often undermined by a lack of funding (Greece).
- Some MS have not yet established a National Rapporteur or an equivalent mechanism (Bulgaria, Cyprus, Germany, Ireland and Lithuania), despite the key role of such a mechanism in data collection on THB at national and EU level.

- Where National Rapporteurs have been established, their statuses differ widely across the MS: from independent rapporteur (the Netherlands, Finland) to representatives of the Ministry of the Interior (Spain). These varying structures raise the issue of independence and the consistency of the data collected across the EU.
- Data gathered by coordination bodies and agencies across the MS are not systematically aggregated by gender, age and types of exploitations. In addition, when gendered data and indicators on THB are available, they are not necessarily taken into account in policy planning (Spain, Cyprus).
- The majority of the experts who contributed to this assessment deplore a one-size-fits-all approach to victims of THB with no specific gender approach.
- Difficulties in identifying trafficking can be partly explained by the difficulties in identifying and tackling gender-based violence in general.

5.2. Assistance and support for victims

Perpetrators of THB apply effective methods for entrapping victims and keeping them obedient or bound by psychological methods, threats, pressures from the 'milieu' as well as by depriving them of papers and contacts or forcing them into complete dependence. Moreover, as underlined above, victims too often are not treated and recognised as victims. This is particularly challenging in cases where recognition is key for being granted protection measures. Without protection (that can include the availability of shelters and a safe social environment with support, e.g. social workers) and sufficient amount of time in a secure environment, victims cannot overcome their fear and mistrust, which is a precondition for opening up and, possibly, cooperating with law enforcement authorities. However, as shown in the research papers, making full cooperation with police a precondition, for example for a residence permit for non EU nationals or for being granted protection, raises significant concerns. Victims might be in a situation where they fear the revenge of the perpetrator, putting them (and possibly their relatives) at risk.

Article 11 on that aspect underlines the fact that assistance and support for a victim should not be made conditional on the victim's willingness to cooperate in the criminal investigation. On this aspect, some research papers argue that victims should be seen as right-holders, not only witnesses in the criminal proceedings.

Furthermore, Article 8 provides for a non-punishment clause for victims of trafficking. On the latter, victims of trafficking engaged in prostitution are reported to be often criminalised (Bulgaria, Spain), as well as TCN victims who are treated as illegal migrants. As underlined above, TCN are often deported without a screening process to ensure that possible victims of trafficking who are in custody are not deported or sent to migrant detention centres. State authorities often assume that victims of THB are lying about their situation in order to avoid deportation. As reported in Bulgaria, Spain and Greece, inconsistencies are found between national legislation on THB and immigration laws.

As regards support measures for victims, the research papers find important gaps and challenges across the MS under scrutiny:

- Counter-trafficking efforts seem to give priority to prosecution over assistance. Victims are often asked to cooperate with the criminal justice system before being given protection (Finland, Ireland, Spain). Furthermore, victims of THB are often not adequately informed of their rights, the assistance and support measures that are available to them.
- Specific assistance programme for victims of trafficking have been established in Finland, the Netherlands, Sweden and the UK. However, concerns have been expressed concerning victims of trafficking who are pregnant or have children, who are often overlooked and for whom support is not systemically provided (the UK).
- Some MS show positive development in the field of legal aid and assistance (Lithuania, Romania), but practical obstacles faced by women, especially those belonging to disadvantaged groups, remain (Bulgaria).
- In most of the MS, assistance to victims depends heavily on NGOs and funding is very limited (Bulgaria, Spain, Lithuania, Greece). Furthermore, cooperation between NGOs and official authorities is often found to be unsatisfactory.
- The majority of the MS have set up shelters for victims of trafficking (mostly run by NGOs). However, some of them do not provide in-house psychosocial support programmes (Cyprus). In Ireland, the policy of housing victims is criticised as unsafe and inappropriate for human trafficking victims: reports suggest that the direct provision hostels are targeted by men seeking to buy sexual services, and are used by traffickers. In addition, shelters for women with children are often inexistent (Spain) or inadequate. The lack of similar facilities available for male victims of THB is also deplored (Bulgaria, Cyprus, Greece).
- In Spain, the only protection granted to victims of THB derives from legislation dealing with immigration - as a consequence, EU national victims are often excluded from protection.

5.3 Protection of victims in criminal investigations

Article 12 of the Directive covers protection in criminal investigation and proceedings, including legal aid, witness protection programmes and prevention of secondary victimisation. Despite efforts deployed in training and legal assistance, the requirements of the Directive remain often inadequately implemented in practice:

- In some EU MS, trafficking cases are handled by specially trained judges (the Netherlands).
- Re-victimisation as a result of having to repeat accounts of traumatic experiences is not necessarily prevented in some MS (Ireland, Romania, Spain). Protocols or guidelines for referral and exchange of information related to THB in order to avoid repeat victimisation are not consistently found across the MS.
- A range of provisions to protect the private life and identity of the victim/witness during criminal court hearings exists in some MS (Germany, Lithuania, the Netherlands, Sweden, UK). However, victim protection measures

have not been systematically applied in practice to victims of THB (Lithuania, Sweden).

- Some MS have implemented special protection programmes for victims of trafficking (Germany). However, from a gender perspective it is crucial to allow security and protection during court appearances to victims without applying a high-level witness protection programme. As women are often the first care giver in their families, the participation in a programme that would require a new identity and the disconnection of people close to the witness has not been proven to be effective.
- Where victims of trafficking benefit from legal assistance, problems were reported in the exercise of victims' rights in criminal proceedings. These include: lack of application of the reflection period for victims; flaws in adequate legal aid and representation in court; no specialisation of judges in trafficking cases; possible violations of privacy rights of victims in criminal proceedings (Romania).

5.4. Assistance, support and protection measures for child victims

Articles 13, 14 and 15 of the Directive specifically address child victims of THB. The research papers underline that the obligation to include both a gender perspective and the perspective of the rights of children is paramount. The papers show promising initiatives as regards the prevention of trafficking in children, as well as important challenges and concerns:

- There is a lack of a systematic approach to detect and identify child victims of trafficking. As a result, child victims of trafficking are often inadequately protected.
- Unaccompanied migrant children are increasingly vulnerable to any forms of trafficking across the EU. In the Netherlands, a specific action plan launched in 2011 targets Roma children, victims of forced criminal activities and forced marriage. The plan included pilot projects, information leaflets for social workers and police, and European cooperation to exchange information and share good practices. Furthermore, the Netherlands has implemented a special action plan to address the phenomenon of 'lover boys' (where the trafficker enters into a romantic relationship with the victim, just to gain her/his trust, and then manipulates or coerces the victim into sexual exploitation).
- The UK Modern Slavery Strategy recognises the special vulnerabilities of children, but does not highlight gender as a particular vulnerability.
- In Ireland, the draft Sexual Offence Bill includes the criminalisation of child grooming (which consists of establishing an emotional connection with a child to lower the child's inhibitions for sexual abuse).
- There are often no specific shelters for child victims of trafficking. As a result of the lack of specialised care, the few children that are identified as trafficking victims are referred either to general children's homes, where they often flee within days of arriving due to the pressures of the mafias; or they are sent to

shelters for adult victims, where they do not receive proper child-oriented assistance and protection (Spain).

- Women victims with children often face additional distressing situations, such as lack of adequate support and protection (UK, Spain), and also the risk of losing custody of their children (Spain).
- Services for children and young women are still needed in destination countries. In particular, children retained in detention centres do not receive adequate care and protection.

5.5 Compensation for victims

Article 17 of the Directive provides that MS shall ensure that victims of THB have access to existing compensation schemes. On that matter, the research papers show that even if compensation measures are found in most of the MS under scrutiny, there is a lack of viable avenues to compensation for the majority of victims of trafficking (Bulgaria, Ireland, Germany, UK, Romania):

- Difficulties in victims' identification result in preventing them from being granted protection and assistance, as well as compensation.
- In Bulgaria, the established practice of excluding the possibility for compensation in cases where a settlement has been reached with the offender considerably reduces the instances of compensation. Furthermore, there is no free legal aid to claim compensation.
- In contrast, in the Netherlands, victims are entitled to free legal aid and they can claim damages through criminal proceedings (including compensation for the money they were forced to earn for their traffickers) and the Criminal Injuries Compensation Fund.
- In Sweden, state compensation can be applied for by a victim of crime, regardless of their nationality or residency status. There is also a mechanism that allows foreign victims who have returned home to access compensation from abroad.

5.6. Prevention

Article 18 addresses the issue of prevention: MS *'shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings'*. In addition, they *'shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings'*. MS also have a legal obligation to discourage and reduce the demand that fosters all forms of exploitation.

As underlined by some of the research papers, tackling demand is key, in particular in the context of sexual exploitation. However, as noted in the 2016 Commission Study on the Gender Dimension of THB, 'regulation [of prostitution] can be focused on one of three aspects: the sale of sex; the purchase of sex; and the taking of profits from the sale of

sex'.³⁴ The Study further elaborates on two different approaches found in the EU: the one that favours decriminalisation of the purchase of sex (Germany and the Netherlands) and the one that favours the criminalisation of the purchase of sex (Sweden).

On the first 'model', the study notes that prostitution regulations found in Germany and the Netherlands

*'do not adequately regulate employment conditions and relations, and anti-trafficking laws do not provide a normalization of immigration status and thus also do not provide alternative futures for victims of trafficking in prostitution. As a result, the current mix of regulations function unintentionally to reinforce insecure working conditions while failing to adequately encourage victims to prosecute perpetrators.'*³⁵

On the second 'model', the study notes that the Swedish model has curtailed the growth of the sex industry. It also notes, however, that this model might be difficult to be transferred to other national contexts, where buying sex could be *'more normatively acceptable and/or where there is no social democratic contract between state and citizens with corruption undermining the rule of law'*.³⁶ Furthermore, as underlined above and in relation to the recent debates in France, opponents of this model hold that robust data on the alleged success of the Swedish model is still lacking and that victims of THB are more vulnerable in contexts where the purchase of sex is criminalised. Thus, debates concerning the most efficient ways to tackle trafficking via demand reduction continue. However, there is a widespread consensus that purchasing sex from minors should not only remain illegal, but must be prosecuted more effectively.

It should also be considered that there are only limited data with regard to demand for other forms of exploitation, apart from sexual exploitation.

In cases of sexual exploitation, most of the MS include provisions in their criminal law which criminalise clients who are aware of the conditions of the victims. However, as noted in all the research papers:

- These provisions are difficult to implement: clients are often reluctant to report victims, the level of 'awareness' is not easy to establish, and cases of trafficking are hard to prove.

In terms of awareness campaigns, the research papers find the following:

- Some MS have no real and effective prevention campaigns designed and implemented (Bulgaria, Greece, Cyprus, Spain).
- Some MS have developed targeted awareness campaigns (Germany, the Netherlands, Romania, Sweden, the UK). However, not all the campaigns have a gender-specific dimension and focus mostly on sexual exploitation.

³⁴ [Study](#) on the gender dimension of trafficking in human beings, Final Report, European Commission, DG Migration and Home Affairs, 2016, p. 93.

³⁵ Ibid., p. 121.

³⁶ Ibid., pp. 138-139.

6. Conclusion

The EU Anti-Trafficking Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims is a landmark piece of legislation, at the international level, for fighting THB and for effective protection of the victims.

However, all the external expertise which contributed to this European Implementation Assessment shows an uneven implementation of the Directive's requirements across the MS. In particular:

- The gender dimension of THB is not taken into account in the application of the Directive in some MS. This would be essential, however, for identifying the victims and for ensuring adequate support to them, as well as for effectively preventing the crimes;
- Trafficking of minors is particularly lacking proper prosecution;
- The identification and protection of the victims needs to be drastically improved;
- Prevention should be ensured more effectively by public awareness campaigns and by serious measures aimed at reducing demand.

In general terms, the Directive needs to be fully implemented, consistently and diligently applied by all actors in the field: legislators, judges, prosecutors, police and public administrations. Proper training of all these actors is important, as are preventive awareness-raising campaigns and cooperation between public administration and the relevant parts of civil society.

ANNEX 1

Implementation of Directive 2011/36/EU from a gender perspective in Bulgaria

**Research paper
by Genoveva Tisheva and Nusha Yonkova**

ABSTRACT

This paper examines the implementation of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA in Bulgaria from a gender perspective.

For this purpose, the human trafficking response of the Member State is evaluated, with a particular focus on identification, assistance and protection of trafficked victims with a view to establishing a gender-sensitive approach or the lack thereof applied in the process of the transposition and implementation of the EU law.

AUTHORS

Genoveva Tisheva is a lawyer with extensive experience in the field of protection of human rights at national and international level. She is the Managing Director of the Bulgarian Gender Research Foundation and a Chair of the Alliance for Protection against Gender Based Violence, the largest network for protection of victims of trafficking in Bulgaria. She is Board member of the European Women Lawyers' Association and of Equality now.

Nusha Yonkova is the anti-trafficking manager at the Immigrant Council of Ireland, a licensed law centre. She is conducting an employment based post-graduate research with the University College Dublin, sponsored by the Irish Research Council, exploring gender-sensitive approaches to the assistance of trafficked victims. Nusha has been working exclusively in the area of human trafficking for the last 9 years and has authored a range of reports as well as coordinated national and transnational research teams.

This paper is part of the European Implementation Assessment of the Directive 2011/36/EU (Trafficking in Human Beings) for the Committee on Women's Rights and Gender Equality FEMM, together with other analyses on the same issue.

RESPONSIBLE ADMINISTRATOR

Helmut Werner, Ex-Post Impact Assessment Unit

To contact the Unit, please e-mail EPRS-ExPostImpactAssessment@europarl.europa.eu

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List of Abbreviations

NCCTHB	National Commission for Combatting Trafficking in Human Beings
CEDAW	UN Convention on the Elimination of All forms of Discrimination against Women
GRETA	Group of Experts on Action against Trafficking in Human Beings
CSO	Civil Society Organisations
TCN	Third Country Nationals
TIP	US Department Trafficking in Persons Reports
MS	Member States
NGO	Non-governmental organisations
APGBV	Alliance for Protection from GBV
GBV	Gender- based violence
VAW	Violence against Women
TRP	Temporary Residence Permit
VoT	Victims of Trafficking
PC	Penal Code
NSI	National Statistical Institute
NRM	National Referral Mechanism
UPR	Universal Periodic Review

EXECUTIVE SUMMARY

The Republic of Bulgaria has ratified and implemented Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. The European law has a clearly distinguished gender dimension in its provisions, which is a reflection of the gendered phenomenon of the crime of human trafficking. The present paper presents an independent evaluation of the Directive's implementation by the Member State from a gender perspective, keeping a particular focus on identification, assistance and protection of trafficked victims and prevention of the crime with a view to establishing the extent of gender-sensitivity in the taken approach. Even though trafficking for various purposes exists, the major problem in Bulgaria lies with trafficking of women for sexual exploitation. The prevalent profile of victims are national citizen women trafficked for the purposes of sexual exploitation. For the above reasons, with regard to assistance of victims and prevention of the crime in Bulgaria, the present paper pays particular attention to the situation with women susceptible to trafficking.

The MS has established a national coordination body (NCCTHB) and has developed a national referral mechanism for victims of trafficking, in cooperation with NGOs. There is a functioning legislation criminalising human trafficking and putting assistance and protection of statutory basis. The Bulgarian authorities launch a considerable number of investigations, with a high proportion resulting in successful prosecutions and efforts are being made to combat the complicity of public officials (TIP 2015). NGOs working with women victims of GBV and their children remain the main resource for the protection of the rights and the delivery of assistance to women and girls who have experienced human trafficking (Alliance for Protection from GBV). The same NGOs also ensure the gender-sensitive approach to assistance in the state. There are two specialised shelters for adult female victims operated through the national commission. The majority of services, and especially counseling centers are not financed via a state-delegated budget.

Despite all the positive achievements, there are areas of concern identified by the international monitories. The second evaluation report of GRETA (2016) contains extensive recommendations to the Bulgarian government in relation to the core problems of identification and assistance to victims of trafficking, and to the full realization of their rights. While acknowledging the positive developments in the field of the legal aid, the CEDAW Committee (2012) expresses concern regarding the practical obstacles faced by women, especially those belonging to disadvantaged groups in accessing redress, legal counselling and services. Bulgaria is designated to Tier 2 by the recent annual US Department TIP reports, indicating the minimum standards in addressing human trafficking have yet to be reached, and in addition put on the 'TIP Watch List' due to disruptions of the system of assistance in 2014/15 as a result of administrative irregularities.

Bulgaria has emerged as one of the primary source countries of human trafficking in the EU, and Bulgarian women and children are subjected to internal as well as external sex trafficking in Europe, Russia, the Middle East, and the United States. The gravity of the problem is evident in the key findings of the Eurostat (2014) reporting that most victims

detected in EU Member States are citizens from Bulgaria and Romania. Apart from sex trafficking, other forms encountered in Bulgaria and/or by Bulgarian citizens are labour trafficking, forced criminal activities, organised begging and trafficking of pregnant women for baby selling. The newer forms of human trafficking, such as forced begging, forced pickpocketing and selling of babies are usually problems linked to the lower socio-economic status of the sizeable Roma community in Bulgaria. Victims of these crimes are predominantly women and children of Roma ethnicity.

The legal definition of human trafficking has a peculiarity in that the element of 'means' is not included alongside 'action' and 'exploitation', which provides a wide scope for interpretation resulting in prosecutions. Some argue that the same broad interpretation is not applied in assessing individuals who are victims of the same crime. The identification of victims of trafficking occurs on two levels, whereby the higher level (formal identification) requires endorsement by certain state authorities and confers greater privileges. The formal identification procedure risks leaving out victims who do not wish to cooperate with the investigation. The involvement of NGO's and the possibility for self-identification are positive albeit leading to quite limited assistance. Services are obliged to report to the authorities the accommodation of victim of trafficking within the first 24 hours.

More than 50% of the asylum seeking population in Bulgaria are women and children. The system for international protection does not offer gender-sensitive approach. Cases of human trafficking involving TCN are rarely identified. Inconsistencies between the national legislation on human trafficking and the national immigration laws expose TCN victims to arbitrariness, according to independent scholars.

There are specialised shelters for assistance of victims of human trafficking that are run by contracted independent service providers with expertise in violence against women and children, which is positive arrangement in light of the prevalent victim profile. There are no similar facilities for male victims of trafficking. There are centres for child victims of crime with no specialisation in relation to human trafficking. Full level of assistance and protection is designated to trafficked victims identified by the authorised statutory bodies. The assistance to victims depends heavily on NGOs and the state funding is very limited.

According to international monitoring bodies (US TIP, GRETA), there are not enough measures protecting victims against secondary victimisation. The provision for non-punishment of victims is put on statutory footing, however more training is required for judges and prosecutors in order to give real effect to this unique immunity. Some concerns exist in relation to the criminalisation of women involved in prostitution, and in particular the attribution of too much weight on the initial decision to engage. Compensation is possible but it is rarely utilised. The established practice to exclude the possibility for compensation in cases where a settlement has been reached with the offender, considerably reduces the instances of compensation.

Based on the trends and statistics of trafficking in Bulgaria, the prevention of trafficking for sexual exploitation and the tackling demand that fosters this crime calls for priority considerations on the part of the Bulgarian Government. Presently, this is not the case as no real and effective prevention measures had been designed and implemented in the

last three years. Similarly to other forms of trafficking featuring a strong gender component, such as the sale of babies for example, the necessary preventative initiatives and programmes are almost entirely absent. Arguably, the compliance with the Directive, in particular with regard to Art.18, appears to be the weakest point in the performance of the State.

Chapter 1

I - Background

The issues at stake in the present report which offers an independent assessment of the compliance of Bulgarian legislation and practice with the EU Anti- trafficking Directive have been in the focus of different monitoring procedures at international level, of which the Council of Europe (GRETA 2016) and the conclusions of the CEDAW Committee (2012) merit particular attention. The recent second evaluation report of GRETA (2016) contains extensive recommendations to the Bulgarian government in relation to the core problems of identification and assistance to victims of trafficking, and to the full realization of their rights, particularly by guaranteeing their right to compensation. The Committee monitoring the implementation of CEDAW considered the combined fourth, fifth, sixth and seventh periodic report of Bulgaria at its 1045th and 1046th meetings, on 12 July 2012. The concluding observations from August of the same year covered several aspects of the situation in the country relating to trafficking and available legal mechanisms for victims assistance³⁷.

The CEDAW Committee (2012) noted the positive development in the legal aid system in the country: the enactment of a law on legal aid and the establishment of a national legal aid bureau. However, concern was expressed regarding the practical obstacles faced by women seeking redress and the insufficient counselling and legal aid services available to women, especially those belonging to disadvantaged groups. CEDAW (2012) urged the government of Bulgaria to provide women with effective access to legal aid by strengthening the legal aid facilities in place and ensuring that, when pursuing legal remedies, women are sufficiently informed of their rights during proceedings. Under the section “Trafficking and Exploitation of Prostitution”, the committee further expressed concern of *“the inadequate assistance and protection provided to victims and the lack of rehabilitation procedures, of compensation and of funding for non-governmental organisations that provide assistance and temporary shelter to victims”*. The recommendation in this respect urged the government of Bulgaria to: *Provide adequate assistance and protection to all women victims of trafficking, increase the number of shelters for victims, expedite efforts to establish compensation mechanisms for victims and strengthen programmes for victims’ reintegration into society”*.

We note that Bulgaria continues to be in Tier 2 and, in addition, was put on the Watch list in the 2015 TIP report, due mainly to some problems affecting the institutional framework in 2014-2015 by causing disruption in the provision of services in the shelters for VoT, funded by the state and managed by specialized CSOs. These problems will be, hopefully, overcome and the governmental bodies in cooperation with CSOs will be able to meet the commitments to more effective prevention of trafficking and protection of victims.

³⁷ Concluding observations of the Committee on the Elimination of Discrimination against Women, Bulgaria, 9-27 July 2012, CEDAW/C/BGR/CO/4-7, available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-BGR-CO-4-7.pdf>

II - Objectives

This paper examines the implementation of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA in Bulgaria from a gender perspective. For this purpose the human trafficking response of the Member State is evaluated, with a particular focus on identification, assistance and protection of trafficked victims with a view to establishing the gender-sensitive approach or the lack thereof applied in the process of the transposition and implementation of the EU law. Bearing in mind the gendered nature of the phenomenon and the high proportion of Bulgarian women affected, this paper explores in greater details their experiences in navigating the provisions put in place for victims, while male victims are acknowledged in the course especially where particular issues have arisen for them.

III – National Context

National and international reports suggest that Bulgaria is a source and, to a lesser extent, a transit and destination country for men, women, and children subjected to sex trafficking and forced labour (TIP 2015, GRETA 2011 and NCCTHB 2014). Bulgaria has emerged as one of the primary source countries of human trafficking in the EU, and Bulgarian women and children are subjected to internal as well as external sex trafficking in Europe, Russia, the Middle East, and the United States (TIP 2015). The gravity of the problem is evident in the key findings of the Eurostat (2014) reporting that most victims detected in EU Member States are citizens from Bulgaria and Romania. Europol (2016) recently reports that Bulgarian citizen victims are among the most often recurring profiles in both sexual and labour exploitation in the EU.

The main destinations of sex trafficking, according to Petrunov's (2014) research are Austria, Belgium, the Netherlands, Germany, France, Spain and Italy, while destinations for labour trafficking are Greece, Cyprus, the Czech Republic and also northern Europe. The Bulgarian authorities acknowledge that Bulgaria is also, to some extent, a country of transit and destination for trafficked persons, although the official statistics do not reveal the real scale of the problem. For instance, only three foreign victims of trafficking were identified in 2008-2009 (GRETA 2011).

According to TIP (2015) reports, some CSOs believe that the internal trafficking is on the rise, and GRETA (2011) estimates that nearly 40% of the victims of trafficking in the period 2008-2009 were internally trafficked. Eurostat (2014) reports that even more Bulgarian citizen victims are registered externally in other EU Member States. A relatively large number of victims are reported in Bulgaria on an annual basis albeit the TIP (2015) reports some decrease in detection in both prevalent forms of trafficking, sexual and labour exploitation respectively. Comparatively, a very small number of foreign national victims are reported every year.

The main form of crime is trafficking for sexual exploitation, both abroad and within the country (GRETA 2011, Petrunov 2014). A recent study also suggests that the prevalent form of recruitment used is 'intimate relationship or boyfriend' (Petrunov 2014). Women

constitute the prevalent majority of victims and there are sizeable and concerning proportions of child victims detected (GRETA 2011). According to the US TIP, (2015) Bulgarian men, women, and children are also subjected to trafficking for labour exploitation in Belgium, Cyprus, the Czech Republic, Germany, Greece, Israel, Italy, Lithuania, the Netherlands, Norway, Spain, Sweden, the UK, and Zambia, predominantly in agriculture, construction, and the service sector (TIP 2015). Petrunov (2014) reports that labour trafficking mostly involve single traffickers, not organisations or partnerships, and that Bulgarian nationals are trafficked mostly to work in the agriculture or food processing industry.

Considering the more recently recognised forms of human trafficking, Bulgarian children and adults with disabilities are forced into street begging and petty theft within Bulgaria but also in Austria, Greece, Italy, Sweden, and the UK. Romanian girls are subjected to sex trafficking in Bulgaria, while government corruption creates an environment enabling some trafficking crimes (TIP 2015). In 2010, six cases of trafficking for organ removal were reported (GRETA 2011). From 2009 to 2010, 25 cases involving pregnant women with arranged illegal adoption were reported. More recent investigative reporting exposes again the phenomenon of 'babies for sale', which was first uncovered through a BBC sting in 2006. It continues to occur across the Greek-Bulgarian border and pregnant Bulgarian women travel to Greece to sell their babies to Greek couples who want to adopt (Koleva and Kallergis 2015). Victims of this type of trafficking are usually Roma women from extremely poor Roma ghettos and the main form of recruitment is a promise of material benefits (Petrunov 2014).

Further information of the available national statistics is available in Appendix "National Statistical data" (APPENDIX 2).

The Bulgarian authorities launch a considerable number of investigations, with a high proportion resulting in successful prosecutions. Regarding investigations in 2014, out of 81 for sexual and 6 for labour exploitation respectively, the authorities prosecuted and convicted 53 sex traffickers and one labour trafficker (TIP 2015). Some criticism exists in relation to the proportion of those convicted who receive a prison sentence, which is about 34 percent.³⁸ Another type of criticism in relation to the prosecution of human traffickers in Bulgaria stems from certain definitional peculiarities in the national context allowing for a broader range of situations to be legally interpreted as human trafficking crimes (Stoyanova, 2013b).

³⁸ The European Commission technical report SWD(2016)15 of 1.2.2016 on Progress in Bulgaria under the Co-operation and Verification mechanism, on p.27: 'In quite some cases plea bargain agreements have been concluded with the defendants, resulting in suspended or relatively short prison sentences (less than 3 years).' and: 'Over the years since its accession to the EU Bulgaria has seen a change in the nature of organised crime. The traditional hierarchical criminal organisations vying for control of specific territories have to some extent been replaced by looser networks working across borders. These developments are partly linked to general factors influencing the risks and opportunities facing organised crime groups, which are naturally focusing on the most lucrative forms of criminal activity carrying the lowest risk. Organised crime is therefore arguably less visible today than a few years ago.¹²⁵ Organised crime groups reportedly remain active in a number of fields, including facilitation of irregular migration, VAT and excise fraud, public procurement fraud, trafficking in human beings and drugs, smuggling of cigarettes, credit card fraud, etc.'

While in general, the TIP 2015 report puts Bulgaria on the Watch list as not complying with the minimum standards for combatting human trafficking, the authors praise the government's efforts to combat complicity of public officials, noting that in 2014 the police investigated seven police officers accused of soliciting bribes from pimps. However, according to the same report, observers alleged that the police and prosecution rarely pursue high-profile traffickers and that government corruption creates an environment enabling some trafficking crimes.

The legal framework of responding to human trafficking crimes and its victims rests with two pieces of legislation. The criminal law regime is based on Section IX of the Bulgarian Criminal Code, while the protection and assistance regime rests on the Trafficking Act 2003 (Stoyanova, 2013a). Bulgaria prohibits both sex and labour trafficking through Article 159 of its Criminal Code, which prescribes penalties of between 2 and 15 years imprisonment for convicted offenders. The TIP 2015 considers the penalties to be sufficiently stringent and commensurable with those prescribed for other serious crimes, such as rape for example. GRETA (2011) points out that in 2009 the use of services of victims of trafficking was criminalised and the penalties for trafficking increased.

Chapter 2

I - Identification of victims of human trafficking

1. Definitional issue

Key finding:

The legal definition of human trafficking in Bulgaria has some specificities. In the first place, it contains only two of the three elements commonly constituting the crime, which results in broader legal interpretations. Secondly, the exploitation of pregnant women for the purposes of sale and adoption of babies is defined explicitly as a form of human trafficking.

There are concerns that human trafficking in the national law creates definitional ambiguity and it is not compatible with the definition from the Palermo protocol (UN 2000). The national interpretation excludes the '*means*' dimension of the international definition, which is one of the three elements commonly accepted as constituting the crime of trafficking in human beings. This is viewed as beneficial by the Court of Cassation because the number of prosecutions and convictions can be easily increased and thus there is a 'trend favouring expansive interpretation of the crime of human trafficking' (Stoyanova, 2013a). This trend is also applied to the legal understanding embedded in Bulgarian law with regard to 'sexual exploitation' and 'forced labour', which both appear broader than the commonly agreed standard interpretations.

Furthermore, a particular feature of the national law in this area is the inclusion of 'selling the child of a pregnant women', which is interpreted as a form of exploitation regardless of the consent of the woman. However, due to ambiguities, the concept of

exploitation does not preclude the victimisation of women who actively participate in and benefit from the whole transaction (Stoyanova, 2013a).

GRETA (2011) has a different take on this definitional issue in that it believes that by including in the definition of human trafficking the 'irrelevance of the consent of the victim', the Bulgarian legislations provide wider opportunity for a larger scale of right's approach to victims, including services and rights, in addition to wider prospects for investigations. Some scholars disagree by arguing that while the definition for the purposes of investigation is unusually broad the definition of victim in trafficking under the Trafficking Act is more narrow, whereby the 'means' matter, as will be explained further in the paper.

2. Identification procedure

Key finding:

The identification procedure in Bulgaria comprises of two stages – informal identification, which could involve a self-referral or an NGO referral and a formal identification, which requires the endorsement by certain statutory authorities. Both stages of identification confer different level of protection and assistance. A victim recognised in another EU MS has to request endorsement from the national authorities. The involvement of NGO's and the possibilities for self-identification are positive albeit leading to limited assistance.

The issue of identification of victims in Bulgaria is narrowly linked to the problems with the definition. There appear to be two definitions of human trafficking, for the purposes of criminalisation on the one hand and for the purposes of identifying individuals as victims for affording them protection and assistance on the other. Both have different scopes, resulting in a situation where the individual could be deemed simultaneously *a victim* and *not a victim* for the purposes of prosecution and victim assistance respectively. This raises the serious question as to whether victims, from the perspective of the criminal trial, will receive adequate assistance in their capacity as victims of human trafficking (Stoyanova, 2013b)

The identification procedure in Bulgaria comprises of two stages – informal identification, which could involve a self-referral by a potential trafficked victim and a formal identification, which requires the endorsement of the pre-trial authorities and the prosecutor, or of the Ministry of Interior in the cases of third country nationals (TCN). The informal identification, which can also be carried out by a CSO or any institution as a matter of fact, leads to access to a specialised shelter for the period of 10 days, which could be extended up to 40 days with the permission of the local branch of the NCCTHB (Dottridge 2010).

The formal identification procedure concludes with the granting of a 'special protection status'. The Bulgarian authorities have indicated that the status of a victim of trafficking issued by another MS is recognised in Bulgaria subject to a procedure. A victim of trafficking can request a special protection status, but cannot receive it automatically solely on the basis of having been given the status of a victim of trafficking in another

country. None of the authorities making decisions with regard reasonable grounds are independent organisations but rather bound by the State's interest in prosecution.

3. Requirement for cooperation

Key finding:

The identification procedure risks leaving out victims who do not wish to cooperate with the investigation.

Art 11.3 Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

The GRETA (2011) report points out that the identification system in Bulgaria is not sufficiently effective as it risks to leave out those who do not want to co-operate with the authorities and take part in the judicial proceedings against the alleged traffickers. The identification of victim according to Stoyanova (2013b) is regulated at the national level with one sole objective in mind vis-à-vis criminal investigation and prosecution.

The present system of identification precludes victims of trafficking from the possibility to be identified on the grounds of personal circumstances or vulnerabilities, and this has direct implications for the implementation of the provision of Directive 2011/36/EU pertaining to attention to victims with 'special needs'. In this regard, the TIP (2015) reports that the police have not proactively searched for signs of trafficking among women detained for prostitution, which is linked to the prevalent form of trafficking crime in the national context.

4. Identification of third country nationals

Key finding:

More than 50% of the asylum seeking population in Bulgaria are women and children. The system for international protection does not offer a gender-sensitive approach. Cases of human trafficking involving TCN are rarely identified. Inconsistencies between the national legislation on human trafficking and the national immigration laws expose TCN victims to arbitrariness, according to independent scholars.

Based on the common assumption that victims of trafficking are primarily Bulgarian nationals returned from Western EU MSs, the situation with third country national victims TCN is less prominent and lacking in clarity. As the country is on the external borders of the EU, it is expected that the authorities encounter many TCN on the border and others are returned to Bulgaria under the Dublin II Regulations (2003). More often than not TCN would not have legal grounds to stay in Bulgaria (Dottridge 2010). Similarly to the legal framework on international protection, the human trafficking framework is of great importance, particularly to those who've encountered exploitation

and abuse as part of their migration experience. According to a legal opinion, however, the inconsistencies between the national legislation on human trafficking and the national immigration laws expose victims to arbitrariness (Stoyanova, 2013b). The author argues that the state appears to be in violation of its international obligations in the absence of clear provision for a recovery and reflection permit, which among other matters serves to prevent the removal of the possible victims from the country. A provision for a recovery and reflection period would give legal grounds for the suspension of deportation proceedings, which might have already started with respect to a victim of trafficking. This is particularly concerning TCN victims who are awaiting deportation in detention because it restricts their opportunity to seek legal aid (Stoyanova, 2013b). However, the situation of the asylum seeking victims who are not in detention is not much different, since the national legislation does not establish any basis for cooperation between the refugee agency and the centre for trafficked victims' protection.

In the report from 2011, GRETA urges Bulgarian authorities to pay more attention to the identification of persons detained as irregular migrants and provide additional training to staff who come in contact with such persons. The TIP (2015) concurs on this point by reporting that victims, particularly among the vulnerable refugee populations, could not be effectively identified by the law enforcement. The same report also indicates that border police, refugee authority officials, and consular officials have not referred victims to care providers.

According to an UNHCR commissioned report on sexual violence and other forms of GBV violence in the context of international protection in Bulgaria, it was established that among the asylum seeking population for the second half of 2014, over 50 percent were women and children, which is a trend that has been observed since 2013 (Tisheva and Nikolova 2014). It is reported that no sensitivity and special skills exist among those professionals dealing with persons in process of international protection. There were no cases of human trafficking identified, including unaccompanied minors, while the staff and experts appeared overwhelmed with pressing humanitarian tasks and the need for general counselling.

II - Gender sensitive assistance to victims

1. Safe accommodation and material assistance

Key finding:

There are specialised shelters for assistance of victims of human trafficking that are run by contracted independent service providers with expertise in violence against women and children. However, there are no similar facilities for male victims of trafficking. There are centres for child victims of crime with no specialisation in relation to human trafficking. Full level of assistance and protection is designated to trafficked victims identified by the authorised statutory bodies. The assistance to victims depends heavily on NGOs and the state funding is very limited. (See Appendix 3 "Assistance to victims")

There are two specialised shelters for female victims of trafficking in Bulgaria, each with capacity of 6 adult women. In 2014, they accommodated a total number of 16 female victims, which is a decrease from 29 victims in 2013, according to the TIP 2015. It also reported that Specialised CSO provided victims with services such as medical and psychological support, assistance with reintegration and preparations for job interviews. In addition, the government also operated 15 centres for child victims, which could also provide accommodation, medical and psychological assistance to children. However, none of these centres were specialised for child victims of trafficking (TIP 2015).

In the period from September 2014 until the end of 2015, the two government sponsored shelters for victims of trafficking were closed³⁹, and the women-centred CSOs, mostly members of the Alliance for Protection from GBV (APGBV), provided the services to victims sent by the NCCTHB, IOM and others agencies. In 2015, CSOs provided support to about 55 victims in eight Bulgarian towns, with more than half of the victims receiving support in their counselling centres. These services are not specifically recognized and funded by the state as specialised services to victims of trafficking. In the beginning of 2016, two state-funded shelters reopened that are run by members of the aforementioned Alliance, one in Varna operated by Alliance-SOS and another in Bourgas operated by Demetra.

The threshold for accessing the two specialised shelters appears to be low, and allows for self-referral by a potential victim. This is considered a period of informal identification and allows for 10 days of recovery in the shelter, with a possibility of 30 days extension sanctioned by the local Trafficking Commission or pre-trial proceeding authorities or by the Court. The criteria for extension are not publically known, and it is unclear if they are linked in any way with the Directive's reference to victims with special needs. It is further unclear, whether the granting of an extension by the authority amounts to formal identification, also referred to a 'special protection status'.

One way or another, the period of 30 days allows the victim availing of this service to reflect and recover and to take an informed decision about the future, including with regards possible cooperation with the investigation of the crime committed against the victim. Stoyanova (2013b) finds controversy in the requirement assigned to the shelter service to notify the pre-trial proceedings authorities about the accommodation of a possible victim within the first 24 hours from access to the shelter. The immediate submission of information to the authorities irrespective of the will of the victims, the author argues, renders the shelters a 'decoy, designed in furtherance of the state's principle objective of initiating criminal proceedings and obtaining convictions, as opposed to being bona fide instruments of social policy'. The author also raises alert about the dangers prior to or during the criminal proceedings, which might undermine the level of the assistance offered.

The formal identification, which entails conferral of 'special protection status' leads to clear entitlement to safe accommodation in the shelters, and it is granted, as specified earlier, only on condition of cooperation with the investigation authorities.

³⁹ The shelters were closed due to irregularities with the public tender process and suspicion of corruption. <http://www.novinite.com/articles/167502/Secretary+of+Bulgarian+Anti-Human+Trafficking+Commission+Charged+with+Corruption>

There are no specialised shelters for male victims of trafficking entailing also appropriate services, such as reintegration, which are offered to female victims. In its report from 2011, GRETA urges the government to provide all male victims with shelter care and services, including reintegration assistance and legal services.

There are centres for protection and support of victims of trafficking who are formally identified. They offer provision of information regarding the relevant administrative and judicial proceedings, referrals to medical and psychological assistance and also reintegration programmes. There are no provisions within the national legislative framework for assistance to victims who have refused to cooperate in the investigation, and therefore cannot be formally identified. (See Appendix 3 “Assistance to victims” for further information).

2. Secondary victimisation

Key finding:

According to international monitoring bodies, there are not enough measures protecting victims against secondary victimisation

The US TIP 2015 reports that prosecutors and judges lacked sensitivity when interacting with victims trafficked for sexual exploitation:

Victims were often required to give testimony in the presence of the alleged trafficker, and alleged traffickers were permitted to confront victims in court and question them through the judge, including inquiries into victims' previous sexual relationships.

This is in direct violation of Art 12.4 of the Directive providing that the parties shall ensure that victims are protected against secondary victimisation through visual contact with the accused, testimonies in open court and unnecessary questioning into their private life. Another international body recommends to Bulgaria, among other matters, to provide sensitivity training to prosecutors and judges working with victims trafficked for sexual exploitation (GRETA 2011).

III – Protection

1. Non-punishment

Key finding:

The provision for non-punishment of victims is put on statutory footing, however more training is required for judges and prosecutors in order to give real effect to this unique immunity. Some concerns exist in relation to the criminalisation of women involved in prostitution, and in particular the attribution of too much weight on the initial decision to engage.

The provision for immunity from prosecution of victims of trafficking has been put on legislative basis by the amendment of the Penal Code with a view to giving effect to the

Directive. According to Article 16a, a person who is a victim of trafficking is not considered guilty for crimes committed by her/him under duress and in direct connection with the status of a trafficked victim. According to the opinion of the Supreme Court of Cassation⁴⁰, the application of this provision is not yet a stable practice in the judiciary. This new legal construction is considered a challenge for the practitioners, as the hypothesis differs considerably from the traditional cases of using a minor or an incapacitated person for committing a crime. According to a judge from the Administrative court of Sofia, there have not been such court cases yet and the challenge would be the establishment of the fact that the accused person is a victim of trafficking and that the crimes committed by this person are in direct connection with this status. Based on these facts, criminal responsibility will be excluded.

For the purposes of an EC sponsored survey⁴¹, Bulgarian judges responded that they are unaware of any prosecution against trafficked victims but representatives of the Bulgarian police force answered positively to this question (Dobрева 2013). In this regard, it is of particular concern that those engaged in prostitution, possibly including victims trafficked for sexual exploitation, are being systematically criminalised on the grounds that their activities are not beneficial for the society and that they live off of immoral earnings (Wijers 2015, p.18)⁴². Similarly exposed to the possibility for prosecution are pregnant women implicated in a situation of baby selling, which is considered a human trafficking crime, whereby the trafficker is a different person.

An EC sponsored publication reports on cases of criminalisation of female victims of trafficking in Bulgaria (Dobрева 2013). In one case, the woman was criminalised for confronting a judge with an accusation of corruption, which was insinuated by the accused trafficker as part of a threat he managed to direct at her outside of the court room (Dobрева 2013). The same report expressed concern about the situation of sex trafficked victims and the weight attributed to their 'consent to prostitution' by the prosecution authority, even though the 'means' of compelling victims to exploitation are irrelevant in national law.

2. Compensation

Key finding:

Compensation is possible but it is rarely utilised. The established practice to exclude the possibility for compensation in cases where a settlement has been reached with the offender, considerably reduces the instances of compensation. Free legal aid to claim compensation by the State is not available.

⁴⁰ Letter of the Supreme Court of Cassation to the Bulgarian Parliament from December 2014, justifying the needs for amendment of the Penal Code

⁴¹ Natasha Dobрева, Animus Association, Report under the EU funded project HOME/2011/ISEC/AG/4000002581, "Protection of the Rights of victims of trafficking"

⁴² Wijers refers to the following piece of law: "A full age person who continuously remains uninvolved in publicly useful labour, receiving non-labour income in a forbidden or immoral manner, shall be punished..."

According to TIP (2015), no victims received compensation during 2014, whereby opinions were expressed that the procedure continues to be overly bureaucratic and authorities do not always inform victims of their right to apply for compensation and legal aid. The problem of the lack of effective compensation came into focus at the second round of evaluation by GRETA (2016).

For the purposes of a comparative analysis of Bulgarian and Greek laws and practices in handling trafficking cases, including legal representation and compensation to victims, 99 cases in the inventory of 10 courts in Bulgaria were examined (EC ISEC 2014). 77 of these cases were resolved by approving settlement agreements with the offender by the court, while verdicts were issued in only 22. In only five of the cases examined civil actions were brought by victims. This low number is partially due to the fact that 78% of trafficking cases are decided with the approval of a settlement, where participation of a civil claimant is excluded as part of this settlement⁴³. In other words, victims of trafficking were entitled to acquire a civil claimant status in the proceedings in 22 of all reviewed cases, while this right was exercised in 5 of them. Both material and non-material (moral) damages were sought in all of the civil actions. Two of the five first-instance sentences were revoked in the civil part by the higher court.

The research and interviews conducted (EC ISEC 2014) show that among the major reasons for the low percentage of civil claims by victims in criminal proceedings is that victims of trafficking prefer to participate in criminal proceedings solely as a witness. The reasons for this vary: coercion by the trafficker to withdraw, strong willingness to move on and forget the rough past, unawareness of legal rights, mistrust of the judicial system and fear of stigma, which sometime leads to change of testimonies 'clearing' the perpetrator.

The mentioned research established that the amounts of damages awarded in criminal proceedings for trafficking are low. Of particular interest are the settlement agreements between the defendant and the prosecution as they occur in the majority of cases. In none of the 77 cases of settlement examined in the report (EC ISEC 2014), compensation for material damages was made as such damages could not be proven. It should be noted that under the rules of criminal procedure, establishing the nature and extent of the damage in the pre-trial procedure is the responsibility of public prosecution.⁴⁴ The National Council for Assistance and Compensation to Victims of Crime at the Ministry of Justice adopted a practice whereby victims in cases ending with plea bargain do not have the right to claim compensation by the state, thus depriving the victims of the possibility to receive any compensation.

Provided that the vast majority of criminal cases of human trafficking end up with settlements, the established practices of the National Council for Assistance and Compensation to Victims of Crime constitute a serious barrier to financial compensation for the majority of victims of trafficking and should be abolished. The Council proposes a possibility for introduction of an earlier payment of financial compensation to victim,

⁴³ Theoretically, in criminal proceedings resolved by a verdict, special rules may have been applied refusing the joining of a civil action, for example in fast or immediate trial proceedings, but in the preparation of this report, no such cases were found and examined.

⁴⁴ Article 103, para.1 in conjunction with Article 102, item 2 CPC.

even before the criminal process has ended.⁴⁵ Another practice that may improve the access to compensation is to regulate the possibility for victims to apply electronically (EC ISEC 2014).

Other shortcomings of the system are that pain and suffering are still not compensated and free legal aid to claim compensation by the State is not permissible.

Chapter 3

I – New forms of trafficking

Key finding:

The newer forms of human trafficking, such as forced begging, forced pickpocketing and selling of babies are usually problems linked to the lower socio-economic status of the sizeable Roma community in Bulgaria. Victims of these crimes are predominantly women and children of Roma ethnicity. The trafficking usually takes place in destination countries in Central and Western Europe, while the preparations take place in Bulgaria and the traffickers are often Roma men, who hold powerful status in these almost exclusively patriarchal communities.

Trafficking in women for the sale of unborn babies represents a particular problem in Bulgaria and has been acknowledged as a form of severe exploitation and a form of trafficking in human beings. Destination countries for Bulgarian victims of this crime are Greece, France, Italy, Spain and Portugal, however, over the years Greece has become the primary destination (Petrinov 2014). The networks involved in the crime are elaborate and involve recruiters, intermediaries, families and doctors in the destination country. The profile of victims are mostly Roma women living in extremely poor ghettos, some already with children of their own, often illiterate and unemployed (Koleva and Kallergis 2015). Some victims of this form of trafficking have also been involved in prostitution, which they are forced to exercise in some cases up to the point of the birth of the baby (Petrinov 2014). It is common in case of pregnancy for the pimp to organise illegal adoption of the baby with a view to profiting further from the victim. In some cases the victim stayed with the adoptive family, as the pregnancy progressed but the conditions were nonetheless abusive. The adoption rights are usually secured by listing the adoptive father as the biological father, forcing the victim to sign a statement waiving her maternal rights, and at a later stage the adoptive mother formalises adoption of the baby. The prices the adoptive parents participating in the scheme paid as high as tens of thousands of euro, while the victim mother would receive up to 5 or 6 thousand euro, in some cases less than 2 and yet in other cases nothing.

Trafficking for the purposes of criminal activity mostly involves organised pickpocketing, carried out by minors up to the age of 14. According to Petrinov (2014), pickpocketing in Bulgaria is feminised, indicating that the children are trained by the women of the clan,

⁴⁵ Minutes of meeting of a session of the National Council for Assistance and Compensation to Victims of Crime of 19.12.2012

which has been skill exercised as a way of life for decades. The profits from this crime could be enormous and the risks are low as minors are subject to lesser legal punishment and they are usually coached to refuse to give evidence against their families.

Organised begging primarily involves children and adults of Roma ethnicity. In some cases the victims are people with disabilities and sometime the begging has been exercised individually as a way of living prior to the recruitment in the organise scheme. Petrunov (2014) reports that traffickers transport and accommodate the victims in deplorable conditions in the destination country, and they typically confiscate the victims' identification documents. The methods of control exercised by the traffickers involve severe physical violence and brutality and a punishment occurs whenever the amount of money collected appears low or an attempt to escape the organisation is present.

II - Prevention through demand reduction

Key finding:

Based on the trends and statistics of trafficking in Bulgaria, the prevention of trafficking for sexual exploitation and the tackling demand that fosters this crime calls for priority considerations on the part of the Bulgarian Government. Presently, this is not the case as no real and effective prevention measures had been designed and implemented in the last three years. Similarly to other forms of trafficking featuring a strong gender component, such as the sale of babies for example, the necessary preventative initiatives and programmes are almost entirely absent. Arguably, the compliance with the Directive, in particular with regard to Art.18, appears to be the weakest point in the performance of the State.

The Bulgarian Penal Code contains a provision (adopted in 2009 and last amended in 2013) criminalizing the acts of those who knowingly use the services of victims of trafficking, including sexual services (Art. 159 /c /PC). The penalty envisioned is from 3 to 10 years of imprisonment and a fine of 10 000 to 20 000 BGN.

The judicial statistics from the National Statistical Institute (NSI), indicate that the convicted persons under the "Trafficking in persons" crime section for 2014 were 41 persons, 33 of which were male (NSI 2014). It remains unclear if any convictions have been obtained under Art.159/c/PC and no other indication that this provision was applied at all since its adoption in law. Therefore, it appears that the adoption of such a provision on its own is insufficient.

This position is supported in recent research findings. A study in the field of demand for sexual exploitation was implemented by Bulgarian NGOs in the framework of partnership initiatives on EU- funded projects. For example, under the EC ISEC funded project "Stop Traffick: Tackling Demand for Sexual Services of Trafficked Women and Girls", a transnational study was conducted in 5 EU MSs and involved the Bulgarian Gender Research Foundation as a national level research team (Yonkova and Keegan, 2014). The national research comprised 37 in-depth interviews with male buyers of sexual services, while in total 763 buyers participated in either in-depth interviews or on-line

surveys in the five MSs (71 in-depth interviews and 692 online survey results). The findings indicate that buyers of sex are overwhelmingly male. The vast majority are well educated and in some type of employment and over 50% are married, many with children. It is notable that buyers in all countries, including Bulgaria, report that they encounter women who appear controlled and underage.

The findings from the in-depth interviews in Bulgaria suggest that, irrespective of a buyers' knowledge of human trafficking as a crime and as a phenomenon, it is unlikely they will consider the possibility that a seller may be a victim of trafficking when purchasing sex. Similarly, knowledge of existing laws specifically targeting buyers of sexual services from victims of trafficking appear to have no impact on buyers' consideration of human trafficking in the act of purchasing of sex. Moreover, the portion of buyers who reported encountering sellers they believed were being exploited did not consider contacting the authorities to report such fears. In this situation, the buyers still consider the act of buying sex in all cases a transaction between two consenting individuals.

Efficient deterrents of demand, as indicated by the Bulgarian respondents themselves, are fears about their personal safety and health, publicity in the local media or on the internet, letters of disclosure sent to their families and criminal sanctions (Yonkova and Keegan, 2014).

The findings of the same report suggest that criminalising the end users (the buyers) of victims of trafficking for sexual exploitation remains a controversial issue. Under Article 18(4) of the Directive, knowledge of exploitation, on the part of the buyer, is required, and this is how the law has been transposed into the Penal Code of Bulgaria. In order to prosecute buyers who have purchased sex from a victim of trafficking, the state must prove that the 'customers' were aware of the status of the seller. However, this relies on non-material evidence that is difficult to prove and by now it is established that the identification of victims itself represents a challenge even for trained professionals.

It is believed that knowledge of this legal sanction will cause buyers to show greater concern for the status of the seller, including for the possibility of human trafficking.

Therefore the existing provision of Article 159/c/PC is not a sufficient measure for achieving the preventative goals embedded in the Directive. Additional measures should be taken by the Bulgarian government, such as targeting specifically men who buy sex and enforcing criminal responsibility for such men. These measures should be supplemented by initiatives tackling the rootcauses of trafficking for sexual exploitation in the state.

The results of the research carried out under the EU- funded project echo research results from studies of the Bulgarian Gender Research Foundation on the characteristics of the profile of prostitution and demand (BGRF 2006).⁴⁶

⁴⁶ The BGRF implemented the first social science research on the links between trafficking and prostitution in Bulgaria in cooperation with MBMD. This research was based on qualitative and quantitative social research, including surveys among women in prostitution and among men users of sexual services, and including in-depth interviews with experts and review of legislation and policy.

According to the latest annual report of the NCCTHB (2014), the prevention activities implemented by the government are defined as actions in three areas: informational area - directed at the society as a whole and at some specific target groups; educational area - building capacity of professionals and other target groups, such as students, volunteers; and direct area - work with victims or potential victims and their families. In the report itself only one campaign for general awareness of the society is reported, which was conducted in partnership with the media and NGOs and consisted in the dissemination of postcards with the message "Not for sale". The postcards were disseminated in the network of Smart media and Ambient media pool. No other substantial campaign was organized and no trainings of professionals on the prevailing forms of trafficking and its gender aspects were conducted.

We note that the National Programme for 2015 envisaged awareness campaigns against trafficking for sexual exploitation and against trafficking for labour exploitation, which could not be implemented due to administrative disruptions.

The NCCTHB report (2014) identifies root causes and factors for trafficking in human beings, such as poverty in certain geographical areas, lack of educational opportunities for some marginalized groups, vulnerability of women and children from some ethnic groups as well as mental disabilities. Regretably, this sound analysis fails to be translated into specific prevention actions and interventions. Furthermore, the analysis calls for preventative measures exceeding the planned three prevention priorities linked to information, education and direct work with victims, as mentioned earlier. It requires constant and concrete steps for strengthening and enforcing human rights, and in particular socio- economic rights.

In order to counteract the prevailing form of trafficking for sexual exploitation, serious interventions have to be designed targeting primarily the demand, the internal trafficking and re-trafficking, the lack of exiting policies for sellers of sex, and the reintegration of victims of trafficking.

It is in the broader context of human rights that the performance of the Bulgarian government in the field of trafficking is measured in the process of the Universal Periodic Review (UPR).⁴⁷ Namely, by October 2015 the government of Bulgaria accepted a number of recommendations in the field of prevention of trafficking addressed to the government in the process of the Second UPR of the country- strengthening the preventive measures on sexual exploitation of women and children, expand anti-trafficking measures from the large towns to the rural neighbourhoods and highly populated Roma communities so as to protect the most vulnerable groups of society.

The level of prevention activities implemented by the State is not in compliance with the Anti-trafficking Directive and does not meet the pressure posed by the high incidence of trafficking in Bulgaria.

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⁴⁷ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPR>

Bibliography

- GRETA, Council of Europe (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria*. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_19_FGR_BGR_en.pdf [Accessed 13/02/15]
- GRETA, Council of Europe (2016) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria-Second Evaluation Round*. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/2nd_eval_round/GRETA_2015_32_FGR_BGR_en.pdf [Accessed 13/02/15]
- CEDAW (2012), *Concluding observations of the Committee on the Elimination of Discrimination against Women, Bulgaria*, 9-27 July 2012, CEDAW/C/BGR/CO/4-7, Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-BGR-CO-4-7.pdf> [Accessed 13/02/15]
- TIP, US Department of State (2015) *Trafficking in Persons Report: country narrative Bulgaria*. Available at: <http://www.state.gov/j/tip/rls/tiprpt/> [Accessed 13/02/15]
- Koleva, J. and Kallergis, K. (2015) *"Lives for Sale: Bulgaria's Booming Black Market in Babies for Greeks"* in Alumni-Balkan Fellowship for Journalistic excellence 22/01/2015. Available at: <http://www.balkaninsight.com/en/article/lives-for-sale-bulgaria-s-booming-black-market-in-babies-for-greeks-12-19-2015> [Accessed 14/02/15]
- Petrunov, G. (2014) *Human Trafficking in Easter Europe: The case of Bulgaria*, Annals of the American Academy of Political and Social Sciences, 653(1), pp.162-182.
- Stoyanova, V. (2013a) *The Crisis of a Definition: Human Trafficking in Bulgarian Law*. Amsterdam Law Forum, [S.l.], v. 5, n. 1, p. 64-79, mar. 2013. ISSN 1876-8156. Available at: <http://amsterdamlawforum.org/article/view/307> . [Accessed 15/02/16]
- Stoyanova, V. (2013b) *The crisis of a legal framework: protection of victims of human trafficking in Bulgarian legislation*, The International Journal of Human Rights, Vol 17, Issue 5-6, pages 668-668 Available at: w.tandfonline.com/doi/abs/10.1080/13642987.2013.832217 [Accessed 15/02/16]
- Dobreva, N. (2013) *Protection of the Rights of Those Affected by Human Trafficking*, Sofia: Association Animus , EC ISEC HOME/2011/ISEC/AG/4000002581 Project: Promotion of the Rights of Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support
- Wijers, M. (2015) *Position of victims of trafficking in human beings in criminal and other proceedings in Bulgaria, Slovakia and Romania*, Sofia: Netherlands Helsinki Committee , EC ISEC HOME/2011/ISEC/AG/4000002581 Project: Promotion of the Rights of Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support
- European Union, Eurostat (2014) *Eurostat: Trafficking in Human Beings*, Publication Office of the EU, Luxembourg: EU.

NCCTHB (2014), National Commission for Combating Traffic in Human Beings, Report on the actions taken to combat Trafficking in Persons in 2014, Available at: <http://antitrafficking.government.bg> [Accessed 14/02/16]

O'Connor, M. (2015) *Upholding Rights: Early Legal Intervention for Victims of Human Trafficking*, Immigrant Council of Ireland. Available at: www.earlylegalintervention.eu [Accessed: 14/02/16]

Yonkova, N and Keegan, E. (2014) *Stop Traffick! Tackling of Sexual Service from Trafficked Women and Girls*. Available at: www.stoptraffick.ie [Accessed: 14/02/16]

Tisheva, G. and Nikolova, A. (2014), *UNHCR Monitoring report on sexual violence and other forms of Gender-based violence in the context of international protection in Bulgaria*. Available at: http://www.unhcr-centraleurope.org/_assets/files/content/where_we_work/_pdf_en/bulgaria/sgbv_executive_summary_2015.pdf [Accessed 15/02/16]

UN CEDAW (2012), *Concluding observations of the Committee on the Elimination of Discrimination against Women, Bulgaria*, 9-27 July 2012, CEDAW/C/BGR/CO/4-7, Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-BGR-CO-4-7.pdf> [Accessed 13/02/16]

EC ISEC (2014), "*Lawyers against trafficking: Towards improved access to justice and compensation for victims of trafficking in Bulgaria and Greece*", Project of the BGRF, EWLA Bulgaria and KEPAD Greece HOME/2011/ISEC/THB/4000002259

APGBV, 2016. *Alliance for Protection Against GBV: Report to the Anti- trafficking Commission*, January 2016. Sofia: APGBV. For more information: <http://bgrf.org/>

NSI 2014, *National Statistical Institute*. Available at:

<http://www.nsi.bg/bg/content/3762/осъдени-лица-по-брой-на-извършените-престъпления-пол-и-възраст> [Accessed 19 March 2016]

BGRF 2006, Available in Bulgarian. For more information: some sources referring to the report in English. Available at:

http://www.dnevnik.bg/bulgaria/2006/04/10/256529_v_bulgariia_ima_izkljuchitelna_tolerantnost_kum/ and http://news.ibox.bg/news/id_1352814693 [Accessed 19 March 2016]

Supreme Court of Cassacion (2014), Letter of the SCC to the Bulgarian Parliament from December 2014, justifying the needs for amendment of the Penal Code. For more information: <http://bgrf.org/>

UPR (2015) *Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BGSession22.aspx> [Accessed 19 March 2016]

UN (2000), *United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the UN Convention against Transnational Organised Crime*. New York: UN.

Government of Bulgaria. *Penal Code* (2009) Sofia: State Gazette.

Dottridge, M (2011) *E-notes: Report on the implementation of anti-trafficking policies and interventions in the 27 EU member states from a human rights perspective (2008 and 2009)*, Teramo: Associazione On the Road

Europol (2016). *Situation report: Trafficking in Human beings in the EU. The Hague: Europol*. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational_report_trafficking_in_human_beings-europol.pdf [Accessed 16 March 2016]

Referenced in Appendix:

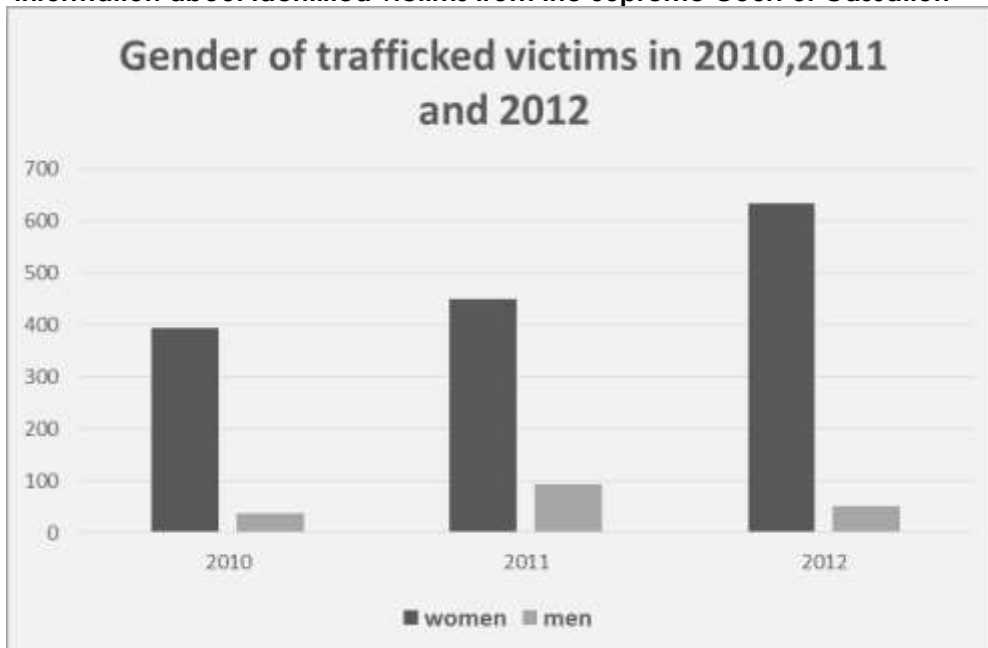
EC ISEC project “Early Legal Intervention for Victims of Trafficking” , Available at: www.earlylegalintervention.eu [Accessed 19 March 2016]

Appendix 1 - Statistics

Available Statistics about Bulgaria

Gender

Information about identified victims from the Supreme Court of Cassation⁴⁸



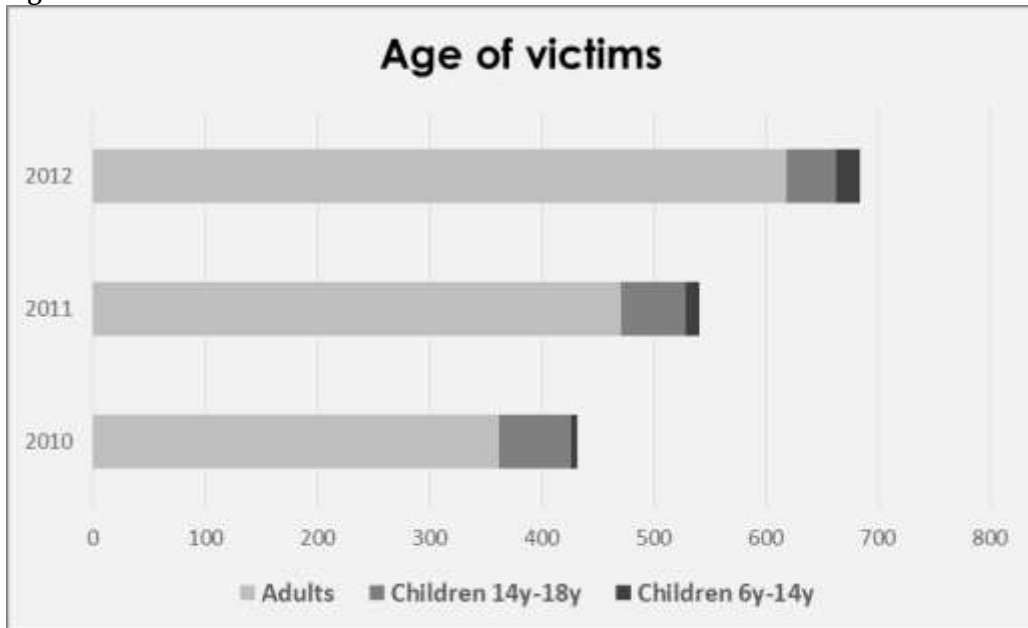
Information about identified victims by gender from Eurostat 2014

Year ⁴⁹	Total number of victims	THB victims/ 100 000 population	Male victims/ 100 000 population	Female victims/ 100 000 population
2010	580	7.8	1.2	14.1
2011	541	7.3	2.6	11.9
2012	579	7.9	2	13.5

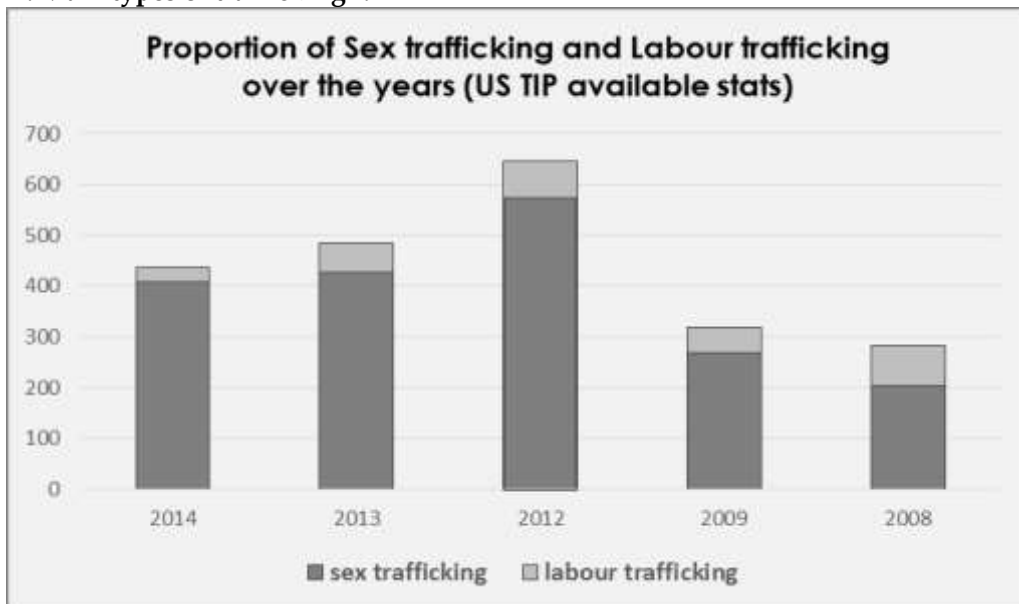
⁴⁸ Source: Based on Petrunov(2014), Supreme Prosecutor's Office of Cassation

⁴⁹ Source: EUROSTAT Trafficking in Human Beings 2014

Age⁵⁰



1. Main types of trafficking⁵¹.



⁵⁰ Source: Based on Petrunov (2014), Supreme Prosecutor's Office of Cassation

⁵¹ Source: US TIP reports 2008-2014 – based on available data

Appendix 2 - Assistance

Assistance to victims of human trafficking and a women-centred approach

1. Infrastructure of services to victims

In Bulgaria, non-governmental organisations (NGOs) working with women victims of GBV and their children remain the main resource for the protection of the rights and the delivery of assistance to women and girls who have experienced human trafficking. It has been recognized by the Anti-Trafficking Commission in its Annual national reports.⁵² The Commission confirms that the NGOs with which it cooperates for the placement of victims of trafficking are, in the first place, the leading NGOs which manage the specialized shelters for trafficking. The Commission recognizes also that it cooperates with NGOs which manage crisis centres for women and children victims of violence and trafficking and that the major NGOs in this field make part of the Alliance for protection from Gender- based violence. The same NGOs also ensure the gender-sensitive approach to assistance in the state.

The majority of services, and especially counseling centers are not financed via a state-delegated budget⁵³ . Such centers are more flexible with regard to the provision of services and have a qualified team with extensive experience in working with victims of violence and trafficking. The majority of such NGOs are members of the Alliance for Protection from Gender Based Violence (APGBV):⁵⁴

"SOS-families at risk" Foundation, Varna

"Demetra" Association, Burgas

Bulgarian Gender Research Foundation (BGRF), Sofia and Haskovo

Association "Open Door Centre", Pleven

"NAYA" Association, Targovishte

"Ekaterina Karavelova" Association, Silistra

"Pulse" Foundation, Pernik

Bulgarian Fund for Women, Sofia/ does not provide services/

"Dinamika Centre" Association, Russe

Foundation "H&D gender perspectives", Haskovo and Dimitrovgrad – associated member

The greater part of the organizations run service crisis centers for women and children, victims of violence. Such centers are managed by organizations in Varna, Burgas, Silistra, Pleven, Pernik, Ruse, Dupnitsa. The newest centre and the biggest one at the moment is the BGRF branch in Haskovo. The centre is located near Haskovo, in the town of

⁵² <http://antitrafficking.government.bg/wp-content/uploads>

⁵³ These are funds for social services from the national budget through the local budgets

⁵⁴ Referred henceforth as the Alliance or as the APGBV. www.alliancedv.org

Dimitrovgrad. With this latest centre, the overall capacity of the centers of the organizations of the APGBV reaches 100 places.

The most recent tenders of the Bulgarian National Commission on Combatting Trafficking in human Beings (NCCTHB)⁵⁵ resulted in financing and authorisation of two specialised centres in the cities of Varna and in Bourgas for the delivery of assisted accommodation to victims of human trafficking, which will be operated by the members of the Alliance. Other smaller scale centres for services to trafficked victims are operated by Animus Association, IOM Bulgaria and Nadya centre. Experience shows that the majority of the female victims of trafficking identified and those returned from abroad are being predominantly referred by the NCCTHB to the centers of the Alliance, to the IOM or other organisations based in Sofia.

The NGOs also operate helplines for victims of violence, which are available to victims of trafficking as well. In late 2015, a specialized and free of charge 24-hour telephone line for victims of trafficking was launched by the Bulgarian branch of Campaign 21, which is privately funded. Statistical information is not yet available from this initiative.

2. Funding mechanism for services to victims

The social services provided by the Alliance organizations, are governed by the social assistance legislation in relation to adults and children respectively (the Law on Social Assistance and the Regulation for the application of the Law on Social Assistance ; the Law on Child Protection), while the specialized shelters for trafficked victims are governed by the anti-trafficking legislation (the Law on combating trafficking in human beings and respective regulatory acts regarding requirements for shelters for victims of trafficking). The social services in the community are decentralized in that the municipalities identify the needs and develop services on their territory, including services for victims of violence. They propose to the central government the financing of such services and tender for service providers in the community to receive the allocated funds. This is the mechanism through which NGOs can obtain funds for their services.

3. Specialized shelters and crisis centres for victims

The existing mechanism for funds allocation is functioning, although the existing services for victims of violence and trafficking are insufficient and under-funded. The two specialized shelters for trafficked persons are organized through tenders from the Anti-Trafficking Commission and funded through the special state budget of the same commission. Crisis centers that are municipally funded to provide services to victims of violence, including trafficked victims, operate in the towns of Sofia, Pleven, Pernik, Silistra, Russe, Varna, Bourgas. In the latter two towns, crisis centers for women victims of GBV and their children exist separately from the specialized shelters for trafficked persons. *Crisis center* is defined as a residential service providing a complex of social services for persons suffering from violence, human trafficking or other form of

⁵⁵ Referred henceforth as the Commission or as the NCCTHB

exploitation, referred there for individual help, shelter, covering basic needs and legal consultation or psycho-social help.

It should be noted that the two shelters for trafficked persons funded through the Commission are only for adult female victims of trafficking. Other female victims of trafficking under 18 years of age as well as mothers with their children can be accommodated in the NGO crises centres.

The services of the women's NGOs in the crises centres of some towns, like Dimitrovgrad, Dupnitsa are not sponsored by the state. It is problematic that victims of trafficking referred to the NGO crisis centres of the NGOs are not provided with additional funding (subsistence) corresponding to their specific needs, and similarly there is no provision for additional staff costs for delivery of specialised services for trafficked victims. Victims often remain long periods in the crisis centres (up to 6 months which is the maximum permitted duration). They require intense support and accompaniment to multiple appointments, including health services.

Comparison table demonstrating the differences and similarities between specialized trafficked shelters and crisis centres

CRISIS CENTRES⁵⁶ for victims of violence and trafficking	SHELTERS for temporary accommodation of victims of trafficking in human beings
Established according the Law for social assistance	Established according the Law combating trafficking in human beings
Target groups: victims of domestic violence victims of trafficking women and children	Target group: victims of trafficking 18 +
Coordination and accommodation: Structure of State Agency for social assistance	Coordination and accommodation: National Commission to fight trafficking in human beings and Local commissions to fight trafficking in human beings
Duration of accommodation and social services/support providing: 6 months	Duration of accommodation and social services/support providing: 10 days or related to the duration of the penal lawsuit, including pre-trial and court procedures, for the rest of the cases it depends to their readiness for re-integration

⁵⁶ These are the centres where currently also trafficked victims are placed. The divisions are based on different criteria: existing crisis centres of NGOs members of the Alliance, then crisis centres sponsored by the state and in which also victims are placed. In addition to the crisis centres in Varna and Burgas, there are the special shelters for victims under the special law.

Private social services providers are registered with the Register of Agency for Social Assistance	Private social services providers are registered with the Register of National Commission to fight trafficking in human beings
Geographical location of crisis centres where also trafficked victims are placed : In the towns of Sofia, Plevna, Pernik, Silistra, Russe, Varna, Bourgas	Geographical location of shelters for trafficked victims: In Varna and Bourgas

4. Consultative centres for victims

Largely underfunded and often completely unfunded are the services run in the consultative centres of women's NGOs. All members of the Alliance and other women's NGOs have consultative centres for victims of GBV. This is a complex of social services that is not explicitly regulated by the Law on Social Assistance in its constitution. The consultative centres offer programs for psychological, social and legal counseling as well as legal representation, where needed, in addition to referrals to institutions, services and other NGOs. Most of the centers offer services through a helpline. Consultative centers provide "entrance" to the other services as well as a "supportive unit" after leaving a crisis center. The counseling services of women's NGOs are crucial for upholding the rights of victims of trafficking. They offer independent legal counselling and early legal intervention for trafficked victims. The practice shows that expenses incurred by NGOs for specialized services for trafficked victims, including for legal representation in some isolated cases, are sometimes reimbursed from the budget of the Commission but there is no reliable and sustainable mechanisms for financing such important services, even though they play an essential role in the process of recovery of the victim.

5. Coordination and referrals

Women-oriented NGOs play important role in the mechanisms for coordination and cooperation of institutions, linking assistance and services for victims of violence and trafficking. Such mechanisms are the *National Referral Mechanism (NRM)* for protection and assistance for victims of trafficking, the *Co-ordination mechanism for unaccompanied minors* upon their return from trafficking and exploitation abroad, the *Special coordination mechanism for children at risk* and crisis situations. The role of women's NGOs in the NRM is especially relevant in its sections on "Protection and support" and on "Social inclusion".

6. Protection and support offered to victims

Crisis intervention

A package of urgent measures for protection and care giving of victims. The following activities are covered:

- Emergency psychological support
- Continuous psychological consultations
- Providing of humanitarian aid
- Health services
- Assistance in renewing or issuing documents

Support during reflection period

- Consultation about possibility to collaborate in the investigation process
- Physiological consultation related to decision to collaborate for revealing of the crime
- Legal consultations

Long term psychological and social support

- Psychological consultation/psychotherapy
- Programs:
- Program “Parental capacity” (for victims that need to provide care for their children)
- Program „Occupational orientation and assistance in finding a job”
- Program “Budget management”
- Program “Gender equal relationship”
- Assistance and support in continuing education and professional qualification
- Social advocacy and communication with institutions
- Improving of health status
- Investigation and preparation of the environment, where the victim may be re-integrated

Safe return

- Providing all needed documentation for the travelling
- Collaboration with institutions/NGOs cooperation on the return
- Consultation of safe traveling
- Organization on the departure
- Collaboration with authorities and institutions on the arrival

7. Major gaps in the system of assistance

As key providers of services to victims of trafficking the members of the Alliance identified a number of gaps in the obligations of the government with regard to assistance and support of victims of trafficking⁵⁷. Among these gaps are:

- a lack of financial packages for social assistance to victims of trafficking;
- an ad hoc social assistance, which is dependent on presenting evidence for permanent address presenting a considerable obstacle;
- a lack of financial assistance over time;
- a lack of mechanisms and opportunities for employment and entrepreneurship;
- problems regarding interrupted medical insurance rights and refusals for hospitalization;
- a lack of possibility for extended stay in the shelters, of transitional accommodation places, and of continuous support with social services for victims, including support to victims in taking care of their children;
- special concern in relation to victims with mental and other disabilities who need specialized support and long-term care, and special accommodation.

8. Legal counselling without delay

The NGOs dealing with the assistance and support of victims of trafficking point at the non-implementation by the government of the obligation provided for in Article 12 of the Directive 2011/36/EU requiring *legal counseling to victims of trafficking without delay*. This provision has not been transposed and as yet it is not a part of the existing NRM.

The EC ISEC funded transnational project “Upholding rights! Early legal intervention for Victims of Human Trafficking” with the participation of the Bulgarian Gender Research Foundation and other partners in Ireland, Croatia, UK-London, UK-Glasgow, Lithuania and Finland showed the importance of adopting such an approach to legal aid. It further showed the importance of the cooperation between NGOs and governmental institutions in the best interests of the VoT.⁵⁸ In the case of Bulgaria the initiative supported models of such cooperation and several cases of trafficked women could receive counseling and representation, which would not have been possible otherwise.

The main recommendations from the project apply to the situation in Bulgaria. These refer to the need to enhance and formalize the role and input of specialized NGOs in identifying potential victims, proactively screen for indicators of trafficking, provision of early legal intervention *as soon as there is indication of trafficking in human beings*, increased cooperation between law enforcement and NGOs, ensuring eligibility of victims for services irrespective of criminal proceedings, risk assessment of immediate protection needs, early collection of all relevant evidence and documentation, working in

⁵⁷ Alliance for Protection from GBV detailed letter to the new management of the Anti-Trafficking Commission with the main problematic areas observed to date, June 2015.

⁵⁸ EC ISEC project “Early Legal Intervention for Victims of Trafficking” www.earlylegalintervention.eu

partnership with other stakeholders and supporting and accompanying victims in order to prevent re-traumatisation.

ANNEX 2

Implementation of Directive 2011/36/EU from a gender perspective in Cyprus and Greece

**Research paper
by Josie Christodoulou**

ABSTRACT

The following report is an analysis of the transposition and implementation in Cyprus and in Greece of the Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims, from a gender perspective.

It critically examines whether Cyprus and Greece are implementing the directive using a gender sensitive approach and whether gender is a basic principle of national legislation, policies and practices in relation to trafficking in human beings. Based in thus analysis, it is evident that although both Cyprus and Greece are making significant efforts to combat THB in recent years, the gender perspective is completely lacking from all their actions.

AUTHOR

Josie Christodoulou is Policy Coordinator at the Mediterranean Institute of Gender Studies [MIGS], Nicosia, Cyprus.

This paper is part of the European Implementation Assessment of the Directive 2011/36/EU (Trafficking in Human Beings) for the Committee on Women's Rights and Gender Equality FEMM, together with other analyses on the same issue.

RESPONSIBLE ADMINISTRATOR

Helmut Werner, Ex-Post Impact Assessment Unit
To contact the Unit, please e-mail EPRS-ExPostImpactAssessment@europarl.europa.eu

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ABBREVIATIONS

NR	National Rapporteur
TIP report	Trafficking in Persons Report of the US Department of State
NAP	National Action Plan
NRM	National Referral Mechanism
THB	Trafficking in Human Beings
EC	European Commission
GRETA	Group of Experts on Action against Trafficking in Human Beings
NGO	Non- Governmental Organisations
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
ISP	Initial Screening Process
EKKA	National Centre for Social Solidarity- Ministry of Labour

Executive Summary

Trafficking in human beings (THB) is a complex, often transnational phenomenon rooted in vulnerability due to poverty, lack of democratic cultures, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities and employment, lack of access to education, child labour and discrimination ([EU Strategy 2012-2016](#)). Trafficking is a human rights violation of global proportions, with women and children being the majority of those trafficked. A gender sensitive approach to trafficking in human beings recognizes the similarities and differences in the experience of trafficked persons, especially women and children, rooted in their unequal social situation ([D'Cunha 2002](#)).

The current research paper aims to provide a detailed and critical examination of the application of a gender specific and gender equality approach to the implementation of the EU Anti-Trafficking Directive in Cyprus and in Greece, with specific reference to:

- Victim identification and the provision of victim support services;
- The principle of non- punishment with regards to victims of THB;
- The effectiveness of preventive measures taken.

In addition to human trafficking for sexual exploitation and for labour exploitation, this research paper focuses wherever possible on the different forms of THB such as forced begging, forced marriages, sham marriages and organ harvesting. For the purposes of this report literature review was carried out through desk research as well as a secondary analysis of policy documents, legal instruments, media reports and available statistical data. Telephone interviews with relevant stakeholders in Cyprus and in Greece were also carried out to gain additional information and insight. In relation to Greece the writer was provided with unpublished reports and documents.

Cyprus

Cyprus transposed the EU Anti-Trafficking Directive 2011/36/EU in 2014 with Law 60(I)/2014 on the Prevention and Combating of Trafficking and Exploitation of Persons and the Protection of Victims. However, although the new legislation is comprehensive it lacks gender perspective in that it does not recognize the different needs and experiences of women and men victims of trafficking although it is child specific.

Cyprus is mainly a destination country for THB with the majority of victims being foreign nationals (GRETA report 2015). The most common forms of THB are for sexual and labour exploitation, while there has been a recent increase in THB for sham marriages.

Cyprus has demonstrated increased commitment to combat trafficking in human beings. The Anti-Trafficking Police Unit have developed formal operational indicators to assist the identification process based on international standards, which take into account the gendered characteristics of trafficking flows, and potential victims. However, there is no evidence to suggest that professionals involved in the identification procedure receive adequate training and whether such training takes into account the gender specificities of

THB. There is also no evidence to suggest that other governmental services such as the Labour Department are actively involved in victim identification processes.

In relation to the provision of victim support and protection of the victims of trafficking, there is currently a lack of a comprehensive and holistic approach to ensure that the victims of THB are provided with adequate services that take into account their specific needs, and address the short and long-term impact of trafficking. Only one shelter of victims is currently in operation, which does not provide any in-house psychosocial support programmes. Furthermore, despite the number of men identified as victims of THB (mainly for labour exploitation), there is no state shelter open to men.

In terms of prevention, despite the recent criminalization of use of services by victims of trafficking in 2014 and despite the implementation of a campaign focusing on demand reduction, this has not shown any quantitative or qualitative positive impacts, and the gender dimension of demand, particularly for sexual exploitation, is not addressed in any systematic manner. Efforts are mainly sporadic and ill-planned, with no follow-up or evaluation as to their effects.

To conclude, Cyprus is not adequately implementing Directive 2011/36/EU from a gender perspective. Sadly, in all efforts to prevent and combat THB the gender dimension is missing, with the exception of the identification processes of the police where a gendered approach is partly incorporated. In relation to victim and protection, the gendered dynamics and root causes of THB are largely ignored and (re)integration programmes are non-existent. Furthermore, gendered data and indicators on THB are not taken into account in policy planning and implementation, and therefore the different and specific needs of both women and men are not taken onto account.

Greece

Greece transposed the 2011/36/EU Directive with the Law 4198/2013 (215/A'/2013) setting a new legal framework for the prevention and protection of victims of THB. Greece is considered to be a transit and destination country for victims of THB, primarily sexual and labour exploitation (EU Anti Trafficking Website) but also for forced begging.

Data available shows a significant decrease in the number of identified victims in Greece in recent years. The low number of identified victims in Greece demonstrates the challenges the authorities are facing in taking proactive action. It is not clear whether the Police are investigating trafficking cases on a systematic basis and taking a proactive approach to the identification of victims. There is no evidence to suggest that the Police incorporate a gender perspective in their work, or if their identification indicators take into account the gender specificities of THB.

Despite the above, there is evidence that Greece is making substantial efforts to prevent and combat THB. For example, front-line professionals who are in a position to identify potential victims of trafficking are being trained. Another positive development is the establishment of a National Rapporteur who is in the process of developing a national referral mechanism as a road map for successful victim identification, referral and support, as well as the setting up of national coordination mechanism for all state agencies.

In relation to victim support and protection, there is currently no state shelter to assist and protect victims of THB specifically, although women victims of trafficking have access to shelter for victims of violence. There is no state shelter of male victims of trafficking. Furthermore, NGOs play a crucial role in the state's efforts to combat THB as the cooperation between the National Rapporteur and NGOs is being formalized and NGOs are providing those services that are not currently offered by the state.

In terms of prevention, as mentioned above the National Rapporteur is in the process of developing the national referral mechanism which will assist in the identification of the victims, as well as promote a more coordinated approach to victim support and protection, as well as prevention measures. However, there is currently no National Action Plan that would help in formulating a concrete strategy with specific targets, allocated budget, and outcome indicators.

To conclude, the gender perspective is absent from all efforts currently being undertaken by Greece to combat THB on all levels, starting from legislation, policy, and practice. This has impeded efforts to effectively identify victims, and offer support services that are tailored to the specific needs of women and men. There is a one-size-fits-all approach to victims of THB, with no analysis or assessment of available data that would promote an understanding of the different forms of THB, and enable policy, legislative, institutional and programmatic initiatives appropriate to women's and men's specific concerns and needs.

Introduction

Trafficking in human beings (THB) is a complex transnational phenomenon rooted in vulnerability to poverty, lack of democratic cultures, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities and employment, lack of access to education, child labour and discrimination ([EU Strategy 2012-2016](#)). THB is a human rights violation of global proportions, with women and children being the majority of those trafficked. According to Eurostat data for 2012, women and girls are overwhelmingly (96 %) the victims of trafficking for purposes of sexual exploitation and the majority (75 %) of victims of trafficking for all purposes, while being 26 % of those trafficked for labour exploitation and 52 % of those trafficked for other forms of exploitation ([Eurostat, 2014](#)). Due to the global face of trafficking in human beings as a form of transnational organized crime and an underground economy, it is very difficult to have a clear picture of its scope and prevalence ([EU Strategy 2012-2016](#)).

A gender perspective acknowledges that women and men, girls and boys are trafficked while recognizing the similarities and differences in the respective experiences which are rooted in their unequal social situation. A gender perspective also recognizes that women and men, girls and boys may experience different gender-based human rights violations and that the short and long-term consequences of trafficking may differ substantially. As such, policy and programme interventions will have differential impacts and effects on women and men. According to D’Cunha (2002), a gender sensitive approach to THB holds that “these differences, that disadvantage women and children the most, are grounded in their more marginalized social locations – gender, age, class, ethnicity” and that policy, legislative, institutional and programmatic initiatives should empower potential victims, and those trafficked, especially women and children to access remedies and claim rights ([D’Cunha, 2002](#)). According to the EC report on the gender dimension, “the distinction between gender neutral and gender-specific has implications for the design of best practice in the provision of services and other forms of intervention to assist victims and prevent trafficking in order to ensure that these are carefully designed according to need and relevance.” ([Walby et al. 2016](#)). The same report underlines that: “The harms from trafficking are gender specific. The harms from trafficking for purposes of sexual exploitation are different from the harms from trafficking for purposes of labour and other forms of exploitation...”

This research paper is one of the pieces of expertise accompanying the own initiative report from the European Parliament’s Committee on Women’s Rights and Gender Equality (FEMM) on the Implementation of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective. The Ex- Post Impact Assessment Unit (IMPT) of Directorate C- Impact Assessment and European Added Value (Within Directorate General for European Parliament Research Services, DG EPRS) has been called to provide expertise on the implementation of this directive.

This research paper will look at the cases of Cyprus and Greece. Cyprus transposed Directive 2011/36/EU in 2014 and Greece in 2013. One major commonality between the

two countries is that both have been identified as destination countries of trafficking in human beings, with sexual and labour exploitation being the forms of trafficking most often identified. In contrast to the case of Cyprus, Greece is also considered to be a transit country for victims of trafficking.⁵⁹

Methodology

The current research paper aims to provide a detailed and critical examination of the application of a gender specific and gender equality approach to the implementation of the EU Anti-Trafficking Directive in Cyprus and in Greece, with specific reference to:

- Victim identification and the provision of victim support services;
- The principle of non- punishment with regards to victims of THB;
- The effectiveness of preventive measures taken.

The research paper will also look at different forms of trafficking in human beings, in addition to sexual exploitation and labour exploitation such as forced begging, forced marriages, sham marriages and organ harvesting. For the purposes of this report literature review was carried out through desk research as well as a secondary analysis of policy documents, legal instruments, media reports and available statistical data. Telephone interviews with relevant stakeholders in Cyprus and in Greece were also carried out to gain additional information and insight. In relation to Greece the writer was provided with unpublished reports and documents.

Cyprus

Key findings:

- Cyprus is not adequately implementing Directive 2011/36/EU from a gender perspective. Sadly, in all efforts to prevent and combat THB the gender dimension is missing.
- Gendered data and indicators on THB are not taken into account in policy planning and implementation, and therefore the different and specific needs of both women and men are not taken onto account

On 15 April 2014 Cyprus adopted the Law 60(I)/2014 on the Prevention and Combating of Trafficking and Exploitation of Persons and the Protection of Victims, which provides the legal framework for the prevention and combating of trafficking and exploitation of human beings, as well as the protection of victims. This law is quite comprehensive and in line with Directive 2004/81/EC and Directive 2011/36/EU and replacing previous trafficking legislation, notably Law 87(I)2007. However, although the new legislation is comprehensive it lacks gender perspective in that it does not recognize the different

⁵⁹ [Informal EU Network of National Rapporteurs; https://ec.europa.eu/anti-trafficking/national-rapporteurs/greece](https://ec.europa.eu/anti-trafficking/national-rapporteurs/greece)

needs and experiences of women and men victims of trafficking although it is child specific.

Identification of victims of Trafficking

Key findings:

- There is no evidence to suggest that professionals involved in the identification procedure receive adequate training and whether such training takes into account the gender specificities of THB.
- Other governmental services such as the Labour Department are not actively involved in victim identification processes.

According to the second evaluation report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe, Cyprus is mainly a destination country for THB with the majority of victims being foreign nationals (GRETA report 2015). The most common forms of THB are for sexual and labour exploitation, while there has been a recent increase in THB for sham marriages. Statistics show that the number of THB victims identified in 2015 had increased slightly to 46 compared to 42 in 2014. A closer look at the data by gender shows that in 2015, 22 identified victims were men, of which 21 were victims of THB for labour exploitation and one victim of THB for criminal activities. A total of 20 women were identified as victims, 9 of which were for the purpose of sexual exploitation, 6 for labour exploitation, 2 for sham marriages, 3 for both labour and sexual exploitation, and one for adoption purposes. In 2014, women were the majority of THB victims identified (25 out of 42 victims in total). According to the Anti-Trafficking Unit of the Cyprus Police which is the responsible body for the identification of victims in Cyprus⁶⁰, the main countries of origin for THB victims are Vietnam, India, Bulgaria and Romania.

According to the data available, although in the past the majority of THB victims were trafficked for the purpose of sexual exploitation (mainly from Eastern Europe) in recent years the number of victims trafficked for the purpose of labour exploitation has increased substantially. In its second report, GRETA notes the increasing number of identified victims of THB, including the growing number of victims trafficked for the purpose of labour exploitation. In 2013, victims of trafficking for labour exploitation accounted for one-third of all identified victims; in 2014, for half of the victims, and in the first seven months of 2015, for two-thirds of all victims. This significant increase, is partially due to the abolition of the so called "artiste visa"⁶¹ in 2008 which resulted in a

⁶⁰ According to the article 45(I) on Prevention and Combating of Trafficking and Exploitation of Persons and the Protection of Victims, Law 60(I)/2014, the Cyprus Police is the competent authority to determine and identify whether a person is a victim of THB.

⁶¹ In Cyprus, women entering the country under the status of "artiste" were forced into prostitution by traffickers who fraudulently recruit victims for work as 'entertainment' dancers in cabarets and nightclubs on short-term 'artiste' or 'entertainment' visas. See more Mapping the realities of Trafficking in Women for Sexual Exploitation in Cyprus, Mediterranean Institute of Gender Studies (2007)

high number high risk establishments⁶² for sex trafficking (such as cabarets and nightclubs) shutting down. However, a small number of cabarets continue to operate as well as other establishments considered high risk such as bars where potential victims of THB can be found. What can also affect the number of victims of sex trafficking identified is the notable decrease in the number of operations carried out by the police on such high risk establishments for sex trafficking.

Furthermore, according to the NGO STOP Trafficking International in Cyprus, due to the shutting down of cabarets and nightclubs, trafficking and sexual exploitation now largely take place in massage parlors and private apartments. According to the police this shift has made access to sites where trafficking and exploitation are potentially taking place more difficult. However, a striking and ethically questionable method used in Cyprus for the identification of THB cases and potential victims of THB is the use of ‘collaborators’ by the Police. When the police receive information in relation to possible cases of prostitution or trafficking for sexual exploitation, the police recruit a ‘collaborator’ who will visit the site where possible exploitation is taking place and proceed with buying sexual services, using marked money as well as the used condom as evidence. Condemning the practice, the Cyprus Ombudsman stated that “what should guide the actions of the police in this matter is to avoid any action or behavior that may give potential victims the impression that the police directly or indirectly encourages ‘client behaviour’ which can result in the victim losing faith and trust in the criminal justice system and refuse to provide information or cooperate with the police.

This practice also ignores the physical and psychological effects of trafficking and sexual exploitation, which are gender specific. As underlined by the [recent EC study](#), the “Identification of victims of trafficking needs to take account of this gender specificity. Victims of trafficking for purposes of sexual exploitation can be hidden within mixed populations of independent, exploited and coerced prostitutes and in mixed migration flows. They are fearful of both traffickers and authorities. Gender expertise is needed to provide gender-sensitive processes of victim identification in these circumstances”. ([Walby et al. 2016](#))

In relation to labour exploitation, statistics show that the majority of identified victims are men working in construction, in the agricultural sector and/or tourism, with many of them been undocumented migrants. A recent study carried out by the Mediterranean Institute of Gender Studies (University of Nicosia Press 2015), shows however that documented female migrant domestic workers, a population of more than 30,000 in Cyprus ⁶³, are also at high risk for trafficking for labour exploitation in domestic work and that “elements of trafficking, specifically deceptive recruitment and exploitation, are present and easily identifiable in the domestic work sector, a highly gendered sector, in Cyprus”. Nevertheless, very few domestic workers have been identified as victims of trafficking for labour exploitation. This is due to two main factors:

⁶² “High risk establishments” shall mean all licensed cabarets and pubs that “recruit” women on “artiste” visas. This categorization is drawn from the Cyprus Government report to the CEDAW Committee 2006, p.33. <http://www.un.org/womenwatch/daw/cedaw/35sess.htm>

⁶³ According to the Cyprus Statistical Service, Demographic Report 2014, the population of Cyprus is 847.000

1. The vast majority of domestic workers live and work in the home of their employers, and labour inspections are prohibited in households because they are private domains.
2. When domestic workers file complaints with the Labour Department of the Ministry of Labour, Welfare and Social Insurance in relation to labour disputes, labour officers do not investigate potential cases of trafficking. This is mainly because of lack of training to such officers on identification of THB.

As mentioned above, there has been a recent increase in cases of THB for sham marriages. According to the Anti-Trafficking Unit of Police, between 2010 and 2015 22 women were formally identified as victims of trafficking for the purpose of sham marriages. The women identified were EU nationals deceived or forced to marry third country nationals, with a view to enabling them to acquire EU residency. Women are often deceived through the offer of free holidays in Cyprus and are subsequently threatened and/or locked up. According to [media reports](#), a number of victims were simultaneously sexually exploited. The lack of harmonization of EU legislation regarding the crime of sham marriage, as well as legislative loopholes and differences among MS, result in the misrepresentation of the real scale of this crime area which affects mostly women ([Situation Report Trafficking in Human Beings in the EU, 2016](#)).

According to the Asylum Unit in Cyprus, a positive development in Cyprus is that “victims of THB may now be detected during the process of asylum as part of the screening procedure or interview with the competent asylum officer. The Asylum Service co-operates with the police in identifying possible victims of trafficking and has established an Initial Screening Process (ISP) for asylum applications for identification purposes”. According to both the Asylum Unit and the Police, potential victims of THB have the option to be interviewed by an officer of the same sex, in order to create a safer space and promote trust.

Lastly, it should be noted that the Anti-Trafficking Police Unit have developed formal operational indicators to assist the identification process based on international standards, which take into account the gendered characteristics of trafficking flows, and potential victims. However, there is no evidence to suggest that professionals involved in the identification procedure receive adequate training and whether such training takes into account the gender specificities of THB.

Protection and support to victims of trafficking

Key finding:

There is currently a lack of a gendered, comprehensive, and holistic approach to ensure that the victims of THB are provided with adequate services that take into account victims specific needs, and address the short and long-term impact of trafficking.

In relation to the provision of victim support services, according to the Anti-Trafficking Unit of the police “when possible female victims are identified, accommodation is secured in the state shelter”, which hosts female victims of trafficking for sexual

exploitation, or are offered secure accommodation through NGO services. However, according to NGO reports, the state shelter operates more as a hostel rather than a shelter as no victims support services are offered on site. There are currently no state or NGO shelters for male victims of THB. However, the police ensure that male victims are secured safe accommodation.

Although victims of trafficking receive basic psychological and other support by the different state authorities and services, victims do not receive a holistic, human centred approach and therefore do not receive adequate witness protection schemes nor are trained to support their cases during the court hearing. Such an approach could be ensured through the operation of a National Referral Mechanism (NRM), which is still not in place in Cyprus.⁶⁴ According to GRETA's second report on Cyprus, a NRM would "have the status of secondary legislation, describing the procedures to be followed at all stages and in more detail than Law 60(I)2014". Given that the Cyprus legislation on THB is gender neutral, a robust NRM could ensure that a gender perspective and approach is integrated at all levels of victims support and protection.

As far as tertiary prevention is concerned, the state has not adopted an official integration plan or policy for victims of trafficking and vocational training or other tertiary prevention programmes are not offered to victims of trafficking. "The Ministry of Labour, Welfare and Social Insurance is currently examining the *possibility* of participation of [THB] victims in specially designed Greek/ English language learning programs, operated by the Ministry of Education and Culture or vocational and training programs" ([GRETA report 2015](#)). Although there have been efforts to secure employment for victims of trafficking in Cyprus, the Labour Department is not taking the necessary measures to do so. For example, victims of trafficking hold an identification certification or a temporary residence under the status of "visitor" for 6 months making it almost impossible to secure employment. Specifically in relation to gender, rather than offering employment to female victims of THB that would address the gendered aspects of vulnerability, in the past the labour department has provided stereotypically female employment options to women of THB, such as domestic work without taking into consideration their specific qualifications and/or skills. This has effectively placed THB victims in precarious employment sectors that do not take into account their best interests.

Principle of non- punishment

The new anti-trafficking law 60(I)2014 Article 29 provides that victims of THB are not to be prosecuted and subject to sanctions for their involvement in criminal activities where such involvement is a direct consequence of the fact that the persons were victims of THB. According to the Cypriot Assize Court during their meeting with GRETA, a number of victims of trafficking were not charged with illegal entry and residence in Cyprus. However, there is anecdotal evidence that following police raids, potential victims of trafficking are subsequently deported without being identified. According to

⁶⁴ At the moment the document of the NRM is with the Press and Information Office (PIO) of the government for editing.

[media reports](#)⁶⁵, following a police raid of the so-called “Aphrodite Temple”, out of 17 women foreign nationals involved in prostitution activities, 16 were deported to their countries.

Preventative measures in combating trafficking in human beings

Key findings:

- Cyprus has recently criminalized the use of services by victims of trafficking in 2014.
- However and despite the implementation of a campaign focusing on demand reduction, this has not shown any quantitative or qualitative positive impacts, and the gender dimension of demand, particularly for sexual exploitation, is not addressed in any systematic manner.
- Efforts are mainly sporadic and ill-planned, with no follow-up or evaluation as to their effects.

In relation to prevention of THB, one of the improved measures undertaken in Cyprus is in the inclusion of article 17 in the new legislation of THB, to address the demand side of THB. Article 17 criminalizes the use of services provided by victims of trafficking *where the user of such services should reasonably have been able to conclude or suspect that the service was provided by a victim of trafficking*. Although this is considered a very positive step forward in the direction of criminalizing all parties to the crime of THB, there is still no case law under this provision and there have been practical difficulties in its implementation. Some NGOs in Cyprus⁶⁶ believe that the relevant article should be revised to hold responsible the user of services by victims of trafficking regardless of their knowledge, and that in this way the Cyprus state would demonstrate zero tolerance to THB, particularly in cases of sexual exploitation.

Also in relation to demand reduction, a media campaign was implemented by the Ministry of Interior, the Multidisciplinary Group on combating trafficking in human beings⁶⁷ and the National Machinery for Women’s Rights focusing on the sexual and labour exploitation and the demand side of both forms. The campaign was visible through ad boards, as well as radio and TV clips and was implemented in 2013 for two months. Although the focus of this campaign was demand reduction, a gender perspective was not apparent in the campaign message, despite demand for sexual exploitation being a highly gendered phenomenon and rooted in historically unequal power relations between women and men.

⁶⁵ <http://cyprus-mail.com/2014/10/04/aphrodites-temple-trial-to-go-ahead-despite-threats-of-revelations/>

⁶⁶ STIGMA NGO <http://www.stigma-organisation.org/#!activities/c132w> and Mediterranean Institute of Gender Studies, www.medinstgenderstudies.org

⁶⁷ The Multidisciplinary Group was created under the 2007 Law on Combating Trafficking in Human Beings and it is chaired by the coordinator, the Minister of Interior and it is composed by all relevant ministries as well as four NGOs

Other preventative activities have included awareness raising on THB in schools under the thematic priorities on human rights on the initiative of the Pedagogical Institute in Cyprus. However, there is no evidence to suggest that such school-based activities incorporate a gender perspective or address the root causes of THB.

The provision of information to migrant workers in Cyprus has also been identified as a strategy to prevent THB. The Ministry of Labour, Welfare and Social Insurance have drafted informational leaflets in relation to the rights and obligations of third country nationals working in Cyprus that are available in six languages including English, Russian, Sri-Lankese, Arabic and Romanian. However, there is no information available on where these leaflets have been disseminated and the extent to which migrant workers receive them upon entering Cyprus. Furthermore, questions however remain as to the extent to which information on THB is included, and whether such information takes into account the specific experiences and vulnerabilities of women and men.

In relation to migrant workers, it is worth making special reference to female migrant domestic workers that comprise the majority of migrant workers in Cyprus. Despite this sector being highly unregulated and highly precarious, it has been largely ignored in anti-trafficking policy in Cyprus. The contract of employment for domestic workers is particularly revealing in this respect. Firstly, the contract is drafted by the Civil Registry and Migration Department of the Ministry of Interior without substantial consultation with the Ministry of Labour, Welfare and Social Insurance that would ensure and clearly define labour protections and recourse for domestic workers. Furthermore, according to an officer from the Office of the Commissioner for Administration "...the contract was created in such a way that instead of clearly and adequately defining labour rights and duties...it treats the employee in a derogatory manner, paternalistically...and imposes an absolute connection between the residence and work permit with one specific employer...and in total it maintain a status of fear and subordination."

Conclusion

Following Cyprus's conviction by the European Court of Human Rights in the case of Oxana Rancheva in 2010 ([Case of Ranchev VS Cyprus and Russia](#)) for having "violated the girl's right to life and right to protection under the law", Cyprus has been stepping up efforts to combat THB. On a legislative level Cyprus has ratified the Convention of the Council of Europe Convention on Action against Trafficking in Human Beings and transposed the EC Directive on preventing and combating trafficking in human beings and protecting its victims. Governmental officers and especially the Anti-Trafficking Unit of the Cyprus Police as well as NGOs are gaining experience and expertise on the issue and are in a better position to face the challenge of THB in Cyprus in a more coordinated fashion.

Without minimizing such efforts undertaken by Cyprus to combat trafficking in human beings it should be underlined that a lot still needs to be done in order to implement a gendered approach to THB as per the directive. Women remain a particularly high risk group for THB for all forms of exploitation, while little attention is paid to the specificities of men's experiences. Cyprus should urgently incorporate a gender sensitive approach in

all its policies and actions on THB in order to meet the specific needs of women and men victims based on their specific experiences and needs, as well as adopt a more coordinated approach towards the prevention of THB and protection of victims by “enabling policy, legislative, institutional and programmatic initiatives appropriate to women’s and men’s specific concerns” ([D’Cunha, 2002](#)).

Greece

Key findings:

- The gender perspective is absent from all efforts currently being undertaken by Greece to combat THB on all levels, starting from legislation, policy, and practice.
- This has impeded efforts to effectively identify victims, and offer support services that are tailored to the specific needs of women and men.

Greece transposed the 2011/36/EU Directive with the Law 4198/2013 (215/A'/2013) setting a new legal framework for the prevention and protection of victims of THB. Greece is considered to be a transit and destination country for victims of THB, primarily sexual and labour exploitation ([EU Anti Trafficking Website](#)) but also for forced begging. According to the Trafficking in Persons Report by the U.S State Department, Greece is also “to a very limited extent, a source country for women and children subjected to sex trafficking and men, women, and children are subjected to forced labor ([TIP Report 2015](#)). This is also evident from the statistics provided by the Greek police that show that since in 2015 there were four Greek recognized victims of trafficking, one man and three women.

As will be discussed further below, Greece has only recently (since 2013) begun stepping up its efforts toward a more coordinated and comprehensive approach to combating THB and the setting up of relevant mechanisms.

Identification of Victims of THB

Key findings:

- There is a significant decrease in the number of identified victims in Greece in recent years.
- The low number of identified victims in Greece demonstrates the challenges the authorities are facing in taking proactive action.
- There is no evidence to suggest that the Police incorporate a gender perspective in their work, or if their identification indicators take into account the gender specificities of THB.

The most recent statistical data for Greece (2015) shows a decrease in the identification of victims. In 2014 the number of identified victims reached 99, as compared to 64 in 2014 ([TIP Report 2015](#)). In 2015, 50 victims of THB were identified (11 victims of forced labour,

30 victims of sexual exploitation, nine of forced begging). Victims for sexual exploitation are overwhelming women with the majority coming from Bulgaria (11), followed by Moldova (4), Ukraine (4) and Romania (4). According to the Greek Police, trafficking for sexual exploitation takes place mainly in illegal brothels, strip clubs, massage parlors, and in the streets. A new trend that has been identified is that of transporting victims to rural areas as seasonal workers where they are in fact sexually exploited. Seven child victims of THB were identified in 2015, of which four were girls exploited in prostitution. Children victims of trafficking were in 2015 7 in total were 4 girls were victims of sexual exploitation, 2 boys and 1 girl were victims of forced begging. In relation to labour exploitation most identified victims were men in rural areas. Despite the above mentioned forms of exploitation, recent research by the Centre for Gender Studies of Panteion University has shown that domestic workers are a group particularly vulnerable to trafficking and exploitation (University of Nicosia Press, 2015). Despite this, the Greek authorities do not make the link between trafficking and labour exploitation in domestic work, a highly gendered sector, where female migrant workers are particularly vulnerable to THB because of the ways that they are recruited by recruitment and employment agencies. Exacerbating the issue is the fact that THB is framed as a security threat rather than a human rights issue, which hinders the possibility of integrating a gendered and victim-centered perspective.

The low number of identified victims in Greece demonstrates the challenges the authorities are facing in taking proactive action. It is not clear whether the Police are investigating trafficking cases on a systematic basis and taking a proactive approach to the identification of victims. There is no evidence to suggest that the Police incorporate a gender perspective in their work, or if their identification indicators take into account the gender specificities of THB.

Protection and support to victims of trafficking

Key finding:

- There is no state shelter to assist and protect victims of THB specifically, although women victims of trafficking have access to shelter for victims of violence

According to Greece National Rapporteur (NR)⁶⁸ there have been intensive efforts to fight THB in Greece, following a comprehensive approach that includes legislative reforms, inter-agency coordination, protection of victims, public awareness campaigns and cooperation with stakeholders from international institutions, as well as countries of origin, transit and destination. A positive step by the office of National Rapporteur are efforts for the development and implementation of a National Referral Mechanism (NRM) as a road map for successful victim identification, referral and support, as well as the setting up of national coordination mechanism for all state agencies. According to the NR it has been agreed with the National Centre for Social Solidarity- Ministry of Labour (EKKA) that the latter will assume a leading role as the principal state agency that will compile information and coordinate all stakeholders and partners of the NRM. Further,

⁶⁸ Telephone interview with the Greek NR, dated 29 February 2016.

EKKA will coordinate the NRM for successful inter-agency cooperation on issues such as *identification, support, protection and promotion* of the rights of victims (including presumed victims) of trafficking in Greece. The NR clarified⁶⁹ that the NRM is anticipated to be fully operational in 2016.

Additionally, the NR is in the process of setting up a national data base for victims' assistance and for prosecutions in collaboration with the national statistical service, to promote large scale training for competent authorities and partnerships with all stakeholders including the private sector academia. Importantly, however, in the specific articles of the Anti-Trafficking Law on the establishment of the NR, gender mainstreaming is invisible even as a matter of principle, leaving it to the discretion of the person who will take the position of the NR.

According to the TIP report 2015, due to the economic crisis and fiscal measures imposed on Greece as part of the country's bail out "NGOs expressed concerns regarding government funding shortfalls" as well as "the Government was not in position to determine how much funding was spent exclusively on victim's assistance". According to the office of the NR, victims as well as potential victims of trafficking receive psychological support, medical care and free legal aid⁷⁰, however it is not clear from available information whether this support is gender blind or whether it incorporates a gendered perspective.

The NR noted that the "General Secretariat for Gender Equality in cooperation with municipalities all over Greece has launched the establishment of shelters for women victims of violence, including victims of trafficking. Currently, 21 shelters are in operation and 3 more are operated by EKKA offering assistance to more than 55 cases from 2012-2014 (1 of them is emergency shelter, in Athens and Thessaloniki). EKKA has cooperation agreements and Memoranda of understanding in place with 3 NGOs to house, protect and assist children in danger and women, victims of violence" in general. The privately funded NGO A21 Campaign in Thessaloniki runs a shelter exclusively for women THB victims. The A21 Campaign and NGO PRAKSIS, both important NGOs partners of the Office, have also opened another emergency shelter in Athens for women victims of trafficking. According to the NR, A21 Campaign offers psycho-social support, psychotherapy, medical care, vocational guidance and legal representation or the facilitation of repatriation. It should be noted that the shelter is provided independently of the cooperation of the victim with the authorities.

In relation to re-integration of victims, there is no evidence to suggest that integration programmes are being implemented by the Greek authorities, thus the gender dimension of this important aspect of victim support and protection cannot be evaluated.

Principle of non-punishment

According to the Anti-Trafficking legislation 4198/2013, article 4 exempts victims of trafficking from punishment for unlawful acts committed as a direct result of being

⁶⁹ Complimentary Telephone conversation with Greek NR, dated 8 March 2016.

⁷⁰ According to the National Rapporteur, his office has agreed with an NGO (A21 Greece) free legal aid for victims of trafficking that will be provided by the law team of the aforementioned NGO. This collaboration is taking place within the priority of the National Rapporteur's Office for the creation of the functional National Referral Mechanism.

subjected to trafficking. At the same time, according to information provided by the NR, “the police report that they have adopted a screening process to ensure that possible victims of trafficking in custody are not deported or sent to migrant detention centers”. At the same however, the TIP report claims that “Greek authorities reportedly arrested and detained trafficking victims for prostitution offences without screening for signs of trafficking” ([TIP Report 2015](#)).

One positive aspect in relation to THB in Greece is that the Greek state is at some level showing zero tolerance towards corruption in THB cases. According to the police there were two cases in 2015 where public officers were involved in trafficking in human beings. One case was at the level of local government and where an official was accused of bribery, producing false documents and distortion of information among other offences, and other case involved a police officer who was accused of involvement in a criminal organization, trafficking, and pimping. There were also other cases in 2013 where the police reported “suspending several corrupt police officers involved in bribery, blackmail, and the exploitation of women, although the women were not confirmed to be trafficking victims” ([TIP Report 2015](#)).

Preventative measures in combating trafficking in human beings

Key Findings:

- A national referral mechanism is in the process of being established
- There is no formal National Action Plan for combating THB leaving all actions with no concrete strategy, with specific targets, budget and indicators towards the elimination of THB

One limitation in Greece is that there is no National Action Plan (NAP) on specific actions, objectives, target groups, results as well as evaluation and specific budget needed on the actions and efforts in combating THB. This puts into question the political will of the Greek Government to preventing and combating THB. The lack of an NAP leaves the responsibility to the National Rapporteur who is in the process in creating a national referral mechanism. It further leaves the responsibility to the discretion of relevant authorities without coordination and specific targets. Despite this, according to the NR, there have been efforts to raise awareness on THB among the general public, as well among frontline professionals dealing with possible cases of THB on victim identification. Further the government of Greece is also taking action to raise awareness among potential victims and more specifically among women victims of violence more generally through the operation of a hotline where (potential) victims can seek assistance. Further the office of the NR has plans to promote an awareness raising campaign among the general public specifically addressing the demand side of THB. However, there is no evidence as to the methods used in order to achieve the above and it is apparent that gender sensitive approaches towards preventing THB is absent.

Some noteworthy examples that are promising in relation to addressing the gender specificities of THB in prevention activities, include a conference in Athens on “Prostitution and Trafficking in Greece” organized by the NR in collaboration with both state authorities and NGOs including the General Secretariat on Gender Equality. Given

the discussions taking place at EU level on the connection between prostitution and THB, this event was timely and the focus was on women in prostitution and how the system of prostitution and THB are linked.

Another noteworthy example is the awareness raising festival on modern day slavery entitled “Break the chain”, implemented by the NR. The aim was “to inform and raise awareness to the general public on Human Rights, Immigration, and Human rights Violations with emphasis on THB and modern day slavery and to combine culture and art with awareness raising and social activism”. Despite gender equality not being included in the main aims of the festival, the festival had as its core philosophy demand reduction and human rights education – focusing on sex merchandizing and how it is linked to sex stereotyping - in schools targeting young people. The campaign was successful in that approximately 3.000 people visited the festival, 80 people participated as speakers, and many musicians, photographers, performers, NGOs and other stakeholders participated. According to the NR the campaign had “a considerable impact in public awareness, since the police reported a rise in the number of telephone calls received from people denouncing cases of potential THB victims”.

In relation to demand reduction, Greece has criminalized the use of services from victims of trafficking. More specifically paragraph 3 of Article 323A of the penal code states that “Whoever knowingly accepts the labour of the person, who is subjected to the conditions described in paragraphs 1 and 2, or the proceeds from the begging of that person, shall be punished with imprisonment of at least six months”⁷¹. Furthermore, according to paragraph 3 of article 351 of the penal code, “Whoever knowingly acts indecently with a person who is under the conditions described in paragraphs 1 and 2 shall be punished with imprisonment of at least six months”⁷². However, as in the case of Cyprus, there is no evidence of case law demonstrating the effectiveness of the criminalization provision.

Conclusion

Since the transposition of the EC directive, Greece is indeed making more serious efforts to combat THB by adopting a more comprehensive approach towards the phenomenon. It is evident that with the creation of the National Rapporteur, Greece has taken more concrete steps in this direction. However, all the information received from Greece shows that the gender dimension is not taken into account at any level and legislation, policy and action on THB are largely gender blind and ignore the gender specificities of THB and the different experiences and needs of women and men, treating victims of THB as a homogenous group. Official indicators for the identification of victims need to be developed with a robust gender approach, and this should be accompanied by systematic training of the police and other frontline officers in a position to identify victims of THB. NGO as well as state shelters should also be in a position to offer adequate support to victims of THB by taking into account the gender dimensions of the different forms of trafficking and their short- and long-term impact on victims. Furthermore, police needs

⁷¹ Penal Code, article 323A, paragraph 3, authors translation. Όποιος εν γνώσει δέχεται την εργασία προσώπου, το οποίο τελεί υπό τις συνθήκες που περιγράφονται στις παραγράφους 1 και 2, ή τα έσοδα από την επαιτεία του προσώπου αυτού, τιμωρείται με φυλάκιση τουλάχιστον έξι μηνών”.

⁷² Penal Code, article 351, paragraph 3, authors translation. Όποιος εν γνώσει ενεργεί ασελή πράξη με πρόσωπο το οποίο τελεί υπό τις συνθήκες που περιγράφονται στις παραγράφους 1 και 2 τιμωρείται με φυλάκιση τουλάχιστον έξι μηνών

to be more proactive in identifying other forms of exploitation including the highly gendered sector of domestic work. A gender perspective would address changes in gender blind institutional rules, procedures, mind-sets and practice at all levels and in all spheres of society, among women and men. This is to ensure actual equality of access and effective results – real and substantive equality which does not seem to be the case in Greece.

Bibliography

European and International Reports

Anderson, Bridget and Julia O'Connell Davidson (2003) *Is Trafficking in Human Beings Demand Driven? A MultiCountry Pilot Study*. Geneva: [pdf], International Organization of Migration. Available at: https://www.compas.ox.ac.uk/media/ER-2004-Trafficking_Demand_Driven_IOM.pdf

D'Cunha, J. (2002). *Trafficking in persons: a gender and rights perspective* [pdf]. New York: Expert Group Meeting on "Trafficking in women and girls". Available at: <http://www.un.org/womenwatch/daw/egm/trafficking2002/reports/EP-DCunha.PDF> [Accessed 21 March 2016].

Council of Europe. (2014). *Report on Prostitution, trafficking and modern slavery in Europe* [pdf]. Available at: <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbncveG1sL1hSZWYvWDJlURXLWV4dHIuYXNwP2ZpbGVpZD0yMDU1OSZsYW5nPWVu&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTIwNTU5>

Council of European Union (2005), *EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings* (2005/C 311/01). Available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XG1209\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XG1209(01)&from=EN) [Accessed 10 March 2016]

European Commission. (June 2012). *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* [pdf]. Brussels. Available at: http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf [Accessed 21 March 2016].

Europol. (February 2016). *Situation Report on Trafficking in human Beings in the EU* [PDF]. Hague. Available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational_report_trafficking_in_human_beings-europol.pdf

European Commission. Trafficking in Human Beings [2013]. Eurostat Methodologies and Working Papers, Luxembourg [pdf]. Available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_human_beings_-_dghome-eurostat_en_1.pdf

Eurostat, Statistical Working Papers: Trafficking in Human Beings. European Union, Luxembourg, 2014 [pdf]. Available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20141017_working_paper_on_statistics_on_trafficking_in_human_beings_en.pdf

Group of Experts on Action against Trafficking in Human Beings, GRETA [2015]. *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Cyprus*, Second Evaluation Report. [online] Available at:

http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/2nd_eval_round/GRETA_2015_20_FGR_CYP_w_cmnts_en.pdf [Accessed 21 March 2016]

United Nations, Convention on the Elimination of All Forms of Discrimination against Women CEDAW [2004] *Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women on Cyprus*. [online] Available at: <http://www.un.org/womenwatch/daw/cedaw/35sess.htm> [Accessed 20 March 2016]

U.S Department of State. [July 2015] *Trafficking in Persons Report* [pdf]. Available at: <http://www.state.gov/documents/organization/243559.pdf> [Accessed 19 March 2016]

U.S Department of State. [July 2015] *Trafficking in Persons Report* [pdf]. Available at: <http://www.state.gov/documents/organization/243558.pdf> [Accessed 19 March 2016]

Walby, S, et al. 2016. *Study on the gender dimension of trafficking in human beings*. European Commission. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings_final_report.pdf

Websites

ec.europa.eu/anti-trafficking/content/nip/Greece [2012], European's Commission official website on General Information on Greece. [online] Available at: <https://ec.europa.eu/anti-trafficking/content/nip/Greece#1> [Accessed 21 March 2016].

ec.europa.eu/anti-trafficking/content/nip/Cyprus [2012], European's Commission official website on General Information on Cyprus. [online] Available at: <https://ec.europa.eu/anti-trafficking/content/nip/Greece#1> [Accessed 21 March 2016].

Legislation

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities.

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

Law Number 3064, Greece

Law Number. 3875, Greece

Prevention and Combating of Trafficking and Exploitation of Persons and the Protection of Victims, Law 60(I)/2014

Penal Code (2013), Articles 323 A and 351 Π. Greece

Books

Agathangelou, M. A., Christodoulou, J., Zobnina, A., Kambouri, N., Parsanoglou, D., Touri, V., Butkeviciute, R., Masalskiene, D., Alexanian, A., Gutierrez, S. L., and I Casals, C. M. (2015). *I thought I was Applying as a Care Giver: Trafficking in Women for Labour Exploitation*. University of Nicosia Press, 2015.

Anthias Floya, Maria Kontos and Mirjana Morokvasic-Müller, *Paradoxes of Integration: Female Migrants in Europe*. Dordrecht: Springer, 2012.

Mediterranean Institute of Gender Studies. [2007] *Mapping the realities of Trafficking in Women for Sexual Exploitation in Cyprus* [pdf]. Nicosia. Available at http://www.meditgenderstudies.org/wp-content/uploads/migs-trafficking-report_final_711.pdf

Media Reports

Andreaou., E. (2015) Sham-marriage brides the latest trafficking victims. *Cyprus Mail Newspaper* [Online]. Available at <http://cyprus-mail.com/2016/02/18/police-investigate-sham-marriage-claim/> [Accessed 15 March 2016].

Psillides., S. (2014) 'Aphrodite's Temple' trial to go ahead despite threats of revelations. *Cyprus Mail Newspaper* [Online]. Available at <http://cyprus-mail.com/2014/10/04/aphrodites-temple-trial-to-go-ahead-despite-threats-of-revelations/>

Court Decisions

European Court of Human Rights (ECHR), Case of *Ranchev VS Cyprus and Russia* (Application No. 25965/04), Judgment, Final 10 May 2010. Available at: https://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/CAR_Serbia/ECtHR%20Judgements/English/RANTSEV%20v%20CYPRUS%20%20RUSSIA%20-%20ECHR%20Judgment%20_English_.pdf

Other

Cyprus Statistical Service, *Demographic Report 2014*, Available at: http://www.mof.gov.cy/mof/cystat/statistics.nsf/populationcondition_21main_en/populationcondition_21main_en?OpenForm&sub=1&sel=4 [Accessed 18 March 2016]

Ministry of Interior, Civil Registry And Migration Department , Contract of Emplymenr. Available at: [http://www.moi.gov.cy/moi/crmd/crmd.nsf/447C9F246384E0F0C2257D230031D0C9/\\$file/DOMESTIC%20WORKER%20ContractOfEmploymentEN.pdf](http://www.moi.gov.cy/moi/crmd/crmd.nsf/447C9F246384E0F0C2257D230031D0C9/$file/DOMESTIC%20WORKER%20ContractOfEmploymentEN.pdf) [Accessed 10 March 2016]

National Action Plan, on Combating Trafficking in Human Beings, Cyprus 2013-2015

Position of the Commissioner for Administration and Human Rights as National Independent Authority, in relation to the undercover collaborators used by the Police during the prosecution and combating trafficking in persons for exploitation, October 2015.

ANNEX 3

Implementation of Directive 2011/36/EU from a gender perspective in Finland

**Research paper
by Venla Roth**

Abstract

Several international and regional legal instruments have been adopted against trafficking in human beings. The implementation of these instruments has, however, proved to be challenging all around the world. Perhaps, the most serious challenge of the current anti-trafficking strategies and activities is the large disparity between the estimated number and the actual amount of identified and assisted victims of human trafficking.

The identification of trafficking is of crucial importance: without proper identification, the bottom easily drops out of the other counter trafficking efforts, too. This paper seeks to analyse the reasons why the counter trafficking efforts have been so ineffective from a gender perspective.

The author argues that the difficulties in counteracting human trafficking especially for the purpose of sexual exploitation may be explained by factors such as the legal history on prostitution and the continuum of violence against women. The difficulties can also be found from the politics of prostitution and the complexity of the legal definition of human trafficking, as well as the lack of a human rights-based approach to human trafficking. Finally, the author presents some recommendations for improvement.

AUTHOR

Dr Venla Roth works as an advisor in human trafficking matters in the Office of the Non-Discrimination Ombudsman/National Rapporteur on Trafficking Human Beings in Finland. She graduated as a Doctor of Laws from the University of Turku on the subject of human rights impacts of the action against human trafficking. Her dissertation "Defining Human Trafficking and Identifying its Victims: A Study on the impact and future challenges of International, European and Finnish legal responses to prostitution-related trafficking" has been published by Martinus Nijhoff Publishers in 2012. Roth was a member of the Group of Experts on Trafficking in Human Beings of the European Commission in 2011-2015.

This paper is part of the European Implementation Assessment of the Directive 2011/36/EU (Trafficking in Human Beings) for the Committee on Women's Rights and Gender Equality FEMM, together with other analyses on the same issue.

RESPONSIBLE ADMINISTRATOR

Helmut Werner, Ex-Post Impact Assessment Unit
To contact the Unit, please e-mail EPRS-ExPostImpactAssessment@europarl.europa.eu

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Executive summary

Several international and regional legal instruments have been adopted against trafficking in human beings. In terms of human rights law, these legal instruments are powerful and remarkable achievements, as persons identified as victims of human trafficking are entitled to assistance and protection measures provided by the state. The implementation of these legal instruments has, however, proved to be challenging all around the world. These challenges are manifested by the large disparity firstly between the estimated number and the actual amount of identified and assisted victims of human trafficking and secondly between the estimated trafficking cases and investigated or prosecuted offences.

The identification of human trafficking is of crucial importance: without proper identification, the bottom easily drops out of the other counter trafficking efforts, too. The low number of identified trafficking victims and cases may give the authorities and politicians the impression that human trafficking is a marginal phenomenon, which does not deserve attention. From the individual's point of view, it is of crucial importance that she becomes identified as a victim of human trafficking, as only victims of human trafficking are usually entitled to assistance and protection measures under the law.

This paper discusses the reasons why human trafficking related to sexual exploitation is so difficult to identify and tackle. The paper concentrates on Finland but the author believes that many of the findings can be generalised to other European countries. The author argues that the difficulties in counteracting human trafficking especially for the purpose of sexual exploitation may be explained by various reasons. Firstly, it can be explained by the definition of human trafficking, its relation to prostitution and the inability of the criminal justice system to identify and recognise the psychological dynamics of exploitation.

It was not easy to reach agreement on the definition of human trafficking while negotiating the UN Trafficking Protocol, the first modern international legal instrument against the phenomenon. The most serious disagreements concerned the relationship between human trafficking and prostitution. The definition in the Protocol is a compromise between different views on prostitution. When assessed in legal terms, the definition does not take a stand on the national regulation of pandering or prostitution but it covers in addition to forcing a person into prostitution using violence and deception, more subtle means, namely, abuse of power and a vulnerable position of the victim. The definition is, however, open to interpretation: the question of when the exploitation occurring as part of prostitution or other forms of commercial sex is of such nature that it meets the definition of human trafficking arises whenever possible trafficking victims are encountered.

The criminal justice system seems to be unequipped to deal with the dynamics of exploitation and the psychological means of committing an offence of human trafficking. The author argues that human trafficking is seldom a question of momentary deals but rather a process of exploitation and submission in which the perpetrator gradually deprives the victim of her sexual self-determination, bodily integrity and freedom by humiliating and manipulating the victim and subjecting the victim to his/her will. In reviewing cases of human trafficking for sexual exploitation discovered in Finland, the victims are under the control of the offenders despite leading apparently normal lives. The victims have not realistic possibility of discontinuing the exploitative activity, to protect themselves or to seek help. Experts in psychiatry and traumatisation giving evidence on

the dynamics of exploitation have explained this by various psychological phenomena, which are, in fact, very similar to those of intimate partner violence or other forms of sexual violence and abuse. In order to overcome this problem in victim identification, more attention should be paid to the psychological means of exploitation both in legislation and in practice.

Secondly, the difficulties to tackle human trafficking for the purpose of sexual exploitation can be explained by the legal history: women in prostitution and other fields of commercial sex have always been considered to be threats to society. Prostitution has traditionally been regarded as a problem that first and foremost endangers societal and general interests, such as morality, public health, public order and security. Throughout the modern legal history, prostitution has induced legal responses that seek to control women in prostitution rather than protect them from violence and abuse. This is the case also in Finland.

The anti-human trafficking framework intends to change this way of understanding by introducing assistance and protection measures for the most vulnerable people. One of the most important problem here is, however, that the role of the victim assistance and protection is often marginalised and granted only an instrumental value for the functioning criminal justice system both in the national legislation and in practice. In other words, victim assistance and protection is often dependent on the criminal process and the ability and willingness of the trafficking victim to report what has happened to her. As a consequence, many of the trafficking victims choose not to be identified and referred to the assistance and protection measures. In order to identify more victims, they should be assisted and protected irrespective of their willingness or ability to testify in the criminal proceedings.

Thirdly, it is important to analyse the difficulties to tackle human trafficking from a broader perspective of violence against women, as these difficulties resemble closely the difficulties that the legal system has with regard to other forms of sexual violence. Feminist authors have widely argued that Finnish women, equal, strong and economically independent, are perceived as “responsible selves”: they are easily held responsible for the violence occurred. This “responsibility” seems to be reflected onto sexually exploited victims of human trafficking in the criminal justice system. Victim characteristics (the fact that the person has sold sex), as well as the social and interactional contexts in which the violence occurs (commercial sex) seem to have an emphasised impact on the interpretative frameworks: if the women have contributed to becoming victims by entering prostitution knowingly, they are not credible victims of exploitation in the eyes of the criminal justice system. This kind of behavioural responsibility is not expected from the victims of labour exploitation. The Finnish National Rapporteur on human trafficking, who is an independent public authority, has stated that the counter trafficking efforts in Finland have, in fact, discriminatory impacts on the basis of the victim’s gender.

Moreover, the experiences of the Finnish National Rapporteur suggest that many sexually exploited women and girls identified in Finland suffer from poor societal and economical status or they are otherwise at a risk of becoming excluded in the society due to mental health problems, for example. Foreign victims of human trafficking are often poorly educated, even illiterate, and economically dependent on their male relatives. This kind of structural inequality makes it difficult for the victims themselves to question their status or the violence and exploitation occurred. This inherent vulnerability causes serious problems

for the criminal justice system which is based on an idea of a rational, autonomous and free individual, capable of standing for rights and claim damages.

In addition, countries from which trafficking victims often come from have rather weak social security system, which fails to provide women with sufficient social security against unemployment, long-term sickness or single-parenting. Weak social security combined with a low level of equality between men and women seem to increase the vulnerability of women and girls to human trafficking.

This paper provides with some recommendations which seek to improve the identification of trafficking victims and the prevention of human trafficking. The recommendations seek to strengthen the understanding that victims of human trafficking are right-holders and that human trafficking should be tackled by using various political and legal instruments, such as social and gender policy. In addition, the recommendations seek to contribute to the understanding that the core of the offence of human trafficking is psychological of nature (hence the dynamics of exploitation) and that human trafficking closely resembles other forms of gender-based violence. The recommendations additionally take into account those aspects in the society which contribute to the existence and potential increase of human trafficking for the purpose of sexual exploitation, such as the demand for commercial sex. Finally, the recommendations emphasise that the countries should carefully evaluate the impacts of their counter trafficking efforts from a gender perspective and make amendments to the legislation where needed. The EU institutions have a major role in this process, as the EU has a strong mandate to adopt legislation in this area.

1. Introduction

Human trafficking is considered among the most serious human rights challenges of our time. Only rough estimates of the number of victims of human trafficking in the world can be given. Government sources and various organisations put the global number of victims between half a million and four million each year. It is estimated that in Europe alone, there are hundreds of thousands of victims of human trafficking each year and that ten per cent of them are children. Finland is a country of destination and transit for hundreds of victims annually. Cases of internal trafficking have also been identified in Finland.

As a consequence of international and regional legal instruments, countries have adopted legal measures to counteract human trafficking: human trafficking has been defined by law, the victims of human trafficking can be identified and referred to assistance, granted a reflection period/residence permit and protected against the perpetrators. In addition, the perpetrators can be brought to justice. The law has had an important role in conceptualising human trafficking as a serious crime and in creating a framework to counteract trafficking in human beings. The implementation of these laws has, however, proved to be challenging all around the world.

Perhaps, the most serious challenge of the current anti-human trafficking strategies and activities is the large disparity firstly between the estimated number and the actual amount of identified and assisted victims of human trafficking and secondly between the estimated trafficking cases and investigated/prosecuted offences. Indeed, despite the increasing trend on the global level, the number of identified trafficking victims and cases remains low. The recent statistics in Europe suggest that the number of investigated and prosecuted trafficking offences is modest.⁷³ Although part of this discrepancy may be explained by exaggerated estimations, the studies show that the vast majority of potential trafficking victims and trafficking offences are not identified.⁷⁴

The identification of human trafficking is of crucial importance: without proper identification, the bottom easily drops out of the other counter trafficking efforts, too. The low number of identified trafficking victims and cases may give authorities and politicians the impression that human trafficking is a marginal phenomenon, which does not deserve attention. From the individual's point of view, it is of crucial importance that she becomes identified as a victim of human trafficking, as only victims of human trafficking are usually entitled to assistance and protection measures provided by the state. In the Finnish legal system, being identified as a trafficking victim is even more crucial for sexually exploited victims than for victims of labour exploitation due to their different procedural position in the criminal proceedings.

Human trafficking is a gender-specific phenomenon. Firstly, women and girls become victims of human trafficking more often than men and boys. According to the European Commission, the majority (68%) of the identified victims in the EU are women; 17% are men, 12% are girls and 3% are boys. Almost two third of the victims (62 %) are subjected to sexual exploitation, and the majority of the victims of labour exploitation are also women

⁷³ Eurostat/European Commission 2013 and 2015 <http://ec.europa.eu/eurostat/web/products-statistical-working-papers/-/KS-TC-14-008-1>

⁷⁴ See more on Roth 2012.

and girls.⁷⁵ In addition of the sex industry, women and girls are often exploited in the domestic work and other related sectors, which regulation and supervision are scarce. Often sexual and labour exploitation are connected: women and girls are exploited both sexually and economically.

Secondly, the aspects which make women and girls vulnerable to human trafficking are gendered and related, for example, to the poor level of equality between women and men especially in the countries of origin and the tendency to marginalise and trivialise the issue of violence against women in the destination countries. To explain, trafficking in human beings is often primarily perceived as a problem of illegal immigration, people smuggling and transnational organised crime. This can be illustrated by the fact that in most countries ministries of internal affairs and sections of national security, organised crime or migration have the major role in implementing counter trafficking efforts. They focus primarily on targeting traffickers/smugglers and putting an end to the illegal immigration. Victims of human trafficking are often instrumentalised to that aim.

However, the connection with illegal immigration and transnational organised crime has been questioned and does not always coincide with the reality of human trafficking. Although organised crimes groups can be involved, human trafficking is often carried out by the victim's family members, friends, relatives, boyfriends, husbands and ordinary employers.⁷⁶ This close relationship between the victim and the perpetrator is an instrumental part of the dynamics of human trafficking, which, in fact, resembles that of domestic violence and other forms of gender-based violence, as will be demonstrated in this paper.

In addition, most of the victims identified in the EU are citizens of EU Member States (61%). In other words, about two thirds of the human trafficking in the EU is internal.⁷⁷ Many of the foreign victims have resided and worked legally in the country where they have been identified as victims of human trafficking. Moreover, cases of internal trafficking have been identified in Finland and many other EU countries. For example, the Finnish National Rapporteur on Trafficking in Human Beings, who is an independent monitoring authority, has expressed her concern about the increasing number of sexually exploited trafficking victims of Finnish nationality. The victims are usually girls or young women, who are at risk of exclusion, suffering from mental health problems. Some of the victims, however, have only been too young and full of confidence on the other people and own opportunities in life, and have, therefore, been vulnerable to deception and exploitation (i.e. professional modelling career as a dream). As the system of victim assistance has been established under the Ministry of the Interior and the law has been based on an idea that victims of human trafficking are of foreign origin, the Finnish trafficking victims have been at real risk of falling outside the assistance system.

Perceiving trafficking in human beings primarily as a problem of people smuggling, illegal immigration or transnational organised crime, makes the countries of destination to believe

⁷⁵ Eurostat/European Commission 2013; United Nations Office on Drugs and Crime 2009.

⁷⁶ Coster van Voorhout 2007.

⁷⁷ According to the statistics, the next most common form of abuse is human trafficking for the purpose of labour exploitation (25%). Other purposes includes the organ trade, coercion into criminal activity and trafficking in children (14%). Trafficking in Human Beings Eurostat/European Commission 2013.

that trafficking in human beings would not exist unless brought from outside. This is a part of a process of alienation: human trafficking is not considered as a domestic problem but concerns merely foreign women in prostitution who have often knowingly entered prostitution and are therefore at least partly responsible for the violence occurred. In addition, the demand for sex is created in the destination countries. It is easy for the countries of origin, too, to close their eyes from those aspects in the society, such as inequality and racism (i.e. Roma women), which create opportunities for human trafficking. To counteract human trafficking effectively, the countries should not withdraw their affections or attention from the fact that there are structural aspects in the societies which have an impact on the prevalence and increase of human trafficking.

Third, sexual exploitation has gendered impacts on the victims, their children and life. The majority of sexually exploited trafficking victims identified in Finland have suffered serious, mainly psychological trauma as a result. Medical reports and psychological evaluations of victims in Finland indicate that a multitude of mental health disorders have been diagnosed in victims as a consequence of exploitation, including post-traumatic stress disorder, (severe) depression, anxiety disorder, psychotic episodes, insomnia, panic attacks and severe suicidal tendencies. A significant percentage of the victims have received medical treatment, medication and in many cases long-term therapy to cope with such damage. The damage inflicted is of a lasting nature, and in some cases exploitation has been found to cause a permanent impairment to the victim's mental health and to their ability to take care of their children.⁷⁸ Sexual exploitation is more traumatising than mere labour exploitation, as sexual exploitation seriously violates victim's bodily integrity.

This paper discusses the reasons why human trafficking related to sexual exploitation is so difficult to identify and tackle. The paper concentrates on Finland but the author believes that many of the findings can be generalised to other European countries. First, the author discusses the situation of human trafficking in Finland, the special status of the trafficking victims and the legal protection enjoyed by them, and the points of criticism about the counter trafficking laws and practice. She then discusses the reasons that could explain why efforts against human trafficking have been so ineffective and insufficient. The author argues that the difficulties in counteracting human trafficking especially for the purpose of sexual exploitation may be explained by factors such as the legal history on prostitution, the continuum of violence against women and the fact that the objectionability of violence seems to depend on the context in which it occurs, as well as the politics of prostitution

⁷⁸ National Rapporteur on Trafficking in Human Beings: Report 2014, Assessment of the current state of action against human trafficking and of the fulfilment in criminal of the rights of victims of human trafficking subjected to sexual exploitation. Ombudsman for Minorities 2014. Under the law, the Finnish National Rapporteur a) monitors phenomena relating to human trafficking, the fulfilment of international obligations and the effectiveness of national legislation, b) issues proposals, recommendations, opinions and advice relevant to the fight against human trafficking and to the realisation of the rights of victims, and c) keeps contact with international organisations in human trafficking issues. The National Rapporteur must submit an annual report to the Government and a report every four years to Parliament concerning human trafficking and related phenomena. The National Rapporteur may assist, or appoint a subordinate official to assist, a victim of ethnic discrimination or a possible victim of human trafficking in securing the person's rights or, if necessary, obtain legal assistance for the person for this purpose if she considers that the matter is of considerable importance for preventing ethnic discrimination or for securing the rights of a possible victim of human trafficking.

and the complexity of the legal definition of human trafficking. Finally, the author presents some recommendations for improvement from a gender perspective.

2. From law to practice: state of play

2.1. Law

Trafficking in human beings as such is not a new issue on the international legal agenda. There have been international efforts to combat slave trade and slavery since the 19th century. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations in 1949, obligated the state parties to ban trafficking in women, procuring (pandering) and keeping of brothels.

The disintegration of the Soviet Union and the armed conflicts in the area of the former Yugoslavia in the late 1980s and the early 1990s put human trafficking on the agenda of the international community after a break of many years. This was mainly caused by an increase in immigration within Europe and the organised crime groups that were argued to be behind the phenomenon and that, it was feared, could threaten public order and security in individual countries. The threat of cross-border crime galvanised the international community into closer cooperation. It was felt that the existing international conventions were no longer adequate to combat organised crime and the human trafficking and human smuggling associated with it.

After many years of negotiations, the Convention against Transnational Organized Crime was adopted by the UN in December 2000. The purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively (Article 1). The Convention was supplemented with a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol). The purpose of the Protocol is to prevent and combat trafficking in persons, protect and assist the victims of such trafficking and to promote cooperation among state parties in order to meet those objectives (Article 2). The Protocol applies to the prevention, investigation and prosecution of human trafficking offences when those offences are transnational in nature and involve an organised crime group, and the protection of victims of such offences (Article 4). This framework of criminal justice condemns trafficking as a serious crime but has been criticised for ignoring human rights aspects of the phenomenon.⁷⁹

Agreeing on the definition of human trafficking is the most important achievement of the negotiations leading to the UN Trafficking Protocol. The definition is sought to promote the prevention and identification of human trafficking, assistance and protection of the victims and the bringing of those guilty of human trafficking to justice. The definition covers women, children and men as potential victims of human trafficking and all purposes of human trafficking. The definition incorporated into the UN Trafficking Protocol has since been adopted as the basis for numerous other international and regional

⁷⁹ See e.g. Gallagher 2006.

legal instruments to combat human trafficking, such as those introduced by the European Union and the Council of Europe.

In order to be considered as human trafficking, the criminal activity referred to in the Protocol and instruments based on it must meet the definition of human trafficking. The Trafficking Protocol defines human trafficking using three basic elements: activity, means and purpose. All these criteria have to be fulfilled in order for the offence to constitute human trafficking. It is important to note that the consent of the victim is irrelevant if any of the means listed in the Protocol have been used for acquiring it. If a child has been recruited, transported, transferred, harboured or received for the purpose of exploitation, the child in question is always regarded as having been trafficked even if the means listed in the Protocol have not been used. A child is defined as any person under 18 years of age. Under the UN Protocol on Trafficking in Persons, human trafficking means:

1. recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of exploitation (activity/method);
2. the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (means);
3. Activity regarded as exploitation includes, at minimum, exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, and the removal of organs (purpose).

Whereas the UN Trafficking Protocol included only discretionary provisions on victim protection and assistance, the later documents, such as the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005, pays more attention to the rights and needs of the trafficking victims. The Convention is a human rights instrument and it recognises that trafficking in human beings constitutes a human rights violation. It provides mandatory provisions as regards assistance and protection of trafficking victims but the provisions are essentially connected with the improved criminal justice responses to trafficking.

The Council of Europe Trafficking Convention is the first international legal instrument, which contains a provision on victim identification (Article 10). The Convention recognises that a correct identification of victims is a prerequisite for counter trafficking efforts: a failure to identify the victims probably leads not only to denial of a victim's rights but also to unsuccessful criminal proceedings. The "reasonable grounds to believe that a person has been victim of trafficking in human beings" create sufficient reason not to remove the person in question from the territory of the receiving state. Until the completion of the identification process, the person in question is to be provided with the necessary assistance measures provided for in Article 12 and issued with a reflection period and a residence permit under the conditions provided for in Articles 13 and 14.

The Directive of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (the Human Trafficking Directive) stipulates that Member States must take the necessary measures to

ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to a human trafficking offence (Article 11). The assistance and support shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered. Article 12 states that Member States must ensure that victims of trafficking in human beings have access to legal counselling and legal representation, including for the purpose of claiming compensation. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment. Separate provisions on assistance and support for child victims with regard to their individual needs are laid down in Article 14.

In Finland, it was the disintegration of the Soviet Union in the 1990s which changed the field of prostitution and procuring. Procuring of foreign women became more international, organised, professional and profit-oriented in nature.⁸⁰ According to researchers and the police, procurers had started using different types of pressure and coercion methods for restricting the freedom of movement of the women in prostitution and for preventing them from leaving prostitution. The position of the women in procuring had become substantially weaker: the women were forced to surrender an increasing proportion of their income to procurers and their negotiating position in matters concerning the rules and conditions of prostitution had weakened. Telephone operators made the controlling of women easier as it allowed the procurers to manage the operations from abroad and to expand them throughout the country.

Even though the field of prostitution and procuring had changed, it was long thought that human trafficking is not a problem in Finland. It was believed that foreign women in prostitution entering Finland were "fully aware of the nature and terms and conditions of their work": the belief was that foreign women were not smuggled into Finland "against their will" and that it was rather a question of procuring benefiting both the women and their procurers. The chances of tackling organised procuring using the Criminal Code were questioned, however, and in a number of studies it was recommended that a separate human trafficking provision should be added to the Criminal Code.⁸¹

The ratification of the UN Trafficking Protocol and the adoption of the EU framework decision on combating trafficking in human beings in 2002 prompted the Ministry of Justice to start the preparation of human trafficking provisions and other necessary statutory changes in Finland, so that the combating of prostitution, procuring and human trafficking could be made more effective. In addition to the provisions on human trafficking, the statutory definition of aggravated procuring was added to the Criminal Code, giving pre-trial investigation authorities a wide range of coercive powers when investigating procuring offences. Furthermore, an act prohibiting the abuse of victims of

⁸⁰ Lehti and Aromaa 2002; Leskinen 2002.

⁸¹ Kimpimäki 1997; Pärssinen 2003.

prostitution entered into force in October 2006. The act does not prohibit all purchases of sex as it defines the victims of procuring and human trafficking as victims of the sex trade. Under chapter 25, section 3, of the Criminal Code of Finland (39/1889), a person who

1. by abusing the dependent status or vulnerable state of another person or by coercing another person,
2. by deceiving another person or by abusing a mistake made by that person,
3. by paying remuneration to a person who has control over another person, or
4. by accepting such remuneration

takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20, section 9, subsection 1, paragraph 1, (procuring) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues shall be punished for trafficking in human beings.

Under chapter 25, section 3a of the Criminal Code, if in trafficking in human beings, 1) violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3; 2) grievous bodily harm, a serious illness, or a state of mortal danger or comparable particularly grave suffering is intentionally or through gross negligence inflicted on another person; 3) the offence has been committed against a child younger than 18 years of age or against a person whose capacity to defend himself or herself has been substantially diminished; or 4) the offence has been committed within the framework of a criminal organisation referred to in chapter 17, section 1a, subsection 4, and the offence is aggravated also when considering as a whole, the offender shall be punished for aggravated trafficking in human beings. A person guilty of trafficking in human beings shall be sentenced to imprisonment for a minimum of four months and a maximum of six years and a person guilty of aggravated trafficking in human beings to imprisonment for a minimum of two and a maximum of ten years. The primary object of protection in the penal provisions is freedom.

The adoption of the international and European obligations led to the amendments of the laws under which the victims of human trafficking can now receive assistance through a system for victim assistance in Finland. Under the Act on the Reception of Persons applying for International Protection (746/2011), services and other support measures can be provided to person who can, considering the circumstances, be deemed to be a victim of human trafficking or in need of special assistance in connection with an investigation of a human trafficking offence. The purpose of the assistance is to take care of the victims of human trafficking, ensure their means of support, help them to recover and to support their functional capacity. The assistance system for victims of human trafficking provides the victims with services tailored to their needs. The assistance may include housing arrangements, social and health care services, legal advice and assistance, security arrangements, supported return and other support measures required by the victim. The Child Welfare Act may also be applied to minor victims of human trafficking and the children of the victims. The aim of the assistance is to help the victims to recover, integrate into Finnish society or help them to return safely to their home countries. This far around 400 victims have been assisted by the system of victim assistance of Finland.

Amendments to the Aliens Act (301/2004) prompted by international obligations have also improved the status of victims of human trafficking residing illegally in Finland.⁸² Provisions allowing the granting of a reflection period and the issuing of a temporary or continuous residence permit to victims of human trafficking have been added to the Aliens Act. During the reflection period, the victim of human trafficking must decide whether he/she will cooperate with the authorities so that those suspected of carrying out the human trafficking can be apprehended. The victim of human trafficking may reside in the country legally during the reflection period and may not be removed from the country during the period. A victim of human trafficking is issued with a temporary residence permit if the residence of the victim in Finland is justified on the grounds of the pre-trial investigation of the human trafficking offence or court proceedings, if the victim is prepared to cooperate with the authorities so that those suspected of human trafficking can be apprehended and if the victim no longer has any ties with those suspected of human trafficking. The residence permit may be issued on a continuous basis and regardless of whether the requirements referred to above are met, if the victim is in a particularly vulnerable position. In such cases, too, the requirement is that the victim has broken all ties with those suspected of human trafficking.

2.2. Practice

When the first plan of action against human trafficking was being prepared in Finland in the middle of the last decade, the impression was that in Finland, too, human trafficking was mainly a question of prostitution and other types of sexual exploitation.⁸³ Unlike in other EU Member States, however, cases of human trafficking identified in Finland mainly concern labour exploitation. As many as 3 out of 4 clients of the assistance system for victims of human trafficking, established in 2007, are victims of human trafficking for the purpose of labour exploitation. Another significant group of victims consists of those who have become victims of sexual exploitation abroad, mainly in the Mediterranean, and who seek asylum in Finland. The situation begs the question of whether there is actually very little trafficking for sexual exploitation in Finland or whether such cases fail to be identified, and if so, why?

In the first comprehensive report Eurojust, the European Union's judicial cooperation unit, has noticed that criminal activities with the characteristics of human trafficking are often investigated as offences other than human trafficking in many Member States of the European Union.⁸⁴ According to the report, an important reason for this is the complexity of the definition of human trafficking and the fact that the main players of the criminal justice system do not have a clear idea of what human trafficking actually means and what the differences between human trafficking and offences associated with it (such as

⁸² These amendments are based on the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with competent authorities.

⁸³ Ministry for Foreign Affairs of Finland 2005.

⁸⁴ De Jonge 2005.

procuring) are. Applying the statutory definition when considering the dependent position (abuse of power) and vulnerability of the victim is seen as particularly difficult.

This is indeed the case also in Finland. The first evidence-based report of the Finnish National Rapporteur on Trafficking in Human Beings, who is an independent public authority under the law, was issued to the Parliament of Finland in 2010. The report is based on the trafficking-related procuring cases heard by courts in 2004 – 2009.⁸⁵ The report shows that many of the criminal cases investigated as procuring also contained features of human trafficking. According to the material used as a basis for the report, procurers often violate the rights of women in prostitution and control them using a variety of means. Violations of individuals' legal rights are not, however, deemed to meet the statutory definition of the means referred to in the penal provisions on human trafficking. Neither are such violations of legal rights, serious violations of sexual self-determination or violations of freedom or bodily integrity separately investigated as other offences on persons, such as extortion or abuse.

In the 2014 report, the Finnish National Rapporteur stated there is more human trafficking taking place in Finland than has hitherto been identified. Judging by the material reviewed (cases of procuring and human trafficking between 2009 and summer 2013), cases of sexual exploitation with characteristics of human trafficking are mainly treated in investigation, prosecution and conviction as procuring offences. The Rapporteur noted that this non-identification in the criminal proceedings clearly has an impact on the assistance system: the number of victims of human trafficking objected to sexual exploitation in Finland who are referred to the assistance system has remained low. In the worst case the potential victims of human trafficking are removed from the country without being offered any assistance at all. The National Rapporteur noted that action against human trafficking may have discriminatory impacts on the basis of victim's gender.

Furthermore, the National Rapporteur noted that the decisions made in the assistance system indicate that, even for a person accepted into the system, assistance is often terminated when a criminal investigation stalls, an offence other than human trafficking is selected in the investigation, or no conviction is achieved for a human trafficking offence in the matter. The National Rapporteur also noted that asylum seekers in Finland who have become victims of human trafficking in another country are in a problematic situation. The discovery of indications of human trafficking may, in an application of the Dublin procedure, lead to the termination of the investigation process and/or the return of the victim to the country where he or she first became a victim of human trafficking.

Although countries may have other criteria for victim identification, assistance and protection, as well, the definition of human trafficking in the criminal law and its application and interpretation in the criminal proceedings has become an important factor to determine what trafficking is all about and who victims of human trafficking are. The criminal law-based definition of human trafficking and its application/interpretation in the criminal proceedings seem to have a great impact on who are considered to have a right to receive assistance and protection under the national law. The same applies to the process of issuing a residence permit. The law enforcement, prosecution and judiciary seem to play a decisive role beyond the criminal justice system.

⁸⁵ Ombudsman for Minorities/Finnish National rapporteur on trafficking in Human Beings 2010.

3. Analysis and Discussion

3.1. Definition of Human Trafficking, Its Relation to Prostitution and the Dynamics of Exploitation

While negotiating the UN Trafficking Protocol, it was not easy to reach agreement on the definition of human trafficking. The most serious disagreements concerned the relationship between human trafficking and prostitution. The negotiators were roughly split into two main groups: abolitionists and libertarians (those supporting the legalisation/decriminalisation of prostitution). Abolitionists defended the provisions contained in the Convention on Trafficking in Persons adopted by the UN in 1949 and referred to above under which all prostitution is objectionable and that no distinction can be made between human trafficking and different forms of prostitution (forced prostitution or other types of prostitution). In short, abolitionists are of the view that all prostitution is violence and slavery that is not in accordance with human dignity. In their opinion, women must be protected against all exploitation and that a society accepting or condoning prostitution cannot be equal.

According to the libertarians, prostitution may also be on a voluntary basis and be carried out as sex work. In this view, a distinction must be made between these two concepts on the one hand and forced prostitution and human trafficking on the other. Libertarians are of the view that voluntary prostitution carried out by adult women and men cannot be prohibited. According to the libertarians, prostitution as such does not violate against human dignity and the free will of individuals must be respected. They believe that defining prostitution as work would lessen the stigma attached to it and, consequently, make prostitutes less marginalised in society. Libertarians are of the view that legalising prostitution and recognising it as a form of employment would protect prostitutes against violence and exploitation better than the approach supported by abolitionists.⁸⁶

The definition of human trafficking incorporated in the UN Trafficking Protocol is a compromise. When assessed in legal terms, it does not take a stand on the national regulation of procuring or prostitution. According to the Interpretative Notes to the Protocol, the Protocol only applies to exploitation for the purposes of prostitution and other sexual exploitation in connection with the regulation of human trafficking.⁸⁷ The Protocol does not define exploitation for the purpose of prostitution or other sexual exploitation and thus, according to the Interpretative Notes, the Protocol does not have a bearing on how the State Parties regulate prostitution in their national legislation.

On the other hand, however, the consent of the victim is regarded irrelevant if any of the *means* listed in the definition have been used for acquiring it. This means that it may also be a case of human trafficking when the perpetrator has persuaded the victim to sell sex by using the inappropriate means referred to in the definition, even if the victim had originally consented to prostitution. In terms of the means used, the definition of human trafficking covers in addition to forcing a person into prostitution using violence and deception, *abuse of power and the exploitation of the vulnerable position of the victim*. However, according to the Interpretative Notes to the Protocol, it is only a question of exploiting the

⁸⁶ Agustin 2004; Balos 2004; Barry 1984; Doezeema 2001; Farley 2004; MacKinnon 1993; Pheterson 1989.

⁸⁷ Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions.

vulnerable position of the victim when the victim has no real or acceptable alternatives to submitting to exploitation.

When assessed in legal terms, the definition of human trafficking contained in the UN Trafficking Protocol and its relationship with prostitution are open to interpretation. It is clear that not all prostitution is human trafficking. However, the question is: when is the exploitation occurring as part of prostitution of such nature that it meets the definition of human trafficking in international law or the statutory definition of human trafficking in the national criminal law?

Stereotypical situations in which the victim of human trafficking has been persuaded to sell sex using violent means or in which the victim has been deceived as to the nature of the work easily fit the definition of human trafficking. In such situations, the victim has believed that she would be able to work as a model, waitress or a housemaid or in other similar professions. However, the perpetrators have then forced the victim into prostitution or other commercial sex using violent means or deprived the victim of her freedom.

According to studies on the topic, however, a large proportion of the victims of human trafficking subjected to sexual exploitation have knowingly entered prostitution and some of them have also sold sex before and some of them continue to sell sex after the criminal procedure.⁸⁸ In these situations, the means concerning the abuse of power and the exploitation of the vulnerable position of the victim could be useful. They have, however, proved difficult to apply and interpret in the criminal procedure: when is the victim so vulnerable or so dependent on the perpetrator that it is a question of human trafficking? In criminal law, one problem is to determine when the victim was unable to act in any other manner and when the perpetrator should have understood this (requirement for intent, *mens rea*).

Consequently, the debate on the nature of prostitution and its relation to human trafficking continues on the national level and has an impact on who is considered as a victim of human trafficking: where the legal boundaries between so-called voluntary and involuntary prostitution are to be drawn? Who are protected under the law and who fall outside of the protection schemes? The question arises whenever possible victims of human trafficking are encountered, for example, in the criminal procedure and when victims of human trafficking are identified, referred to the assistance system or granted a residence permit.

Position of women involved in commercial sex seems to be challenging for the legal systems around the world. International studies show that women in prostitution are particularly vulnerable to sexual and physical violence but that it is difficult for legal systems to identify violence and react to it in a manner that safeguards the victims' rights.⁸⁹ In Finland, too, it has proved difficult to identify violence in commercial sex. Threat of violence and other pressure and the submissive status are often deemed to be a natural part of commercial sex, particularly when it is question of a foreign woman. The legal practice concerning human trafficking seems to represent a view that persons that have opted for commercial sex are already aware of the risk of becoming subjected to violence. If the risks are realised, the women are themselves responsible for the consequences. The context of the violence and who is targeted for violence thus seem to determine how unacceptable the violence is. These women are rarely seen as victims of human trafficking

⁸⁸ Kligman and Limoncelli 2005; Skilbrei and Tveit 2005; Vocks and Nijboer 2000.

⁸⁹ O'Connell Davidson 1998.

or any other offence.⁹⁰ It seems that victims of human trafficking are expected to be innocent, passive and helpless. If they have contributed to becoming victims by initially agreeing to engage commercial sex, they are not credible victims of human trafficking in the eyes of the justice system and may therefore find it difficult to seek or receive assistance and support.⁹¹

The criminal justice system seems to be unequipped to deal with the dynamics of exploitation. As human trafficking is not a question of momentary deals but a process of exploitation and submission in which the perpetrator often gradually deprives the victim of her (sexual) self-determination, bodily integrity and freedom by humiliating and manipulating the victim and subjecting the victim to his/her will, it is often difficult for the victims themselves to identify the actual moment when they were no longer undertaking the activity voluntarily and the moment when they simply caved in to the offender's control. It is a key feature of the dynamics of subjugation that the victims never even consider that they might be able to negotiate with the offender concerning their situation. The victims see no possibility of protecting themselves against exploitation or of escaping from the offender. The Finnish National Rapporteur describes the dynamics of exploitation as follows:

"[i]n reviewing cases of human trafficking for sexual exploitation discovered in Finland, one is struck by a conspicuous characteristic found in all of them: the victims seem to be completely under the control of the offenders despite leading apparently normal lives. They move among other people, use public transport, are not confined to their accommodation and indeed often live in their own homes; yet they have no realistic possibility of discontinuing the exploitative activity, to protect themselves from exploitation or to seek help for their plight. It is often difficult for outsiders to identify or comprehend such complete absence of self-determination, even though the dynamics of sexual exploitation are very similar to those of intimate partner violence or sexual exploitation/violence generally. The characteristics that enable the offender to exploit the victim are usually not discernible by an objective outside observer. Human trafficking for the purpose of sexual exploitation is a process of depriving victims of their right of self-determination and bodily integrity and subjugating them so that the victims gradually submit. It is often difficult for the victims themselves to identify the actual moment when they were no longer undertaking the activity voluntarily and the moment when they simply caved in to the offender's control. It is a key feature of the dynamics of subjugation that the victims never even consider that they might be able to negotiate with the offender concerning their situation. The victims see no possibility of protecting themselves against exploitation or of escaping from the offender. Exploitation establishes a hierarchy of power between the offender and the victim, with the offender possessing all the power, even over matters concerning the victim. There are many factors that facilitate this. Experts in psychiatry and traumatised giving evidence on the dynamics of exploitation at trials describe the submission of the victim as evolving for instance as a result of the manipulation of the victim by the offender. The manipulator emphasizes his position in relation to the victim, although initially he may ingratiate himself and appeal to the victim in ways that are not normal. Gradually, the manipulation becomes belittling, oppressive, threatening and sometimes violent. The offender manipulates the victim into believing that the victim herself is responsible for the exploitation. The victim then believes that she has brought the exploitation on herself, and the sense of guilt feeds her shame. Shame and guilt are what eventually silence victims: they are often silent and do not talk to anyone about what has happened to them, possibly not even in psychiatric care. A victim's mind develops various survival mechanisms in

⁹⁰ See also Roth 2007.

⁹¹ See also on victims of other sexual violence Honkatukia 2011.

order to cope with the unbearable emotional state brought on by the exploitation. The victim establishes a parallel reality of sorts, attempting to deal with the experiences that have fractured her mind. The victim may block out memories, numb her mind or detach herself from unbearable emotional states. It is also characteristic of the dynamics of exploitation that the victim exposes herself to new exploitation situations. This phenomenon has been clinically verified in various cases of abuse and exploitation, including domestic violence and sexual abuse of children. By doing so, the victim is attempting to cope with traumatising memories and bad experiences in the belief that the new situation might end more favourably. She seeks a corrective experience and in doing so may develop a compulsion to repeat the trauma. While this is ultimately a survival technique in which the victim's mind seeks to control the traumatic experience, it will lead to serious psychological trauma whose symptoms will worsen as the exploitation continues. Regardless of such trauma, the exploitation may last for a long time.”⁹²

As the control of a victim can and often does emerge through the use of psychological means, more attention should be paid to the dynamics of exploitation and the subtle means of exploitation both in laws and their application/interpretation. In addition, more training needs to be directed at the law enforcement, prosecution services and judiciary on the dynamics of sexual exploitation and violence. It is important to understand the dynamics of exploitation also because the mental consequences of exploitation for the victim in order to succeed in the criminal proceedings. This should be taken into account in criminal investigations and at trials by creating an environment conducive to the victim feeling safe enough to describe what happened to her. Furthermore, it is important to understand the dynamics of exploitation in order to be able to refer the victims to the kind of assistance and treatment that she needs for recovery.

3.2. Lack of a Human Rights-Based Approach to Human Trafficking: Prosecution over Protection

One of the reasons that may explain the difficulty to tackle human trafficking for sexual exploitation is historical: women in prostitution and commercial sex have always been considered to be threats to society. Prostitution has traditionally been regarded as a problem that first and foremost endangers the societal and general interests, such as morality, public health, public order and security. Throughout the modern legal history, prostitution has induced legal responses that seek to control women in prostitution rather than protect them from violence and abuse. The control has taken various forms: prostitution has been criminalised, women in prostitution have been obligated to undergo regular medical examinations in order to prevent the spread of venereal diseases, and they have been controlled through the supervision of vagrants.

When the number of foreign women in prostitution in Finland increased in the 1990s, prostitution was associated with organised crime. Prostitution became primarily a matter involving foreigners and security. Attempts were made to control prostitution by making the purchasing and selling of sex in public places a punishable act (section 7 of the Public Order Act) and by adding a provision to the Aliens Act (section 148), which made it easier to remove foreign prostitutes from the country. Both legal amendments have been heavily criticised by the NGOs for making people in prostitution more vulnerable to exploitation

⁹² The Finnish National Rapporteur on Trafficking in Human Beings 2014, pp. 108-110.

and violence from the side of sex-buyers and the procurers/traffickers. It should be additionally noted that in comparison with Finland, in the other Nordic countries prostitution has more frequently been identified as an issue which concerns equality and human rights.

The anti-trafficking framework intends to change this way of dealing with the issue by introducing assistance and protection measures. It seems, however, that it fails to make use of the opportunities to protect the most vulnerable people. The context of criminal justice system, identifying the prosecution of traffickers and the intensification of cross-border cooperation among the law enforcement authorities as its main objectives carries a risk of ignoring the fact that victims of human trafficking are, in fact, human beings, who deserve and need protection irrespective of their willingness or ability to cooperate in the criminal proceedings. The tendency that the victims have to deserve the assistance and protection measures is certainly not in line with the human rights-based approach to human trafficking.

While drafting international and European legal instruments on human trafficking, states probably believed that trafficked persons are waiting for being rescued out of the hands of the traffickers and, thus, will gratefully accept the help of the authorities who render them a hungered-for victim status and provide them with services. This understanding has proved to be too simplistic in many of the countries that struggle with the problem arising from the low number of identified victims of human trafficking. One of the most important problems here is that the role of victim assistance and protection is often marginalised and granted an instrumental value for the functioning criminal justice system. In order to receive assistance and protection, victims of human trafficking are required to cooperate with the law enforcement, prosecution services and judiciary. In other words, victim assistance and protection is, in practice, often dependent on the criminal process and the ability and willingness of the trafficking victim to report what has happened to her. This follows from the understanding that trafficking is primarily a problem of illegal immigration and transnational organised crime, threatening state sovereignty, rather than an issue of human rights, human dignity and equality between women and men.

It should be kept in mind that the criminal justice system starts with an assumption of a rational, autonomous and free individual, who has a power and ability to claim her rights in the criminal proceedings. The law on sexual offences, for example, protects sexual self-determination/sexual autonomy. The right has been violated if the litigant has not consented to the sexual relation or act. The litigant has in these circumstances a responsibility to prove that the relation or act has been committed against the litigant's will. Sometimes victims of human trafficking, however, have lived under the (male) domination and control for a long time, perhaps their whole life. Consequently, they do not necessarily have that kind of a legal subjectivity, which is often imperative for successful criminal proceedings. This makes it difficult, even impossible, for the victims to claim rights. They, thus, do not necessarily adopt a self-image as a victim of a crime, let alone of human trafficking. In addition, the perpetrator can be close to the victim, which makes it even more difficult for her to claim rights in the criminal proceedings.

Furthermore, the criminal proceedings can end with a termination of investigation, an acquittal or a sentence for another offence than human trafficking even when the victim has been willing to testify. In individual cases, this can lead to the termination of assistance

and protection, as well, and to the removal from the country. Often this means even greater risk for victims and their families, as the victims has had a courage and ability to stand for her rights against the perpetrator. The fear of retaliation is real and well-founded especially when organised crime is involved. In fact, it seems that many of the trafficking victims choose not to be identified and referred to the assistance measures as the trafficking framework does not offer the trafficked persons sufficient certainty of and guarantees for the future.

Traffickers need to be brought to justice but the victims of exploitation should more often be seen as right-holders, not only as witnesses of a crime and as tools for the functioning criminal justice system. The current situation should be improved by making use of the full potential of the trafficking framework and by balancing protection and prosecution. This can be done in numerous ways but it seems that one of the most important practical measures is to transfer some of the power to determine what human trafficking is and who are assisted and protected from the criminal justice system to the social and health care workers, in other words to those responsible for assistance. The same applies to the migration services, which should be able to issue a residence permit on the basis of humanitarian reasons. The tendency to see the law enforcement as an only competent authority to identify trafficking victims and to decide who are eligible (and how long) to assistance and protection under the law seriously hampers the anti-trafficking work.

Moreover, the recent information of the Europol and UNHCR suggests that the current migration crises seems to increase human trafficking for the purpose of sexual exploitation in Europe. There is a risk that European Union fights against illegal immigration and people smuggling without paying enough attention to the possibility that many of the women and children can be exploited on their way to Europe or at the destination. It is of utmost importance to identify potential victims of human trafficking and to refer them to assistance and protection measures. To prevent human trafficking, channels for legal and safe migration for women and children should be created. The idea of humanitarian visas, for example, could be one way of decreasing the risk of exploitation. On the other hand, the countries of destination have to ensure that the migrant women, who have been granted legal residence, have access to language education and other means of social integration in order to exercise their rights as citizens.

3.3. Trafficking for the Purpose of Sexual Exploitation as a Form of Gender-Based Violence

In many international legal instruments, trafficking in women (human trafficking for the purpose of sexual exploitation) is considered a form of violence against women. In international law, violence against women is an infringement of human rights, and governments as states parties to human rights conventions are obliged within their territories to ensure that they do not engage in infringements of human rights by commission or omission. Also, governments must guarantee the fulfilment of rights by ensuring that no non-governmental actors are guilty of infringing these rights. Known as the "due diligence" principle, this includes the responsibility of preventing, investigating and punishing infringements committed by private individuals, and compensating their victims. It is, thus, important to examine human trafficking and the difficulties connected

to the low-level of victim identification from a broader perspective of violence against women. The perspective provides with an added explanation for insufficient counter trafficking efforts.

As mentioned above, trafficking in human beings has emerged in the societal discussion less due to the domestic awareness than the developments in the international legal arena. The same applies to the other forms of violence against women in Finland. Irrespective of the awareness of the traditionally high rate of male violence against women in Finland, it was the international pressure which finally forced Finland to address violence against women, including human trafficking, and take measures so as to prevent and combat it.

The Committee on the Elimination of Discrimination against Women (CEDAW), for example, has repeatedly expressed its concern about the high incidence of violence against women in Finland, including the increased incidence of trafficking in women, and recommended the government to increase and strengthen its efforts to combat the violence against women. The observations of CEDAW have contributed to the recognition of violence against women in Finland as a societal problem that requires special attention.⁹³

The difficulty to recognise the issue of violence against women may seem peculiar. The international comparisons on gender equality carried out by the United Nations demonstrate that Nordic women are more equal in respects of education, their position in society and health than women in almost any other countries. Relatively high gender equality enjoyed by Nordic women is a result of the extensive welfare policies aimed at the reduction of differences and social inequalities. Although the welfare state has promoted women's economic independence and emancipation, the gender-neutral welfare state has made certain gender specific inequalities and forms of discrimination more difficult to recognise and conceptualise. These include issues such as the violence against women.⁹⁴

Feminist authors argue that the gender-specific questions have long been treated in a gender-neutral way due to the consensus-based equality policy which seeks to avoid confrontations and maintain the illusion about the already existing equality between women and men.⁹⁵ The gender neutral equality policy has avoided the polarisation of genders, thereby contributing to keeping gender issues secondary to other dividing issues, such as class.⁹⁶ As "gender equality is firmly established as a labour market and social welfare issue, rather than as an inalienable right to non-discrimination", the scope of equality politics has been difficult to extend into the private area, such as bodily integrity.⁹⁷ The Nordic equality model has been argued to impede the recognition of differences and disadvantage at the level of the individual. The protection of human rights and privacy has

⁹³ The most recent is the Concluding observations of the seventh periodic report of Finland. Committee on the Elimination of Discrimination against Women. The CEDAW has encouraged Finland, for example, to ensure that women and girls who are victims of trafficking have access to medical care, legal and psychosocial counselling, adequate housing, education, income-generating opportunities and rehabilitation and reintegration programmes, regardless of their ability or willingness to testify against traffickers.

⁹⁴ Piispa et al. 2006.

⁹⁵ Pehkonen 2003.

⁹⁶ Pylkkänen 2001.

⁹⁷ Nousiainen 2008.

become a domestic agenda due to the adherence to international and regional human rights conventions and the European Union.⁹⁸

While feminist authors consider the Nordic criminal policy to be successful in general, they criticise it for being gender-blind and reluctant to recognise violence against women. Indeed, the Nordic countries have responded to violence against women at a relatively late stage compared to other Western countries.⁹⁹ Finland, nevertheless, differs from the other Nordic countries in respect to its tardiness in the recognition and conceptualisation of violence against women as a social problem. For example, rape within marriage was criminalised only in 1994 and the possibility for a restraining order was enacted in 1999. Furthermore, the prosecution for an assault in a private place was dependent on the victim's report and request for prosecution up until the mid-1990s, and the prosecution for rape needed a request of the victim in order to go forward until 1999.¹⁰⁰

The difficulties with human trafficking for the purpose of sexual exploitation closely resemble the difficulties that the legal system has with regard to the offence of rape especially if the victim has initially agreed to meet, join or even marry the perpetrator. The difficulties have been documented by numerous studies. In the 1980s, Viitanen studied the way that reported offences of rape were dealt with by the judiciary and why rape was often not reported to the police or did not proceed to court. She found widespread victim-blaming attitudes in Finnish society in general and in the judiciary. The victims themselves were often held responsible for having been raped, and the consequences of rape to the victim were not considered to be serious. Producing evidence of rape was difficult, and the raped women were often required to prove their "innocence".¹⁰¹

Sulavuori has noted in her study published in 1992 that the police and judiciary often perceive the raped woman as having provoked the rape and connived in the situation afterwards especially when her rapist was known to her before the situation or the rapist was an acquaintance whom she had met in a restaurant. In this situation, the woman either "asked for it" or deserved being raped. In order to convict the rapist, there must be solid evidence of rape, in other words, evidence of physical force and violence must be found. Sulavuori has described the criminal procedure as a "rack" for the raped women and concluded that the criminal procedure is a part of the patriarchal exercise of power by which women's possibilities and choices as sexual beings are restricted.¹⁰²

This unfortunate situation has not changed much since the early 1990s, as also more recent studies indicate similar attitudes in the legal system towards rape. Kainulainen has noted that the authorities often view that the victim carries a certain responsibility for the rape, especially when the litigant has known the perpetrator personally before the crime has been committed. Many police officers were reported to be of the opinion that women should behave in a manner which prevents men from raping them.¹⁰³ Also Hahto has argued that the victim seems to play "a contributory role" in rape: a person behaving in a pertinent manner does not become a victim of crime. As distinct from robbery, for

⁹⁸ Svensson et al. 2004.

⁹⁹ Niemi-Kiesiläinen 2001.

¹⁰⁰ Niemi-Kiesiläinen 2001; Pehkonen 2003.

¹⁰¹ Viitanen 1982.

¹⁰² Sulavuori 1992.

¹⁰³ Kainulainen 2004.

example, the prior consent of the litigant is an especially significant factor when evaluating whether an alleged rape has taken place, and if it has, how reprehensible the offence has been.¹⁰⁴ Feminist authors, thus, argue widely that Finnish women, equal, strong and economically independent as they are, are perceived as "responsible selves", and are thus easily held responsible for the violence they have faced.

This "responsibility" also seems to be reflected onto victims of human trafficking in the criminal justice system. As mentioned above, the trafficking victims seem to carry some level of "responsibility" for exploitation and carry the blame for not avoiding the risk of exploitation. Victim characteristics (the fact that the person has sold sex), as well as the social and interactional contexts in which violence occurs (commercial sex), seem to have an emphasised impact on the interpretative frameworks: if the women have contributed to becoming victims by entering prostitution, they are not credible victims of exploitation in the eyes of the criminal justice system and may therefore find it difficult to seek or receive assistance and support. The gender of the victim seems to be significant in terms of the existing expectations of this "behavioural responsibility" for avoiding the social contexts commonly associated with potential violence. This kind of behavioural responsibility is not expected from the victims of labour trafficking. As combating human trafficking seem to resemble the difficulties with other gender-based forms of violence, it is important to discuss and implement measures that address violence against women in general in order to prevent and combat trafficking in human beings, in particular.

Moreover, according to the experiences of the Finnish National Rapporteur on human trafficking, many sexually exploited victims of human trafficking identified in Finland seem to have one feature in common. These women and girls have had only few opportunities. In both cross-border trafficking cases and in cases of internal trafficking, the identified victims suffer from poor societal and economical status or they are otherwise at a risk of becoming excluded in the society.

In more concrete terms, foreign victims of human trafficking are often poorly educated (even illiterate) and economically dependent on their male relatives. Sometimes they are completely under the control of their male partners or relatives under the cultural norms. This kind of structural inequality makes it difficult even for themselves to see and condemn the violations occurred and therefore to seek help. Violence and exploitation is not always questioned, as these women and girls have understood that they do not have same rights as men and that the men have an overruling power over the women. In addition, countries from which they come from have rather weak social security system, which often fails to provide them with sufficient protection against unemployment, long-term sickness or single-parenting. Weak social security combined with a low level of equality between men and women in the society seem to increase the vulnerability of women and girls to human trafficking and related sexual exploitation.

With regard to the cases of internal trafficking, it seems that many of the identified trafficking victims of Finnish nationality have been vulnerable to exploitation due to mental disorders or poor economic situation. These women and girls have had few options for life and are, therefore, at risk of becoming marginalised in the society. Sometimes, however, only the young age together with low self-esteem and trust in other people can

¹⁰⁴ Hahto 2004. See also Jokila 2010.

lead to exploitation (i.e. trafficking in the modelling business). To prevent exploitation in these situations, sexual education at school must be strengthened, including sexual education about bodily integrity and knowledge about the (psychological) consequences of sexual violence. Blaming attitudes of women for sexual violence should be discussed already at school. Trafficking in human beings should, thus, be recognised as an issue of gender equality and social policy.

Irrespective of the political opinion on prostitution one must additionally take into account those aspects in the society which contribute to the existence and potential increase of human trafficking in the countries where exploitation occurs. It is therefore of utmost importance to discuss the aspects which create a favourable environment for the exploitation. One of these aspects is the demand for commercial sex.

The UN Trafficking Protocol has a provision under which the state parties shall take legislative and other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (Article 9). The Council of Europe Convention on Action against Trafficking in Human Beings obliges the State Parties to consider making the use of services which are the object of human trafficking as criminal offences (Article 19). The EU directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims also encourages Member States to take measures to establish as a criminal offence the use of services of trafficked persons (Article 18).

Finland has criminalised buying of sex from the victims of sex trade, including victims of human trafficking. It seems, however, that the criminalisation has not worked as intended.¹⁰⁵ A partial ban on buying sex is not well suited to human trafficking situations, being insufficient for preventing or curbing human trafficking for the purpose of sexual exploitation or for protecting victims of the sex trade effectively. As a consequence, Finland has amended the provision so that the exploitation of a victim of sex trade is a punishable offence even if committed through negligence. The purpose of the proposal is to improve the protection of victims of prostitution in criminal proceedings and to reduce the demand for paid sex.

The Parliamentary Assembly of the Council of Europe and the European Parliament have recently recommended a ban on buying sex as being a significant policy measure against prostitution. Both international representative bodies consider a ban on buying sex to be an effective and needed means for addressing the demand that fuels human trafficking, and thereby an instrument for curbing and preventing human trafficking itself and associated crime. This kind of prostitution policy is also considered to promote gender equality.¹⁰⁶

4. Conclusions and Recommendations

Trafficking in human beings for sexual exploitation is a gender-specific phenomenon: the reasons why women and girls are trafficked, the impacts that sexual exploitation have on

¹⁰⁵ Ministry of Justice of Finland 2013.

¹⁰⁶ Parliamentary Assembly 2014; European Parliament 2014.

the victims, and the explanations why counter trafficking efforts have largely been ineffective as of today are also gendered. This paper has sought to analyse and discuss human trafficking for the purpose of sexual exploitation from a gender perspective by using Finland as a case study. The author believes, however, that many of the findings can be generalised to other European countries, as well.

There are many reasons to explain why counter trafficking efforts have not been successful. First, the international legal definition and the national criminal laws based on it are complex, in particular with regard to the more subtle means of committing the offence of human trafficking, i.e. abuse of a position of power and victim's vulnerable position. Furthermore, the relation of the trafficking definition to prostitution is problematic and leaves room for interpretation.

Secondly, the counter trafficking efforts seem to overemphasise prosecution over protection. Trafficking victims are often instrumentalised to the functioning criminal justice system which is not in line with a human rights-based approach. The anti-trafficking framework fails to induce victims of human trafficking to resort to the authorities which makes it difficult to use the opportunities of the anti-trafficking framework to protect the most vulnerable people.

Third, trafficking in human beings is often perceived as a problem of illegal migration, people smuggling and transnational organised crime. Its dimensions as a form of gender-based violence and as an issue of inequality between women and men get easily overridden. Trafficking in human beings should, thus, be prevented and combated through social and equality policy, too.

In this context, it must be noted with certain concern that the equality policy in the Western societies is increasingly influenced by the ideology of neoliberalism. The neoliberalism can be argued to underline the priority of individual responsibility over the protection obligation of the state, focusing on the relationship between the market and the individual, rather than the political system and the individual. The protection of privacy and negative rights to freedom are at the core of the ideology.

While it is true that individualism offers considerable positive consequences in the form of increased individual rights, it also makes identification and dismantling of gender-oriented power structures difficult. An individualistic approach has limited opportunities to solve the complex problems in the society or to eliminate injustices in the structures of society and thereby to foster true equality. While freedom is emphasised, we need to make sure that it becomes with real opportunities.¹⁰⁷

According to the Treaty on the Functioning of the European Union, the EU has a strong mandate to adopt legislation in the areas of particularly serious crime with a cross-border dimension, including trafficking in human beings and sexual exploitation of women and children. The implementation of the adopted obligations, such as the 2011/36/EU directive, has, however, remained ineffective. The anti-trafficking strategies and activities can possibly achieve their goals, if states adopt a victim-centred approach to trafficking, as well as regularly evaluate the effect these strategies and activities have on the human rights

¹⁰⁷ See more on Tasa-arvo toisin nähtynä 2012.

of trafficking victims. In more concrete terms, this paper has provided with some recommendations:

- To improve victim identification, the EU Member States should effectively implement the anti-human trafficking laws, including the criminalisation of human trafficking and the assistance and protection of trafficking victims. In addition, they should ensure that the application and interpretation of the provisions on trafficking-related offences (i.e. procuring) or the migration laws (Dublin procedure, for example) do not annihilate the anti-human trafficking legislation.
- To improve victim identification and the identification of the subtle means of trafficking, the criminal justice system (law and practice) should concentrate more on the dynamics of exploitation, and the law enforcement, prosecution services and judiciary should be carefully trained on the issue.
- To improve victim identification and the victim's ability to resort to the authorities, the laws should be modified so that the victims of human trafficking can be seen as right-holders in the eyes of the law. The victims of human trafficking should be entitled to the assistance and protection measures even if the case is not successful in the criminal proceedings. More power to determine what human trafficking is and who are assisted and protected under the law should be given to the social and health care workers, as well as to the migration services.
- To prevent trafficking in human beings and people smuggling, it is important to create channels for legal and safe migration for women and children (i.e. humanitarian visas). On the other hand, the countries of destination have to ensure that the migrant women, who have been granted legal residence in the countries of destination, have access to language education and other means of social integration in order to exercise their rights as citizens.
- To improve victim identification and prevention of human trafficking, it is important to recognise human trafficking as a form of gender-based violence. As preventing and combating human trafficking seem to resemble the difficulties with other forms of gender-based violence, it is important to discuss and implement measures that address violence against women, in general, in order to prevent and combat trafficking in human beings, in particular.
- To improve victim identification and prevention of human trafficking, it is important to recognise trafficking in human beings as a matter of inequality between women and men and to take measures in the fields of social and equality policy. These measures should aim at making less and less people vulnerable to human trafficking.
- To prevent human trafficking for sexual exploitation, the politics of prostitution must strive for making environment unfavourable for prostitution and commercial sex, in general. Therefore, it is important to address the demand for commercial sex and to consider criminalising the purchase of sex.
- To prevent human trafficking and to strengthen the inviolability of bodily integrity of women and girls, blaming attitudes of women for sexual violence and abuse should be discussed already at school and in the society, in general. Sexual education, which takes into account the female perspective, should be increased and strengthened.

- To evaluate anti-trafficking strategies and activities and to improve counter trafficking efforts, countries should appoint an independent National Rapporteur on human trafficking who has a right under the law to report directly to the national Parliament and make recommendations for improvement.
- To improve counter trafficking efforts in the European Union, the EU institutions should carefully evaluate the implementation of the EU legislation in the Member States, and to take added legislative and other measures when needed.

Bibliography

Agustin, Laura: "Daring Border-Crossers: A different vision of migrant women", cited in Helen Ward and Sophie Day (Eds.). "Sex Work, Mobility and Health in Europe", pp. 85-94. London: Kegan Paul 2004.

Balos, Beverly: "The wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation." Harvard Women's Law Journal, Vol. 27, No. 1, 2004, pp. 137-175.

Barry, Kathleen: Female Sexual Slavery. New York: New York University Press 1984.

Concluding observations of the seventh periodic report of Finland. Committee on the Elimination of Discrimination against Women, UN Docs. CEDAW/C/FIN/CO/7.

Coster van Voorhout, Jill E.B.: "Human trafficking for labour exploitation. Interpreting the crime". Utrecht Law Review, Vol. 3, No. 2, 2007, p. 44-69.

De Jonge, Boudewijn: Eurojust and Human Trafficking. The State of Affairs. The Hague: Eurojust and University of Amsterdam 2005.

Doezema, Jo: "Ouch! Western feminists' "wounded attachment" to the "third world prostitute"." Feminist Review, Vol. 67, No. 1, 2001, pp. 16-38.

European Parliament: Report on sexual exploitation and prostitution and its impact on gender equality (A7-0071/2014, 3.2.2014).

Eurostat/European Commission: Trafficking in Human Beings. Luxembourg: Publications Office of the European Union 2013.

Farley, Melissa: "'Bad for the Body, Bad for the Heart': Prostitution Harms Women Even if Legalised or Decriminalised." Violence Against Women, Vol. 10, No. 10, 2004, pp. 1087-1125.

Gallagher, Anne: "Human trafficking: international law and international responsibility. A critical examination of the international legal response to human trafficking with a particular focus on the state responsibility regime as a means of securing accountability of governments for trafficking and related exploitation. Utrecht: University of Utrecht 2006 (Unpublished dissertation).

Hahto, Vilja: Uhrin myötävaikutus ja rikoksentekijän vastuu. Helsinki: Edita Publishing 2004.

Honkatukia, Päivi: Uhrin rikosprosessissa – haavoittuvuus, palvelut ja kohtelu. Oikeuspoliittisen tutkimuslaitoksen tutkimuksia 252. Helsinki: Oikeuspoliittinen tutkimuslaitos 2011.

Jokila, Helena: Tahdonvastainen suostumus ja liiallisen luottamuksen hinta. Raiskauksen ja muiden seksuaalirikosten oikeudellisen tiedon konstruktio. Helsinki: Suomalainen lakimiesyhdistys 2010.

Kainulainen, Heini: Raiskattu? Tutkimus raiskausten käsittelemisestä rikosprosessissa. Helsinki: Oikeuspoliittinen tutkimuslaitos 2004.

Kimpimäki, Minna: Neljä artikkelia ihmisestä kaupan kohteena: A: Varsinainen ihmiskauppa, B: Lapsikauppa, C: Elinten, kudoksien ja sukusolujen kauppa, D: Kaupallinen erotiikka. Rovaniemi: University of Rovaniemi 1997.

Kligman, Gail and Limoncelli, Stephanie: "Trafficking Women after Socialism: To, Through, and From Eastern Europe." *Social Politics: International Studies in Gender, State & Society*, Vol. 12, No. 1, 2005, pp. 118–140.

Lehti, Martti and Aromaa, Kauko: Naiskauppa, laitton siirtolaisuus ja Suomi. Nykytilanne, lainsäädäntö ja tutkimuslähteet. Helsinki: Oikeuspoliittinen tutkimuslaitos 2002.

Leskinen, Jari: "Organisoitu paritus ja prostituutio Suomessa", cited in "Rikostutkimus", pp. 9-30. Vantaa: Keskusrikospoliisi 2002.

MacKinnon, Catherine: "Prostitution and Civil Rights." *Michigan Journal of Gender & Law*, Vol. 1, 1993, pp. 13–31.

Ministry for Foreign Affairs of Finland: The Finnish Plan of Action against Trafficking in Human Beings. Helsinki: Ministry for Foreign Affairs 2005.

Ministry of Justice of Finland. Exploitation of victims of prostitution. Feasibility study on the ban on buying sex. Helsinki: Ministry of Justice 2013.

National Rapporteur on Trafficking in Human Beings: Report 2014, Assessment of the current state of action against human trafficking and of the fulfilment in criminal of the rights of victims of human trafficking subjected to sexual exploitation. Helsinki: Ombudsman for Minorities 2014.

Niemi-Kiesiläinen, Johanna: "Criminal Law or Social Policy as Protection Against Violence." In *Responsible Selves. Women in the Nordic Legal Culture*, edited by Kevät Nousiainen, Åsa Gunnarson, Karin Lundström and Johanna Niemi-Kiesiläinen, 289-309. Aldershot: Ashgate, 2001.

Nousiainen, Kevät: "Utility-based equality and disparate diversities from a Finnish perspective." In *European Union Non-Discrimination Law*, eds. Dagmar Schiek and Victoria Chege, 187-214. New York/Oxford: Routledge/Cavendish 2008.

Nousiainen, Kevät and Niemi-Kiesiläinen, Johanna: "Introductory Remarks on Nordic Law and Gender Identities." In *Responsible Selves. Women in the Nordic Legal Culture*, edited

by Kevät Nousiainen, Åsa Gunnarson, Karin Lundström and Johanna Niemi-Kiesiläinen, 1-22. Aldershot: Ashgate, 2001.

O'Connell Davidson, Julia: "Prostitution, Power and Freedom. Cambridge: Polity Press 1998.

Ombudsman for Minorities/Finnish National rapporteur on trafficking in Human Beings: Report 2010. Trafficking in human beings, phenomena relating to it and implementation of the rights of human trafficking victims in Finland. Helsinki: Ombudsman for Minorities 2010.

Parliamentary Assembly: Prostitution, trafficking and modern slavery in Europe (Doc. 13446, 20.3.2014).

Pehkonen, Pirjo: Naisten puolesta, ei miestä vastaan. Suomalainen naisliike väkivaltaa vastustamassa. Joensuu: University of Joensuu 2003.

Pheterson, Gail: Part One. Not Repeating History", cited in Gail Pheterson (Ed.). "A Vindication of the Rights of Whores", pp. 3-30. Seattle: Seal Press 1989.

Piispa, Minna, Markku Heiskanen, Juha Kääriäinen and Reino Sirén: Naisiin kohdistunut väkivalta 2005. Helsinki: Oikeuspoliittinen tutkimuslaitos 2006.

Pärssinen, Venla (now Roth): Ihmiskauppa rikoksena Suomen lainsäädäntömaisemassa: Ehdotus hallituksen esitykseksi rikoslain 25 luvun ja oikeudenkäynnistä rikosasioissa annetun lain muuttamisesta. Turku: University of Turku 2003.

Pylkkänen, Anu: "The Responsible Self: Relational Gender Construction in the History of Finnish Law." In Responsible Selves. Women in the Nordic Legal Culture, edited by Kevät Nousiainen, Åsa Gunnarson, Karin Lundström and Johanna Niemi-Kiesiläinen, 105-128. Aldershot: Ashgate, 2001.

Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions: Addendum. Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, A/55/383/Add.1.

Roth, Venla: Defining Human Trafficking and Identifying Its Victims. A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings. Leiden/Boston: Martinus Nijhoff Publishers 2012.

Roth, Venla: "Paritusta vai ihmiskauppaa?" Defensor Legis 2007, pp. 436-437.

Skilbrei, May-Len and Tveit, Marianne: "Defining Trafficking Through Empirical Work. Blurred Boundaries and their Consequences." *Gender, Technology and Development*, Vol. 12, No. 1, 2005, pp. 9-30.

Sulavuori, Maarit: *Piinapenkki: naisnäkökulma raiskausten rikosprosessikäsittelyyn*. Tampere: University of Tampere 1992.

Svensson, Eva-Maria, Anu Pylkkänen and Johanna Niemi-Kiesiläinen: "Introduction: Nordic Feminist Legal Studies at a Crossroads." In *Nordic Equality at a Crossroads. Feminist Legal Studies Coping with Difference*, ed. Eva-Maria

Svensson, Anu Pylkkänen and Johanna Niemi-Kiesiläinen, 1-16. Aldershot: Ashgate 2004.

Tasa-arvo toisin nähtynä. Oikeuden ja politiikan näkökulmia tasa-arvoon ja yhdenvertaisuuteen, eds. Johanna Kantola, Kevät Nousiainen and Milja Saari. Tallin: Gaudeamus 2012.

United Nations Office on Drugs and Crime (UNODC): *Global Report on Trafficking in Persons*. Vienna: UNODC 2009.

Viitanen, Pirkko: *Raiskaus*. Helsinki: WSOY 1982.

Vocks, Judith and Nijboer, Jan: "The Promised Land: A Study of Trafficking in Women from Central and Eastern Europe to the Netherlands." *European Journal on Criminal Policy and Research*, Vol. 8, No. 3, 2000, pp. 379-388.

ANNEX 4

Implementation of Directive 2011/36/EU from a gender perspective in Germany, Lithuania, Romania, Sweden, the Netherlands and the UK

Research paper
by Prof. Ryszard Piotrowicz, Ms Klara Skrivankova, Dr
Baerbel Uhl and Ms Marjan Wijers

Abstract

This paper outlines and analyses the implementation by six EU Member States: Germany, Lithuania, Romania, Sweden, the Netherlands and the UK of selected obligations arising under Directive 2011/36/EU, from a gender perspective; and makes proposals intended to facilitate the full compliance with the duty to take into account the gender perspective in the implementation of the Directive.

AUTHORS

Ryszard Piotrowicz of Aberystwyth University, is member of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings and member of the European Commission's Group of Experts on Trafficking in Human Beings from 2008-2015.

Klara Skrivankova is Programme Advisor to the Joseph Rowntree Foundation and member of the European Commission's Group of Experts on Trafficking in Human Beings from 2008-2015.

Baerbel Heide Uhl is independent consultant on anti-trafficking policies and member of the European Commission's Group of Experts on Trafficking in Human Beings from 2003-2011 (chaired the Group from 2008-11).

Marjan Wijers is independent consultant and researcher on human rights and trafficking and chair of the European Commission's Group of Experts on Trafficking in Human Beings from 2003-2006.

This report was written in two stages. Stage one (November-December 2015) examined three Member States: Germany, Lithuania and Sweden. Stage two (February-March 2016) examined the Netherlands, Romania and the United Kingdom. Piotrowicz, Skrivankova and Uhl contributed to stage one; all four authors contributed to stage two. The authors welcome the recent publication by the European Commission of a study on the gender dimension of human trafficking. This extensive document was published in the very final stages of the drafting of this report and it was beyond the scope of this assignment to take its findings into account.

This paper is part of the European Implementation Assessment of the Directive 2011/36/EU (Trafficking in Human Beings) for the Committee on Women's Rights and Gender Equality FEMM, together with other analyses on the same issue.

RESPONSIBLE ADMINISTRATOR

Helmut Werner, Ex-Post Impact Assessment Unit

To contact the Unit, please e-mail EPRS-ExPostImpactAssessment@europarl.europa.eu

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List of Acronyms

ANITP Agenția Națională împotriva Traficului de Persoane (National Agency against Trafficking in Persons) (Romania)

CoMensha Coordination Centre for Human Trafficking (Netherlands)

COSM Centre for Reception of Trafficked Persons (Netherlands)

ECPAT End Child Prostitution, Child Pornography and Trafficking of Children for Sexual purposes

GLA Gangmasters Licensing Authority (UK)

GRETA Council of Europe, Group of Experts on Action against Trafficking in Human Beings

KOK Koordinierungskreis gegen Menschenhandel (Network against Trafficking in Human Beings) (Germany)

SIDA Swedish International Development Cooperation Agency (Sweden)

STPO Slavery and Trafficking Protection Orders (UK)

Executive Summary

The report focuses on the implementation from a gender perspective of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. It assesses the compliance of six EU Member States: Germany, Lithuania, the Netherlands, Romania, Sweden and the United Kingdom. Germany has yet to fully transpose the Directive; the parliamentary procedure to make the necessary amendments to the criminal code was underway at the time of writing.

The report covers several gender aspects of the Directive, including prevention, assistance, support to and protection of victims. It also analyses other gender dimension elements, including monitoring procedures and compensation.

Supply of people willing and needing to migrate for work (either internally or internationally) and demand for the labour and services of exploited individuals are both understood as drivers of human trafficking. Understanding the gender dimension of these situations, as well as the understanding of what constitutes demand, will assist Member States and EU institutions to develop more appropriate measures to help tackle the underlying causes of human trafficking.

Available EUROSTAT data suggests that there is a significant gender split between different forms of trafficking, with women and girls being documented as the highest number of victims of trafficking for sexual exploitation, while men are mainly trafficked for labour exploitation. This does not apply to labour exploitation in domestic servitude, where victims are mainly women and girls.

According to the EU Fundamental Rights Agency (FRA), however, trafficking cases have been identified in an increasing range of industries: agriculture, food processing, construction, domestic work, manufacturing, care, cleaning and the service sector.

Article 18 of the EU Directive obliges Member States to take action to prevent trafficking in human beings, including to discourage and reduce demand that fosters all forms of exploitation, to raise awareness among groups at risk, to train officials to better identify victims, and to consider the establishment as criminal offences of the use of services qualifying under the trafficking legislation, where it is known to the user that the provider of the service has been trafficked.

Lithuania has carried out a number of initiatives and programmes to raise awareness for victims of trafficking, including victims of forced prostitution. Germany and Sweden have founded their activities in prevention of trafficking upon a solid women's rights background. Sweden is recognised for its high regard for gender equality and diversity. However, some research suggests that measures that would follow an equality and diversity approach, such as those that would strengthen the position and rights of populations vulnerable to trafficking, have been applied only in a limited way. Conversely, criminal justice approaches, such as the criminalisation of the purchasing of sex, have been favoured.

Germany's anti-trafficking strategy originates from a women's rights framework. In 1999, the first national action plan against trafficking was part of the action plan against violence

against women. Specific measures to discourage demand for services of the victims of trafficking for the purpose of sexual exploitation are being implemented. Within the framework of regulating prostitution, the German government has proposed a new draft law that foresees, among other measures, the mandatory registration of all sex workers in Germany, combined with mandatory health and social counselling, as well as a new regulation of brothels.

In the UK, a host of new legislation was introduced across its three jurisdictions in 2015 addressing modern slavery, human trafficking and exploitation. Northern Ireland is the only jurisdiction to have introduced a provision on the criminalisation of the buying of sex in its new anti-trafficking legislation. A committee of the UK Parliament has recently concluded a consultation on regulatory arrangements around prostitution, the outcomes of which are yet to be published. In its response to the consultation, the UK government expressed a view that there is not unequivocal evidence that any one approach is more effective in tackling trafficking and exploitation.

Until recently, prostitution was defined as a criminal offence in Romania. This has been changed into an administrative offence. In the Netherlands, a law was introduced of local licensing systems, requiring brothels to meet certain standards: planning; hygiene, fire safety and management (e.g. no forced drinking, no unsafe sex, no minors, no undocumented workers and no trafficking). In both countries, measures to discourage demand for trafficked labour and services are being targeted mainly at exploitative situations in the sex industry.

Article 11 of the Directive obliges Member States to provide assistance and support for victims of trafficking. The Lithuanian government funds several NGO projects on provision of assistance to victims of trafficking and forced prostitution. The infrastructure on support capacities has a strong focus on female victims. Different types of assistance provided by NGOs are financed by the state budget and are not dependent on co-operation with the law enforcement authorities. Sweden's efforts to provide assistance to victims of trafficking have been mainly aimed at victims of sexual exploitation. In recent years, however, Sweden has begun focusing more on cases of trafficking for forced labour; there is concern regarding a lack of accommodation and assistance for male victims.

In Germany, there is a wide range of decentralized assistance infrastructure, mainly operated by NGOs. Similar to Sweden and Lithuania, the main target groups are women and girls. While not explicitly stated in the UK government strategy, the UK applies equality and diversity approach support provisions, which are available for all victims, regardless of the purpose for which they have been trafficked. For several years, the majority of potential victims identified had been trafficked for purposes other than sexual exploitation. Recent research however suggested that more regard needs to be given to the specific needs of certain victims, particularly trafficked women who are pregnant and/or have children.

In the Netherlands, the statistics make clear that the focus is still dominantly on women and the sex industry, although the number of, predominantly male, (potential) victims reported by the Labour Inspection is slowly but steadily growing: from 39 in 2010 to 72 in 2014. The Romanian authorities also report that the majority of identified trafficking victims are women exploited in prostitution.

The report documents flaws in the implementation of the Directive with regard to the protection of victims in criminal investigations (Article 12), the compensation of victims for material and immaterial damages (Article 17), and the monitoring of gender dimensions in the implementation of the Directive (Article 19).

The report concludes that there is a lack of consistent and systematic monitoring of gender implications for the Directive's application.

The authors recommend engaging in a practical discussion about the specifics on gender implications in an overall anti-trafficking approach. For instance, identification procedures need to implement more anonymous counselling possibilities in order to counter the stigma a victim of trafficking may experience due to sexual violence. Compensation schemes for victims should cover also material damage claims that would reflect the loss of earnings of victims while they were trafficked. Sexual violence should be treated as severe injury for the purposes of compensation. At the same time, the severity of lasting psychological damage in victims that have not been subject to harsh physical violence, but systematic psychological terror and harassment, must not be underestimated.

The report found a continued lack of coherent understanding of the term "demand" among the examined Member States and in EU institutions. Moreover, there are only limited data on implementation with regard to demand for other forms of exploitation apart from sexual exploitation. The report further recommends that a comprehensive strategy be elaborated to translate policies designed to curb "demand" into practical action.

I. Introduction

[1] In 2011 a new instrument on the regulation of trafficking in human beings (THB) in the European Union was adopted. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (the Directive)¹⁰⁸ was a new attempt by the EU to establish a legal framework that would more effectively enable criminal prosecutions against traffickers but also – crucially – to better protect the victims of THB, and reduce the vulnerability of possible victims to being trafficked.

[2] In the words of Recital (1) of the Preamble, “[t]rafficking in human beings is a serious crime, often committed within the framework of organised crime, [and] a gross violation of fundamental rights”. The Directive adopted “an integrated, holistic, and human rights approach to the fight against trafficking in human beings” (Recital (7)).

[3] An essential element of this approach is the appreciation of the gender dimension in THB: that gender must be fully taken into account in assessing people’s vulnerability to THB if the human rights-based approach to THB is to be fully and effectively implemented. Accordingly, gender occupies a prominent place in the Directive.

[4] Recital (3) of the Directive provides:

“This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate. The ‘push’ and ‘pull’ factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry nor for labour exploitation in, for example, in construction work, the agricultural sector or domestic servitude.”

[5] Recital (12) provides, regarding assessment of the vulnerability of victims that gender should be taken into account. Recital (18), on assistance and support, states that such measures should be implemented “on the basis of an individual assessment” and “take into account the circumstances, cultural context and needs of the person concerned”. Furthermore, according to Recital (20), “victims of trafficking should during criminal investigations and proceedings receive treatment that is appropriate to their individual needs”.

[6] This report assesses the compliance of six EU Member States: Germany, Lithuania, Romania, Sweden, the Netherlands and the UK, with their duty to ensure that the gender dimension is taken fully into account in the exercise of their obligations arising out of the Directive.

[7] These countries’ compliance with the Directive may also be assessed to some extent in light of other relevant international instruments, in particular the Council of Europe Convention on Action against Trafficking in Human Beings, to which all six States are party. Article 5.3 of that instrument provides:

¹⁰⁸ Official Journal of the European Union, 15.4.2011. L 101/1.

“Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming ... in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.” Paragraph 2 refers to policies and programmes to prevent THB. This is based on the view of the drafters that these policies and programmes be based on, inter alia, gender mainstreaming.¹⁰⁹

[8] Germany has not yet fully transposed Directive 2011/36/EU, even though the transposition deadline expired in April 2013. Currently, the parliamentary procedure to transpose the Directive is based on the draft law (BT-drs 18/4613) as set forth by the German government in April 2015.¹¹⁰ The draft law proposes to enhance the criminal code on human trafficking with the elements ‘exploitation of criminal activities’, ‘forced begging’ and trafficking for the purpose of ‘removal of organs’.¹¹¹ In addition, the Federal Ministry of Justice and Consumer Protection announced a proposal to amend the criminal law significantly in order to amend the penal code on human trafficking in line with international standards.¹¹² NGOs and academics have criticised the draft law, as well as the suggested amendment of the Federal Ministry of Justice, for not taking fully into consideration the rights of trafficked victims and focussing rather mainly on penal and criminal procedure law.¹¹³

[9] Moreover, the German government has proposed a new draft law on prostitution, the Prostitutes’ Protection Act, (‘Prostituiertenschutzgesetz’), that foresees among other measures the mandatory registration of all prostitutes in Germany, combined with mandatory health and social counselling as well as a new regulation of brothels.¹¹⁴ The discussions about the draft law are proving controversial among civil society, academics and governmental stakeholders.¹¹⁵

II. Gender perspective in the prevention of trafficking in human beings

[10] There is a positive duty upon States to adopt measures to prevent and discourage demand. Recital (25) of the Preamble to the Directive stipulates that, in these initiatives, “Member States should adopt a gender perspective”.

¹⁰⁹ Council of Europe Convention on Action against Trafficking in Human Beings, *Explanatory Report*, para 104.

¹¹⁰ See: <http://dip21.bundestag.de/dip21/btd/18/046/1804613.pdf>

¹¹¹ KOK e.V.: Informationsdienst 2015, Aktuelle rechtliche Entwicklungen mit Bezug zu Menschenhandel. 1. Dezember 2015, page 7. See: http://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Informationsdienst/Informationsdienst.2015.rechtliche_Entwicklungen.pdf

¹¹² KOK e.V.: Informationsdienst 2015, p. 8.

¹¹³ KOK e.V.: Informationsdienst 2015, p. 8.

¹¹⁴ See http://plattform-frankfurt.de/wp-content/uploads/2015/03/150204_Vereinbarung-und-Eckpunkte_Prostituiertenschutzgesetz.pdf

¹¹⁵ See for instance the statements of Deutscher Juristinnenbund: <https://www.djb.de/st-pm/st/st15-10/>; and the statement of Solwodi. http://www.solwodi.de/fileadmin/_medias/pdf/Politik/Stellungnahme_zum_Referentenentwurf_des_Prostituiertenschutzgesetz.pdf

[11] A gender perspective on the prevention of THB needs to reflect the understanding that individuals might be at risk of being trafficked because of their *personal* vulnerability and/or because of their gender. For example, a person is more likely to be targeted because they have a disability, such as learning difficulties, rather than because of their gender. By the same token, a woman or a man from a particular background is more likely to be targeted because of the way they have been socialised into their gender roles. The two examples¹¹⁶ below illustrate how gender can increase an individual's vulnerability to trafficking:

R grew up in a poor background in a country in south Asia. Since her childhood, the family treated her and her sisters very differently to their brothers. It was made clear to her that as a girl she is a burden, she is of a lesser value than the boys in her family and that her role is to serve and to follow the orders of her parents/brothers. When she was about ten years old, she was sent to work as a domestic help to a wealthier family that provided her with room and board. She made small amounts of money that were sent to her parents and went to support one of her brothers' schooling. None of the sisters in the family were ever sent to school. When R reached the age of 17, her elder brother brought her back and told her that she was to travel to the Middle East with him where he found a job for her. Because their parents were old now, they needed medical care which was expensive, and R was to make money to contribute to the costs of hospital treatment. In the Middle East she was put to work in a house of a local business man. She suffered horribly in that household; she was subject to regular beatings and verbal abuse, slept on the floor and was given only leftovers to eat. She was also assaulted sexually. All the time she was there she believed that money was being sent back to her brother to support the treatment of the parents. She felt it was her duty to endure the situation to support her parents.

The family R was "working" for owned several properties in England. They travelled regularly to London to spend some time there, and R was required to travel with them and serve them. On one of the visits to London, she was beaten by her employer's wife so badly that she needed medical attention. A doctor in the hospital emergency department who treated R spoke her language and identified that she was a victim of trafficking for labour exploitation and referred her to assistance of a support organisation in London.

R never questioned the behaviour of her parents or her brother. As a girl, she was socialised to be submissive and to learn her place in the world. This learned role made her susceptible to exploitation and trafficking – and was abused by her brother to put her to work in the Middle East. Even after R had left the situation of exploitation and was staying in a safe house, she kept cleaning up after everyone and tried to serve. It took a long time in counselling for her to understand where the line is between a job duty and exploitation and to learn to how to say no.

[12] The case of R is illustrative of a situation where gender is a form of vulnerability. A man of the same background as R would have been socialised in a very different way and hence his gender would not have been a form of vulnerability in the same way as R's was.

[13] Equally, the different role ascribed to men in a society/community can also make them vulnerable to exploitation. Case study no. 2 is an example where gender was exploited as a form of vulnerability in a man from Eastern Europe.

¹¹⁶ The cases studies and commentary are reproduced from: *Trafficking for Labour Exploitation – Gender*. Anti-Slavery International, CCME, ITUC. Brussels, 2015 pp 8-9.

P was a skilled engineer and worked in a factory producing machinery in a rural part of a country in Eastern Europe. He had a wife and two small children. He grew up in a community where the expectation on the man is to provide for his family and to be the backbone of the household. At some point, the factory where he worked was sold off to another company that decided to move the production outside of the EU to reduce the costs of labour and closed the premises down. P and many of his friends lost their jobs. He was no longer able to bring in the main income for his family, and his wife's part-time job was not sufficient to sustain all of them. A former workmate of his suggested that they go to work abroad and that he had a cousin in Germany who could get P work repairing tractors and other agricultural machinery. P was delighted about the offer, as has he was getting concerned about being seen as a failure, a "loser" by his friends and community, as someone who could not provide for his family. Unfortunately, things in Germany did not turn out the way that he was promised. When he arrived, he was told that his job was not going to be engineering, but he was to work in an asparagus field. He was supposed to work seven days a week and given a quota that he needed to meet every day. If he failed to meet his quota, he would be fined. He was also told by his former workmate that he had a debt to pay for arrangement of the job and cost of the travel and that this money will be offset against his pay for the first three months. If P were to refuse, his wife would be made to pay the debt.

P felt he had no option but to submit to what was being asked of him. He worked every day, no matter what the weather, to make sure he met his quota. He lived in tents with the other workers, with only one dry toilet for all 15 workers and one water tap for washing. Food was delivered to them three times a day and money for it deducted from their pay. The little money he had left he sent home to his family. When he spoke to his wife once a month, he mentioned nothing about the conditions he was enduring. He was too ashamed to admit that he was being exploited and that he worked as a worker in the field. All he wanted to do was to get through his day and send money back home. When the asparagus season in Germany finished, he was sent by his former workmate to England to work in a chicken factory.

There, the conditions were even worse, as the gangmaster in charge of them was violent and subjected him to verbal and physical abuse. It was then that P started to use alcohol as a means to survive. Because of his dependency on alcohol, he was dismissed and became homeless. He was later identified as a victim of trafficking by a homeless charity in London and referred to a specialised service. P was very difficult to deal with at the beginning; he was heavily alcohol dependent and suicidal.

Eventually, he was able to overcome his dependency and accept counselling to help him deal with the sense of shame and his perception that he was a failure. An NGO assisted him in getting work in decent conditions as an engineer, and he has been able to bring his family over to England to join him.

P was socialised into understanding his role as a man is to provide for his family. Showing weakness or being incapable of supporting your family meant in his view failure to fulfil his role. It is also likely that if he were indeed unable to support his family, it would have led to him being ostracised by his community. P has taken very long to be able to admit to himself that it was not his fault that he was exploited and eventually decided to undergo counselling. Still, none of his family and friends back home know what happened to him. The way that P was socialised into his role as a man within his family and community was his gender vulnerability – vulnerability that was abused by his workmate who was from the same community and knew about this vulnerability.

[14] The cases of R and P are both examples of gender as a form of vulnerability that make individuals susceptible to trafficking. At the same time, in each case it is important to note

that it was their gender combined with further circumstances that gave rise to trafficking. In R's case it was poverty; in P's case it was loss of income. While gender on its own can be a form of vulnerability, it is often abused when particular circumstances arise.

[15] Supply of people willing to and needing to migrate for work (either internally or internationally) and demand for labour and services of exploited individuals are both understood as drivers of human trafficking. Understanding the gender dimension of these situations as well as the understanding of what constitutes demand will assist Member States and the EU to develop more appropriate measures to help tackle the underlying causes of human trafficking. While gender may be a factor contributing to someone's vulnerability, it is not an inherent feature.¹¹⁷ For example, not all women are trafficked, but many of those who are, have previously been victims of violence. Gender related vulnerability tends to be the outcome of structural discrimination. Consequently, anti-trafficking measures should not only focus on reducing vulnerability, but enhancing rights, especially the right to non-discrimination, addressing structural violence against women, but also enhancing the protection of workers in workplace through promoting freedom of association and collective bargaining, the right to protection and the right to a remedy and compensation in cases of trafficking, as well as enhancing the individual's ability to act on their own behalf, take autonomous decisions and remove restrictions on mobility and access to work.

[16] Measures designed to prevent trafficking (and re-trafficking), including those targeting demand, need to be gender sensitive and enhance peoples' access to their rights in order to be effective.

[17] Available data on trafficking in the EU¹¹⁸ suggests that there is a significant gender split between different forms of trafficking. Women and girls are the highest cohort of identified victims and tend to be trafficked mainly for sexual exploitation, while men are mainly trafficked for labour exploitation, with the exception of domestic servitude where victims are predominantly female.¹¹⁹ The data further shows that most identified victims in the EU are trafficked for sexual exploitation.

[18] However, the gender split as well as incidence of a particular type of exploitation among identified cases of trafficking reported by Member States largely reflects the effectiveness of the respective States in addressing trafficking in all its forms.

¹¹⁷ <http://www.womenlobby.org/Call-for-tenders-European-Commission-Addressing-demand-in-anti-trafficking>;
https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/work_programme_2013_en_1.pdf
 (on page 45)

¹¹⁸ Eurostat Report on Trafficking in Human Beings, 2015 Edition. Eurostat, 2015. Global Report on Trafficking in Persons, UNODC, 2014.

¹¹⁹ In this paper we use the terms "sexual exploitation" and "labour exploitation" as these are commonly used. It should however be noted that the Committee of Experts of the International Labour Organization (ILO) has always dealt with forced prostitution as a form of forced labour. As stated by the 2007 International Labour Conference: "While a certain distinction has been drawn in the above definition between trafficking for forced labour or services and trafficking for sexual exploitation, this should not lead to a conclusion that coercive sexual exploitation does not amount to forced labour or services, particularly in the context of human trafficking". ILO, *Eradication of Forced Labour* (2007), p. 42.

[19] Demand in the context of human trafficking is not clearly defined in EU law or policy, which may complicate the implementation of this element of the Directive by Member States. The EU recognised the need to understand what constitutes demand in this area – in 2013, the European Commission, Directorate General for Research & Innovation issued a tender for a research project on “Addressing demand in anti-trafficking efforts and policies”. The multi-year, multi-disciplinary study¹²⁰ on the topic is currently underway and is expected to be finished in the second half of 2017.

[20] In assessing the implementation of Article 18 to prevent and discourage demand, the Commission ought to consider that demand in the context of trafficking ought not to be perceived as an economic term, as human trafficking is not a purely economic issue, but also a social and political one.

[21] In applying the Directive requirements to prevention and demand reduction, Member States ought to be encouraged to consider why is the demand for certain types of labour and services of trafficked persons met by traffickers? Is it the demand that pulls vulnerable persons into situations of exploitation? Or is it created in reaction to the *supply* of individuals pushed by their circumstances, lack of work and opportunities, to seek alternatives away from home? Given the distinctive sectors into which men and women are trafficked, more research from a gender perspective is also needed into the question as to which factors make particular sectors vulnerable to trafficking and exploitation.

[22] Demand in the context of trafficking in persons has previously been described at three levels:

- **Employer** demand (employers, owners, managers or subcontractors).
- **Consumer** demand (clients (sex industry), corporate buyers (manufacturing), household members (domestic work)).
- **Third parties** involved in the process (recruiters, agents, transporters and those who participate knowingly in human trafficking at any stage of the process).¹²¹

In the EU context, a fourth level ought to be added to the list:

Demand for decent work and better opportunities by women, men and children who are pushed by their circumstances to migrate to seek better economic or education opportunities.

[23] Underpinning this is the impact of gender inequality and discrimination (gender as well as other forms of discrimination) in the countries from which many of the victims trafficked to and within Europe come. The burden of poverty, impact of conflict and violence disproportionately affect women, leading to feminisation of migration. Many of these women are particularly vulnerable because of their position in the community and society they come from, and as a consequence end up being trafficked.¹²²

¹²⁰ <http://www.demandat.eu>

¹²¹ *The Mekong Challenge: Human Trafficking – Re-defining Demand*. ILO, Bangkok 2005, p. 4.

¹²² Andrijasevic, R., “Beautiful dead bodies: gender, migration and representation in anti-trafficking campaigns”, (2007) 86 *Feminist Review*.

[24] The increase in identified cases of trafficking for forced labour reported by a number of Member States¹²³ suggests that demand for exploited workers (women and men) in many industries is significant across the EU. In the anti-trafficking discourse, demand has been too often seen narrowly in terms of sexual exploitation and forced prostitution. However, both the globalised nature of the world economy, the need to cut costs following the recent economic crisis and the flexibilisation of labour market relationships through increased sub-contracting has led to, and increased demand for, disposable, low-skilled labour.

[25] There is an increasing list of industries where cases of trafficking or risk of trafficking have been identified in the EU: agriculture, food processing, construction, domestic work, manufacturing, care, cleaning and the service sector. Lack of access to opportunities, combined with the demand for disposable, easily controllable labour, leads to trafficking of workers into and across the EU. It is not surprising that the majority of victims from within the EU come from the poorer countries of the EU, such as Bulgaria and Romania.¹²⁴

[26] Eurojust has found¹²⁵ that most prevention measures and those targeting demand in Europe have focused on awareness-raising and only to some extent also employed enforcement measures.

[27] Measures to reduce the demand for trafficked labour need to focus both on the demand and the circumstances that facilitate exploitation in the place of destination, as well as the conditions that push people to move in the first place. A gender lens needs also to be applied in developing these measures to address the vulnerabilities that arise from a combination of individual circumstances and gender. These should include, in particular, a combination of awareness-raising, education and socio-economic measures, and the enforcement of labour law protections developed with a variety of stakeholders, including the private sector, civil society and trade unions.

Article 18: Preventing and discouraging demand

United Kingdom

[28] The response to modern slavery and human trafficking is governed by legislation and policies at the central government level and in the devolved administrations. In 2015, three new pieces of legislation were introduced in the UK – the Modern Slavery Act, the Human Trafficking and Exploitation (Scotland) Act and Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland). While some of provisions in the Modern Slavery Act (hereafter MSA) apply to the whole of the UK (such as the establishment of the UK Independent Anti-Slavery Commissioner and the Transparency in Supply Chains provision), most provisions apply to England and Wales only. Consequently, there are variations in the way the individual countries of the UK

¹²³ Eurojust, *Prosecuting THB for the Purpose of Labour Exploitation*, The Hague, 2015.

¹²⁴ EU Fundamental Rights Agency, *Severe labour exploitation: workers moving within and into the European Union.*, Vienna, 2015.

¹²⁵ Eurojust, *Prosecuting THB for the Purpose of Labour Exploitation*, The Hague, 2015.

define human trafficking, and while Scotland and Northern Ireland detail victims' entitlement to protection in law, England and Wales do not have these guarantees.

[29] The UK Modern Slavery Strategy follows four strands: Pursue, Prevent, Protect, Prepare. With regard to the prevention and discouraging of demand, the Prevent and Protect strands are key. The UK has historically combined awareness raising and regulatory approaches to prevention and demand reduction. This is described in some detail in the 2012 GRETA report on the UK's compliance with its obligations under the Council of Europe Convention on Action against Trafficking in Human Beings.

[30] Since the appointment of the first UK Independent Anti-Slavery Commissioner, the UK has begun to focus strategically on prevention of trafficking from key countries of origin. In his 2015-2017 strategic plan,¹²⁶ the Commissioner identified three priority countries: Romania, Vietnam and Nigeria.

[31] As regards the prevention of demand for services of trafficked and exploited victims, the Policing and Crime Act 2009 introduced an offence of paying for the sexual services of a prostitute subjected to force, deception, threats or any other form of coercion. According to the UK authorities, the offence is difficult to prove and is generally charged when accompanying more serious offences.¹²⁷

[32] The table below shows charges for offences of paying for sexual services of a prostitute subjected to force.¹²⁸

	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Sexual Offences Act 2003 {53A} ¹²⁹	0	40	7	8	0	3

[33] In 2015, Northern Ireland, the only country of the UK to do so, decided to implement the so-called *Nordic model* and introduce the offence of paying for sexual services of another person under its Human Trafficking and Exploitation Act.

[34] In January 2016, the Home Affairs Committee of the UK Parliament launched an inquiry into prostitution and invited written submissions on:

Whether criminal sanctions in relation to prostitution should continue to fall more heavily on those who sell sex, rather than those who buy it;

What the implications are for prostitution-related offences of the Crown Prosecution Service's recognition of prostitution as violence against women;

¹²⁶ Independent Anti-Slavery Commissioner Strategic Plan 2015-2017.

¹²⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the UK*, 12 September 2012, para 316, Council of Europe.

¹²⁸ Annex B, Written evidence by the Home Office to the Home Affairs Committee inquiry on prostitution, February 2016.

¹²⁹ In 2010 a new offence, S53A of the Sexual Offences Act 2003, criminalised those who make or promise payment for sexual services from a prostitute who is subject to force or exploitation.

What impact the Modern Slavery Act 2015 has had to date on trafficking for purposes of prostitution, what further action is planned, and how effectively the impact is being measured;

Whether further measures are necessary, including legal reforms, to:

Assist those involved in prostitution to exit from it

Increase the extent to which exploiters are held to account.

[35] The inquiry attracted a wide range of responses expressing a variety of views on the issues raised. As the inquiry closed only on 18 February 2016, no inquiry findings report is available at the time of writing.

[36] In its submission to the inquiry, the Home Office affirmed that the UK Government remains of the view that, while it is aware of differing legislative approaches in other countries, there is not unequivocal evidence that any one approach is more effective at tackling harm and exploitation and that the new provision in Northern Ireland “provides an opportunity to observe the implementation and impact of such a change.”¹³⁰ It also highlighted that the Home Office supported the establishment of the national “Ugly Mugs” Scheme aimed at protecting people involved in prostitution from violent and abusive individuals and encouraging sex workers to report incidence of violence. In the Home Office submission, the Crown Prosecution Service stated that “it does not promote the need to end prostitution and that voluntary engagement in sex work is a matter of personal choice.”¹³¹

[37] The 2015 laws in all three UK jurisdictions have introduced new Slavery and Trafficking Prevention Orders (STPO), which allow the court to restrict the behaviour of those convicted of modern slavery offences anywhere in the world, in order to prevent re-offending. Twelve STPOs have been successfully obtained to date, including one with extraterritorial application in collaboration with another EU Member State.

[38] With regard to trafficking for labour exploitation, the UK has successfully implemented prevention through regulatory means. Since 2005, the Gangmasters Licensing Authority (GLA) has been regulating, through a licensing scheme, labour providers in agriculture, horticulture and shellfish gathering and some related processing industries. The scheme was introduced to prevent exploitation of workers following the tragic deaths of 21 Chinese cockle pickers. As a result of the GLA’s operations, the situation has markedly improved in the industries which it regulates.¹³²

[39] In 2014, the Home Office conducted a major campaign focused on public awareness-raising about modern slavery¹³³. It included TV campaign, alongside a website informing about the signs to look out for and a helpline has been launched as well. Initial spike in the calls to the helpline during the campaign has declined and an enhanced helpline is to be re-launched later this year.

¹³⁰ Written evidence by the Home Office to the Home Affairs Committee inquiry on prostitution, February 2016. para 27.

¹³¹ Ibid. Para 12.

¹³² A. Balch, *Regulation and Enforcement to Tackle Forced Labour in the UK: A Systematic Response?*, Joseph Rowntree Foundation, 2012.

¹³³ www.modernslavery.co.uk.

[40] An Immigration Bill, currently before the UK Parliament, will introduce a new Labour Market Enforcement Agency, which is hoped will further contribute to the prevention of worker exploitation. The new bill includes proposed reform of the GLA, which would enable its functions to be extended to other industries.

The Netherlands

[41] In 2000 the Dutch Parliament lifted the ban on brothels which was in place from 1911. Since then the Dutch Penal Code no longer treats organising the prostitution of

adult persons as a crime, provided it is done with the consent of the sex worker. This allowed regulating the sex industry under administrative and labour law and the treatment of sex work as a form of labour, while by separating punishable and non-punishable forms of (exploitation of) prostitution it was expected that trafficking and other associated criminality could be combatted more effectively. At the same time “undesirable forms of prostitution”, such as the exploitation of involuntary prostitution and of minors, became more strictly penalised, as were the clients of minors.

[42] A key element of the change of law was the introduction of local licensing systems, requiring brothels to meet certain standards: planning; hygiene, fire safety and management (e.g. no forced drinking, no unsafe sex, no minors, no undocumented workers and no trafficking). If the operator violates the requirements he or she can be fined or the brothel can be shut down.

[43] The licensing system is part of the so-called ‘barrier model’ which aims to throw up as many barriers as possible for traffickers through a combination of (regulatory, administrative, fiscal and other) measures.¹³⁴

[44] At the time of writing a draft bill was pending to tighten the regulation of prostitution and harmonise the local licensing systems.¹³⁵ If passed, the bill would raise the minimum age for working in prostitution from 18 to 21 years. Moreover, the licensing system would be expanded to include home-based sex workers and independent escorts, making it illegal operate as an independent worker without a license. The latter two elements have been criticised by both sex workers and organisations working with sex workers because of concerns about the protection of privacy, safety and independence of sex workers.¹³⁶

[45] Measures to discourage demand are mainly aimed at trafficking and exploitation in the sex industry and predominantly consist of awareness-raising campaigns aimed at, in

¹³⁴ Response of the Netherlands to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties, First evaluation round May 2012, pp.4-5.

https://www.coe.int/t/dghl/monitoring/trafficking/Source/Public_R_Q/GRETA_RQ_NLD_en.pdf.

¹³⁵ Bill to regulate prostitution and to suppress abuses in the sex industry, no. 32 211.

¹³⁶ See e.g.: Letter to the Second Chamber of Parliament, SOA AIDS, Rutgers Expertise centre sexuality, Association Women and Law, TAMPEP European Network for HIV/STI prevention and health promotion among migrant sex workers, SHOP Assistance and support to victims of trafficking, Swexpertise 21, Platform for the improvement of the position of sex workers, 5 October 2015; Letter to the Second Chamber of Parliament, PROUD, Dutch Union of Sex Workers, 4 October 2015.

particular, (male) clients to encourage them to report possible cases of trafficking. One example is Crime Stoppers campaigns on trafficking and forced prostitution encouraging clients to anonymously can report suspicions of trafficking.¹³⁷ Crime Stoppers inform clients about signs of trafficking through, for example, banners on erotic websites and encouraged them to report suspicions of abuse. In several cases this has led to the arrest and conviction of traffickers.¹³⁸ The Crime Stoppers campaigns also aim to raise awareness on trafficking amongst the general public and professionals working with sex workers.

[46] Other preventive measures include awareness-raising campaigns about the phenomenon of so-called “loverboys” in schools and among parents, trainings to prevent youth prostitution for social workers, police officers, local and provincial governments and schools, and websites where young people can chat with social workers on topics such as loverboys, online sexual abuse or relationships.¹³⁹ In addition, since 2008 various exit programmes are funded to support sex workers who want to change work.¹⁴⁰

[47] A draft bill is pending on the criminalisation of clients of sex workers who knew or ought to have known that the sex worker is a victim of trafficking.¹⁴¹ The bill, however, has been criticised by sex workers’ organisations, organisations working with sex workers, academics and jurists, especially in regard to the element of “should have known”.¹⁴² There are also concerns that clients will be less willing to report possible cases when it is unclear whether they risk being prosecuted themselves. Recent research has shown that almost 70% of clients feel responsible for abuses in the sex sector. About 40% are willing to actually report abuses. As factors that encourage reporting they mention guarantees of anonymity and safety; ease and a low threshold for reporting; and transparency on how reports are dealt with.¹⁴³

[48] In certain circumstances, clients who knowingly make use of the services of a trafficked sex worker can be penalised also under existing legislation (Art. 273f para 1(6) of the Criminal Code: intentionally benefitting from the exploitation of another person) or under the provision on rape. Clients of minor prostitutes are punishable under Art. 248b of the Criminal Code.

[49] In recent years, attention has been growing to trafficking in other sectors than the sex sector, though the focus is still dominantly on women and the sex industry. In 2014, about 60% of the reports on (possible) victims concerned exploitation in the sex industry, while 20% concerned exploitation in other industries, such as forced criminality, agricultural labour, the hospitality sector, transport and domestic labour. Almost 20% of the reports

¹³⁷ See: <http://gedwongenprostitutie.meldmisdaadanoniem.nl/english/>

¹³⁸ See: <https://www.meldmisdaadanoniem.nl/blog/2015/06/15/recordaantal-meldingen-na-campagne-mensenhandel/>

¹³⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, 18 June 2014, para 110, Council of Europe.

¹⁴⁰ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, 18 June 2014, para 120, Council of Europe.

¹⁴¹ Bill to criminalise abuse of prostitutes who are victims of trafficking in human beings, no. 34 091.

¹⁴² See e.g.: Letter to the Second Chamber of Parliament, Dutch Association Women and Law, October, 15 2015; Letter to the Second Chamber of Parliament, Proud, Dutch Union for Sex Workers, August 11, 2015.

¹⁴³ ‘In gesprek met de klant’; een onderzoek naar klanten van prostituees en hun rol bij de aanpak van misstanden. GGD Amsterdam (E&G reeks 2014/3; ISBN: 978-90-5348-226-1).

concerned (possible) male victims.¹⁴⁴ Due to increased scrutiny the number of identified cases of these forms of exploitation is steadily growing.

[50] Initiatives to prevent trafficking and exploitation in high risk industries, such as the construction industry and agriculture, include information cards in different languages, produced by the Ministry of Social Affairs and Employment, to provide migrant workers with information on signs of exploitation and where they can go for help. Other activities include awareness-raising campaigns targeting the general public,¹⁴⁵ employers and employees in high-risk sectors, information sessions for municipal inspection services, conferences focussing on victims of labour exploitation and their needs, and information materials and meetings with the embassies of the 22 most important source countries for trafficking.¹⁴⁶

[51] A special Action Plan against the exploitation of Roma children in criminal activities and forced marriage of under aged girls was launched in 2011, consisting of knowledge improvement, pilot projects to solve problems faced by Roma families, information leaflets for social workers and police, and European cooperation to exchange information and share good practices.¹⁴⁷

Romania

[52] According to the National Agency against Trafficking in Persons (ANITP), Romania is mainly a country of origin. Therefore, ANITP has implemented numerous awareness-raising campaigns to inform vulnerable groups in Romania about the risks of trafficking in human beings.¹⁴⁸ GRETA recommendations of its first evaluation report on Romania include raising awareness “on the question of equality between women and men and the principle of non-discrimination as a preventive measure against THB”.¹⁴⁹

[53] According to the Romanian authorities, ANITP implemented from the period 2012-2013 91 campaigns (12 national and 79 at regional/local level) on targeting all forms of trafficking.¹⁵⁰ Those campaigns included preventive action for minors at risk, Roma communities, homeless people, as well as preventing sexual exploitation and discourage

¹⁴⁴ National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2015). *Trafficking visible and invisible. Update figures possible victims 2010-2014*, The Hague: BNRM.

¹⁴⁵ For example by the NGO Fairwork: <http://www.fairwork.nu/mensenhandel.html>.

¹⁴⁶ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, 18 June 2014, para 111-114, Council of Europe.

¹⁴⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, 18 June 2014, para 121, Council of Europe; Letter of the Minister of Justice and Security to the Second Chamber of Parliament on Integration Policies and Human Trafficking, 32 824 and 28 638 no. 92, 14 April 2015.

¹⁴⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania*, 31 May 2012, para 91, Council of Europe..

¹⁴⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania*, 31 May 2012, para 99, Council of Europe..

¹⁵⁰ Council of Europe, Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, Report submitted by the Romanian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)7 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, p. 13.

demand. Information materials, including posters with contact details of hotlines are visibly displayed in transportation hubs, including at major airports in Romania.

[54] In 2013, ANITP in cooperation with Caritas Association Bucharest carried out a prevention campaign entitled “Indifference makes us accomplices”, that targeted potential clients of victims of trafficking for sexual exploitation and people active in so-called “sex tourism”.¹⁵¹ In addition, campaigns have also been targeted at providing information on labour exploitation.

Lithuania

[55] While a number of initiatives and programmes were implemented in Lithuania in the years 2012-14, there does not appear to have been much emphasis on the gender dimension. The Klaipeda Social and Psychological Support Centre ran a project entitled “Social Assistance to Victims of Trafficking in Human Beings and Forced Prostitution, Their Integration into the Society and the Labour Market”,¹⁵² which was a series of seminars for young people. It is not clear how many seminars there were, how many people took part, and what were the outcomes and impact.

[56] These programmes do not appear to have been systematic and were more about raising awareness than discouraging demand. GRETA recommended that the Lithuanian authorities “should continue to implement awareness-raising activities on THB and provide information to the general public on emerging trends in THB, such as for the purpose of labour exploitation, forced criminality, and marriages of convenience which result in exploitation”.¹⁵³

[57] Lithuanian law includes an offence of the use of forced labour or services, including sexual services, when a person using them knew or should have known that these services were obtained as a result of exploitation of a victim of trafficking.

Sweden

[58] Sweden has applied a gender perspective on its actions by concentrating primarily on preventing women and children from becoming victims of sexual exploitation. It carried out several awareness-raising measures, including campaigns targeting women who are at risk of sexual exploitation and helping victims escape (the campaign was entitled “Safe Trip” and measured by YouGov survey), and a campaign to alert travellers to sexual

¹⁵¹ Council of Europe, Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, Report submitted by the Romanian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)7 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, p. 16.

¹⁵² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 86, Council of Europe.

¹⁵³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 88, Council of Europe.

exploitation of children (“Don’t Look Away” campaign implemented in partnership with NGO ECPAT).¹⁵⁴

[59] The evidence of the impact of this measure is conflicting, with positive accounts given by some law enforcement and government agencies, while other research, such as the one by the Swedish Council for Crime Prevention Council that evaluated the implementation of the Swedish National Action Plan, found that the impact is not unequivocal. It concluded that it is not possible to assess whether prostitution and trafficking for sexual exploitation has decreased in Sweden as a result of the national action plan, as there was not sufficient information to allow for such assessment to be made.¹⁵⁵

[60] Sweden is recognised for its high regard for gender equality and diversity. However, it appears that this have been less influential in initiatives to combat human trafficking and has rather favoured criminal law measures, such as the criminalisation of the purchasing of sex, rather than pro-active empowerment measures to strengthen the position of vulnerable migrant workers and enable them to access their rights.¹⁵⁶

[61] By contrast, SIDA, the Swedish International Development Cooperation Agency, has supported numerous anti-trafficking projects in Europe and beyond, that included vocational training, micro-credits and education programmes for at-risk population. Education and empowerment programmes for women and girls are key in strengthening their position in the society, reducing discrimination and thus risk of exploitation and human trafficking.¹⁵⁷

[62] Swedish law does not criminalise the knowing use of the services of a victim. Sweden, having taken the view that countering demand for sexual exploitation is fundamental to combating trafficking for sexual exploitation has since 1999 criminalised the purchase of sexual services.

Germany

[63] As for prevention of trafficking, several initiatives cover prevention and awareness-raising in Germany within a broader framework of anti-trafficking themed activities, including information dissemination in schools, specialized information targeted at migrant workers’ rights and risks of communicating in the cyber space.¹⁵⁸ The German authorities identify those activities also to discourage and to reduce demand according to Article 18.

[64] Specific measures to discourage demand for services of persons trafficked for the purpose of sexual exploitation are implemented by several civil society organizations.

¹⁵⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, paras 104-105, Council of Europe.

¹⁵⁵ Johansson, I., *Swedish Anti-Trafficking Policy, Official Framework and Local Practices*, University of Malmö, 2014, p.41.

¹⁵⁶ Johansson, I., *Swedish Anti-Trafficking Policy, Official Framework and Local Practices*, University of Malmö, 2014, p.41.

¹⁵⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, para. 97, Council of Europe.

¹⁵⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015 paras 97-99, Council of Europe.

These include awareness-raising campaigns aiming at clients of prostitutes and at prevention of sexual violence perpetrated by tourists.¹⁵⁹

[65] The introduction of a general minimum wage of €8,50 per hour on 1 January 2015 in Germany can be regarded as a tool to discourage demand for labour exploitation as it tackles all labour sectors.

[66] Germany's comprehensive anti-trafficking strategy originates from a women's rights framework. In 1999, the first national action plan against trafficking in women was part of the national action plan against violence against women. To the present day the national coordination group on trafficking in human beings is chaired by the Ministry of Family and Women's Affairs.¹⁶⁰

III. The gender dimension of assistance, support and protection of victims

[67] The idea to set up a system to identify victims within a complex anti-trafficking strategy was introduced years after the adoption of the Palermo Protocol in 2000.¹⁶¹ The first international instruments containing language of identification are the OHCHR guidelines on human rights and human trafficking (2002)¹⁶² and, later, the OSCE/ODIHR handbook on the National Referral Mechanism (2004).¹⁶³ From a human rights point of view, identification procedures were meant to transform a migrant with an irregular status into a valid claimant of rights. Since then, identification procedures have become a core measure in anti-trafficking politics; helping to establish a highly bureaucratic system of qualification for presumed victims to benefit from assistance and support structures.¹⁶⁴

[68] The gender dimension of outreach to victims of trafficking includes taking into consideration that it is a very diverse group of victims. Female victims of trafficking often face sexual violence and other forms of severe suffering that often bear a social stigma. Victims often remain silent about their sufferings.

[69] From a gender perspective, identification procedures should undergo a critical review of based on existing knowledge and research on most appropriate ways of outreach to victims, including victims of sexual violence and domestic violence. Taking into

¹⁵⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, paras 107-108, Council of Europe.

¹⁶⁰ <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/gewalt-aktionsplan-gewalt-frauen-ohne-vorwort,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

¹⁶¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 2000, UNGA Resolution 55/25.

¹⁶² See <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

¹⁶³ OSCE/ODIHR, *National Referral Mechanism. Joining the Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*. Warsaw, 2004. See <http://www.osce.org/odihr/13967?download=true>

¹⁶⁴ B.H. Uhl, *Die Sicherheit der Menschenrechte: Bekämpfung des Menschenhandels zwischen Sicherheitspolitik und Menschenrechtsschutz* (2014); P. Roth, B. Uhl, M. Wijers, W. Zikkenheiner, *Data protection challenges in anti-trafficking action*, (2015), http://www.dataact-project.org/fileadmin/user_upload/pdf/datAct_engl_Online.pdf

consideration the sensitivities around these crimes, the predominant approach to allowing victims to access support structures is rooted in a strategy that provides victims with anonymous and low-threshold access. Therefore, the current registration system that accompanies the identification of trafficking victims should be examined.

[70] With regards to male (and female) victims of trafficking exploited outside of the sex industry, procedures of identification should be an integral strategy of all labour inspection activities.

[71] In addition, the following measures of anti-trafficking response should be critically reviewed and checked against existing women's rights standards: high-security shelter concepts; gender-sensitive accommodation, including respective specialised shelters for male victims, female victims and children; counselling for labour opportunities to be included as a core counselling topic for all victims, including victims of sexual exploitation. Provisions ought to also be made to take into account other gender identities, as some member states, like the UK, begin to identify trans-gender victims.

Article 11: Assistance and support for victims of trafficking in human beings

United Kingdom

[72] In the UK, a National Referral Mechanism was introduced in 2009. Until 2014, some 6,800 individuals were referred into the system.¹⁶⁵ The NRM has been criticised for some shortcomings, including the quality decision-making, which resulted in an evaluation of the system. The evaluation, published in November 2014¹⁶⁶ made a number of recommendations for improvements, including the need to professionalise the process and ensure that support is provided based on the needs of individual victims. In summer 2015, a year-long pilot testing a possible new system was launched in England. The NRM pilot includes a multi-agency decision making process, in which a panel reaches a positive/negative identification rather than that decision being made by a single competent authority, as it is under the current system.

[73] In 2015, there were 3266 potential victims referred to the NRM, with labour exploitation (including exploitation for forced criminality and domestic servitude) being the most prevalent form of exploitation recorded. The number of women referred was slightly higher: 1744 females (53%) compared to 1518 males (46%) and 2 (<1%) recorded as transsexual and in a further 2 (<1%) cases, the gender was not recorded.¹⁶⁷ Women and girls still represent the majority of victims trafficked for sexual exploitation and domestic servitude.

¹⁶⁵https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf, p.8.

¹⁶⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf

¹⁶⁷ <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>

[74] The anti-trafficking legislation in Scotland and Northern Ireland guarantees specific and detailed victim protection and assistance provisions, whereas the Modern Slavery Act does not include such measures, only a provision that enables the introduction of statutory victim assistance provisions at a later stage. The difference in approaches to victim assistance across the UK raises a concern of potential varying standards in entitlements and provision of victim support.

[75] Under the National Referral Mechanism, the support providers are contracted by authorities of the respective countries, to support victims who have been referred to the NRM. Provision is made for both women and men, who receive accommodation and support for at least 45 days (the duration of the recovery and reflection period) while children are cared for by local authorities.

[76] The UK Modern Slavery strategy recognises the special vulnerabilities of children, but does not highlight gender as a particular vulnerability. The Strategic Plan of the UK Independent Anti-Slavery Commissioner does recognise that gender can be a form of vulnerability in the context of human trafficking.¹⁶⁸

[77] A report, published by the Anti-Trafficking Monitoring Group in February 2016,¹⁶⁹ found that victims of trafficking who are pregnant or have children are “systematically overlooked” in the UK’s anti-trafficking response and identified that support to meet their special needs, such as access to safe and appropriate accommodation, childcare, access to specialist healthcare and support for their children, is not systematically provided. It further found that no official data is recorded on pregnancy and parenthood of victims of trafficking, but the research indicates that as many as half of those trafficked in the UK are pregnant or have children. The conclusions of this report raise a question whether the victim protection provisions implemented by the UK sufficiently apply a gender lens, in particular with regard to female victims who might be pregnant prior to exploitation, as a result of exploitation or become pregnant after they have been identified but remain vulnerable.

[78] Of particular concern from a gender perspective is the situation of overseas domestic workers in the UK, most of whom are women. Domestic workers work in private households and come to the UK accompanying their employer on a special visa. The risk of abuse of domestic workers is well known and many are identified as victims of trafficking and servitude. There has been a debate over the past two years in the UK over the protection of this category of victims and in particular prevention of their abuse. Between 1998 and 2012 women who came to the UK as overseas domestic workers were able to change employer within the same visa category, empowering them to leave an abusive employer without repercussion. Changes to the visa in 2012 tied workers to their employers, removing the protection from these vulnerable women. In December 2015, an independent inquiry commissioned by the UK Government found that a “tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK”, and recommended that “all overseas domestic workers be granted the

¹⁶⁸ Independent Anti-Slavery Commissioner Strategic Plan 2015-2017, p. 8.

¹⁶⁹ http://www.antislavery.org/includes/documents/cm_docs/2016/a/atmg_time_to_deliver_report_for_web_final.pdf

right to change employer and apply for annual extensions, provided they are in work as domestic workers in a private home.”¹⁷⁰

The Netherlands

[79] In the Netherlands CoMensha, the Coordination Centre for Human Trafficking, is responsible for coordinating the primary reception, care and assistance of (potential) victims of trafficking and for providing information and advice to service providers, police and other professionals. In 2014, 173 (potential) victims were referred to them for primary reception, of whom 115 were women and 28 men (in 30 cases the gender is not registered).¹⁷¹ As soon as a victim is placed in one of the shelters, CoMensha transfers the coordination of the assistance to one of the 10 regional coordinators.¹⁷² The coordination of assistance to minor victims is done by the youth care service.

[80] CoMensha also registers reports of (possible) victims of trafficking in order to get insight into the scale and nature of trafficking and to identify trends, problem areas and success factors in the implementation of trafficking policies.¹⁷³ Most reports come from the (border) police (2014: 64%) who are obliged to report (possible) victims of trafficking at the slightest indication; other reports mainly come from the regional coordinators and other service providers (2014: 22%). A small percentage comes from the Labour Inspection (2014: 4%).

[81] In 2014, 1.561 (possible) victims were reported at CoMensha: 1.314 reports concerned women, 247 men. Around 18 % of the reported cases of (possible) victims concerned minors. About 30% (468) of the reported (possible) victims in 2014 have Dutch nationality; the other most common nationalities were Romania (216), Bulgaria (154), Poland (99) and Hungary (96). Around 39% of all reported (possible) victims come from EU countries. Despite the increase in the number of reported (possible) victims, the number of requests for shelter has remained more or less stable over the years.

[82] Most of the reports on female (possible) victims concerned exploitation in the sex industry (77%); most of the reports on male (possible) victims concerned exploitation in other sectors (58%). The latter concerned, in particular, the hotel and catering sector (21.6%), domestic labour (14.3%), the shipping and transport sector (12.7%) and agriculture and the fishing industry (9.3%). The following table indicates the different sectors of exploitation for female and male (possible) victims.

¹⁷⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/OD_WV_Review_-_Final_Report_6_11_15_.pdf, p.5

¹⁷¹ The number of victims for whom CoMensha is asked to arrange a shelter does not provide insight into the total number of (potential) victims, as reception can also be arranged through other ways and not all (presumed) victims need to be in a shelter.

¹⁷² CoMensha (2015), *Annual report. The picture of 2014*, available at http://mensenhandel.nl/files/jaarverslag_comensha_2014.pdf.

¹⁷³ Unless otherwise indicated the figures are based on the 2014 report of CoMensha (*Annual report. The picture of 2014*). CoMensha reports to the National Rapporteur who uses the (anonymous) data for analyses and policy recommendations.

Sector	Female/percentage	Male/percentage
Sex industry	77	12
Other industries	8	58
Forced criminality	2	4
Not yet worked	2	0
Unknown	11	25
Not victim but witness	0	1

Of the female (possible) victims, 216 were reportedly victims of so-called “loverboy techniques”.¹⁷⁴ The majority (187) had Dutch nationality; 43% (92) were minors, mostly between 15 and 17 years (78). Of the male (possible) victims the largest group were Filipinos (53), who were mainly exploited in (inland) shipping. The largest group of male (possible) victims was aged 31-40 (68), the largest group of female (possible) victims was aged 24-30 (380).

[83] While the number of reported (possible) victims has considerably increased since 2000, it is difficult to interpret these figures, as the increase in reports can be both a signal of successful (better detection and identification of victims) and failing policies (more victims) or simply indicate that, in particular, the (border) police more consistently report indications of trafficking, as they are obliged to do since 2012. Moreover, the figures concern “signals of possible victims”, which can vary from “the slightest indication” to actual cases. On the basis of these figures it is therefore impossible to establish the actual number of victims.

[84] The statistics make clear that the focus is still dominantly on women and the sex industry, although the number of, predominantly male, (potential) victims reported by the Labour Inspection is slowly but steadily growing: from 39 in 2010 to 72 in 2014.¹⁷⁵ In recent years there have been more targeted initiatives against trafficking and exploitation in other sectors, in particular after several large-scale cases in the agricultural sector were discovered.

[85] Currently there is no formal identification procedure for victims of trafficking; the police only decide whether there are sufficient indications to start a criminal investigation. Following recommendations of GRETA, the National Rapporteur and research by Intervict, there is a pilot ongoing with multi-disciplinary identification teams.¹⁷⁶

[86] GRETA has pointed out the need to improve the identification of victims of trafficking and exploitation outside the sex industry and among asylum seekers, especially in regard to unaccompanied minors.¹⁷⁷ Other concerns, identified by the Special Rapporteur, are the

¹⁷⁴ Under Dutch legislation this falls under “trafficking”. Under other legislations this might fall under ‘pimping’.

¹⁷⁵ National Rapporteur (2015), *Trafficking in human beings visible and invisible. Update statistics potential victims 2010-2014*, The Hague: National Rapporteur.

¹⁷⁶ Letter of the Minister of Justice and Security to the Second Chamber of Parliament on a National Referral Mechanism, 23 June 2014.

¹⁷⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, 18 June 2014, para 152, Council of Europe.

identification of minor Dutch and EU victims, as well as the continued assistance of unaccompanied foreign minors in protected reception centres when they turn 18.¹⁷⁸

[87] There are three specialised shelters (COSMs) with 70 places for the initial reception of victims of trafficking who do not have Dutch nationality/are from outside the EU and are in the reflection period; 16 of these places are allocated for male victims. In other cases, a place in a regular women's or general shelter is sought, or, when there are no other options, in a crisis shelter. Since 2015 the COSM shelters are also open to Dutch and EU victims in exceptional cases. One problem is the transition after the reflection period from the first shelter to follow-up reception centres and the continuity of psychological and medical assistance. Also, the lack of independent housing for victims who have pressed charges after their period in a shelter poses a problem, despite the fact that since 2012 municipalities have an explicit duty in this respect.¹⁷⁹

[88] There are specialised shelters and assistance services for young, mostly female, victims of so-called "loverboys"; the victims are predominantly Dutch. Unaccompanied foreign minors who are trafficked or are at risk of trafficking can be accommodated in protected reception centres. Apart from these two situations minor victims are catered for under the general youth care services.

[89] In 2013 research was carried out on the needs of different victims of trafficking by Intervict.¹⁸⁰ One of the critiques was that Dutch policies are mainly directed at female foreign victims in the reflection period or who have a temporary residence permit. Another problem, identified by different actors, concerned the fact that the available services for trafficked persons and the applicable regulations were quite fragmented, which made it difficult to find appropriate assistance for each individual victim, tailored to their specific needs. Moreover, research showed that EU victims did not always receive the assistance to which they were entitled. This applied in particular to, predominantly male, EU victims of exploitation outside the sex industry who do not need a shelter but want to return or continue working as soon as possible. The same applied to Dutch victims who do not need a shelter.¹⁸¹

[90] To address the above mentioned problems and to improve identification and access to assistance tailored to the specific needs of different victims, a National Referral Mechanism has been developed since 2013, which aims to solve the identified gaps and lays down the different tasks and responsibilities of the different actors involved. Part of the NRM is an online guidance for professionals, victims and concerned citizens on the available services and regulations, which was launched in 2015.¹⁸² Also, a pilot started to improve diagnostic

¹⁷⁸ Letter of the Minister of Justice and Security to the Second Chamber of Parliament on a National Referral Mechanism, 23 June 2014.

¹⁷⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, 18 June 2014, para 157 and 172, Council of Europe; 9th Report National Rapporteur (2013).

¹⁸⁰ C. Rijken, J. van Dijk and F. Klerx-van Mierlo, *Mensenhandel: het slachtofferperspectief. Een verkennende studie naar behoeften en belangen van slachtoffers mensenhandel in Nederland (Human Trafficking: the perspective of victims. An explorative study into the needs and interests of victims of human trafficking in the Netherlands)*, Tilburg: Intervict, Tilburg University (2013).

¹⁸¹ Letter of the Minister of Justice and Security to the Second Chamber of Parliament on a National Referral Mechanism, 23 June 2014.

¹⁸² www.wegwijzermensenhandel.nl

instruments, especially in case of traumatised victims, to ensure adequate treatment. A commission was established by the youth care institutions to improve identification and assistance of minor victims and (mostly female) victims of “loverboys”. In 2016 CoMensha will open a 24/7 helpline for victims of trafficking and professionals to make the threshold for reporting as low as possible. There are special Action Plans to address the phenomenon of “lover-boys” and the exploitation of Roma children.¹⁸³

[91] In some cities victims of trafficking in the sex industry are prohibited in the context of criminal proceedings to continue working in prostitution under free conditions if they want to do so, despite the fact that sex work is legal.¹⁸⁴ This acts as an extra barrier to pressing charges for this group, as reporting would imply giving up their income, upon which in many cases their families are dependent. This in particular affects women as they are the majority of victims exploited in the sex industry. Similar requirements are not posed to (predominantly male) victims of trafficking in other industries.

Romania

[92] The Romanian Anti-Trafficking Act (Art. 39) stipulates that victims of trafficking are entitled to a recovery and reflection period of 90 days. In addition they have access to counselling, medical and social assistance, as well as food and accommodation. Both national and foreign victims qualify for those rights from the moment when there are reasons to believe that presumed victims have been trafficked.¹⁸⁵

[93] ANITP coordinates through its Regional Centres an assistance and support structure for victims of THB throughout Romania. The cooperation between NGOs providing assistance and support and law enforcement agencies is not always sufficient, due to lack of resources and unclear mandates.¹⁸⁶

[94] In 2014, ANITP launched a several year-long programme to improve the national identification and referral mechanism. The expected outcomes include improving indicators to identify and refer possible victims, to elaborate risk assessments for identified victims, and to develop return programmes for foreign victims.¹⁸⁷

¹⁸³ Letter of the Minister of Justice and Security to the Second Chamber of Parliament on a National Referral Mechanism, 23 June 2014.

¹⁸⁴ Local policies of Groningen, e.g., prohibit victims of trafficking from working in the sex industry for six months after they have pressed charges (Policy note on prostitution- and other sex businesses, Groningen, February 2016).

¹⁸⁵ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p. 52.

¹⁸⁶ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p.23

¹⁸⁷ Council of Europe, Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, Report submitted by the Romanian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)7 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, p. 20

Lithuania

[95] According to the GRETA evaluation report, the Ministry of Social Security and Labour has allocated €43,442 annually for NGO projects on provision of assistance to victims of THB and forced prostitution. In 2013 tenders were held and five NGOs were allocated funding. Additionally municipalities were reported to fund NGOs assisting victims of THB either by financing crisis centres or co-financing services provided by NGOs.¹⁸⁸ Different types of assistance provided by NGOs are financed by the state budget; these are not dependent on co-operation with the law enforcement authorities.¹⁸⁹ However it was not indicated whether gender issues were taken into account.

[96] There is no specialised centre for victims of THB.¹⁹⁰ Lithuanian Caritas accommodates trafficked persons in rented apartments or municipal shelters for women victims of violence if there is an agreement with the municipality, usually for up to six months. State funding provided for this (about €17,000 per year) was reported not to be enough to cover all the costs.

[97] Klaipeda Social and Psychological Service Centre assists women victims of violence and THB; it tries to help them reintegrate by facilitating access to the labour market. It runs a hotline (open 11 hours per day) for reporting cases of violence against women and THB. It also runs a shelter offering short-term accommodation for victims of violence and THB. In 2013 capacity was reduced from 30 to 12 places because of lack of funding.¹⁹¹

[98] The municipalities run 28 crisis centres, 71 family support centres and 56 social service centres with short-term accommodation for people in need, where trafficked people may also be placed.¹⁹²

[99] There does not appear to be specific provision for the accommodation of male victims of THB. In its report, GRETA urged Lithuania to strengthen its efforts to assist trafficked persons, especially to ensure that all trafficked persons have effective access to assistance, including adequate accommodation, emergency and long-term medical assistance, as well as social assistance.¹⁹³

Sweden

[100] Sweden has until recently focused predominantly on trafficking for sexual exploitation and strictly linked its anti-trafficking measures with the fight against prostitution. As a consequence, the focus in Sweden has been on identification of this form

¹⁸⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 115, Council of Europe.

¹⁸⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 116, Council of Europe.

¹⁹⁰ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 117, Council of Europe.

¹⁹¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 119, Council of Europe.

¹⁹² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 123, Council of Europe.

¹⁹³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 125, Council of Europe.

of trafficking, and the knowledge and understanding of the authorities has been shaped thus.¹⁹⁴ In recent years however, Sweden has begun focusing more on cases of trafficking for forced labour and has recorded a higher number of cases of trafficking for labour exploitation than those for sexual exploitation in 2011 and 2012.¹⁹⁵ This corresponds to the trends in other EU countries, like in the UK, where the numbers of identified cases of forced labour surpassed those for sexual exploitation after the authorities consciously began focusing on trafficking for forced labour.¹⁹⁶

[101] According to the GRETA evaluation report, the Health and Social Care Inspectorate has had the responsibility for supervising the provision of social services, while provision of assistance to persons in need, including trafficked persons lies with the social welfare committees in each of the 290 municipalities in Sweden. Municipalities often sub-contract NGOs to provide services to victims. Victims of trafficking for sexual exploitation can also access help from anti-prostitution units of municipal social services in Stockholm, Malmö and Gothenburg.¹⁹⁷

[102] Sweden does not have a formal identification and assistance mechanism for trafficked persons.¹⁹⁸ The development of a National Referral Mechanism in Sweden began in 2014;¹⁹⁹ however, as of September 2015, a mechanism has still not been put in place.

[103] It was also noted by GRETA, as well as trade unions and NGOs in Sweden, that while Sweden has developed some systems to support women trafficked for sexual exploitation, there are significant gaps in identification and assistance to victims of trafficking for labour exploitation, who are predominantly male. For instance, there is no specialised accommodation and assistance provisions for male victims of trafficking. Furthermore, the requirement to co-operate in the criminal proceedings in order to access assistance is reportedly more stringently enforced in cases of trafficking for labour exploitation than in cases of trafficking for sexual exploitation.²⁰⁰

Germany

[104] In Germany there are no formalised indicators for authorities to identify trafficked persons. Identification of victims takes place in a decentralised and diverse manner. On a Länder or local level, cooperation agreements between law enforcement agencies and civil

¹⁹⁴ I. Johansson, *Swedish Anti-Trafficking Policy, Official Framework and Local Practices*, University of Malmö, 2014. p.41.

¹⁹⁵ https://polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/Trafficking_1998_/Trafficking_report_13_20130530.pdf

¹⁹⁶ National Crime Agency Statistics of persons referred as potential trafficking victims in 2014: 1093 cases of trafficking for labour exploitation, including domestic servitude (670 men/423 women); 830 case of sexual exploitation (794 women/34 men/2 transgender).

¹⁹⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 145, Council of Europe.

¹⁹⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, para. 128, Council of Europe.

¹⁹⁹ <http://www.icmpd.org/Completed-Projects.1677.0.html>

²⁰⁰ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, paras.128, 149, 150, Council of Europe.

society counselling centres ensures the referral of presumed victims of trafficking to specialised counselling centres without risking deportation of a presumed victim.

[105] Those cooperation agreements have a strong focus on referring trafficking victims for the purpose of sexual exploitation, while victims of labour exploitation face an underdeveloped infrastructure.²⁰¹

[106] All 38 civil society stakeholders involved in a local or Länder-based referral system are embedded into a national network, called KOK (Koordinierungskreis gegen Menschenhandel). The KOK offers on a regular basis qualification measures for counselling centres and elaborates advocacy statements for the political stakeholders. It is rooted in the German women's movement against violence against women, women migrants' rights, faith-based and prostitutes' peer groups. Strengthening women's rights as an integral part of anti-trafficking activism is part of its mission statement.²⁰² In the report of GRETA on Germany, the concern was raised about a lack of national referral mechanisms for victims of trafficking for labour exploitation.²⁰³

Article 12: Protection of victims of trafficking in criminal investigations

United Kingdom

[107] Victims are entitled to protection during criminal investigations and trials under the laws of all three UK jurisdictions. They can be given access to special measures in court and application can be made to preserve their anonymity during proceedings and in court. Section 46 of the Modern Slavery Act extended the special measures provisions to all victims of modern slavery.²⁰⁴ In Scotland, trafficked persons are categorised as vulnerable witnesses under the Victims and Witnesses (Scotland) Act 2014.

[108] While provisions for special measures in criminal courts are available to victims of trafficking, concerns have been raised about protections available in other courts. In 2012, GRETA raised a concern about the lack of protection for victims in Employment Tribunals.²⁰⁵

The Netherlands

[109] Victims of trafficking are generally heard during the criminal investigation by an investigative judge. It is possible to hear the victim outside the presence of the defendant(s), who will then watch the interrogation from behind a screen and can submit

²⁰¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, para 131, Council of Europe.

²⁰² See www.kok-gegen-menschenhandel.de

²⁰³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, paras 131, 137, Council of Europe.

²⁰⁴ This applies to England and Wales only.

²⁰⁵ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, 12 September 2012, para 367, Council of Europe.

their questions to the judge who will then pose them to the victim/witness. Before the hearing the victim will be offered a meeting with the prosecutor, who will explain the procedure and answer any questions of the victim/witness in regard to the procedure. The defendant can request to have the victim/witness again examined at the trial, but this will only be granted if there is new evidence on which the defence could not interrogate the victim/witness during the interview before the investigative judge. In that case, the victim can be heard *in camera* or through the use of audio-visual means.

[110] Since 2010, there are special guidelines for the use of audio-visual means to hear victim-witnesses.²⁰⁶ A pilot is currently going on to establish facilities in the specialised shelters (COSMs) for interviewing victims.²⁰⁷

[111] Under certain conditions, the personal data of the victim can be kept confidential. Victims may give the office of their lawyer as their residence. Personal data of victims will never be publicised in the verdict or in the media. In exceptional cases the victim may be qualified as a threatened witness and be heard anonymously by the investigative judge. If necessary, the victim is provided with a telephone number by which she or he can reach the police 24/7 in case of threats or intimidation. If necessary, the police will also accompany the victim to and from the court.

[112] Trafficking cases are handled by specially trained judges. In addition, each court has a specialised prosecutor who needs to be contacted by the acting prosecutor in trafficking cases. There are specific binding Guidelines of the Prosecutors-General on how to act in (suspected) cases of trafficking.²⁰⁸ In line with Directive 2011/36/EU, the guidelines address the protection of victims during criminal proceedings and the prevention of secondary victimisation,²⁰⁹ special protection measures for minor victims and other victims with special needs (e.g. due to pregnancy),²¹⁰ the non-punishment principle and the need for an integrated approach to trafficking.

[113] It is accepted as a principle that the criminal proceedings may not increase the suffering of the victim. This principle has been strengthened by the 2010 *Act on Strengthening the Position of Victims of Crime*, which lays down the rights of victims of crime and explicitly lays down a responsibility of prosecutors and judges for the respectful treatment of victims.²¹¹

²⁰⁶ Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen en verdachten, *Stc.* 2010, nr. 11885.

²⁰⁷ Letter from the Minister of Justice and Security to the Second Chamber of Parliament on a National Referral Mechanism, 23 June 2014.

²⁰⁸ Aanwijzing mensenhandel, geldend vanaf 01-07-2013 t/m heden.

²⁰⁹ Limitation of the number of interrogations, avoidance of unnecessary repetition of interviews, visual contact between the victim and the suspect(s), giving of evidence in open court and unnecessary questioning on the victim's private life.

²¹⁰ Other special needs can follow from the health situation of the victim, handicaps, psychological disorders, or the severe psychological, physical or sexual violence the victim has suffered.

²¹¹ Wet versterking positie slachtoffers, *Stb.* 2010, 1.

Romania

[114] According to Article 44 of the Romanian Anti-Trafficking Act, victims of trafficking “benefit from obligatory legal assistance in order to exercise their rights during criminal procedures according to the law, during criminal trial, and to sustain all their petitions and civil requests against those who committed the criminal offences mentioned in the law”.²¹² Civil society organisations, in cooperation with international human rights experts, have however reported problems in the exercise of victims’ rights in criminal proceedings. These include:

- Lack of application of the reflection period for victims;
- Flaws in adequate legal aid and representation in court;
- No specialisation of judges in trafficking cases;
- Possible violations of privacy rights of victims in criminal proceedings.²¹³

[115] In 2012, 1092 victims benefited from legal assistance within the framework of the national programme on victim-witness coordination in penal trials. Of this number, 421 victims were identified as trafficked in 2012 while 671 were already in the support system from previous years.²¹⁴ The relatively low number of victims receiving legal aid is due to several problems occurring during the criminal procedures:

- The average duration of criminal proceedings is 3-5 years. This leads to high turnover of lawyers during trials.
- There is insufficient funding to pay lawyers in due time.
- Lack of access to information on legal aid possibilities for victims.
- Lack of access to specialised knowledge and expertise for lawyers.

The majority of lawyers representing victims in trials are state lawyers, who are often overburdened by different appointments and have therefore only limited resources to dedicate their time to representing victims.²¹⁵

Lithuania

[116] The Code of Criminal procedure (CCP), Article 198 allows victims of crime to apply for full or partial anonymity if they meet three criteria. GRETA considered this too high a threshold, “given the sensitivity of the offence of THB and the fact that it violates

²¹² Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p. 26.

²¹³ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, p. 23.

²¹⁴ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p.28.

²¹⁵ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p.30.

fundamental human rights of its victims”, and “does not contribute to the protection of victims and witnesses of trafficking offences”.²¹⁶

[117] The Law on Protection of Participants in Criminal Procedures and Criminal Intelligence, Officers of Justice and Law Enforcement Officials against Criminal Consequences (1996) offers a witness protection programme designed primarily for witnesses of organised crime. Inclusion can be at the request of the witness, an investigating officer, a prison or a court. The protected person must sign an agreement to special protection and security measures.²¹⁷

[118] GRETA reported that victim protection measures have not been systematically applied in practice to victims of THB. The police, prosecution officials and NGOs report that only a few victims of THB agree to participate “as many of them find the measures taken by this programme not adapted to their needs and often too invasive”.²¹⁸

[119] There is a problem of suspects who have not been detained intimidating victims and witnesses of THB with the effect that testimony is changed or recanted, which interferes with the course of justice. Some victim and witnesses may be particularly vulnerable to this because of their gender but this does not appear to have been taken into account.

Sweden

[120] Under the Act of Public Access to Information and Secrecy, personal and financial information of victims may be kept secret in trafficking cases, if the disclosure would cause harm to the victims or their close relatives. Contact details of victims may also be kept secret during preliminary investigations if there is a risk of violence or threats to the victim. The court can also decide to hold hearings *in camera* and impose reporting restrictions on those attending. GRETA reported, however, that the identity of victims is disclosed at all stages and was informed that judges make less use of secrecy provisions in trafficking cases than, for example, in rape cases.²¹⁹

Germany

[121] In Germany, there is a flexible range of provisions to protect the private life and identity of the victim/witness during criminal court hearings. While on a low profile programme, victims can be entitled to direct protection by police and support organisations, using the criminal court witness care unit, providing security-relevant information to the counselling centre supporting the victim and other relevant measures.²²⁰

²¹⁶ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 169, Council of Europe.

²¹⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 171, Council of Europe.

²¹⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 173, Council of Europe.

²¹⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, paras. 209-210, Council of Europe.

²²⁰ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, para 216, Council of Europe.

[122] High risk witness protection programmes are also open to victims of trafficking. Other measures to protect the identity of a victim/witness during court appearances include to withhold the residence contact details and audio-visual recordings.²²¹

[123] From a gender perspective it is crucial to allow security and protection during court appearances to victims without applying a high-level witness protection programme. As women are often the first care giver in their families, the participation in a programme that would require a new identity and the disconnection of people close to the witness has not been proven to be effective. A flexible range of applying protection elements, however, has a higher acceptance by female victims/witnesses.

Article 17: Compensation for victims

United Kingdom

[124] Provisions for compensation are included in law. Victims can obtain compensation through civil proceedings, in an employment tribunal, during criminal proceedings or by applying to a fund for victims of crime. However accessing these options in practice remains difficult and only few victims seek and obtain compensation, as found also by GRETA in 2012.²²²

[125] Even where compensation has been awarded by a court, enforcement of such judgment is very difficult as the UK does not provide victims with any support in this regard. Employment tribunals in particular have found in favour of a number of women trafficked for domestic servitude, but these are nearly impossible for a vulnerable victim to enforce. In one recent case, a major London law firm secured £300,000 of compensation for a victim, after a protracted process of attempting to enforce the judgment for four and half years. This case demonstrates that even with the pro-bono backing, specialist skills and resources of a big law firm, compensation is difficult to access for victims of trafficking.²²³

[126] So far the most successful route for victims to obtain compensation has been through the Criminal Injuries Compensation Scheme, but it remains accessible mainly to victims of sexual exploitation. The authors are not aware of any successful labour trafficking cases in which compensation has been obtained through this route.

The Netherlands

[127] Victims of serious crimes, including trafficking in human beings and sexual offences, are entitled to free legal aid, including for pursuing damages. Compensation can be

²²¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, paras 218-220, Council of Europe.

²²² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, 12 September 2012, paras 290-299, Council of Europe.

²²³ http://www.freshfields.com/en/news/Freshfields_secures_£300,000_for_trafficking_victim_-_Protracted_case_highlights_difficulties_of_enforcing_judgements/

claimed in three ways: by joining a claim for compensation as a civil action to the criminal proceedings, through civil proceedings and through the Criminal Injuries Compensation Fund.

[128] Apart from these three mechanisms, the *Act on Migrant Labour*²²⁴ allows the awarding of lost earnings to irregular migrant workers through a formula based on the legal minimum wages and the legal assumption that the worker concerned has worked for six months, unless the employer can prove differently. However, as far as known this provision is not or hardly used in practice.

[129] Damages claimed in the criminal procedure may include both immaterial and material damages. Immaterial damages may include compensation for psychological and physical suffering, but also for the stigmatisation a victim might suffer as a result of the trafficking. This is especially important in the case of trafficking for prostitution.

[130] Material damages may include costs for medical or psychological care, but also costs for removing a tattoo placed under coercion or money the victim had to pay to the trafficker(s) or his/her accomplices for travel costs, housing, food, clothing etc. A key form of compensation is compensation for the money the victim earned and was forced to hand over to the trafficker or, in the case of exploitation in other work than prostitution, wages that were due but not paid. It is established case law that money that a suspect has appropriated or that has been surrendered to him must, in principle, be considered as material loss.²²⁵

[131] From a gender perspective it is particularly important that in recent years, lawyers have been quite successful in claiming compensation for the money victims of trafficking in the sex industry were forced to earn for their traffickers by calculating the (minimum) number of days the victim worked and the (minimum) amount of money she earned per day. Since 2011 the Court has awarded compensation for amounts from €100 up to €500 per day on a regular basis; the highest amount of compensation awarded so far is €800,000. Amounts of up to €500 per day apply especially to cases in which it is plausible that the victim concerned was forced to earn extreme amounts of money, for instance by working double shifts.

[132] When the claim is awarded, the court can impose a compensation order (*'schadevergoedingsmaatregel'*) as part of the criminal sentence, with detention if the offender fails to pay. This implies that the State is responsible for the collection of the damages awarded by the court on behalf of the victim. If the offender does not pay, the claim will be transferred to a bailiff in order to seize corresponding assets of the offender. If the offender has insufficient assets to cover the claim, the prosecutor will execute the order for substitute imprisonment. This requires no new court action. The execution of substitute detention, however, does not relieve the offender from his/her obligation to pay the compensation ordered. Since 2011 victims can seek an advanced payment from the State if the offender was sentenced to pay damages and he/she fails to do so for a period of eight months after the sentence has become final. Three quarter of the (final) compensation orders in the

²²⁴ Wet arbeid vreemdelingen (Wav). This is in line with *Directive 2009/52/EC of The European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*.

²²⁵ National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings, Case Law on Trafficking in Human Beings 2009-2012. An analysis*. The Hague: BNRM, p. 141.

period 2010-2014 was paid under the advanced payment regulation. Amounts varied from €500 to more than €35,000.²²⁶

[133] The Criminal Injuries Compensation Fund provides a financial allowance (benefit) for victims of violent crimes which have resulted in serious psychological or physical damage, including trafficking in human beings. If the damages are not compensated in another way, the Fund can provide compensation through a lump sum of maximum €10,000 for immaterial damages and €25,000 for material damages. It is not a condition of benefitting from the Fund that the offender is prosecuted or sentenced. However, if the case is dismissed or the suspect acquitted, it is difficult to get compensation from the Fund as in that case the Fund may decide that the victimhood of the applicant is not plausible.

Romania

[134] Victims of trafficking are entitled to claim for compensation of material and immaterial damages suffered due to the crime. They may join a civil claim to the criminal case, start a separate civil action or apply for compensation from the state fund.²²⁷

[135] The number of victims who have received compensation in Romania is low. However, there are no official statistics available regarding the entitlements of compensations.²²⁸ Often, victims are not informed about the possibilities to obtain compensation. In addition, in international trafficking cases, compensation claims are subject to highly bureaucratic procedures involving international cooperation.²²⁹ Even if victims win compensation in civil claims, these are hardly ever paid as the perpetrators will have assigned their property to other persons in order to avoid confiscations.²³⁰

[136] In 2015, the Romania state agency against Trafficking in Persons (ANITP) conducted a series of trainings on the implementation of compensation claims, for members of the judiciary, civil society and lawyers in Bucharest, Pitesti, Brasov, Iasi, Cluj, and Timisoara. These trainings were implemented in cooperation with the Council of Europe, La Strada International and Anti-Slavery International.

Lithuania

[137] Lithuania provides secondary legal aid (such aid includes drafting of documents, defence and representation in court, litigation costs incurred in civil proceedings, costs incurred in administrative proceedings and costs related to the hearing of a civil action

²²⁶ National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2015). Trafficking visible and invisible. Update figures compensation 2010-2014. The Hague: BNRM.

²²⁷ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p. 43.

²²⁸ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p.46.

²²⁹ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p.49.

²³⁰ Pro Refugiu/Netherlands Helsinki Committee, *Legal Analysis of the Rights of Trafficked Persons, Romania*, 2015, p. 40.

brought in a criminal case) for victims of criminal offences to claim compensation “for damage suffered from criminal actions”.²³¹

[138] Lithuanian and EU nationals and residents of Lithuania whose property and income are below a certain level are entitled to secondary legal aid. It was stated by the prosecutor’s office that victims of crime who seek compensation often receive legal aid irrespective of their financial situation. There is a problem in calculating exactly how many victims of THB received legal aid as the statistics do not specify of which crimes the recipients had been victims.²³²

[139] The Law on Compensation of Damage Caused by Violent Crimes sets out how state compensation operates regarding material and non-material damage of victims of violent crimes. A “violent crime” is defined as “a criminal act which has caused intentional deprivation of the victim’s life, serious or non-serious health impairment, or a crime against the individual’s freedom, freedom of sexual self-determination, or integrity”. It includes THB, which is listed as a crime in para 147 of the Criminal Code. Victims of crime whose damage (material or non-material) has been recognised by the court may have access to state compensation after the completion of criminal proceedings, once a judgment enters into force or where the court has agreed to compensate damage prior to the completion of criminal proceedings.²³³

[140] GRETA took the view that Lithuania should adopt further measures to facilitate access to compensation for victims of THB, in particular:

Ensure that victims are systematically informed in a language they understand of the right to seek compensation, as well as the procedures involved;

Enable victims to get compensation by ensuring effective access to legal aid;

Make it possible for victims of THB to receive State compensation regardless of whether criminal proceedings are initiated.²³⁴

Sweden

[141] In Sweden, victims of crime (including human trafficking) are entitled to free legal assistance during criminal proceedings, but this is discontinued once the final judgement has been handed down. Although the legal counsel paid for by the state during the proceedings may lodge a compensation claim on a victim’s behalf, once there is a verdict, victims are left without legal assistance in pursuing their claim. Victims can apply for compensation within two years after the completion of the criminal case.²³⁵

²³¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 137, Council of Europe.

²³² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 138, Council of Europe.

²³³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 141, Council of Europe.

²³⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 143, Council of Europe.

²³⁵ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, para 176, Council of Europe

[142] State compensation can be applied for by a victim of crime in Sweden, regardless of their nationality or residency status. There is also a mechanism that allows foreign victims who have returned home to access compensation from abroad. According to the data of the Crime Victim Compensation and Support Authority, in 14 cases compensation was awarded to victims of trafficking in human beings for sexual exploitation and only in one case to a victim of trafficking for labour exploitation. Compensation between €8,200 to €33,400 was granted to victims for pain, suffering and violation of personal integrity.²³⁶

Germany

[143] Victims of human trafficking are entitled to claim damages for material and non-material harms caused by the perpetrators. They can be enforced by the victim in a civil action or in an 'adhesive procedure' (*Adhäsionsverfahren*), which enables the victim to bring a civil claim within the framework of criminal proceedings. Surveys from specialised counselling centres however have shown that there have been only few successful compensation claims.²³⁷

[144] In addition, there is a possibility for victims of trafficking to apply for compensation under the Crime Victims Compensation Act (*Opferentschädigungsgesetz, OEG*). All victims of crime are eligible to claim from this state fund, including German citizens, EU nationals and Third Country nationals. There is no time limit for claiming compensation under this fund, and claims do not have to be linked to criminal proceedings.²³⁸

IV. Assessment of other gender sensitive measures taken to address trafficking in human beings

Article 19: Monitoring of gender dimensions in the implementation of Directive 2011/36/EU

United Kingdom

[145] All victims of human trafficking, regardless of their gender, are entitled to the same level of support under the National Referral Mechanism. Every year, the National Crime Agency publishes referral and identification data disaggregated by age and gender. While the Modern Slavery Strategy points out that women and girls are the majority amongst victims for trafficking for sexual exploitation, gender is not considered a particular vulnerability and there is very little reference to gender in official government documents.

²³⁶ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, para 177, Council of Europe.

²³⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, paras 173-174, Council of Europe

²³⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, para 173, Council of Europe

The exception is the strategic plan of the UK Anti-Slavery Commissioner, which recognises gender as a particular vulnerability that can be abused to subjugate victims.

The Netherlands

[146] Since 2000 the Netherlands has had a National Rapporteur on Trafficking in Human Beings. Some years ago the Rapporteur's mandate was extended to include sexual violence against children. The Rapporteur issues annual reports as well as thematic reports. The Rapporteur is independent and directly accountable to the Parliament. The reports do not address the gender dimension as a separate issue, but statistics presented are segregated by age and gender and, where applicable, gender implications are discussed.

Romania

[147] ANITP operates a national data base on all identified trafficking cases in Romania, the National Integrated System to Monitor and Assess Trafficking in Persons (SIMEV).²³⁹ The data base allows the Romanian authorities to monitor short- and long-term implications of victims' assistance programmes in Romania as well as in-depth analysis of victims' profiles.

Lithuania

[148] There is no national rapporteur on THB in Lithuania. An Inter-Institutional Commission for the Implementation of the National Crime Prevention and Control Programme was established on 1 July 2009.²⁴⁰ This body is responsible for preparing and submitting for government approval an Action Plan for the Implementation of the National Crime Prevention and Control Programme and co-ordinating its implementation.²⁴¹ It submits annual reports to the government. These are published. This may include THB but there is no dedicated group or person dealing with THB as such.

Sweden

[149] Since 1997, Sweden has had a National Rapporteur on trafficking in human beings. The office is based under the National Police Board and presents yearly reports to the government on progress in combatting trafficking and information about trends and issues. In addition, in 2009, Sweden appointed a National Co-ordinator against Prostitution and Trafficking to implement the Action Plan on combatting prostitution and trafficking for sexual exploitation.²⁴²

²³⁹ Council of Europe, Group of Experts on Action against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania*, 31 May 2012, para 77, Council of Europe.

²⁴⁰ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 19, Council of Europe.

²⁴¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 20, Council of Europe.

²⁴² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, paras. 20-27, Council of Europe.

Germany

[150] Germany does not hold a formalized National Rapporteur Mechanism on trafficking; however the Federal Criminal Police Office (BKA) compiles and publishes annually the National Situation Report on Trafficking in human beings. It represents the outcomes of police investigations and includes statistical data on suspects and victims.²⁴³

V. General assessment of measures taken to address the gender dimension of trafficking in human beings in the implementation of the Directive

[151] Article 22.1 of the Directive provides: “Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013.” The Directive was adopted on 5 April 2011, and had been under negotiation for some considerable time prior to that, so Member States had ample time to take the necessary steps to ensure that they were in compliance.

[152] Member States are under a duty (Article 22.2) to transmit to the Commission the text of any provisions that have the effect of transposing into their national law those obligations imposed upon them by the Directive, including those obligations discussed in this Report. It is not clear at this stage exactly what information member States have transmitted to the Commission or indeed whether any have failed to comply with this duty. Compliance with this duty is closely linked to the Commission’s duty to report under Article 23.

Obstacles encountered by Member States

[153] The transposition of a Directive is not necessarily problematic. It is for each Member State to decide how it does so, as long as it gives full effect to the obligations contained in the Directive. However, the period of time required for this will vary according to the way in which individual Member States give effect to this duty. There can be considerable variation between States. Moreover, it may be necessary not only to pass legislation to give effect to particular parts of the Directive but also to amend or repeal inconsistent national legislation.

Reporting

[154] Article 23 established several reporting duties. First, it requires the Commission to have reported by 15 April 2015 to the European Parliament and the Council with an assessment of the extent to which Member States have in fact taken the “necessary measures” in order to comply with the Directive.

²⁴³ See:

https://www.bka.de/nm_196810/SharedDocs/Downloads/DE/Presse/Pressearchiv/Presse_2015/pm151001_BundeslagebildMenschenhandel.html?nnn=true

[155] Second, this was to include a description of any action taken under Article 18.4, accompanied if necessary by legislative proposals. Article 18.4 established a duty for Member States “to consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation [as referred to in Article 2], with the knowledge that the person concerned is a victim of an offence referred to in Article 2” (that is, offences concerning trafficking in human beings).

[156] Regarding the second reporting duty, practice is varied. Lithuanian law appears to criminalise the use of the services of a trafficked person (where the user is aware that the person has been trafficked).²⁴⁴ The use of services of a victim of trafficking with the knowledge that the person is a victim is not criminalised as a separate offence by Swedish legislation.²⁴⁵ Germany does not criminalise the use of services of a person with the knowledge that the person is a victim of trafficking in human beings, except in the particular scenario of the sexual abuse of juveniles (section 182 *StrafGesetzBuch*).²⁴⁶ In the UK, it is an offence to pay for sexual services of a prostitute subjected to force, deception, threats or any other form of coercion. In 2015, Northern Ireland has criminalised the purchase of sexual services. In Romania, prostitution used to be a criminal offense. This was recently changed into an administrative offence, persecuting the people who offer sexual services.²⁴⁷ In the Netherlands a draft bill criminalising clients of sex workers who knew or ought to have known that the sex worker is a victim of trafficking is pending. Making use of the services of a minor prostitute is already punishable (article 248b Criminal Code).

[157] The first reporting task does not appear to have been completed on schedule and indeed at the time of writing has still not been done. This can be seen as a failure in achieving a harmonised playing field, although there are limits to what the Commission can do if Member States fail to comply or fail to communicate adequately about the steps they have taken to comply unless the Commission conducts the infringement proceedings rigorously and eventually refer the Member State to the European Court of Justice.

[158] Under Article 23.2, a third reporting obligation is established. The Commission must, by 6 April 2016, submit a report to the European Parliament and the Council, assessing the impact of existing national laws which establish as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings. This report is to be accompanied “if necessary, by adequate proposals”, although it is not clear what these proposals should be for.

[159] It needs to be asked why the Commission has failed in its duty to report under Article 23.1. This may be because States have failed to notify it of their efforts to comply. On the other hand it may be that there is disagreement with some States that have reported, as to whether they have in fact complied. Another possibility is that Member States have in fact

²⁴⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania*, 5 June 2015, para 89, Council of Europe, referring to Article 147 of the Criminal Code, introduced on 30 June 2012 through Law No. XI-2198. See also para 152.

²⁴⁵ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, para 190, Council of Europe.

²⁴⁶ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany*, 3 June 2015, para 192, Council of Europe.

²⁴⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania*, 31 May 2012, para 188, Council of Europe.

transmitted to the Commission, as required by Article 22.2, the text of the provisions transposing into their national law the obligations imposed on them under the Directive, but that the Commission has failed to deliver its report on time.

[160] The reporting stage is a crucial element of Member States' compliance with the Directive. The Commission should consider its own assessment of whether it has complied with its obligations, since while the State may well consider that it has complied with the Directive, the Commission may take a different view. The Commission has been able to gather valuable input from civil society;²⁴⁸ however, consideration should be given to carrying out its own research, as well as referring to the research of other relevant bodies, such as GRETA, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings, which actively monitors compliance by States (currently all EU Member States except for the Czech Republic) with their obligations under the Council of Europe Convention on Action against Trafficking in Human Beings, the country visits reports produced by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human beings, or those by the UN Special Rapporteurs on Trafficking and Contemporary Forms of Slavery.

[161] Nevertheless it is up to Member States to notify the Commission of their progress in transposing the Directive by transmitting to the Commission the text of the provisions transposing into their national law the obligations imposed by the Directive (Article 22.2).

Recommendations

Elaborating a coherent understanding of gender implications for the anti-trafficking response

[162] Gender dimensions are not consistently and systematically monitored in the implementation of EU anti-trafficking law, including the Directive 2011/36/EU, nor in other monitoring procedures such as the Council of Europe monitoring body 'GRETA'.

[163] It should be emphasized that it is a duty of Member States, and of the European Union, to take full account of gender in their actions to assist and protect victims of trafficking, as well as in law enforcement measures or any other measures to address trafficking.

[164] Gender has been understood rather narrowly in EU anti-trafficking policies. Going forward and in particular in the post-2016 EU Strategy, the understanding must be widened to take due regard of all gender identities, ensuring that all victims of trafficking are covered.

[165] The EU anti-trafficking policy has so far been shaped heavily by the security agenda, with the primary focus on police and border control. Law enforcement and security

²⁴⁸ https://ec.europa.eu/anti-trafficking/media-outreach-els/eu-civil-society-e-platform_en.

services are known for their often poor record in terms of gender sensitivity. To ensure that a gender perspective is reflected in the implementation of the Directive, training for the police and law enforcement authorities regarding the gender dimension of human trafficking should be considered, in particular how the trafficking experience can impact upon women, men and transgender individuals differently.

[166] As policies may have different impacts on women and men, an essential element of gender monitoring is the consistent assessment of the distinctive impact of anti-trafficking measures on (the protection of the human rights of) women, men and transgendered persons before, during and after implementation. While this applies to all policy areas, this is particularly important in regard to repressive measures.

[167] Official identification procedures should take into account the social stigma that the crime of trafficking entails, including trafficking for sexual exploitation. Assistance and support schemes should therefore offer anonymous and confidential counselling. Assistance and support structures should be organized in a gender specific way, covering all the different needs of the individual victims.

[168] Victim/witness protection programmes should offer flexible and individualized protection schemes, as women are often the main care-giver for their families and are therefore not ready to participate in a programme that requires a disconnection of all social contacts and the adoption of a new identity.

[169] Compensation schemes for victims of trafficking should include material damage claims that reflect realistically the remuneration of their services while trafficked. The latter is particularly important for female victims as they are predominantly trafficked into the sex industry and do not have access to labour compensation schemes. There should also be the possibility to obtain compensation for non-material damage caused by the trafficking experiences. Suffering sexual violence should be ranged among severe injuries and be compensated accordingly.

[170] In addition, more use should be made of Article 6(1)a of the Employers Directive 2009/52/EC, which obliges Member States to ensure that the employer shall be liable to pay any outstanding remuneration to an illegally employed third-country national, whereby an employment relationship of at least three months duration should be presumed unless, among others, the employer or the employee can prove otherwise.²⁴⁹

[171] The EU benefits from multiple areas of expertise resulting from the wide portfolio of agendas covered by its functions. To address the underlying causes that compound the impact of gender discrimination on people vulnerable to trafficking, the EU should work more closely and involve more directly the following bodies in the development and implementation of anti-trafficking policies:

DG Employment, Social Affairs and Inclusion;

DG International Co-operation and Development; and

DG Justice and Consumers (which includes a gender equality portfolio).

²⁴⁹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Elaborating a coherent understanding of the term “demand”

[172] Article 18.4 of the Directive was introduced *inter alia* with the intention to reduce the demand for the services of trafficked persons by putting in place a criminal offence that prohibits the use of services of trafficked persons. As the Commission is required to report on this in 2016, little data is available on the impact of the implementation of Article 2 of the Directive.²⁵⁰

[173] In assessing the implementation of this provision, the Commission ought to consider several key aspects: 1. Whether an offence of knowing use of the services of a victim has been introduced. 2. Where such offence has been introduced, how have the law enforcement authorities applied it, and in particular how was this evidenced. 3. The effectiveness of applying a criminal law measure on addressing an issue caused largely by socio-economic factors.

[174] There is no consistent use of the terminology “to discourage and reduce the demand that foster all forms of exploitation”. While some Member States discuss the introduction of the use of services of trafficked persons exploited in prostitution as an element of crime into the anti-trafficking legislation, others, including Sweden, define all use of services of prostitutes as an element of crime and schedule it as a measure to discourage demand, as provide for in Article 18.

[175] Accordingly, there is no common understanding among the EU Member States about the activities that form “demand” for exploitation under the anti-trafficking framework. Inserting the concept of demand as an integral part of the anti-trafficking criminal code may result in the perpetrators getting off lightly, as investigations and prosecutions focus less on the violence committed as part of the trafficking crime, and more on the offense of demand, which carries a lesser penalty.

[176] In regard to the criminalisation of clients of trafficked prostitutes, it should be ensured that criminal proceedings do not add to the risk of secondary victimisation of the victims.

[177] Moreover, discouraging demand for other forms of exploitation than sexual, also has strong gender implications. For instance, domestic labour and care-taking are traditionally labour sectors with a high level of female workers. In many Member States, these labour sectors are not illegal; however, they are to a high extent organized in an informal and not officially documented way. Special care should be taken that measures adopted do not increase the vulnerability of, in particular, workers in the informal sector but rather empower them to oppose and report exploitative situations.

[178] While from an economic and demographic point of view, domestic work and care-taking of elderly people is without doubt a sector with an increasing demand for cheap and affordable labour, too little attention has hitherto been paid to the question of discouraging demand for these economic sectors.

²⁵⁰ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-005342&language=EN>

[179] In order to elaborate practical guidelines to translate the commitment about addressing 'demand' into a consistent strategy and raise awareness about other forms of demand beyond the demand for sexual exploitation, the following can be a useful basis for discussion:

- Employer demand (employers, owners, managers or subcontractors).
- Consumer demand (clients (sex industry), corporate buyers (manufacturing), household members (domestic work)).
- Third parties involved in the process (recruiters, agents, transporters and those who participate knowingly in human trafficking at any stage of the process)

In the EU context, a fourth level ought to be added to the list:

Demand for decent work and better opportunities by women, men and children who are pushed by their circumstances to migrate to seek better economic or education opportunities.

[180] Gender does not exist in isolation. EU institutions, Member States and civil society all need to be aware of the significance of gender for all forms of exploitation resulting from the crime of human trafficking.

Annex 1: Country Summaries

United Kingdom

The United Kingdom has devoted significant attention to addressing human trafficking in recent years. Trafficking is most commonly described by the UK Government as a form of modern slavery. The UK operates a national referral mechanism (NRM) which provides potential and recognised victims with some assistance. All victims, regardless of nationality or gender are entitled to be referred to the NRM.

In recent years, cases of trafficking for labour exploitation (including domestic servitude) have exceeded those of trafficking for sexual exploitation. The majority of those trafficked for sexual exploitation and domestic servitude are women and girls. Several cases of trafficked transgender individuals have also been recorded. In the UK, a host of new legislation was introduced across its three jurisdictions in 2015, addressing modern slavery, human trafficking and exploitation. Northern Ireland is the only jurisdiction to have introduced a provision on the criminalisation of the buying of sex in its new anti-trafficking legislation. A committee of the UK Parliament has recently concluded a consultation on regulatory arrangements around prostitution, the outcomes of which are yet to be published. In its response to the consultation, the UK government expressed a view that there is not unequivocal evidence that any one approach is more effective in tackling trafficking and exploitation.

Without explicitly stating a gender-sensitive approach, the UK applies a gender perspective to anti-trafficking provisions to a large extent by providing assistance to all victims. The UK Independent Anti-Slavery Commissioner recognises gender as a potential vulnerability.

The Netherlands

Since 2000 the Penal Code no longer treats the organising of the prostitution of adult persons as a crime, provided this is done with their consent. At the same time the use of force, deceit or abuse of authority became more strictly penalised. Sex businesses are regulated through local licensing systems and have to meet health and safety standards. Measures to discourage demand mainly aim at the sex industry, e.g. by awareness-raising campaigns and encouraging clients to report possible cases of trafficking.

A draft bill to criminalise clients of trafficked sex workers is pending. Prevention measures in other industries include information cards for migrants, awareness-raising campaigns and training of inspection services. Special action plans address the phenomenon of “loverboys” and exploitation of Roma children in criminal activities.

The majority of reported cases concern the sex industry, but the number of cases in other sectors is increasing, as is the number of male (potential) victims. Coordination of the primary reception of victims is done by CoMensha, the national coordination centre. There are special shelters for trafficking victims. A national referral mechanism exists since 2013, with special attention for minor, Dutch and (male) EU victims.

Measures are in place to protect victims in criminal investigations and for the avoidance of secondary victimisation. Trafficking cases are handled by specialised judges. Victims are entitled to free legal aid. They can claim damages through the criminal proceedings, including compensation for the money they were forced to earn for their traffickers, and the Criminal Injuries Compensation Fund. If the offender has not paid the awarded compensation no later than eight months after the final verdict, the victim can seek advance payment from the State.

The Netherlands has an independent National Rapporteur on Trafficking in Human Beings who issues annual and thematic reports. Statistics are disaggregated by gender, age and type of exploitation.

Romania

The Romanian governmental coordination body on human trafficking, the National Agency against Trafficking in Persons (ANITP), is part of the Romanian police. The ANITP considers Romania mainly as a country of origin for trafficking in human beings. It has implemented multiple awareness-raising campaigns aiming at identified vulnerable groups on risks of trafficking in information on safe work migration. An awareness-raising campaign also aimed at clients of prostitutes.

The Romanian Anti-Trafficking Act (Art.39) stipulates that victims of trafficking are entitled to a recovery and reflection period of 90 days. They have access to counselling, medical and social assistance, as well as food and accommodation. Both national and foreign victims qualify for those rights from the moment when there are reasons to believe that presumed victims have been trafficked.

According to Article 44 of the Anti-Trafficking Act, victims of trafficking have access to legal assistance in order to exercise their rights during criminal procedures. In 2012, 1092 victims benefited from legal assistance within the framework of the national programme on victim-witness coordination in penal trials.

Victims of trafficking are entitled to claim for compensation of material and immaterial damages suffered due to the crime. They may join a civil claim to the criminal case, start a separate civil action or apply for compensation from the state fund. The number of victims who received compensation is low. ANITP operates a national data base on all identified trafficking cases in Romania, including its victims. The data base allows the Romanian authorities to monitor short- and long-term implications of victims' assistance programmes in Romania as well as in-depth analysis of victims' profiles.

Lithuania

Lithuania has carried out a number of initiatives and programmes, more to raise awareness for victims of trafficking than to discourage demand, including for victims of forced prostitution; however there does not appear to have been much focus on the gender dimension. Lithuanian law criminalises the use of forced labour or services, including sexual services, where the person using such services knew or should have known that the services were provided through exploitation of a victim of trafficking.

In terms of support, some funding is allocated to NGOs, but there is no specialized centre for victims of trafficking. Therefore trafficked persons are accommodated in several other

types of accommodation, but it is questionable how well these meet the needs of such persons.

Victim protection measures in Lithuanian criminal procedure are reported to be inadequate in practice. Compensation mechanisms are seen as ineffective.

Sweden

Sweden is recognised for its high regard for gender equality and diversity. In the context of trafficking in human beings, Sweden has applied a gender perspective to its actions by concentrating primarily on preventing women and children from becoming victims of sexual exploitation. Consequently, the activities in prevention of trafficking in Sweden have been based upon a solid women's rights background. Some research suggests, however, that measures that would follow an equality and diversity approach, such as those that would strengthen the position and rights of populations vulnerable to trafficking, have been applied only in a limited way. Conversely, criminal justice approaches, such as the criminalisation of the purchasing of sex, have been favoured.

Until recently, Sweden had focused predominantly on trafficking for sexual exploitation and strictly linked its anti-trafficking measures with the fight against prostitution. As a consequence, the focus in Sweden has been on identification of this form of trafficking, and the knowledge and understanding of the authorities has been shaped thus. However, this focus has changed and Sweden has begun focusing intensively also on cases of trafficking for forced labour, and in some years the number of recorded cases of trafficking for labour exploitation has exceeded those of trafficking for sexual exploitation.

Victim assistance measures are in effect in Sweden, mainly for those trafficked for sexual exploitation. The development of a formal National Referral Mechanism in Sweden began in 2014; as of September 2015, the NRM has not been put in place.

Germany

Germany's comprehensive anti-trafficking strategy originates from a women's rights framework. In 1999, the first national action plan against trafficking in women was part of the action plan against violence against women. To the present day the national coordination group on trafficking in human being is chaired by the Ministry of Family and Women's Affairs. Specific measure to discourage demand for services of persons trafficked for the purpose of sexual exploitation are implemented by civil society organisations.

Identification of victims takes place in a decentralized and diverse manner. On A Länder or local level, cooperation agreements between law enforcement agencies and civil society counselling centers ensures the referral of presumed victims of trafficking to specialized counselling centers. All 38 civil society stakeholders involved in a local of Länder-based referral system are embedded into a national network, called KOK.

There is a flexible range of provisions to protect the private life and identity of the victim/witness during criminal court hearings. Victims are entitled to direct protection by police and support organizations, using the criminal court witness care unit, providing security-relevant information to the counselling center supporting the victim and other relevant measures.

Victims of human trafficking are entitled to claim damages for material and non-material harms caused by the perpetrators. They can be enforced by the victim in a civil action or in an “connected procedure” (*Adhäsionsverfahren*), which enables the victim to bring a civil claim within the framework of criminal proceedings. Surveys from specialised counselling centers however have shown that there have been few successful compensation claims.

Germany does not have a formalised National Rapporteur Mechanism on trafficking; however the Federal Criminal Police Office (BKA) compiles and publishes annually the National Situation Report on Trafficking in Human Beings. This provides the outcomes of police investigations and includes statistical data on suspects and victims.

Bibliography

Deutscher Bundestag, Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zur Umsetzung der Richtlinie 2012/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI des Rates. 15.4.2015 (18/4613), <http://dip21.bundestag.de/dip21/btd/18/046/1804613.pdf>

KOK e.V.: Informationsdienst 2015, Aktuelle rechtliche Entwicklungen mit Bezug zu Menschenhandel. 1. Dezember 2015,

http://www.kok-gegen-menschenhandel.de/fileadmin/user_upload/medien/Informationsdienst/Informationsdienst.2015.rechtliche_Entwicklungen.pdf

Deutscher Juristinnenbund, Stellungnahme zum Referentenentwurf des Bundesministeriums für Familie, Senioren, Frauen und Jugend eines Gesetzes zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen, <https://www.djb.de/st-pm/st/st15-10/>; Solwodi, Stellungnahme zum Referentenentwurf des Prostituiertenschutzgesetzes,

http://www.solwodi.de/fileadmin/_medias/pdf/Politik/Stellungnahme_zum_Referentenentwurf_des_Prostituiertenschutzgesetz.pdf

Trafficking for Labour Exploitation – Gender. Anti-Slavery International, CCME, ITUC. Brussels, 2015:

http://www.ituc-csi.org/IMG/pdf/labour_exploitation_the_role_of_gender_en.pdf

European Commission, Call for Tenders, Addressing demand in anti-trafficking efforts and policies (deadline: 31 January 2013), <http://www.womenlobby.org/Call-for-tenders-European-Commission-Addressing-demand-in-anti-trafficking>; https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/work_programme_2013_en_1.pdf (on page 45)

Eurostat Report on Trafficking in Human Beings, 2015 Edition. Eurostat, 2015,

https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_human_beings_-_dghome-eurostat_en_1.pdf

Global Report on Trafficking in Persons, UNODC, 2014,

https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf

International Labour Organisation (ILO), Eradication of Forced Labour – General Survey concerning the Forced Labour Convention, 1930 (No.29), and the Abolition of Forced labour Convention, 1957 (No.105) (2007), http://www.ilo.org/ilc/WCMS_089199/lang-en/index.htm

International Labour Organisation, the Mekong Challenge: Human Trafficking – Re-defining Demand. ILO, Bangkok 2005, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_29_en.pdf

Andrijasevic, R., “Beautiful dead bodies: gender, migration and representation in anti-trafficking campaigns”, (2007) 86 *Feminist Review* 26-44

Eurojust, Prosecuting THB for the Purpose of Labour Exploitation, The Hague, 2015
https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_prosecuting_thb_for_the_purpose_of_labour_exploitation_en_1.pdf

EU Fundamental Rights Agency, Severe labour exploitation: workers moving within and into the European Union., Vienna, 2015, http://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf

Independent Anti-Slavery Commissioner Strategic Plan 2015-2017
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468729/IASC_StrategicPlan_2015.pdf

Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, 12 September 2012, Council of Europe
http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf

Annex B, Written evidence by the Home Office to the Home Affairs Committee inquiry on prostitution, February 2016
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/prostitution/written/29590.html>

Balch, A., Regulation and Enforcement to Tackle Forced Labour in the UK: A Systematic Response?, Joseph Rowntree Foundation, 2012
<https://www.jrf.org.uk/report/regulation-and-enforcement-tackle-forced-labour-uk-systematic-response>

Letter to the Second Chamber of Parliament, SOA AIDS, Rutgers Expertise centre sexuality, Association Women and Law, TAMPEP European Network for HIV/STI prevention and health promotion among migrant sex workers, SHOP Assistance and support to victims of trafficking, SWexpertise 21, Platform for the improvement of the position of sex workers, 5 October 2015;

Letter to the Second Chamber of Parliament, PROUD, Dutch Union of Sex Workers, 4 October 2015

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands, 18 June 2014, Council of Europe,
http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2014_18_FGR_ITA_w_cmnts_en.pdf

Letter to the Second Chamber of Parliament, Dutch Association Women and Law, October, 15 2015; Letter to the Second Chamber of Parliament, Proud, Dutch Union for Sex Workers, August 11, 2015.

‘In gesprek met de klant’; een onderzoek naar klanten van prostituees en hun rol bij de aanpak van misstanden. GGD Amsterdam (E&G reeks 2014/3; ISBN: 978-90-5348-226-1).

National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2015). Trafficking visible and invisible. Update figures possible victims 2010-2014, The Hague: BNRM, <https://www.dutchrapporteur.nl/current/news/archief/new-figures-on-identification-and-protection-of-victims-of-human-trafficking-and-prosecution-of-traffickers.aspx>

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania, 31 May 2012, Council of Europe, http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_2_FGR_ROU_en.pdf

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania, 5 June 2015, Council of Europe, https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2015_12_FGR_LTU_en_w_cmnts.pdf

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden, 27 May 2014, Council of Europe, http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2014_11_FGR_SWE_en.pdf

Johansson, I., Swedish Anti-Trafficking Policy, Official Framework and Local Practices, University of Malmö, 2014.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany, 3 June 2015, Council of Europe, https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2015_10_FGR_DEU_w_cmnts_en.pdf

Bundesministerium für Familien, Senioren, Frauen und Jugend, Aktionsplan der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen, 1999, <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/gewalt-aktionsplan-gewalt-frauen-ohne-vorwort,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>

OSCE/ODIHR, National Referral Mechanism. Joining the Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook. Warsaw, 2004. See <http://www.osce.org/odihr/13967?download=true>

Uhl, B.H., Die Sicherheit der Menschenrechte: Bekämpfung des Menschenhandels zwischen Sicherheitspolitik und Menschenrechtsschutz 2014

Roth, P., Uhl, B., Wijers, M., Zikkenheiner, W., Data protection challenges in anti-trafficking action, (2015),

http://www.dataact-project.org/fileadmin/user_upload/pdf/datAct_engl_Online.pdf

Home Office, Review of the National Referral Mechanism for victims of human trafficking, November 2014,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467434/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf

National Crime Agency: National Referral Mechanism Statistics - End of Year Summary 2015, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>

The Anti Trafficking Monitoring Group, Time to Deliver, Considering pregnancy and parenthood in the UK's response to human trafficking, 2016,

http://www.antislavery.org/includes/documents/cm_docs/2016/a/atmg_time_to_deliver_report_for_web_final.pdf

Ewins, J., Independent Review of the Overseas Domestic Workers Visa, 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf, p.5

CoMensha (2015), Annual report. The picture of 2014,

http://mensenhandel.nl/files/jaarverslag_comensha_2014.pdf.

National Rapporteur, Trafficking in human beings visible and invisible. Update statistics potential victims 2010-2014, The Hague: National Rapporteur, 2015

Letter of the Minister of Justice and Security of the Netherlands to the Second Chamber of Parliament on a National Referral Mechanism, 23 June 2014

Rijken, C., van Dijk, J., and Klerx-van Mierlo, F., Mensenhandel: het slachtofferperspectief. Een verkennende studie naar behoeften en belangen van slachtoffers mensenhandel in Nederland (Human Trafficking: the perspective of victims. An explorative study into the needs and interests of victims of human trafficking in the Netherlands), Tilburg: Intervict, Tilburg University (2013)

Pro Refugiu/Netherlands Helsinki Committee, Legal Analysis of the Rights of Trafficked Persons, Romania, 2015

Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen en verdachten, Stc. 2010, nr. 11885

Aanwijzing mensenhandel, geldend vanaf 01-07-2013 t/m heden. Wet versterking positie slachtoffers, Stb. 2010, 1

National Rapporteur on Trafficking in Human Beings (2012). Trafficking in Human Beings, Case Law on Trafficking in Human Beings 2009-2012. An analysis. The Hague: BNRM

National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2015). Trafficking visible and invisible. Update figures compensation 2010-2014. The Hague: BNRM

ANNEX 5

Implementation of Directive 2011/36/EU from a gender perspective in Ireland

Research paper

by Denise Charlton and Nusha Yonkova

Abstract

The paper considers the implementation in Ireland of Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims.

The aim of the analysis, which is conducted from a gender perspective, is to assess the implementation with a view to critically examining measures that appear counterproductive as well as highlighting those that fulfil the purpose of the law.

The paper focuses primarily on victim identification, protection, assistance, and prevention of the crime through demand reduction.

AUTHORS

Denise Charlton has 25 years' experience in the field of gender-based violence, inclusive of human trafficking, migration and integration issues. Denise became Chief Executive Officer of the Immigrant Council of Ireland (ICI) in 2003, an Independent Law Centre which engages in securing improved rights and protections for migrants and their families. She has been involved in several European Commission projects specifically in the area of integration, immigration and human trafficking.

Nusha Yonkova is the anti-trafficking manager at the Immigrant Council of Ireland, a licensed law centre. She is conducting an employment based post-graduate research with the University College Dublin, sponsored by the Irish Research Council, exploring gender-sensitive approaches to the assistance of trafficked victims. Nusha has been working exclusively in the area of human trafficking for the last 9 years and has authored a range of reports as well as coordinated national and transnational research teams.

This current paper is part of the European Implementation Assessment of the Directive 2011/36/EU (Trafficking in Human Beings) for the Committee on Women's Rights and Gender Equality FEMM, together with other analyses on the same issue.

RESPONSIBLE ADMINISTRATOR

Helmut Werner, Ex-Post Impact Assessment Unit

To contact the Unit, please e-mail EPRS-ExPostImpactAssessment@europarl.europa.eu

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Abbreviations

NREM	National Rapporteur or Equivalent Mechanism
DJE	Department of Justice and Equality
DJE website	Official website of the Irish Department of Justice and Equality dedicated to the response to human trafficking, Containing annual statistics and other information
US TIP	Annual report of the United States Department on Trafficking in Persons
ASI	Anti-Slavery International
AHTU	Anti Human Trafficking Unit of the Department of Justice and Equality in Ireland
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
CSO	Civil Society Organisations
CL (TH) Act 2008	Criminal Law (Human Trafficking) Act 2008
CL (ChT&P) Act	Criminal Law (Child Trafficking and Pornography) Act 1998
CoE GRETA	Council of Europe Convention on Action against Trafficking in Human Beings, Monitoring Committee
MS (MSs)	Member state of the EU (Pl)
NAP	Irish National Action Plan to Prevent and Combat Human Trafficking in Ireland
AIA	Administrative Immigration Arrangements for the Protection of Victims of Trafficking in Human Beings
VAW/ GBV	Violence against women / Gender-based violence
LAB	Legal Aid Board, state funded legal aid agency
An Garda Síochána	Irish national police force
TRP	Temporary Residence Permit

EXECUTIVE SUMMARY

This report considers the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA. It evaluates the implementation of the Directive in Ireland from a gender perspective and has been commissioned for this purpose by the Directorate General for Parliamentary Research Services. The Directive has been transposed in the Irish context.

The report highlights the various forms of human trafficking, relevant to the Irish perspective and the responses developed nationally. It provides a detailed and critical examination of the measures taken, and considers their effectiveness from a gender perspective. It examines key elements of implementation such as the identification of victims and subsequent services provided. It explores key provisions such as the principle of non-punishment, and considers activities by key agencies and stakeholders in relation to the Directive's implementation. The report offers some recommendations for increased effectiveness with regards to the implementation of the Directive.

Ireland is a destination and transition country for women, men, and children subjected to sex trafficking and forced labour, including forced criminal activity (US TIP 2015). While trafficking for sexual exploitation remains by far prevalent, there are reports of increasing trends in trafficking for marriages of convenience (Irish Times 2013, EC ISEC Hestia 2015). Irish law enforcement reported an increase in suspected victims of forced labour, forced criminal activity, and forced begging from Eastern Europe, particularly Romania, as well as an increase in potential sex trafficking victims from Brazil (US TIP 2015). According to the TIP report (2015) victims of forced labour have been identified in domestic service, the restaurant industry and car washing services. The same source reports cases of Vietnamese and Chinese men prosecuted and sentenced for cannabis cultivation exhibiting indicators of human trafficking, such as document retention, restriction of movement, and non-payment of wages. Some domestic workers, primarily women, employed by foreign diplomats on assignment in Ireland, work in poor conditions and are at risk of labour trafficking (TIP 2015, MRCI 2011). Irish children are subjected to sex trafficking within the country and over 30 child victims of trafficking were identified over a two year period (Irish Times 2015, DJE 2015).

The State has taken some measures to ensure effective implementation of the Directive. In order to give effect to some criminal law provisions and to bring Ireland in compliance with the Directive, the Irish State adopted amendments to the main human trafficking legislation (CL(HT)Act 2008 and CL(ChT&P)Act 1998) in 2013. These included the expansion of the definition of the crime of trafficking by adding trafficking for criminal activities and 'begging' to the definition of forced labour and introducing aggravating factors in sentencing, linked to abuse of public duties. The amendment of the Criminal Law (Human Trafficking) Act 2008 brings the definition of forced labour in line with international legal standards.

In addition, the Irish State has developed a national referral mechanism and a specialised counter trafficking unit located within the An Garda Síochána. The Health Services provide individual care plans, and medical assistance is available to all. There is some

legal information provided, and access to certain accommodation arrangements is also available.

However, advocates have highlighted some of the limitations of the above provisions and additionally, some outstanding areas that need to be addressed, specifically from a gender perspective. The key recommendations, elaborated on in the full report are outlined below:

Legislative/policy framework for provision of assistance:

Legislation to be drafted and enacted guaranteeing protection and assistance to victims of human trafficking. In the interim, a clear and comprehensive policy document should be developed, applicable to all victims, which can provide a blueprint for future legislation. This recommendation should be included in the forthcoming second National Action Plan, due to be published in 2016.

Mechanism aimed at early identification:

Reform of the existing identification practices with an introduction of a non-discriminatory procedure applicable to all victims of human trafficking, regardless of their nationality and immigration status.

The identification procedure should formally involve specialist CSOs and independent services, with clear criteria for review, inclusive of time restrictions. The review should include a gender-sensitive and trauma-specific approach to victims.

The provision of assistance from a gender perspective:

Ensure that a commitment to gender sensitivity is made in an explicit manner in the draft NAP 2016, in order to ensure an acknowledgement of the gendered nature of human trafficking and in particular the overwhelming presence of women among victims who have been sexually exploited.

Review the services offered and ensure that the access is not dependent on cooperation with the police authorities and subject to repetition of traumatic accounts.

Ensure funding is available to specialist CSOs to provide appropriate supports and services.

Safe and gender-sensitive accommodation:

The submission to the Minister for Justice and Equality on the accommodation needs of victims of trafficking, which contains detailed analysis and a range of discussions and recommendations, should be taken into account when determining the priorities under the new draft NAP 2016.

The setting up of specialised shelters for victims of trafficking could be considered, alongside ending of the practice of accommodating victims in centres for asylum seekers, which are limited in gender sensitivity, privacy and safety.

The involvement of specialist CSOs and supported-housing providers, including the utilisation of the existing shelters and rape crisis centres for victims of GBV violence could also be considered.

Attending to victims with special needs:

The development of specific gender-aware guidelines should be considered when assessing special needs of victims. Victims' rights and specialised support service organisations should be closely involved in the development of these guidelines.

Avoiding secondary victimisation:

Develop and formalise protocols for referral and exchange of information related to human trafficking in order to avoid repeat victimisation.

Legal advice without delay:

The delivery of training should be resourced highlighting the importance of timely legal aid. The training toolkit on early legal intervention developed by a consortium of legal specialists from MSs to be used for training with police detectives, lawyers and other practitioners who may encounter victims (ELI 2015).

An increase in the overall civil legal aid budget to the Legal Aid Board should be considered for the purposes of enhanced assistance and representation of victims of trafficking crimes.

The provision of funding for specialised law centres should be considered and extended to include private practitioners providing legal services to victims of trafficking through an extension of the private practitioners' scheme.

Cooperation and assistance:

The identification process should be established as a procedure distinguishable from investigation, with involvement of CSOs and independent services providers, included in the establishment of reasonable grounds and respective access to assistance.

Victim identification should not be reliant on cooperation with law enforcement.

The grounds for Temporary Residence Permit should be expanded to take into account the personal circumstances of the victim, including cases where cooperation with the investigation is not possible.

Non-punishment:

Disseminate more explicit guidelines to judges and public prosecutors in order to guarantee the non-punishment of victims of trafficking for their involvement in unlawful activities, committed in the context of the trafficking crime.

Consider future amendments to the Spent Conviction legislation, in order to provide for the expunging of criminal records of victims who have been punished due to a failure in the process of timely identification.

Improve the identification of victims and access to early legal intervention as a measure of prevention against non-punishment.

Compensation:

Ensure that avenues for compensation are applicable, as well as easily accessible, to trafficked persons. Advocates recommend that new possibilities for compensation are explored, such as the creation of a specialised fund or the possibility for direct compensation from the Criminal Assets Bureau fund (IT 2015).

Tackling demand - prevention work:

The new Government should progress the draft Sexual Offence Bill, enacting it as a matter of priority. The draft legislation includes the criminalisation of child grooming, purchase of sexual services with explicit decriminalisation of the seller, among other provisions.

National Rapporteur:

Establish an independent national rapporteur to review the effectiveness of the anti-trafficking response and report to the national parliament. Include a commitment to this effect under the forthcoming second NAP 2016.

New Forms of Trafficking:

The findings and the recommendations of the forthcoming research on exploitative sham marriages funded by the EC should be considered as part of the second NAP (EC ISEC Hestia 2014).

An awareness-raising strategy to strengthen the identification of trafficking for forced labour needs to be developed and implemented. The NAP (2016) should set specific targets, actions and resources to combat and address criminality as a new form of human trafficking.

Data Collation:

Extract trends and analyse the collected statistical data from a gender perspective.

CHAPTER 1

I - Background

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, has a well expressed gender awareness dimension. It recognises that this is a gender-specific phenomenon, affecting women and men in different ways as they are trafficked for a different purpose and have separate experiences. The Directive obliges member states to attend to victims with special needs. Such special needs, in particular, may derive from the victim's health, disability, mental or psychological disorder, case of pregnancy, and/or serious forms of psychological, physical or sexual violence. Attending to such special needs is an acknowledgment of the particular harm experienced by female victims of trafficking. The fact that human trafficking is a highly gendered crime and women are affected by its most devastating forms of exploitation, including sexual assault, merits particular attention in the implementation of this Directive.

Similarly to the EU-wide statistics reported by the Eurostat 2013, the national statistical data in Ireland indicates that the vast majority of victims of trafficking identified in Ireland are women and girls subjected to trafficking for the purposes of sexual exploitation (Appendix 2). There are also men trafficked for the purposes of labour exploitation, and a small number of boys trafficked for sexual exploitation. However, the number of female victims dominate in all forms of human trafficking starting from its most common form in Ireland, sex trafficking, through to labour trafficking and the less frequently occurring types of trafficking crimes, such as exploitation for conducting criminal activities and begging, and more recently exploitative sham marriages.

II - Objectives

This paper considers the implementation of the Directive on preventing and combating trafficking in human beings and protecting its victims. Its transposition has been completed by the Irish State. The aim of the analysis, which is conducted from a gender perspective, is to assess the Directive's implementation with a view to critically examining measures that appear counterproductive or causing unintended effects. It also highlights those that fulfil the purpose of the law. This paper focuses primarily on victim identification, protection, assistance, and prevention of the crime through demand reduction.

The analysis highlights the gender specific provisions of the Directive, specifically those related to victims with special needs, inclusive of health (reproductive health), the forms of violence experienced, and the resulting trauma.

III - National context

Ireland is a destination and transition country for women, men, and children subjected to sex trafficking and forced labour, including forced criminal activity (US TIP 2015). There are reports of increasing trends in trafficking for marriages of convenience (Irish Times 2013, EC ISEC Hestia 2015). Irish law enforcement reported an increase in suspected victims of forced labour, forced criminal activity, and forced begging from Eastern Europe, particularly Romania, as well as an increase in potential sex trafficking victims from Brazil (US TIP 2015). According to the TIP report (2015) victims of forced labour have been identified in domestic services, the restaurant industry, and car washing services. The same source reports of cases of Vietnamese and Chinese men prosecuted and sentenced for cannabis cultivation exhibiting indicators of human trafficking, such as document retention, restriction of movement, and non-payment of wages. Some domestic workers, primarily women, employed by foreign diplomats on assignment in Ireland work under poor conditions and are at risk of labour trafficking (TIP 2015, MRCI 2011). Irish children are subjected to sex trafficking within the country and over 30 child victims of trafficking were identified over a two year period (Irish Times 2015, DJE 2015).

The Irish CSO NREM (Appendix 3) cites figures from 2009-2013. Collated with the data available for 2014, the combined data for the five year period (2009 – 2014) presents results that reveal the high prevalence of trafficking for the purposes of sexual exploitation and that women are in the majority of those affected by trafficking crimes. The regions from which trafficking occurs vary but West Africa and EU are the main source regions. Authorities initiated investigations of 79 new trafficking-related cases in 2014, an increase from 56 in 2013 (DJE website). Forty investigations did not result in the identification of trafficking victims, while the other 39 cases involved a total of 46 suspected victims. The majority of suspected victims in these cases, namely 32, were identified as being sexual exploitation. Authorities investigated cases involving seven suspected victims of labour trafficking, four suspected victims of forced criminality, one suspected victim of forced begging, and one suspected victim of both sex and labour trafficking (DJE website).

The Immigrant Council of Ireland law centre has responded to over 60 cases of human trafficking for sexual exploitation in the country, 19 in 2014 alone (Irish Examiner 2015). A recent national TV investigative piece on the sex trade in Ireland, confirmed a thriving industry in which women and children are trafficked (RTE 2015).

The 2013 European Union (EU) Drug Market Report noted that Ireland has experienced an increase in the domestic cultivation of cannabis in the last five years (EMCDDA 2013). In 2015, the High court delivered a judgement in the case of a Vietnamese national trafficked for the purposes of cannabis production deeming the existing procedure for identification of victims of such crime inadequate (IEHC 22). Trafficking for sham marriages of exploitative nature is another emerging phenomenon in Ireland and there are diverging views at present as whether such situations amount to human trafficking, in addition to existing definitional ambiguities. To date there has been no joined research examining the nature or scale of the problem, but EC sponsored research is due to be published in 2016.

CHAPTER 2

In order to give effect to some criminal law provisions and to bring Ireland in compliance with the Directive, the Irish State adopted amendments to the main human trafficking legislation (CL (HT) Act 2008 and CL (ChT&P) Act 1998) in 2013. These included the expansion of the definition of the crime of trafficking by adding trafficking for criminal activities and ‘begging’ to the definition of forced labour and introducing aggravating factors in sentencing linked to abuse of public duties. The amendment of the Criminal Law (Human Trafficking) Act 2008 brings the definition of forced labour in line with international legal.

These amendments are perceived by advocates as insufficient for full compliance with the law, which is evident both in the record of Parliamentary debates on this matter and from the submissions of specialist civil society organisations (ICI 2013, Oireachtas archive 2013). The following chapters outline in more detail these outstanding areas of implementation, in particular concerning victim identification and assistance in the context of a gendered analysis.

I – Legislative/policy framework for responding to human trafficking victims

Key finding:

There is an absence of comprehensive legislation, and/or clear policy guidelines, guaranteeing the rights of victims of human trafficking to be identified, and their subsequent access to services and support.

While the offence of human trafficking is criminalised in a decisive manner under Irish law, providing for severe penalties and imprisonment for life, there are not any statutory legislative or administrative frameworks that guarantee protection and assistance to all victims.

In 2015, a draft second NAP was published, with a consultation process that was completed in July of that year. Interested parties were invited to make written comments and many specialised CSOs availed of this opportunity. Presently, the publication of the second NAP is expected. The draft national action plan has no immediate intention to legalise or to revise the limited administrative policy document (AIA 2011), which is the basis for response to (some) trafficked victims in the state (NAP 2015). The AIA, which are relevant for isolated cases of undocumented third country national victims, could be replaced with a substantial policy that stipulates the provisions for identification and assistance to all victims.

Recommendations

Legislation to be drafted and enacted guaranteeing protection and assistance to victims of human trafficking. In the interim, a clear and comprehensive policy document should be developed,

applicable to all victims, which can provide a blueprint for future legislation. This recommendation should be included in the forthcoming second National Action Plan, due to be published in 2016.

II - Mechanism aimed at early identification

Key findings:

There is a lack of clarity in relation to the definition regarding victims of trafficking, with terms such as 'potential' 'suspected' and 'alleged' used interchangeably, affecting access to the full provisions intended by the Directive.

Due to existing policy, the vast majority of victims, namely EU citizens and asylum seekers, remain formally excluded from the identification process because it is immigration and/or nationality dependent.

The identification of victims of trafficking is extended to a limited category of victims and has no defined timeline. It is delegated exclusively to the police authorities without a clear structure for this process, setting any limits with regard number of interviews, times for decision, communication and review of the decisions or any minimum criteria in order to give effect to the Directive's provision for 'early' identification.

The timely identification of a victim of trafficking is a vital pre-condition for access to a range of rights afforded to victims of such crimes, which is further reinforced in Article 11.4 of the Directive, requiring the establishment of a mechanism for early identification. Presently, the arrangement for identification of victims of human trafficking, in Ireland, has been subjected to detailed critiques by international monitories and Irish specialists alike (ICI 2015, GRETA 2012, and OSCE 2012). This is further reflected in the High Court decision in the case of *P. v. The Chief Superintendent of the Garda National Immigration Bureau (IEHC 222)*, which further exposes the need for urgent revision of the identification procedure. The difficulties include the fact that the process does provide for the identification of victims of trafficking who are EU nationals and also excludes all applicants under international protection. Furthermore, the process is affected by the decision to exclusively delegate the identification of victims to An Garda Síochána, excluding any specialist civil society organisations and other independent services from the decision making in relation to reasonable ground (ICI 2015). The resulting outcome is that at present there are limited numbers of individuals formally recognised as victims of trafficking crimes and afforded a full range of measures for recovery assistance. In practice, many more victims participate every year in criminal investigations without the benefit of a formal recognition (Yonkova 2015).

As a result of the High Court ruling, the State established a Garda National Protection Services Bureau, which remit is yet to be clarified and publically communicated, but the intent is to have an integrated and victim protection oriented police response to human trafficking and other serious crimes, and has been welcomed by advocates (Joint CSO 2015).

There is a commitment by the Government towards fundamental review of the system of identification of victims of trafficking, which is presently being progressed (NAP 2015).

There is an opportunity as part of this review to consider the gender elements and variations in relation to the identification of victims of human trafficking, and to incorporate this into any recommended action outlined.

Recommendations

Reform of the existing identification practices with an introduction of a non-discriminatory procedure applicable to all victims of human trafficking, regardless of their nationality and immigration status.

The identification procedure should formally involve specialist CSOs and independent services, with clear criteria for review, inclusive of time restrictions. The review should include a gender-sensitive and trauma-specific approach to victims.

CHAPTER 3

I -The provision of assistance from a gender perspective

Key finding:

The gendered dimension of human trafficking is not highlighted or referenced in the forthcoming National Action Plan, and similarly there are no references to gender-sensitive assistance to victims, in line with rec. 3 of the Directive.

A joint CSO submission on the occasion of the publication of the second draft NAP highlights the lack of a commitment to a gender-sensitive approach to protection and assistance of victims of trafficking in the draft NAP (2016).

However, some very positive measures and services have been developed that consider the gender dimensions of human trafficking. The Government has delegated the development of individual care plans for victims to the Women's Health Services at the Health Service Executive. This is a unit comprising of medical practitioners and social workers who have years of experience responding to women involved in prostitution and the management of the unit has an acute gender-sensitive approach to their work and gives special attention to women exposed to sexual trauma. However, there are some restrictions as victims have to be referred for care planning by the police authorities, (as per access in general in relation to any other State-provided services). The situation with assistance that is not conditional on cooperation with authorities is reviewed further below.

The State is also funding Ruhama, a Dublin-based NGO which works on a national level with women affected by prostitution and other forms of commercial sexual exploitation.

Recommendations

Ensure that a commitment to gender sensitivity is made in an explicit manner in the draft NAP 2016, in order to ensure an acknowledgement of the gendered nature of human trafficking and in particular the overwhelming presence of women among victims who have been sexually exploited.

Review the services offered and ensure that the access is not dependent on cooperation with the police authorities and subject to repetition of traumatic accounts.

Ensure funding is available to specialist CSOs to provide appropriate supports and services.

II - Safe and gender-sensitive accommodation

Key finding:

Provisions with regard to accommodation and material assistance to victims of human trafficking have been the focus of criticism by Irish specialists and international monitors.

In addition to the overall gender-specific approach to service provision and assistance, the Directive also calls for appropriate and safe accommodation and assistance to be provided to victims of trafficking (Art. 11.5). Ever since a decision was taken in 2008 to use the reception arrangements for asylum seekers in Ireland as accommodation for victims of human trafficking, there have been debates in the State, multiple submissions and criticisms regarding this policy (FLAC 2009, AkidWa 2010).

Commonly referred to as Direct Provision, these reception arrangements largely comprise accommodation in hostels dispersed around the country, offering full board and pocket money of €19.10 per week. The Direct Provision system and its suitability in general to asylum seekers has been the subject of controversy for years, which culminated in a review process in 2015 (WG 2015). Advocates had highlighted the lack of discussion around safe accommodation for victims of trafficking in the draft NAP document.

This policy of housing victims in Direct Provision coupled with the restrictive identification is criticised as unsafe and inappropriate for human trafficking victims. This is particularly of concern in relation to victims of trafficking for sexual exploitation, who await formal identification. There are a small number of victims eligible for identification under the AIA who are supported to move on to private accommodation. In practice, the vast majority of victims remain for considerable periods of time unidentified and living in direct provision hostels, criticised especially women who have been sexually exploited (ICI/Nasc et al 2014, GRETA 2013). GRETA (2013) in its first report on Ireland's implementation of the CoE Convention urged the Irish authorities to *'review the policy of accommodating suspected victims of trafficking in accommodation centres for asylum seekers and to consider the setting up of specialised shelters for victims of trafficking, with the involvement of NGOs as support providers'*.

There are reports²⁵¹ that mixed hostels, in particular, may leave already vulnerable young women with a prior history of sexual abuse open to further grooming and exploitation. The ICI report provides evidence suggesting that the direct provision hostels are targeted by men looking to buy sexual services, and are used by traffickers (ICI 2011). Further challenges are caused by the issue of dispersal in the direct provision system, where residents, including victims of trafficking are randomly moved, which is mostly determined by hostels' capacity considerations. Most CSOs highlight that the intense level of support required initially by vulnerable persons is thus interrupted, when

²⁵¹ Interview Ruhama (n 76) lines 170-173; Interview ICI (n 45) 168.

women are been transferred to areas will limited or no appropriate services. In a joint submission to the Minister of Justice and Equality in 2014, a group of specialist Irish CSO and supported housing providers produced a detailed analysis of the housing situation with victims of trafficking calling for a commitment to prioritise the provision of appropriate accommodation for female victims who have undergone severe sexual abuse (ICI/Nasc et al 2014) .

Recommendations

The submission to the Minister for Justice and Equality on the accommodation needs of victims of trafficking, which contains detailed analysis and a range of discussions and recommendations, should be taken into account when determining the priorities under the new draft NAP 2016.

The setting up of specialised shelters for victims of trafficking could be considered, alongside ending of the practice of accommodating victims in centres for asylum seekers, which are limited in gender sensitivity, privacy and safety.

The involvement of specialist CSOs and supported-housing providers, including the utilisation of the existing shelters and rape crisis centres for victims of GBV violence could also be considered.

III - Attending to victims with special needs

Key finding:

There is a lack of clarity in the process of considering the special needs of victims of human trafficking and appropriate referral.

The Trafficking Directive calls for attention to be focused on victims with special needs. Article 11.7 of the Directive obliges the MSs to ‘attend to victims with special needs’, where those needs derive from pregnancy, health issues, disability, mental disorder or a ‘serious form of psychological, physical or sexual violence they have suffered’. It is noted that the draft NAP does not contain any commitments and even references with regards to victims with *special needs* (CSO NAP 2015).

While the work of the Women’s Health Centre, as mentioned above, in developing individual care plans for victims is very important, it is ultimately limited by a number of existing policy restrictions, which could negate focussed attention to any special needs (Yonkova and Widdis 2015). For instance, the need for safe and gender-sensitive accommodation for sexually violated victims is virtually unmet. Only a small proportion of victims proceed over time to private accommodation, and this is not based on any assessment of special needs but on residence status and nationality. However, it should be noted that medical assistance is unconditional in Ireland, and open to everyone who experience exploitation, and presents to this service.

Recommendations

The development of specific gender-aware guidelines should be considered when assessing special needs of victims. Victims’ rights and specialised support service organisations should be closely involved in the development of these guidelines.

IV - Secondary victimisation

Key finding:

There is no apparent memorandum of understanding and protocols for data sharing and referrals between the CSO and the State and within State agencies, which leads in practice to re-victimisation by the repetition of traumatic accounts.

The Directive (Art.12.4) reinforces an obligation to avoid negative experiences and secondary victimisation through unnecessary repetition of interviews during investigation, prosecution or trial. The Directive requires that States take measures to reduce the dangers of secondary victimisation of victims cooperating with the authorities by preventing the unnecessary repetition of traumatic accounts. In the Irish context, there is no specific policy or commitment on this matter in Ireland, and there is no memorandum of understanding or protocols between NGOs and the State, nor among the State agencies encountering victims of trafficking.

According to advocates, it is not uncommon that the victim gives a statement to the police, followed by another account to the Refugee Application Commissioner or to the Refugee Appeals Tribunal (Becker 2011). This is in addition to the possible previous account given to the supporting NGO or agency, when making the first referral to the police. It is difficult to develop measures ensuring that victims are not subjected to secondary victimisation by a multiple delivery of personal accounts. Researchers (Kelleher et al 2009) have questioned both the psychological impacts of continuous cooperation with the police, including the provision of multiple statements, on victims of trafficking and the risk of victims exposing themselves to associated risks of participation in criminal investigations with no official recognition as identified victims of trafficking crimes.

Recommendations

Develop and formalise the protocols for referral and exchange of information about cases of human trafficking in order to avoid repeat victimisation.

CHAPTER 4

I - Legal advice without delay

Key findings:

The State provision of legal advice is dependent on referral by the police and is limited to legal information.

The early and effective legal aid to potential victims of trafficking remains an area that has yet to be adequately resourced in Ireland.

In 2015, a pilot project run by an independent law centre, exposed the need for timely legal intervention as soon as anyone recognises a potential victim in the country.

The training toolkit on the benefits of early legal intervention, developed by Irish and international legal experts represents a viable opportunity for improvement of the legal services to victims (ELI 2014, www.earlylegalintervention.eu).

The Directive (Art.12.2) obliges the State to ensure victims have access without delay to counselling, and in accordance with the right of victims in the criminal justice system to legal representation, including for the purpose of compensation. Early legal aid is identified within the EU as an essential mechanism for the upholding of the rights of the victims and for facilitating their informed decisions that ultimately assist with recovery.

The country narrative on Ireland in the US TIP (2015) highlights the need for enhanced access to legal aid for victims and respectively early legal interventions for same. Presently, victims in Ireland have access to legal information provided by the Legal Aid Board. Legal services on certain matters are provided only upon referral from the police following their assessment of the person's status as a potential victim of trafficking. In the Irish context, it is reported that during pre-identification contact with the Garda Síochána, a suspected victim does not have access to legal advice (Becker 2009). It is argued that lack of access to legal advice at this juncture raises serious concerns in light of the fact that some suspected victims have ended up in jail, or applying for asylum in the State in situations where this may not necessarily be in their best interests (Becker 2009). Due to the way the Irish system operates, decisions made at the early stages by suspected victims of trafficking at a time of great vulnerability, will have far reaching consequences which can critically affect how their lives progress, their social recovery and long-term opportunities for those who wish to remain in the state. The ICI, which is an independent law centre in Ireland, led on an EC ISEC funded project on early legal intervention for victims of trafficking, identifying a range of benefits and highlighting dangers which may arise where legal aid is delayed (ELI 2015, Healy 2016). As part of this initiative, a transnational research was conducted identifying guiding principles for early legal intervention, which were subsequently tested within real life parameters. The pilot offered provision of enhanced legal aid to more than 25 victims of trafficking. This innovative work was overseen by a national advisory committee comprising of An Garda Síochána, AHTU, Legal Aid Board and individual legal experts. Training on the benefits of early legal intervention has been scheduled in the foreseeable future (www.earlylegalintervention.ie).

Recommendations

The delivery of training should be resourced highlighting the importance of timely legal aid. The training toolkit on early legal intervention was developed by a consortium of legal specialists from MSs to be used for training with police detectives, lawyers and other practitioners who may encounter victims (ELI 2015).

An increase in the overall civil legal aid budget to the Legal Aid Board, should be considered, for the purposes of enhanced assistance and representation of victims of trafficking crimes.

The provision of funding for specialised law centres should be considered, and extended to include private practitioners providing legal services to victims of trafficking through an extension of the private practitioners' scheme.

II - Cooperation and assistance

Key finding:

In order to access assistance, victims of trafficking are required to cooperate with the authorities, under the provisions of the national system for identification and support.

Theoretically and in line with the AIA, assistance to victims is not conditional on cooperation with the authorities during the recovery and reflection permit period, which is granted to victims to recover and to make an informed decision on whether or not to cooperate in investigations. In practice, the AIA apply to a small number of third country national victims due to the exclusionary identification policy. The majority of victims cannot benefit from the provisions of Art 11.2 of the Directive, as they are ineligible to be identified to a 'reasonable grounds' assessment. Further complication for the implementation of this aspect arises from the fact that investigation is unlimited in time and reliant on the investigation process, including in cases captured by the AIA. Furthermore, it is expected that the implementation of this provision will remain challenging in the context of the present policy to grant TRP to victims of human trafficking exclusively on the condition of cooperation with the investigation into the crime committed against them. The international optional provision (CoE 2005) for granting TRP for personal reasons in relation to gender and other vulnerabilities has not been opted into by the State. The almost absolute requirement to cooperate with the authorities is a result of a policy decision authorising exclusively the police authority to provide access to assistance such as accommodation, subsistence and legal advice.

Recommendations

The identification process should be established as a procedure distinguishable from investigation, with involvement of CSOs and independent services providers, included in the establishment of reasonable grounds and respective access to assistance.

Victim identification should not be reliant on cooperation with law enforcement.

The grounds for Temporary Residence Permit should be expanded to take into account the personal circumstances of the victim, including cases where cooperation with the investigation is not possible.

III - Non-punishment

Key finding:

Despite the existing prosecutorial guidelines discouraging the unnecessary punishment of victims for crimes they have committed in the trafficking context, the prosecution of victims continues to occur.

The stated purpose of the protection from prosecution in Recital 14 of the Directive is to “safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators”.

The Irish courts have confirmed that there is no actual right not to be prosecuted. The Director of Public Prosecution reserves discretion whether to prosecute or not and this is not open to court scrutiny. Advocates have noted that applications for immunity from prosecution are complex and require a legal representative for the victim to prepare a letter to the DPP detailing all the articles of the law with respect to which immunity is required (ICI 2015). Experience shows that if victims are prosecuted before they are identified as a victim of trafficking, they appear to hold a criminal record which cannot be expunged following formal identification. The issue could possibly be dealt with through possible amendments to the Criminal Justice (Spent Convictions)²⁵² law passed in February 2016.

Recommendations

Disseminate more explicit guidelines to judges and public prosecutors in order to guarantee the non-punishment of victims of trafficking for their involvement in unlawful activities, committed in the context of the trafficking crime.

Consider future amendments to the Spent Conviction legislation, in order to provide for the expunging of criminal records of victims who have been punished due to a failure in the process of timely identification.

Improve the identification of victims and access to early legal intervention as a measure of prevention against non-punishment.

IV - Compensation

Key finding:

There are a lack of viable avenues to compensation for the majority of victims of trafficking and especially those affected by the prevalent form of crime, namely sexual exploitation.

The Directive does not specify that existing schemes must effectively provide a route of compensation; it specifies only access to existing schemes, whether or not these deliver for victims.

The existing compensation mechanism puts victims of trafficking at a disadvantage because in the vast majority of cases they do not have verifiable expenses or employment losses in order to avail of the Criminal Justice Compensation Tribunal. The draft NAP presents intentions to examine the possibilities of compensation and to issue recommendations.

Recommendations

Ensure that avenues for compensation are applicable, as well as easily accessible, to trafficked persons. Advocates recommend that new possibilities for compensation are explored, such as the creation of a specialised fund or the possibility for direct compensation from the Criminal Assets Bureau fund (IT 2015).

²⁵² Criminal Justice (Spent Conviction) Bill 2012, with expected enactment in 2016

CHAPTER V

I – Demand in prevention work

Key finding:

There is a significant advancement in the area of prevention of human trafficking for the purposes of sexual exploitation in Ireland through the publication of heads of the Sexual Offences Bill 2014 including its provisions against child grooming and the introduction of a new offence of purchase of sexual services.

The EU Directive specifically highlights the gender dimension of the crime and requires the countries to adopt a gender perspective in prevention work. (See Preamble recital 3 and Article 1).

Of further note is the explicit commitment in the draft NAP to progress the publication of the actual Bill and its adoption with a view to achieving synchronicity with the laws in Northern Ireland for an all-island approach to demand reduction.

In recent years, it has become increasingly clear in Ireland, as in other jurisdictions operating similar legislation, that the criminalisation of the use of services from a trafficked person with the knowledge that such a person is trafficked has yielded little or no convictions. While the declarative message this sends is important, only an unconditional approach to discourage demand delivers the desired impact. It is highly commendable that the published preliminary text of the Sexual Offences Bill reflects this position and complements the provisions pertaining exclusively to trafficked victims, with broader provisions about the purchase of sexual services in general.

Recommendations

The new Government should progress the draft Sexual Offence Bill, enacting it as a matter of priority. The draft legislation includes the criminalisation of child grooming, purchase of sexual services with explicit decriminalisation of the seller, among other provisions.

II - National Rapporteur

Key finding:

Presently, the role of a national rapporteur is delegated to a government departmental unit coordinating the anti-trafficking response in the MS.

Article 19 of the EU Directive provides for the establishment of a national rapporteur or equivalent mechanism that will be in charge of statistical data, extraction of trends and evaluation of the adequacy of the national measures against trafficking in human beings.

The Anti Human Trafficking Unit (AHTU) at the Department of Justice and Equality collates the statistics and presents the trends in this crime. However, the element of independent evaluation cannot be provided by AHTU due to the fact that this unit is at

the centre of the decisions on, and implementation of, policies and measures. Advocates have recommended that the National Rapporteur report regularly to the Parliament.

Recommendations

Establish an independent national rapporteur to review the effectiveness of the anti-trafficking response and report to the national parliament. Include a commitment to this effect under the forthcoming second NAP 2016.

III - New Forms of Trafficking

Key finding:

Trafficking for sham marriages and cannabis cultivation appear to be among the emerging forms of human trafficking.

The 2013 European Union (EU) Drug Market Report noted that Ireland has experienced an increase in the domestic cultivation of cannabis in the last five years (EMCDDA 2013). In 2012, there was substantial media coverage on raids of cannabis farms in Ireland as part of Operation Nitrogen and Operation Wireless, intelligence-led operations targeting cannabis cultivation. During 2011 there were 500 growing houses located under the abovenamed operations resulting in seizure of product valued at 10.5mil Euro (ASI 2014). The commercial cannabis industry in Ireland has been controlled predominantly by Vietnamese and Chinese gangs, although An Garda Síochána have reported “an increase in the number of Irish and Eastern European gangs involved in the industry” (ASI 2014).

Trafficking for sham marriages of exploitative nature is an emerging phenomenon in Ireland and there are diverging views at present as to whether such situations amount to human trafficking, in addition to existing definitional ambiguities. The issue of sham marriage has been the subject of much political debate and legal controversy as well as extensive media coverage in the context of various operations, such as Operation Charity (Smyth 2010) and Operation Vantage (O'Reilly 2015), conducted by the Irish police to investigate sham marriage operations. The ruling in the case of Izmailovic (IEHC 2011) concerning police objection to a proposed marriage between an EU citizen and an Egyptian citizen led to important legal changes in this area. The High Court determined that even if well intentioned, the Irish police were not empowered to prevent suspected marriages of convenience (sham marriages). As a result of the case, the Civil Registration Act 2004 was amended in 2015 and the Civil Registration Service now has the power to form an opinion on whether an intended marriage constitutes a marriage of convenience and, consequently, if there is an impediment to the marriage.

In 2014, the EC provided project funding to undertake research regarding the situation in five EU countries - Latvia, Lithuania, Estonia, Slovak Republic and Ireland, which appears as the only destination country included in the research project. The Irish CSO, the Immigrant Council of Ireland, conducted national research (publication of report expected in 2016), resulting in the preliminary findings that reveal clear patterns of males from the Indian sub-continent (Pakistan, India and Bangladesh) marrying EU national

females from Portugal and Eastern European countries (mainly Latvia, Romania, Hungary and Estonia).

Recommendations

The findings and the recommendations of the forthcoming research on exploitative sham marriages funded by the EC should be considered as part of the second NAP (EC ISEC Hestia 2014).

An awareness-raising strategy to strengthen the identification of trafficking for forced labour needs to be developed and implemented. The National Action Plan (2016) should set specific targets, actions and resources to combat and address criminality as a new form of human trafficking.

IV- Data Collation

Key finding:

The official annual statistical trends are not analysed from a gender perspective.

The official annual statistical trends (DJE website) are not analysed from a gender perspective with a view to exploring the needs of the victims and planning for necessary services. Only the section on statistics and the references to European documents contain any mention of the term gender (CSO NAP 2015). The lack of gender lens is also evident in the State's submission to the *EC Template for National Rapporteurs or Equivalent Mechanisms and in contribution to the upcoming report according to Art.20 of Directive of October 2015*, where no trends with regards to gender were identified (DJE NREM 2014). Gender trends were highlighted, however, in the joint Irish CSO report (CSO NREM 2015).

Recommendations

Extract trends and analyse the collected statistical data from a gender perspective.

CONCLUSION in view of future steps²⁵³

Integrated, holistic and human rights approach to the fight against trafficking is needed.

Recital 7 of the preamble to the EU Directive requires that when the instrument is being implemented, Directive 2004/81/EC on residence permits for victims of third countries should be taken into account as well as Directive 2009/52/EC on sanctions against employers of legally residing third-country nationals, with a view to ensure that the Member States adopt integrated, holistic and human rights approach to the fight against trafficking. The Irish State has not opted into the two complementary Directives mentioned above and this position needs to be reviewed in order to achieve a holistic and integrated approach to human trafficking in the transposition of the EU legal instruments.

²⁵³ For the overall conclusion and key recommendations see the Executive Summary

Bibliography

US TIP (2015), *Country narratives. Ireland*. Available at: <http://www.state.gov/documents/organization/243559.pdf> [Accessed on 09-02-12]

Cahill, A. (2013) '400 a year trafficked for sham marriages', *Irish Times*, 1 February 2013. Available at: <http://www.irishexaminer.com/ireland/400-a-year-trafficked-for-sham-marriages-221367.html> [Accessed 19 March 2016]

EC ISEC HESTIA (2014) Research on trafficking for exploitative marriages in Ireland 2015 – unpublished. Preliminary information could be obtained by www.immigrantcouncil.ie

MRCI (2011), *Protecting domestic workers employed by diplomats in Ireland*. Available at: <http://mrci.ie/wp-content/uploads/2012/10/Policy-Paper-Diplomatic-Immunity-2011.pdf> [Accessed 19 March 2016]

O'Halloran, M (2015) *Thirty children trafficked for sexual exploitation in two years*. *Irish Times*, 10 July 2015 Available at: <http://www.irishtimes.com/news/politics/oireachtas/thirty-children-trafficked-for-sexual-exploitation-in-two-years-1.2280420> [Accessed 19 March 2016]

DJE (2015), *Blue Blind Fold "Do not close your eyes to human trafficking"*, Key statistics. Available at: <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/keystats-en> [Accessed 19 March 2016]

Irish CSO NREM (2015), *Submission to the European Commission in response to the Template for National Rapporteurs or Equivalent Mechanisms and in contribution to the upcoming report according Art.20 of Directive 2011/36/EU by the Irish Civil Society Organisations (CSO) in the EU Anti-trafficking Platform: Doras Luimní, Immigrant Council of Ireland and Ruhama*. Available at: <http://www.ruhama.ie/assets/Press-Releases/Submission-to-2015-EC-re-NREM-by-Irish-CSO-members-of-the-EU-AT-Platform.pdf> [Accessed 19 March 2016]

DJE NREM (2015), *Irish Statutory NREM Template for National Rapporteurs or Equivalent Mechanisms and in contribution to the upcoming report according Art.20 of Directive 2011/36/EU*. More information: <https://ec.europa.eu/anti-trafficking/>

Killoran, B. (2015), *Promised actions must be taken on sex trafficking and prostitution*. *Irish Times* 1 December 2015 Available at: <http://www.irishexaminer.com/ireland/promised-actions-must-be-taken-on-sex-trafficking-and-prostitution-368899.html> [Accessed 19 March 2016]

Smyth, O. (2015), *Prime Time Investigate: sex for sale*, RTE 30 November 2015, Available at: <http://www.rte.ie/news/player/2015/1130/10499497-rte-investigates-sex-for-sale/> [Accessed 19 March 2016]

Maguire, P (2012), *Prime Time: Profiting from Sex* documentary, RTE 6 February 2012 <http://www.rte.ie/about/en/press-office/press-releases/2012/0206/293201-040212primetime/> [Accessed 19 March 2016]

EMCDDA (2013), *EU Drug Market report: A strategic Analysis*. European Monitoring Centre for Drugs and Drug Addiction. Available at:

http://www.emcdda.europa.eu/system/files/publications/741/TD3112366ENC_406102.pdf

[Accessed 19 March 2016]

Legislation (Ireland: CL (Human Trafficking) Act 2008 and Amendment) Available at:

<http://www.irishstatutebook.ie/eli/2013/act/24/section/1/enacted/en/html>

[Accessed 19 March 2016]

Legislation (Ireland: CL (Child trafficking and Pornography) Act and Amendments)

Available at: <http://www.irishstatutebook.ie/eli/1998/act/22/enacted/en/html>

[Accessed 19 March 2016]

ICI (2011), *Asylum seeking victims of Trafficking: Legal and Practical Challenges*. Dublin: Immigrant Council of Ireland / UN.Gift. Available at:

http://immigrantcouncil.ie/files/publications/84faa-18.11.2011un_gift_report.pdf [Accessed 19

March 2016]

Anti-Slavery International (2014), *Trafficking for Forced Criminal Activities and Begging in Europe Exploratory Study and Good Practice Examples*. Available at:

http://www.antislavery.org/includes/documents/cm_docs/2014/t/trafficking_for_forced_criminal_activities_and_begging_in_europe.pdf [Accessed 19 March 2016]

P vs Chief Superintendent of the Garda National Immigration Bureau, IEHC 222 (2015) (High Court, O'Malley J. , April 15th, 2015) Available at:

https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/p._v._the_chief_superintendent_of_the_garda_national_immigration_bureau_the_director_of_public_prosecutions_0.pdf

Izmailovic & Anor v The Commissioner of An Garda Síochána , IEHC 32 (2011)

Akidwa (2010), Am Only Saying it Now: Experience of Women Seeking Asylum in Ireland.

Dublin. Available at: <http://akidwa.ie/publications-2/> [Accessed 19 March 2016]

FLAC (2009), *One Size does not Fit All: A legal Analysis of the Direct Provision and Dispersal System in Ireland*. Dublin: FLAC. Available at:

http://www.flac.ie/download/pdf/one_size_doesnt_fit_all_full_report_final.pdf

[Accessed 19 March 2016]

ICI, Nasc, Focus Ireland and Sonas Housing (2014), *SUBMISSION on the accommodation needs of adult victims of sex trafficking in Ireland*. Dublin. Available at:

<http://immigrantcouncil.ie/files/publications/21d36-proposal-for-housing-of-adult-victims-of-sex-trafficking.pdf> [Accessed 19 March 2016]

Becker, H. (2009) "Human Trafficking: Psychologically Shattered and Caught in a Legal Quagmire" (APT Conference, Dublin, 19 October 2009) Available at:

http://www.aptireland.org/wp-content/uploads/2012/06/hilkka_becker_the_legal_quagmire_oct_09.pdf [Accessed 19

March 2016]

Edwards, E. (2015), *Call for compensation for sex-trafficking victims*, Irish Times, 4 August 2015. Available at: <http://www.irishtimes.com/news/social-affairs/call-for-compensation-for-sex-trafficking-victims-1.2305945> [Accessed 19 March 2016]

ICI (2013), *Parliamentary briefing on the outstanding issues with the transposition of Directive 2011/36/EU* Dublin: ICI. For more information: www.immigrantcouncil.ie

Government of Ireland, *Oireachtas record* (2013), *Parliamentary debate on the adoption of some legal provisions giving effect to the 2011/36/EU*. Dublin. Available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013042400026?opendocument> [Accessed 19 March 2016]

Department of Justice and Equality (2011), *Administrative Immigration Arrangement for the Protection of Victims of Human Trafficking (AIA)*, Dublin: DJE. Available at:

<http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf>

ICI 2015, *Submission to the Draft National Action Plan on Combatting and Preventing Trafficking in Human Beings*. Dublin: ICI. Available at: <http://immigrantcouncil.ie/files/publications/b7b8f-napsub.pdf> [Accessed 19 March 2016]

GRETA (2013), *Council of Europe first monitoring report on Ireland*. Available at: https://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf [Accessed 19 March 2016]

OSCE (2012), *Monitoring report on Ireland*. Vienna: OSCE. Available at: <http://www.osce.org/secretariat/99775> [Accessed 19 March 2016]

Yonkova, N. (2015), *"Victims' Rights: An Agenda for Change"* (University of Limerick Conference, Limerick, 20 September 2015): (The Victims Directive - a viable tool for upholding the rights of human trafficking victims) Available at: http://www.ul.ie/law/sites/default/files/files/Victims'%20Conference%202015%20Programme_Final.pdf [Accessed 19 March 2016]

NAP (2015), *Draft National Action Plan on Combatting and Preventing Trafficking in Human Beings*. Dublin: DJE. Available at:

[http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-9Y2H3C135052-en/\\$File/Second%20National%20Action%20Plan%20-%20June%202015.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-9Y2H3C135052-en/$File/Second%20National%20Action%20Plan%20-%20June%202015.pdf) [Accessed 19 March 2016]

CSO NAP (2015), *Joint CSO Submission to the Draft National Action Plan on Combatting and Preventing Trafficking in Human Beings*. July 2015. Dublin. For more information: www.immigrantcouncil.ie

WG (2015), *Working group report on direct provision and the protection process*. Dublin: DJE, Available at:

<http://www.justice.ie/en/JELR/Pages/PR15000389> [Accessed 19 March 2016]

NAP review (2011), First review of National Action Plan on Combatting and Preventing Trafficking in Human Beings. Dublin: DJE Available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/\\$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf) [Accessed 19 March 2016]

Yonkova, N. and Widdis, R. (2015), *Implementation of the Victims' Rights Directive with reference to the protection of Victims of Trafficking in Human Beings in Ireland* [unpublished]. For more information: www.immigrantcouncil.ie

Kelleher, P., Kelleher, C, Pillinger, and J.O'Connor, M. (2009) *Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland* Dublin. Available at: <http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Trafficking-Report-FULL-LENGTH-FINAL.pdf> [Accessed 19 March 2016]

Healy, G. (2016), *Evaluation of ELI*. EC ISEC funded project Upholding Rights: Early Legal Intervention for Victims of Trafficking. Available at: <http://www.earlylegalintervention.eu/wp-content/uploads/2014/07/ELI-Evaluation-Report.pdf> [Accessed 19 March 2016]

ELI (2015), *Toolkit on Early Legal Intervention*. EC ISEC funded project Upholding Rights: Early Legal Intervention for Victims of Trafficking. Available at: <http://immigrantcouncil.ie/pages/publications> [Accessed 19 March 2016]

RIA (2014), *Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment*. Dublin: Reception and Integration Agency, Available at:

<http://www.ria.gov.ie/en/RIA/RIA%20Policy%20Document%20on%20Domestic%20&%20Gender%20Based%20Violence%20&%20Agreed%20Report.pdf/Files/RIA%20Policy%20Document%20on%20Domestic%20&%20Gender%20Based%20Violence%20&%20Agreed%20Report.pdf> [Accessed 19 March 2016]

RCNI (2013), *Asylum Seekers and Refugees surviving on hold*. Galway: Rape Crisis Network Ireland. Available at: <http://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf> [Accessed 19 March 2016]

AkiDwA. (2012). *No Place to Call Home: Safety and Security Issues of Women seeking Asylum in Ireland*. Dublin: AkiDwA. Available at:

<http://akidwa.ie/publications/No-place-to-call-home-Executive-Summary.pdf> [Accessed 19 March 2016]

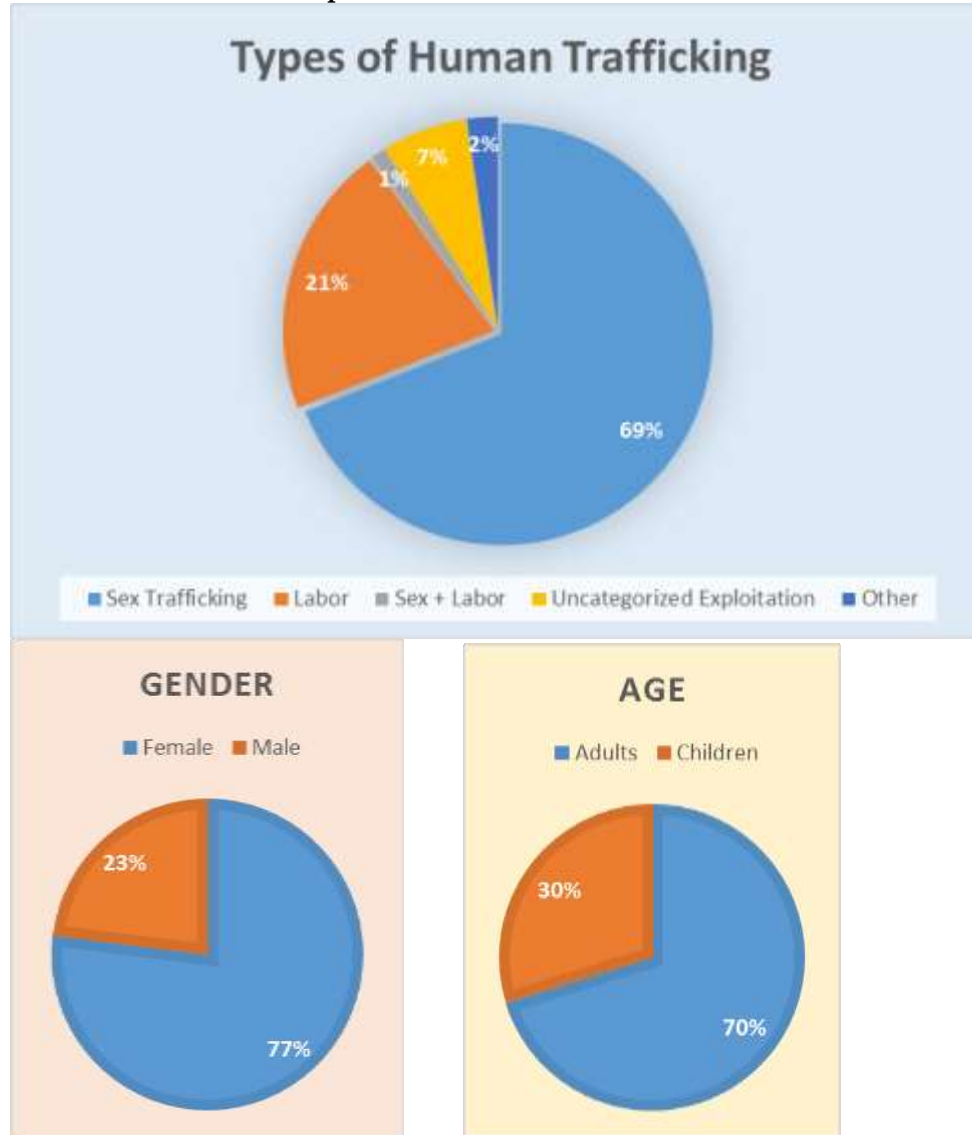
Legislation (Ireland: Criminal Justice (Spent Conviction) Bill 2012) Dublin. Available at: <https://www.kildarestreet.com/sendebates/?id=2015-03-03a.21> [Accessed 19 March 2016]

O'Reilly, B. (2015), *200 Gardai involved in nationwide searches in massive sham marriage probe*, The Irish Independent, 25 November 2015. Available at <http://www.independent.ie/irish-news/200-gardai-involved-in-nationwide-searches-in-massive-sham-marriage-probe-34233842.html> [Accessed 19 March 2016]

Smyth, J. (2010), *Few Legal Means to Restrict Rise in Bogus Unions*, Irish Times, 17 August 2010, Available at <http://www.irishtimes.com/news/few-legal-means-to-restrict-rise-in-bogus-unions-1.638680> [Accessed 19 March 2016]

APPENDIX 1 – National Statistical data

National Statistics for the period 2009 to 2014²⁵⁴



²⁵⁴ Information obtained from CSO NREM report, February 2015 and national statistical data for 2014 available from the Department of Justice and Equality website www.blueblindfold.gov.ie

APPENDIX 2 – Irish NGO Submission to the European Commission



Submission to the European Commission

February, 27th 2015

in response to the Template for National Rapporteurs or Equivalent Mechanisms and in contribution to the upcoming report according Art.20 of Directive 2011/36/EU

compiled by

the Irish Civil Society Organisations (CSO)

of the EU Anti-trafficking Platform:

Doras Luimní, Immigrant Council of Ireland and Ruhama

The Department of Justice and Equality in Ireland assumes the functions of the National Rapporteur or Equivalent Mechanism (NREM). We, the undersigned, hope that these arrangements are temporary and that the State will soon follow the best practice examples in the European Union.

The undersigned organisations strongly recommend the appointment of an independent National Rapporteur in Ireland. The lack of such an independent structure has been the subject of criticism by Civil Society Organisations (CSO herein) in press releases and submissions to the Irish Government focusing on this particular topic²⁵⁵.

The preferred option for the Irish national context is an independent body with the power to request information and the competence to analyse trends accountable directly to the Irish Parliament. A good example in this regard is the Irish National Rapporteur on Child Protection and his annual reports to the Parliament²⁵⁶.

This submission follows the structure of the formal template but provides an independent separate response to the questions originally put to the NREM in Ireland. As such the submission is structured under the following headings:

Assessments of trends in trafficking in human beings.

Measuring of results of anti-trafficking actions.

Criminal Law, Investigation and Prosecution.

Assistance and support (including protection).

Prevention:

Information and awareness raising campaigns, including to curb demand

Training and education programmes

Legislative measures on prevention and to discourage demand

Gathering of statistics in close cooperation with relevant civil society organisations active in this field.

For any further information, please contact:

Doras Luimní: <http://dorasluimni.org/>

Ruhama: <http://www.ruhama.ie/>

Immigrant Council of Ireland: <http://www.immigrantcouncil.ie/>

²⁵⁵ <http://www.immigrantcouncil.ie/images/PDFS/Rappa.pdf>

²⁵⁶

http://www.dcy.gov.ie/viewdoc.asp?fn=/documents/Child_Welfare_Protection/SpecialRappor%20teurChildProtection.htm

1. Assessments of trends in trafficking in human beings.

Measure	Assessment of THB Trends
Timeframe of Assessment Period	
Objectives Present and Future-Oriented assessment Analyse the different trends of THB (such as on victims and traffickers disaggregated by gender, age and citizenship, various forms of exploitation, new and emerging trends, modus operandi, Organised Crime Groups, national and transnational THB, involvement of legal persons, recruitment of victims, means used, profile trafficker/facilitator, higher risk sectors, estimates of profit and money flows, demand) Inform actors working in the field of THB (public and private authorities, civil society organisations, researchers and others) in order to take adequate policy measures.	Response from Irish CSO The present Irish NREM at the Department of Justice provides a present and retrospective analysis of trends in trafficking in human beings (THB). However, the data compiled and presented in the NREM annual report is published with a significant delay after the assessment period. As a result, finding up-to-date information on THB trends or figures in Ireland remains problematic. As indicated by the official NREM report, formal projections of future trends have not yet been included in the NREM report for Ireland, while information is gathered in cooperation with CSOs with considerable expertise. There is scant information in the NREM report on traffickers. The NREM reports do not include sufficient analysis of current and emerging trends, modus operandi of traffickers, organised crime groups, involvement of legal persons, estimates of profit and money flows, or information on higher risk sectors. On the basis of the data available, some trends are easily distinguishable, albeit unacknowledged. These is for instance the prevalence of trafficking for the purposes of sexual exploitation and the disproportionate representation of women in the victim's statistics. There is also a worrying trend of child trafficking for suspected purposes linked to sexual exploitation, which is a reoccurring trend in the data gathered in Ireland. The undersigned CSOs submit that regardless of the difficulties experienced in data collection, it is safe to conclude based on the knowledge available in Ireland that women and children are the primary target group of the traffickers and that trafficking for sexual exploitation is by far the most prevalent form. While data gathered by the Irish NREM is used to monitor trends and provide an evidence base, it is arguable that with such minimal disaggregated data THB trends cannot be sufficiently understood in all their aspects, and therefore nuanced preventative measures cannot be informed.
Details of assessment - please specify and elaborate in each case Methodology Inclusion of statistics Who carried out the assessment and which organisations and/or	Response from Irish CSOs The THB figures collated by the NREM for the year 2013 and 2014 have yet to be made available to the general public. Information collection process

<p>stakeholders have been involved? List sources that have been used <u>such as</u> analytical reports of law enforcement services, reports by CSOs, EU agencies, academic studies, international organisations etc?</p>	<p>The CSOs welcome and support the efforts of the AHTU to collate statistics. The three organisations²⁵⁷ making the present submission fill in and submit information in the required format and then engage in further efforts to eliminate any duplications.</p> <p>The Irish NREM cites figures from 2009-2013, which in a collated manner illustrates the main stats at a glance:</p> <p>Types of human trafficking Sex trafficking: 202 (69%) Labour trafficking: 64 (22%) Uncategorised exploitation: 21 (7%) Sex and labour trafficking: 3 (1%) Other: 3 (1%)</p> <p>Gender Female 230 (79%) Male 63 (22%)</p> <p>Age Adults 205 (70%) Children 88 (30%)</p> <p>Regions Various but West Africa and EU are the main source regions.</p>
<p>Dissemination and Use of the Results - please provide details <u>such as</u> publication on website, distribution to parliament for discussion, distribution to stakeholders etc.</p>	<p>Response from Irish CSOs While the annual reports are very welcome, the information is not made available in a timely manner. Presently, the latest published report is for year 2012. Given that centralised information on THB trends in Ireland is not available from alternative sources, these reports are especially important.</p>

2. Measuring of results of anti-trafficking actions

2.1. Criminal Law, Investigation, and Prosecution

Measuring the result of	Financial investigations
Timeframe of the assessment period	
<p>Objectives: Evaluate the use of financial investigations in THB cases as a tool to detect money flows, as well as enabling the freezing, seizure and confiscation of proceeds of crime Develop better gathering of evidence in THB cases with a view to increasing prosecutions and convictions and dismantling Organised Crime Groups (OCGs) Improve knowledge on crime</p>	<p>“No formal overall assessment of THB investigations involving financial investigations have been conducted” (<i>official NREM template</i>)</p> <p>Response from Irish CSO</p> <p>The lack of investigations and assessment of the financial side of THB in Ireland is of concern as is the lack of transparency in criminal investigations into human trafficking in general.</p> <p>We recommend regular updates for victims in ongoing cases of the progress of the case or respectively its closure.</p>

²⁵⁷ Please note that the Immigrant Council of Ireland was not included in the original report but the Department of Justice have undertaken to amend it.

patterns in THB cases Expose gaps in anti-money laundering compliance and uncover liability of a financial institution or other professionals	We recommend that investigations into THB should not be overly reliant on victims' testimonies.
Organisations and/or Stakeholders involved - please list and explain how they were involved Experts could include those in the fields of trafficking in human beings, financial crime, cybercrime, organised crime, prosecutors, judges where appropriate, private sector (banking, ICT)	
Details of assessment - please specify and elaborate in each case These could include the methodology, number of cases evaluated, experts involved etc	
Relevant reports-please provide an exhaustive list	
Output Evaluation report on financial investigation in THB cases that includes the mentioning of the number of THB cases evaluated, meetings organised between experts, the model used, number of staff trained (also by CEPOL) Conclusions based on the evaluation of the increase of prosecutions (and eventually convictions) because of the use of financial investigations, the number of OCGs dismantled, the information sent to Europol, cooperation with Eurojust Have recommendations been formulated because of the evaluation?	<p>"Internal An Garda Síochána operational assessments of 2 THB investigations resulting in confiscation orders being imposed were conducted" (<i>official NREM template</i>)</p> <p>Response from Irish CSOs We note that the formal report mentions two confiscation orders involving THB cases. These instances are very important.</p> <p>The note with concern that the only available easy-to-access compensation mechanism in Ireland is the Criminal Justice Compensation Tribunal that refunds verifiable expenses, which is not applicable to victims of trafficking in the majority of cases.</p> <p>We recommend the establishment of a fund and a clear procedure that would ensure that part or all of the confiscated assets are used for the compensation of victims of trafficking, in the absence of any other avenues for compensation in Ireland.</p> <p>We recommend the creation of easy to access compensation avenues for victims of trafficking.</p>
Outcome (short and medium term) Has financial investigation in THB cases resulted in an increased number of traffickers prosecuted? Has it lead to a better detection and dismantling of THB OCGs? Has it resulted in an increase of the freezing, seizing and confiscation of	<p>"Operation Abbey – confiscation order for €2 million. OCG primary and 2 accomplices convicted in UK and confiscation order made based on evidence provided by An Garda Síochána. Operation Mast - OCG dismantled, brothel keeping conviction, assets confiscation order made" (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p>

<p>proceeds of crime? Has it lead to better collection of evidence and in the process lift the burden for victims to testify?</p>	<p>There is a lack of transparency in operations or outcomes of THB detections and prosecutions, and victims of trafficking are rarely updated on their cases.</p>
<p>Impact (long term) Has the detection and prosecution of THB cases increased? Has the number of convictions increased and have more OCGs been dismantled? Has compensation to victims increased and has THB been better prevented?</p>	<p>“No formal assessment of impacts carried out” (<i>official NREM template</i>)</p> <p><u>THB Related Convictions</u></p> <p>2010 – 5 2011 – 4 2012 – 6 2013 – 9</p> <p>Response from Irish CSOs</p> <p>Despite the positive trend, we note the low level of convictions for THB and we acknowledge that this is a problem across the EU. The adversarial criminal justice system as well as a lack of understanding of the Non-Punishment principle (Pursuant to Article 26 of the Convention) often sees victim of trafficking prosecuted and even detained.</p> <p>We also note with concern the lack of avenues for compensation for victims of THB as stated above.</p>
<p>Who provided funding for the evaluation, who carried out the evaluation?</p>	<p>“No formal assessment carried out” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>The lack of formal evaluations with an independent monitoring body is a concern. For this reason, the CSO in Ireland call for the appointment of an independent Rapporteur on the issues of human trafficking, which would reporting directly to the Parliament, following the good precedent already existing in the area of Child protection.</p>

2.2 Assistance and Support (Including Protection)

Measuring the result of	National referral mechanisms or other coordination mechanisms
Timeframe of the assessment period	2011
Objectives: Evaluation of the implementation of the mechanism Expose gaps and short comings in the mechanisms and changes in patterns on identification, assistance and protection to victims of THB, including children Develop or improve the mechanisms in terms of reacting to emerging trends of THB, including new actors, including transnational elements	<p>“A review of the National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012 (NAP) was conducted to examine the implementation of the NAP and outlines the measures that have been undertaken in Ireland to prevent human trafficking, support victims and prosecute those responsible for this crime” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>The Irish CSO, including the present submission makers has published a range of reports on the issues of protection and assistance to victims of human trafficking. In addition, the Irish CSO made a joint submission to the Council of Europe (GRETA) in 2012. Many of the issues highlighted in the submission were reflected in GRETA’s country report on Ireland²⁵⁸.</p> <p>The CSO analysis and the concerns remain valid to date, as no changes have been implemented in Ireland. These outstanding areas cover:</p> <p>Identification of all detected victims regardless of their nationality and legal status, and with formalised input from the CSO specialist organisations.</p> <p>Access to national referral mechanism outside of Dublin area²⁵⁹.</p> <p>Ending the practice of excluding victims in the asylum process from the possibility to be identified acknowledged and supported as victims of the crime of trafficking²⁶⁰.</p> <p>Providing gender-sensitive assistance to victims, in view of the prevalence of trafficking for sexual exploitation and the female victim profile. Ending the policy of using the asylum accommodation centres for vulnerable female victims²⁶¹.</p> <p>Issuing acknowledgement to all identified victims of trafficking, and ensuring access to services equally to non-EU and EU victims of trafficking, through the provision of a Temporary Residence Permit and the exemption of EU citizens from the Habitual Residence Condition. This should not be limited to cases where the victim cooperates in an investigation but also for cases where the personal circumstances of the victims so require.</p>

²⁵⁸ <http://www.immigrantcouncil.ie/index.php/research-publications/publications/771-greta-shadow-report-analysis>

²⁵⁹ <http://doraslumini.org/wp-content/uploads/2015/02/No-Chances-No-Choices-Soft-Copy.pdf>

²⁶⁰ <http://www.immigrantcouncil.ie/index.php/research-publications/publications/523-asylum-seeking-victims-of-human-trafficking-in-ireland>

²⁶¹ <http://www.nascireland.org/wp-content/uploads/2014/10/Proposal-for-housing-of-adult-victims-of-sex-trafficking.pdf>

	<p>Introducing viable avenues for compensations for victims of trafficking, outside of the criminal compensation tribunal, which is unsuitable for most victims, and outside of court orders which have never been made.</p> <p>The principle of non-prosecution for victims of trafficking must be adhered to. The guidelines issued to the office of the Director of Public Prosecution (DPP), are insufficient in practice, due to problems with the current identification procedure, as well as a lack of awareness among judiciary and legal practitioners.</p> <p>With regard to the efforts in upholding the rights of victims of trafficking, there is a leading EC ISEC funded project in the EU (led by the Immigrant Council of Ireland) that promotes early legal intervention for victims of trafficking, in which Doras Luimní, Ruhama and other leading CSOs and State agencies are included in advisory capacity²⁶².</p> <p>We await the publication of the next draft National Action Plan and we are looking forward to participating in the consultations.</p> <p>We anticipate greater input into the victim identification process.</p>
<p>Details of assessment - please specify and elaborate:</p> <p>Methodology</p> <p>Inclusion of statistics</p> <p>Who carried out the assessment, what budget was available and which organisations and/or stakeholders have been involved?</p> <p>List sources that have been used <u>such as</u> analytical reports of law enforcement services, reports by CSOs, EU agencies, academic studies, international organisations, etc?</p>	<p>Response from Irish CSOs</p> <p>We appreciate that the review of the NAP in Ireland in 2012 included feedback from CSOs, international organisations and civil society actors.</p> <p>However, the delay in publication of any new national action plan since 2012 is worrying. In the absence of a new national strategy, the working group consultative meetings, which used to provide an important space for sharing of information and debate on policy and legislation, have also unfortunately discontinued.</p>
<p>Output:</p> <p>Evaluation report on the implementation</p> <p>Persons trained.</p>	
<p>Outcome</p> <p>Questions:</p> <p>Has the mechanism raised awareness and increased the use by the targeted actors?</p>	<p>"No formal evaluation was conducted in regard to the referenced outcomes" (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p>

²⁶² <http://www.earlylegalintervention.eu/>

<p>Has it increased the number of victims identified and victims? Have victims received better assistance, support and protection to victims? Have more contacts been established with actors in country of origin of victims Were victims better reintegrated?</p>	<p>Re I. The mechanism has created greater awareness of THB in Ireland, particularly around media outlets and the general public.</p> <p>Re II. Unfortunately, the increased awareness in Ireland has not translated into an increased number of identified victims of trafficking. We attribute this fact to the serious policy shortcomings in relation to victim identification in Ireland, namely the exclusion of victims in the asylum process as well as EU and Irish nationals from a process of formal identification. We attribute this to the failure to utilise the expertise of the specialist CSO by including them in the identification procedure in a formalised manner.</p> <p>Re III. Services for THB have not improved as the majority of detected victims remain un-identified and consequently do not receive the full range of protections. The number of identified victims has decreased per year in the reporting period.</p> <p>Statistics from 2013 and 2014 have yet to be made available.</p>
<p>Impact Questions : Has there been a decrease of victims of THB? Were victims of THB less damaged? Was quality of assistance and support to victims of THB better?</p>	<p>“There has been a year on year decrease in regard to the number of victims of human trafficking however it is not possible on the basis of the current data to state why this is the case” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>Re I. We would like to express our reservations in relation to the question of increase or decrease of victims of human trafficking in Ireland. Instead, we note that what could be claimed for sure is the fact that annually, there are only several identification procedures carried out and respectively very few R&R permits granted. Yet there are tens of detected victims featuring on the annual statistical reports who have not been formally identified, while many of them participate in continuous criminal investigations of the crime committed against them. In addition, we would like to raise a point of comparison with Northern Ireland that has half the population of the Republic, but reports similar number of detected victims in 2012.</p> <p>Re II. We are concerned about the process of re-victimisation of victims of trafficking stemming from the necessity to repeat traumatic accounts and also the pressure on victims to appear as a primary source of intelligence in trafficking investigations. In that regard, we would repeat our call for more pro-active investigations that are not heavily reliant on victims’ testimonies.</p> <p>Re II. Identification of victims of human trafficking does not involve input from CSOs. There are also issues around detecting certain types of exploitation. Trafficking for forced marriage for example is not recorded and is not legislated for.</p> <p>An upcoming EC ISEC funded project involving the Immigrant Council of Ireland and the Department of Justice and Equality, led by the Latvian Ministry of Interior is expected to provide clarity in the area of ‘sham’</p>

	<p>marriages in the context of human trafficking.</p> <p>Trafficking for criminal activity, particularly in cannabis production²⁶³ and heroin distribution, is not recognised by the courts or judiciary despite the recent amendment to the Criminal Law (Human Trafficking) Act 2008 that expands the definition of the trafficking crime in Ireland.</p> <p>There is insufficient understanding of the Non-Punishment principle (Article 26 of the Convention) among legal practitioners in Ireland.</p> <p>Trafficking for forced labour insufficiently detected, and relies on the work of CSOs.</p>
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Prevention

Measuring the result of	Information and awareness raising campaigns, including to curb demand
Timeframe of the assessment period	
Objectives: Evaluation of campaigns Better knowledge and effectiveness of campaigns and identify gaps and shortcomings in the campaigns, in reaching out to the target groups, and in the tools used such as social networks through the internet Improved campaign materials and better use of the available tools such as the internet	Response from Irish CSOs There has been a wide range of awareness work carried out in Ireland, some of it sponsored by the Irish Government. The Department of Justice (AHTU) in partnership with Ruhama are currently (2014-15) delivering an EU PROGRESS funded awareness campaign targeting the most vulnerable in Ireland in the commercial sex trade, who may be victims of THB. This project is also in partnership with The Northern Ireland Ministry for Justice as well as the police and key health and Civil Society organisations. The Irish CSO have been particularly active in the field of prevention through awareness and through addressing of demand that fosters human trafficking. Examples of such efforts on the part of the CSO are: The photo exhibition “Not Natasha” in 2011, organised by the Immigrant Council and sponsored partially by the Department of Justice & Equality and Dublin City Council; Screening of the documentary “The price of Sex” in various venues around Ireland, which was hosted by Immigrant Council, Doras Luimní and many other regional specialist organisations. Running a national campaign Turn off The Red Light, aimed at the discouragement of demand that fosters the environment of sex trafficking (most prevalent form of trafficking in Ireland). https://www.facebook.com/turnofftheredlight?fref=ts The poster campaign “Anna Was 14” alerting the public about child trafficking and the young age of people entering prostitution, which was ran by the TORL sponsored by the Community Foundation of Ireland Research on demand that fosters human trafficking “Stop Traffick”: Under the EC ISEC programme, the Immigrant Council of Ireland led a transnational research based initiative that explored the issue of demand from ‘users of services’ perspective and issued practical and widely-applicable recommendations for efficient demand reduction strategies ²⁶⁴ .

²⁶³ <http://www.mrci.ie/wp-content/uploads/2014/03/Full-Report-Trafficking-for-Forced-Labour-in-Cannabis-Production-1.pdf>

²⁶⁴ <http://www.stoptraffick.ie/>

<p>Details of assessment - please elaborate</p> <p>Methodology</p> <p>Inclusion of statistics</p> <p>Who carried out the assessment, what budget was available and which organisations and/or stakeholders have been involved?</p> <p>List sources that have been used <u>such as</u> analytical reports of law enforcement services, reports by CSOs, EU agencies, academic studies, international organistaions etc?</p>	<p>“No formal evaluations have been undertaken” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>Some of the CSO initiatives have been evaluated, which is often a condition for accounting to the funders sponsoring the campaign. For example the EC ISEC project “Stop Traffick” has been evaluated and the recommendations of the project welcomed by the European Commissioner for Home Affairs, the EU Anti-trafficking Coordinator as well as EU and national level politicians²⁶⁵.</p>
<p>Output:</p> <p>Evaluation report</p> <p>Persons trained</p> <p>Persons reached by campaigns.</p>	<p>“No formal evaluations have been undertaken” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>Due to the fact that no evaluation has been undertaken of the awareness and prevention efforts overall, it would be difficult to assess, their effectiveness.</p> <p>It is hoped that the eventual appointment of an Independent National Rapporteur, in line with the CSO recommendations, would be in a position to provide assessments on the effectiveness of the various initiatives.</p>
<p>Outcome</p> <p>Questions:</p> <p>Have the campaigns lead to an increase in the knowledge and awareness of THB of the targeted group?</p> <p>How have the campaigns been used by the targeted group?</p> <p>Did the targeted group identify more victims?</p> <p>Were victims better referred and assisted?</p> <p>Have campaigns prevented THB?</p>	<p>“No formal evaluations have been undertaken” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>As per the above, due to a lack of an evaluation it is difficult to assess if the campaigns have been successful in reaching the targeted group.</p> <p>Some campaigns will be delivered in the near future which will contain an evaluation component.</p>
<p>Impact:</p> <p>Questions:</p> <p>Has the number of victims of THB decreased?</p> <p>Was THB prevented?</p>	<p>“No formal evaluations have been undertaken” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>While detections of THB has decreased it is difficult to ascertain if this is due to awareness raising campaigns. There are on-going issues with the victim identification process.</p>
<p>Dissemination and Use of the Results - Please provide details</p>	<p>None provided</p>

²⁶⁵ <http://www.stoptraffick.ie/wp-content/uploads/2013/03/Stop-Traffick-Independent-Evaluation-by-Dr-Jane-Pillinger.pdf>

Measuring the result of	Training and education programmes
Timeframe of the assessment period	On-going
Objectives Such as Evaluation of the training and education programmes on THB Increased knowledge on the effectiveness of these programmes and identification of gaps and shortcomings Improved programmes and materials as well as better use of the available tools such as the internet	Response from Irish CSOs The NREM reports that An Garda Síochána conduct training in conjunction with international organisations and civil society organisations. Feedback forms at the training sessions act as a monitoring mechanism to evaluate the training. A particularly welcome approach adopted by the State authorities is the regular training of police detectives from around the country with input from non-governmental organisations. In recent past, the Train-the-Trainer initiative had a wide reach among civil servants and practitioners who could encounter victims of trafficking.
Details of the assessment – please elaborate in each case Methodology Inclusion of statistics Who carried out the assessment, what budget was available and which organisations and/or stakeholders have been involved? List sources that have been used <u>such as</u> analytical reports of law enforcement services, reports by CSOs, EU agencies, academic studies, international organisations, etc?	
Output Such as Evaluation reports Persons trained Others	“IOM conducted an evaluation of Garda training. Over 800 police officers have received this training” (<i>official NREM template</i>) Response from Irish CSOs Feedback from training sessions by CSOs were made available but not of the overall evaluation of the entire training.
Outcome Questions : Has the knowledge and awareness of THB of the targeted group increased? To what extent is the targeted group using the acquired knowledge? Have more victims been identified by the targeted group? Were victims better referred and assisted? Has the communication on the rights of victims improved? Have victims been better protected?	“Improvements to implementation of training course. Initially training consisted of a series of presentations from a range of different stakeholders (law enforcement, government bodies and civil society) however following a review of the feedback and input from course organisers a more interactive approach was adapted which also included panel discussions and more time for questions and debate. Feedback regarding the course has been very positive indicating that participants felt the course delivered on its objectives. Outcomes in terms of victim identification have not been assessed” (<i>official NREM template</i>) Response from Irish CSOs It is difficult to assess whether the knowledge and awareness of THB has been effective with the target group – detections of THB have decreased in the last few years.

	Additionally, Ruhama conducts more in-depth training with Gardai on the issue of prostitution.
Impact: Questions: Have the number of victims of THB decreased? Was THB prevented?	<p>“The number of victims detected by/reported to An Garda Síochána has been decreasing in recent years however it is not possible to say with any certainty whether this is related to training” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>The victim identification process is problematic, particularly among certain forms of THB, such as trafficking for criminal activity (cannabis cultivation, heroin distribution)²⁶⁶ and for forced labour.</p>
Dissemination and Use of the Results - Please provide details	“Results are not publically available”.

Measuring the result of	Legislative measures on prevention and to discourage demand
Timeframe of the assessment period	
Objectives: Evaluation of the legislative measures on prevention and to discourage demand Expose gaps and short comings Identify best practices and develop and/or improve legislative measures to better prevent THB	<p>Response from Irish CSOs</p> <p>We acknowledge that an analysis of the effectiveness of the Human Trafficking Act in criminalising forced labour was conducted, which was welcome and which subsequently led to an amendment to the definition in 2013 to include a definition of ‘forced labour’.</p> <p>However, the effectiveness of the legal measures to discourage demand for the most widely spread form of exploitation, sex trafficking, has not been carried out.</p> <p>In this regard the absence of any convictions obtained under Art 5 of the Criminal Law (Human Trafficking) Act 2008, specifically aimed at users of services of trafficking victims has not been acknowledged and analysed. Nonetheless, the futility of the provision to penalise users who knowingly purchase services from victims of trafficking is an established fact today. In light of this, the CSOs welcome the Government Approval in November 2014 of the inclusion for unconditional penalties to users in the sex industry, as part of the new Criminal Law Sexual Offences Bill, while the CSOs are mindful that these developments occurred after the completion of the official NREM report by the State and therefore were not included there.</p>
Details of assessment - please specify and elaborate in each case Methodology Inclusion of statistics Who carried out the assessment, what budget was available and which organisations and/or	<p>Response from Irish CSOs</p> <p>No formal evaluations of the 2008 or the 2013 acts are available.</p>

²⁶⁶ <http://www.thejournal.ie/imprisoning-slavery-victims-1389053-Mar2014/>

<p>stakeholders have been involved?</p> <p>List sources that have been used <u>such as</u> analytical reports of law enforcement services, reports by CSOs, EU agencies, academic studies, international organisations, etc?</p>	
<p>Output</p> <p>Evaluation reports</p>	<p>“Neither the Criminal Law (Human Trafficking) Act, 2008 nor the Criminal Law (Human Trafficking) (Amendment) Act, 2013 have been subject to formal evaluation as a whole” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>This would be an area of concern for Irish CSOs.</p>
<p>Outcome</p> <p>Questions:</p> <p>How have the legislative measures led to the prevention of THB in all forms of THB?</p> <p>Have new measures been introduced and were they implemented correctly?</p> <p>Have relevant actors been informed and trained on the new measures?</p>	<p>“A Report of the examination of the effectiveness of the Criminal Law (Human Trafficking) Act, 2008 Act in criminalising forced labour was published on the web site www.blueblindfold.gov.ie” (<i>official NREM template</i>)</p> <p>Response from Irish CSOs</p> <p>An evaluation led to the definition of forced labour being included in the 2013 human trafficking amendment act.</p>
<p>Impact:</p> <p>Questions:</p> <p>Has THB decreased?</p> <p>Have all forms of THB been prevented?</p>	<p>Response from Irish CSOs</p> <p>No formal evaluation of either the 2008 and 2013 pieces of legislation.</p>
<p>Dissemination and Use of the Results – Please provide details</p>	<p>There has been no formal evaluation, hence no dissemination of the results.</p>

3. Gathering of statistics in close cooperation with relevant civil society organisations active in this field.

We acknowledge that a designated anonymised template for statistical purposes has been developed, which the CSOs complete and submit. We also understand the efforts made by AHTU to eliminate any instances of duplication. These are welcome efforts and could represent the foundation for a very broad and valuable data collection process in Ireland. At the same time, we remain focused on the areas that require improvement as previously outlined in this submission.

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ANNEX 6

Implementation of Directive 2011/36/EU from a gender perspective in Spain

**Research paper
by Gema Fernández Rodríguez de Liévana and
Viviana Waisman**

Abstract

This paper provides a critical analysis of the transposition and the implementation of different elements of the EU Anti-Trafficking Directive focusing on the protection and promotion of victim's rights.

The authors explain how gender stereotyping is creating obstacles in the identification of victims as well as in the realization of other State obligations under the Directive such as the special protection required for child victims of trafficking. The authors offer information based on qualitative data from their experience investigating and litigating in the field that demonstrates the need for Spain to improve its mechanisms of enforcement from a gender perspective of the non-punishment principle, data collection and the application of international protection, amongst others.

The paper concludes that both the transposition of the Directive itself and the implementation of the provisions on victims' rights are inadequate in providing effective protection from a human rights and gendered approach.

AUTHORS

Gema Fernández Rodríguez de Liévana is a Senior Attorney at Women's Link Worldwide. She received her law degree and a postgraduate degree in International Relations: European Union and Globalization from the Complutense University of Madrid (Spain), where she also obtained the title of Equality Agent, granted by the university's Institute of Feminist Studies. She also holds a certificate in International Women's Human Rights Protection from the Women's Human Rights Training Institute (Bulgaria).

Viviana Waisman Viviana is President & CEO and co-founder of Women's Link Worldwide. She holds a Master of Studies in International Human Rights Law from Oxford University, a Juris Doctorate from the University of California Hastings College Of Law in San Francisco and a Bachelor of Arts in Political Science from the University of California, Berkeley.

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This paper is part of the European Implementation Assessment of the Directive 2011/36/EU (Trafficking in Human Beings) for the Committee on Women's Rights and Gender Equality FEMM, together with other analyses on the same issue.

RESPONSIBLE ADMINISTRATOR

Helmut Werner, Ex-Post Impact Assessment Unit

To contact the Unit, please e-mail EPRS-ExPostImpactAssessment@europarl.europa.eu

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Executive summary

In this paper the authors offer an analysis of Spain's efforts to implement Directive 2011/36/EU from a gender perspective with a focus on the sections of the Directive that call for protection mechanisms. The paper focuses on the transposition of the sections of the Directive that best demonstrate the need for improvement to protect trafficking victims. It does not seek to offer an exhaustive analysis of all the articles of the Directive.

The information and analysis offered in the document derive from the authors' experiences of working in the field as part of the non-governmental organization Women's Link Worldwide and thus is sometimes anecdotal in nature. Included are a number of case studies that seek to better illustrate the realities faced by trafficking victims in Spain and the difficulties that they frequently have accessing justice and the basic rights to which they are entitled under the Directive and other norms.

The paper first provides some contextual information on the features of the trafficking phenomenon in the country and the legislative actions taken by the government to tackle it prior to the adoption of the Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims ('the Directive').

In the last several years, important efforts have been made by the State to put into place mechanisms to address human trafficking. Despite these efforts, there continues to be serious deficiencies. The paper critically analyses the Spanish authorities' efforts to transpose the Directive from a gender perspective, assessing whether the legal framework adopted includes a comprehensive, human rights based approach to trafficking in human beings that includes all forms of exploitation and all victims, regardless of their nationality. Further it analyses the harmful role that gender stereotyping plays in the identification process and how it impacts on a potential victim's possibilities to receive protection. In this section, we provide a case study, illustrating how the State's myopic focus on trafficking for sexual exploitation reinforces the general idea that in Spain, trafficking exists only for sexual exploitation, creating a blind spot for State agents in relation to other cases that also affect women and girls.

The paper also examines the identification machinery in place in Spain, concluding that it is neither effective nor coherent due to its focus on crime (prosecution) and immigration.

The key findings of the report are as follows:

Spain's lack of a comprehensive, human rights approach in transposing the Directive as well as the general lack of a gender perspective in its implementation has led to deficiencies in the ability of the State to adequately protect the rights of trafficking victims. In this regard, the State addresses trafficking from a criminal law framework and an immigration control one, and not from a human rights framework.

Gender stereotypes frequently hamper the identification of victims of trafficking in human beings. This gender stereotyping manifests itself in different ways including the legislation's sole focus on sexual exploitation, meaning that other gendered forms of trafficking remain invisible and thus are inadequately combated.

Gender and racial stereotypes often intersect or function together to deny women and children their basic rights to access justice and protection, including identification, recovery and reflection periods and access to international protection.

Spain is failing in its obligations under Article 18 of the Directive, which stipulates that EU member states should provide regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, *including* (but not only) front-line police officers.

In Spain the only authority responsible for identification is the national police, meaning that other State actors do not act to comply with the obligations under the Directive.

The exclusive competency of the police in assessing whether someone is a trafficking victim and the lack of a multidisciplinary team's presence during identification procedures means that the Spanish State is currently failing to comply with Article 11.5 of the Directive. The EU Directive has recognised that it is imperative that a victim has knowledge of the assistance and support measures available. This is currently not the case in Spain.

The lack of a comprehensive, victim-centred approach to trafficking that includes all forms of exploitation and all victims, regardless of their nationality, has resulted in inadequate government action. As a consequence, victims of trafficking from within the EU have frequently been left invisible.

It is crucial that the non-punishment clause set out in Article 8 of the Directive be implemented with a gender perspective. This would mean its extension to administrative penalties, which trafficking victims for sexual exploitation often face.

Child victims of trafficking are inadequately protected in Spain not only as a result of failures to identify them as victims of trafficking, but also failures to even identify them as minors. In some cases, there have even been failures to identify potential victims both as a victim of trafficking and as children. Furthermore, the lack of specialized facilities leads to ineffective protection even when children are correctly identified.

Despite the high number of trafficking victims in Spain, there are an alarmingly low number of women that are granted and accept protection from the authorities under a recovery and reflection period and an even lower number of women that are granted international protection.

Process and data collection is not being implemented from a gender perspective in Spain. This means that no information is made public as to gendered forms of trafficking other than for sexual exploitation and that even data on sexual exploitation is not being produced by the government agency tasked with issues of gender violence and discrimination, but by the police and the Prosecutor's Office.

I. Introduction

Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims ('the Directive') is a clear mandate to EU Member States to adopt an integrated, holistic, and human rights approach in the fight against trafficking in human beings (THB) and to do so with a gender perspective. At the same time, it is important to note that the EU is undergoing a period of extreme difficulty as it seeks to implement new policies to address the current influx of refugees and other migrants entering Europe. There is evidence that women and children are in a particularly vulnerable situation and thus at risk of falling into the hands of traffickers. This situation is exacerbated when restrictions block legal entry. The current EU approach can be seen as sending a contradictory message to the Member States as it relates to the mandate of the Directive at hand.

Against this background this paper seeks to analysis Spain's efforts to implement the Directive from a gender perspective. The information and analysis offered in this paper derive from the authors' experiences of working in the field as part of the organization Women's Link Worldwide. Since 2006 Women's Link has been documenting the situation of trafficking victims in Spain, litigating cases on behalf of victims of trafficking to gain recognition of rights and access to justice as well as participating in civil society's efforts to advance the rights of these women and girls. It is important to note that Women's Link's efforts are all directed towards the protection and recognition of the rights of trafficking victims; and not focused on prevention or prosecution. Thus, we only address prevention and prosecution where the issues relate to the protection of women and girls.

As part of the paper's methodology we provide a number of case studies. Some of these case studies are cases that Women's Link has litigated. The ones not litigated by Women's Link relate to cases and information provided to us by partner organisations in Spain. The information contained in this paper is often anecdotal in nature relating the qualitative methodology of the paper. It is a product of our work, our experience in the field, as well as numerous and frequent conversations with colleagues throughout the years. One of the issues in the field is the lack of documentation and evidence based research. Women's Link has worked to bridge the literature gap through qualitative research and fact-finding and are experts in this area (Women's Link, 2012). The cases we include are illustrative and real life examples of what is occurring in Spain. The paper focuses on the provisions of the Directive that are the weakest due to the lack of a comprehensive human rights approach with a gender perspective. This paper does not seek to offer an exhaustive analysis of all the articles of the Directive.

Spain is a destination, origin, and transit country for men, women, and children subjected to forced labour and sex trafficking. According to the U.S. State Department 2015 TiP Report²⁶⁷ 'women from Eastern Europe (particularly Romania, Bulgaria, Ukraine, Russia, and Croatia), Latin America and the Caribbean (particularly Paraguay, Brazil, Colombia, and Ecuador), China, and Nigeria are subjected to sex trafficking in Spain. Many women forced into prostitution are held under the control of Nigerian, Romanian, and Spanish trafficking networks that operate out of major cities in Spain. In addition, victims are

²⁶⁷ US Department of State 'Trafficking in Persons Report 2015' (July 2015) Available at www.state.gov/j/tip/rls/tiprpt/2015/

increasingly subjected to trafficking by individuals and smaller groups of traffickers. Unaccompanied migrant children continue to be vulnerable to sex trafficking and forced begging in Spain¹.

It was not until relatively recently that protection measures for trafficking victims were enacted in Spanish law. Organic Law 4/2000²⁶⁸ was amended in 2009 in order to include the period of recovery and reflection and in 2010 through an amendment of the Criminal Code, trafficking of human beings became a crime for the first time.²⁶⁹ The legal instruments selected for amendment by the Government in order to comply with its obligations under EU law²⁷⁰ says much about the focus on these measures: namely, migration and crime control.

Subsequently, the Government approved a number of Action Plans on trafficking for the purposes of sexual exploitation (public policy documents without legal force) and modified a number of laws that regulate diverse issues which relate to trafficking, in a patchwork and *ad hoc* fashion further underlining the lack of systematic consideration of this phenomenon.

II. Spain's transposition of Directive 2011/36/EU

In accordance with Article 1 of the Directive, Spain has transposed the Directive into domestic law as it relates to the adoption of minimum standards in the field of criminal law. Amendment to the Spanish Criminal Code introducing, among others, Article 177 Bis adopts for the most part the definition of the crime of trafficking of human beings as set out in the Directive. The wording of the provisions differs from the Directive in so far as the Spanish Criminal Code excludes the words "exploitation of criminal activities."

In addition to the above stated amendments to the Criminal Code to include the crime of human trafficking, Spain's efforts to transpose the Directive includes the passage or amendment of a number of other laws and policy papers. In its reporting to the European Commission regarding the transposition of the Directive, Spain has included a list of 36 "laws" as National Implementing Measures (NIM) concerning the Directive.²⁷¹ All the documents included in the communication were published in Spain's official State bulletin (*Boletín Oficial del Estado*). However, this list contains both amendments to existing Acts (or legislation) that specifically address trafficking, general legislation not

²⁶⁸ Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. Boletín Oficial del Estado de 12 de diciembre. Available in Spanish at: www.boe.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19949.pdf

²⁶⁹ Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. Boletín Oficial del Estado de 23 de junio. Available in Spanish at: www.boe.es/boe/dias/2010/06/23/pdfs/BOE-A-2010-9953.pdf

²⁷⁰ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report (Warsaw, 16.V.2005) Council of Europe Treaty Series – No 197 and Council Directive 2004/81/EC of 29 April 2004 on the residence permit issues to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

²⁷¹ National Implementing Measures (NIM) communicated by the Member States concerning: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Available at: <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32011L0036&qid=1456330803729>

intended to address trafficking;²⁷² Acts that were repealed by subsequent passed Acts;²⁷³ corrections (errata sheet) and Policy Papers.²⁷⁴

Thus, despite the relatively long list of National Implementing Measures communicated, only four of these specifically address the crime of trafficking, and the prevention or the protection of victims. The remainder of these laws are of general application and could affect trafficking victims as well as victims of all other crimes and a number of other situations as they deal with different aspects of the justice system such as legal aid, assistance for victims of violent crimes or the right of victims to be part of criminal proceedings.

Furthermore, if we remove from this list of 36 NIM laws that simply seek to correct errors in the previous publication of a law; laws that have been repealed; laws that simply amend a law that is also listed as one of the 36; and the first National Plan Against Trafficking (Policy Paper which is currently not in force), the number of measures that actually seek to transpose the Directive is reduced to 20. Of these 20, eight are policy papers or administrative decisions. In conclusion, 12 of the original 36 “laws” communicated to the Commission, are actually laws that apply either directly or indirectly to trafficking.

Therefore, the Directive has not been adequately transposed with regards to obligations to prevent the crime and to protect victims of THB. This is partly due to the inadequacy of the implementing legal instruments that Spain has adopted (Roth, 2016). One major issue is the lack of binding regulations or laws that address trafficking from a human rights perspective. Other than the provisions in the criminal code, the only two binding legal norms that include provisions specifically related to trafficking victims are the Victims of Crime Protection Act²⁷⁵ and sections of Spain’s amended 2009 Immigration Law and accompanying regulations.²⁷⁶ The other instruments that Spain has enacted are

²⁷² These are the Ley Orgánica 19/1994, de 23 de diciembre, de protección a testigos y peritos en causas criminales and the Ley Orgánica 13/2015, de 5 de octubre, de modificación de la Ley de Enjuiciamiento Criminal para el fortalecimiento de las garantías procesales y la regulación de las medidas de investigación tecnológica. Laws relating to the protection of witnesses and expert witnesses in criminal trials and on fair trial guarantees and new technologies of investigation.

²⁷³ This is the case with the Ley Orgánica 3/2000, de 11 de enero, de modificación de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de lucha contra la corrupción de agentes públicos extranjeros en las transacciones comerciales internacionales. (On corruption of foreign public agents relating to international commercial transactions).

²⁷⁴ These are the following: Corrección de errores de la Ley Orgánica 13/2015, de 5 de octubre, de modificación de la Ley de Enjuiciamiento Criminal para el fortalecimiento de las garantías procesales y la regulación de las medidas de investigación tecnológica; Corrección de errores de la Ley 26/2015, de 28 de julio, de modificación del sistema de protección a la infancia y a la adolescencia; and Corrección de errores de la Ley 41/2015, de 5 de octubre, de modificación de la Ley de Enjuiciamiento Criminal para la agilización de la justicia penal y el fortalecimiento de las garantías procesales. (Laws updating and modifying: fair trial guarantees and the regulation of investigation involving new technology; systems of protection of children and Young persons; and the improvement of fair trial guarantees and criminal justice).

²⁷⁵ Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito. Boletín Oficial del Estado de 28 de abril. Available in Spanish at: www.boe.es/diario_boe/txt.php?id=BOE-A-2015-4606

²⁷⁶ Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009. Boletín Oficial del Estado de 30 de abril de 2011. Available in Spanish at: www.boe.es/boe/dias/2011/04/30/pdfs/BOE-A-2011-7703.pdf

either not legally binding – thus dependent on the political will of the State’s agents – or are general laws that apply to trafficking as well as to numerous other crimes. These non-binding instruments are two National Plans²⁷⁷ and a Framework Protocol, discussed further below.²⁷⁸

The first National Plan was in force between 2009 and 2012 and put in place the then Government’s intentions in relation to trafficking of human beings for sexual exploitation. The second National Plan, currently in effect (2015 – 2018) is a policy paper that only addresses trafficking for sexual exploitation. The policy does not address other forms of trafficking such as labour, domestic work, forced begging, forced marriages, sham marriages and organ harvesting.

In 2011 the Framework Protocol came into effect following agreement between a number of Government Ministries: the Home Office, Justice, Employment and Social Benefits and Health, Social Services and Equality; the National Public Prosecutor’s Office; and the Judge’s Council. The Protocol aims to *“establish operational guidelines for the detection, identification, support and protection of victims of human trafficking, to foster coordination among the institutions involved in these processes and to define the mechanisms for the relationship among authorities with responsibilities in the field, along with the processes for communication and cooperation with organisations and bodies with proven experience in attending to victims of trafficking, in particular those which provide comprehensive support and are involved in public administration programmes for victim support and protection.”*

The Framework Protocol regulates the following:

- Definition of human trafficking
- Scope of application of the Protocol
- Detection of possible victims of human trafficking and initial actions
- Identification of presumed victims of human trafficking
- Specific actions with victims who are “illegal” foreigners, including
- rehabilitation and reflection period
- identification at the border or in foreigner internment centres
- Specific actions in cases of victims of human trafficking who are legal minors
- Action by organisations and bodies specialising in attending to victims of human trafficking

While the Spanish Government’s commitment to combating sexual exploitation is welcomed, in this paper we draw attention to how this single focus fails to take into

²⁷⁷ The plan currently into force is *Plan Integral de Lucha Contra la Trata de mujeres y niñas con fines de explotación sexual 2015-2018*, available in Spanish at www.violenciagenero.msssi.gob.es/planActuacion/planContraExplotacionSexual/docs/Plan_Integral_Trata_18_Septiembre2015_2018.pdf

²⁷⁸ Framework Protocol for Protection of Victims of Trafficking (*Protocolo Marco de protección de las víctimas de trata de seres humanos*, 2011). See at www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/marco/docs/ProtocoloTrataEN.pdf

account other forms of exploitation. Further, we illustrate how the current understanding of tackling THB relates to law enforcement and the police force meaning that other State actors are not sufficiently engaged in the process of identifying, protecting and supporting victims of THB. Finally, we illustrate through a number of case studies how the State is failing to adopt a human rights approach in the fight against THB and the protection of the victims.

III. Gender Perspective: gender stereotyping and trafficking

Article 1 of the Directive provides that Member States (MS) must take into account a gender perspective. Although there is no further indication in the Directive as to what “the gender perspective” means, the Directive and wider EU legal and policy framework make it clear that MS need to take gender-specific actions. As the European Commission noted in its *Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings*, Brussels, 17 October 2014 (SWD (2014) 318, [5.3]: “For the first time, the Directive adopts a gender-specific approach to THB, recognizing that women and men, girls and boys, are trafficked in different circumstances and require gender-specific assistance and support.”²⁷⁹ The wider EU strategy on THB recognizes violence against women and gender inequalities as root causes of trafficking.

The provisions of the EU Anti-Trafficking Directive which call on MS to adopt a gender perspective in relation to providing victims of THB with protection measures, has been inadequately transposed and implemented by the Spanish Government. Thus far the provisions have focused solely on sexual exploitation, with implementation measures reflecting a stereotyped view of prostitution and sex work. The result of this stereotyped and narrow focus has meant that other forms of exploitation and other potential victims or issues, such as childhood, have not been considered adequately, if at all.

A. Gender stereotyping

A stereotype is a generalized or preconceived notion of the characteristics or attributes of the members of a group or a preconceived idea of the roles that certain members of a group should play. A stereotype presumes that all members of a certain group possess those attributes or characteristics. What is essential to a stereotype is that it be used as a way of avoiding an individualised investigation into a particular person’s abilities or circumstances. It is also essential that the generalisations that amount to stereotypes have been adopted by one group as a description of other individuals, rather than derived from these individuals’ own attempts at self-definition (Moreau, 2004). A gender stereotype refers to the social and cultural construction regarding men and women in

²⁷⁹ Available online at:

http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/commission_staff_working_document_-_mid-term_report_on_the_implementation_of_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf

relation to their different roles in society, be it based on physical, biological, social or other reasons (Fernández, 2015).

Stereotyping can affect the prosecution of gender-based violence cases, such as where procedures and rules of evidence in the criminal justice system are infiltrated by strong gender stereotypes which can result in engagement in gender-biased behaviour by court officials and discrimination against women by the criminal system in general (Knaul, 2011). They can also influence whether or not courts issue and enforce protection orders; perpetrators are held to account for their violent acts; and survivors receive reparations for those acts (Cusack, 2014).

B. Gender stereotyping and trafficking victims

In the context of trafficking, it is important to highlight the ways in which gender stereotypes impact upon victims of THB, including issues of credibility and access to protection and support. Gender stereotyping impacts Spain's ability to comply with the EU Anti-Trafficking Directive in that stereotyping hinders proper and timely identification of the victims of THB while also creating obstacles in victims' access to justice. For example, a commonly held stereotype about women in our society is that they are more likely to be manipulative or liars (Kennedy, 1993). In the context of trafficking, this stereotype can be very harmful as women victims of trafficking are often thought to be making up stories. Discrimination based on gender or gender stereotyping often interacts with other forms of discrimination. Thus, an intersectional analysis of the discrimination faced by trafficking victims reveals that women migrants face an even stronger application of this stereotype; that is, State authorities often work under the preconceived idea that a migrant woman facing deportation is highly likely to fabricate facts or claim to be a trafficking victim in order to avoid being deported.

Another stereotype that creates obstacles to identify victims of THB are those associated with the preconceived notion of how a victim of a violent crime "should" behave; especially a female victim. Most often, authorities expect women who are "victims" to behave in a certain manner, for example, scared, hurt, trapped, highly emotional, etc. When a woman does not act in this way, her status as a victim is often questioned and could lead to her account being discredited.

Furthermore, stereotypes based on the intersection of race and gender may also contribute to poor treatment of potential victims of trafficking, including a lack of identification and access to protection as well as discriminatory treatment in interactions with authorities. For example, black women in Spain are often stereotyped as prostitutes. A clear example of this can be seen in a case that condemned Spain for discrimination based on race and gender.²⁸⁰ In this case, the inhumane treatment the applicant received from police officers was based on the fact that she was a black woman and thus presumed to be a prostitute, and less deserving of her fundamental human rights. She was assaulted by police officers on two separate occasions, and subject to verbal racist assault. Significantly, the Spanish government in its answers to the European Court of Human Rights insisted on the need to control prostitution and trafficking conflating the

²⁸⁰ *B.S. v Spain*, Application no. 47159/08, ECHR 2012.

issues and submitting that it needed to do so for security purposes. This case clearly demonstrates the lack of understanding which the Government has of trafficking and explains why there are problems with identification based on stereotypes.

In order to illustrate the ways in which gender stereotypes operate *vis-a-vis* the identification and protection of victims of THB, we will put forth a number of case studies. Except for the first case study, the examples are all taken from our own experiences of litigating trafficking cases.

C. Gender stereotyping in the transposition

Another prevalent stereotype in Spain regarding trafficking has been largely created by the lack of implementation of the Directive itself. As set out above, all government efforts have been and are currently focused on trafficking for sexual exploitation. One of the consequences of the sole focus by Spain on trafficking for sexual exploitation is the lack of investigations or policy to address other forms of trafficking leading to a generalized view that other forms of human trafficking are not taking place. This makes trafficking for other types of exploitation, such as for labour, remain invisible.

CASE STUDY 1- Three cloister nuns of Indian origin reported before the Spanish authorities that they were locked up against their will in a convent in Santiago de Compostela (Galicia) for nearly 20 years. When they expressed their desire to leave the convent, the abbess allegedly threatened them, telling them that they would be deported to their country of origin due to their lack of residence permit. The judge in charge of the case stated in her decision, that the farming work they had carried out was performed “in conditions of quasi slavery.” Her comments were based on the police investigation in the case. Consequently, she ordered the liberation of the nuns and started proceedings against the abbess. (Auto, de 22 de enero de 2016, del Juzgado de Instrucción No. 1 de Santiago de Compostela)

There was no mention in the investigation, in the case or in accompanying news stories of the possibility that the nuns were victims of trafficking for labour exploitation. This case is illustrative of how the State’s focus on trafficking for sexual exploitation creates the general idea that in Spain trafficking exists only for sexual exploitation; creating a blind spot for State agents.

(Authors reviewed Auto, de 22 de enero de 2016, del Juzgado de Instrucción No. 1 de Santiago de Compostela after the case appeared in the press.)

IV. Identification of trafficking victims

The Directive states “Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organizations.”

The timely identification of trafficking victims is a crucial aspect of counter-trafficking as well as the gateway for access to a host of rights and protections for the victims. The failure to correctly identify a trafficking victim or a potential victim is in itself a violation of the rights and obligations derived from the Directive. At the same time, the lack of identification leads to a denial of a number of other rights as well as to unsuccessful criminal investigations and the impunity of traffickers.

A. Identification of trafficking victims with a gender perspective

In Spain, the identification process is far from being effective or coherent. The impact of the lack of appropriate implementation of this article of the Directive has consequences not just for Spain, but also for other EU Member states due to the fact that Spain is an important entry point of trafficking victims in Europe.

The failures that are present in effective implementation of identification procedures are in large part structural. In Spain, the only institution with the legal authority to identify and certify that a person is a victim of THB is the National Police. In accordance with national legislation under Art. 141.2 Regulation on Foreigners and section VII.A.1 Frame Protocol police officers must receive specific training on the prevention and fight against THB, and also training in order to identify and assist victims. However, the designation of the police force as the *sole* State agency responsible for these tasks is highly problematic in terms of combating THB for several reasons.

First and foremost, this structure does not allow for a human rights approach to be employed in the treatment of trafficking or potential trafficking victims. The police units are tasked with combating illegal immigration and investigating criminal offences. Thus, the fact that they are also tasked with performing the identification interviews and identifying victims means that the approach can only be one that focuses on migration and crime control and not on the human rights of the victims.

The US Department of State affirmed in its *Trafficking in Persons Report of 2011*, that in Spain “(the) continued lack of formalized procedures for proactive identification increased the likelihood that unidentified victims were treated like illegal migrants and deported.”²⁸¹ The duty to identify, support and assist victims is currently only a secondary consideration, if that, resulting in inadequate protection for suspected victims of THB.

Similarly, the fact that the same institution that interviews a potential victim also has the power to detain that person for illegal activity or to deport her if she is not legally in the country creates a power dynamic between the interviewer and the interviewee that is very likely to cause increase stress and vulnerability in a woman that has been trafficked. This is of special concern when trafficking victims fear for the safety of family and loved ones in their countries of origin. This fear often manifests as reluctance on the part of the trafficking victim to give information, heightening the already present stereotypes described above.

²⁸¹ US Department of State “Trafficking in Persons Report 2011” (2011) available at www.state.gov/j/tip/rls/tiprpt/2011/164233.htm

Further, the fact that it is police officers that interview potential victims is problematic due to the perceptions that exist regarding the role of security forces in many parts of the world. In many cases, trafficking victims will be reluctant to speak with police officers. Furthermore, the overwhelming number of male police officers in comparison to women on the national police force means that women are often required to tell difficult stories that include incidences of sexual violence and other abuses to men from a culture different to their own.

The reliance on stereotypes to undermine credibility is exacerbated when trafficking victims are detained in immigration detention centres, where migrants are held (for a maximum of 60 days) before they are deported to their countries of origin. Women held in immigration detention centres who claim to be trafficking victims and/or claim for asylum are particularly affected by the stereotyped notion that migrant women are willing to do anything, including make up stories, in order to not be removed. In addition to the issues outlined above, the manner in which identification is carried out (or in some cases not at all) in these detention centres aggravates the deficient identification.

First of all, there is no protocol that sets out how the identification process should be carried out. This leaves the procedure at the hands of the director of each detention centre, or even each police officer or team of officers. Second, proactive interviews are not conducted to identify potential victims in the detention centres, thus placing the onus on the victims to self-identify and ask for protection activating suspicion that they are abusing the system by making up a trafficking story. Finally, as previously mentioned the identification process is only carried out by police officers and with limited legal guarantees at detention centres. For example, the police officers often take women to be questioned without notifying their attorneys or civil society organizations, and without proper interpreters.

We have witnessed that the police officers' attitudes during the interview process can be disrespectful, accusing and even abusive. The consequence is an environment that can lead a victim to feel as though her credibility is questioned or as if she were the criminal.

CASE STUDY 2 (Case brought by Women's Link) – Ms. Gladys John, a Nigerian woman, was trafficked into Spain for the purposes of sexual exploitation in 2006. Upon arrival she claimed asylum on grounds of religious persecution. She did not mention that she had been trafficked. The responsible authority (*Oficina de Asilo y Refugio* – OAR, a department within the Ministry of Interior) did not refer her to the authorities responsible for identifying her as a victim of THB, even though there were indicia that this was a possibility.

Her asylum claim was dismissed despite evidence that she was a trafficking victim. It is widely known (and so the authorities knew or should have known) that a number of Nigerian women and girls are trafficked to Europe through Spain. At that time, a pattern of behaviour had been identified by UNHCR and civil society organizations regarding the functioning of the Nigerian mafias. Traffickers often instructed women to make false claims based on religious persecution, which was the case in this situation. Women's Link has documented this situation in the publications: *Migrant Women's Rights: Invisible Reality* and *Trafficking of Nigerian*

Women and Girls: Slavery across Borders and Prejudices. The fact that a Nigerian woman that enters Spain by boat and makes a manifestly ill-founded claim could itself be an indicator that the person is a potential victim of trafficking since it forms part of a documented pattern.

Ms. John ended up in a shared flat near Madrid, under the control of a *madame*. She was forced into prostitution, and also to have sex without a condom. As a consequence, she became pregnant. She was detained by the police when she was en route to submit her application for a residence permit. She was sent to an immigration detention center in Madrid without being identified as a THB victim by the many authorities with whom she interacted.

Ms. John made a fresh asylum claim while she was in detention, this time alleging that she was a victim of THB. The UNHCR was satisfied that there were indicators that she was a victim and, together with two supporting NGOs that interviewed her (*Proyecto Esperanza* and Women's Link Worldwide) gave evidence supporting her asylum application. However, the OAR dismissed her claim. Following legal advice from Women's Link, she also applied for a reflection period. Shockingly, she was *refouled* to Nigeria before she was notified of the decision. Subsequent investigations by a Women's Link consultant lead us to believe that Ms. John has fallen back into the hands of trafficking mafias and has been re-trafficked.

B. Cooperation with relevant support organizations and training

Despite the Directive's mandate under Article 11.4 to cooperate with support organizations, in Spain there are no formal mechanisms to make this cooperation a reality. Little attention has been paid to recommendations to create "*a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society,*"²⁸² in order to "*ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services.*" The police are the only institution charged with identifying trafficking victims. Within this process, collaboration with NGOs is only voluntary. Also, potential victims are not entitled to legal representation during the identification interview. The Framework Protocol mentions the assistance of an interpreter where necessary during the identification interview (Section VI.B. 'Interview Process'), but it is our experience that very often in detention there are no such interpreters available, nor is there any written information on the rights of THB victims in different languages (Servicio Jesuita a Migrantes Pueblos Unidos, 2014).

Despite the fact that only the police have the authority to determine if a person is a victim of trafficking, there are many State agents and authorities who could and should play a role in identifying possible victims of THB including judges, prosecutors and lawyers. Although legal actors frequently have contact with potential victims of trafficking, they are currently not considered as relevant actors for identification and protection purposes.

²⁸² Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE). OSCE/ODIHR. National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook [online]. (2004) Page 16. Available at: www.osce.org/odihr/13967?download=true

For example, when authorising the detention of a migrant the judge must verify that the legal requirements for detention are present. If a judge is ordering the detention of a potential victim of trafficking without identifying the risks, that State actor is failing in his or her obligation. In this context, the prosecutors that issue the obligatory report that accompanies the detention and the lawyers who represent the undocumented migrant could and should also identify victims or potential victims.

Currently, Spain is failing in its obligations under Article 18 of the Directive, which stipulates that EU member states should provide regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, *including* (but not only) front-line police officers.

C. Identification of Child victims of THB

In addition to the lack of due diligence in correctly identifying trafficking victims in a timely fashion, Spain has demonstrated an overall lack of ability to put in place mechanisms to identify child victims of trafficking and thus offer this group, which is especially vulnerable, the appropriate protection. In relation to this group, the obligation to include both a gender perspective and the perspective of the rights of children is paramount.

According to the Directive, if children are victims of any of the acts that fall under the legal definition of THB (recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons), their consent is irrelevant (see Art. 2.5). This means that it is not necessary that such acts take place *“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.”* (Art 2.1). At all times, the best interests of the child must prevail in any legal or administrative decision

A major issue in the identification of child victims of THB is that the State is currently failing to act in accordance with the presumption that a person is a child when the age cannot or has not been verified. The Directive makes it clear that a potential victim of THB should be presumed to be a child and receive immediate assistance, support and protection where the age is unknown or where there is uncertainty regarding the age.

If an undocumented young person asserts that she or he is an adult, this assertion is not questioned and thus not investigated. This is problematic because in certain circumstances child victims of THB assert that they are adults on instruction from their traffickers. In contrast, when the undocumented person states that he or she is under 18, the credibility of this assertion is often questioned, and disbelieved. In accordance with Spanish law, children are not to be held in immigration detention centres.

Due to the lack of identification or the lack of veracity given to children's statements, too often, children are in fact sent to immigration detention centres. Over the years, for these reasons many girls have been detected in immigration detention centres. For example, the yearly reports published by the Servicio Jesuita a Migrantes, an organisation that provides direct services to migrants in these centres, always document the presence of

children in different immigration detention centres throughout Spain (Servicio Jesuita a Migrantes, 2013; Servicio Jesuita a Migrantes, 2014).

There is a lack of a systematic approach to detect and identify child victims of trafficking. This is also true in the immigration detention centres as has been documented in several reports (Pueblos Unidos, 2015). The impact of this lack of proper identification of girls is alarming. We have identified girls as young as 10 years of age exploited by trafficking mafias (Women's Link, 2012).

Furthermore, there are no specific shelters for child victims of trafficking in Spain as there are for women. The shelters that do exist for adult women are run by NGOs but partly financed by the government. As a result of the lack of specialised care, the few children that are identified as trafficking victims are referred to either general children's homes, where they often flee within days of arriving due to the pressures of the mafias; or they are sent to shelters for adult victims, where they do not receive proper children oriented assistance and protection.

CASE STUDY 3– On December 2015, VF –aged 17– was found on a small boat (*patera*) that was sailing on the Alboran Sea. The 59 people on the boat were taken to Motril (Granada) where VF was not identified as a child or a trafficking victim and thus sent to an immigration detention centre. At no time was she individually interviewed and her detention was ordered en mass in a judicial decision affecting 39 other people. After two NGOs found indicators that she could be a child victim, the Prosecutor initiated proceedings to determine her age and found that she was 17. She was subsequently sent to a children's home where she received no special assistance or protection as a trafficking victim. Despite the warnings of an NGO that she needed a special shelter for child victims of trafficking, and after six weeks at the centre receiving calls from her 'brother' in France she subsequently disappeared.

This case demonstrates some of the highly problematic issues that arise from the lack of specialized housing for minors that are victims of trafficking. These homes are "open" and thus the girls can come and go, facilitating access to the child for the traffickers. We know of cases where the girls are living in the centres and at the same time under the control of the mafias that exploit them at night. At the same time, the lack of specialization means that they do not receive the focused attention that they require.

(Case brought to our attention by the NGO: *Pueblos Unidos*)

V. Protection and Identification of Member States nationals

Due to the fact that the only protections available to trafficking victims in Spain derive from legislation dealing with immigration, victims from other Member States and Spanish nationals are excluded from this protection. At the same time, a high percentage of the victims are nationals of another MS, specifically Romania (Dottridge, 2008/2009).

Once again, the lack of comprehensive, human rights based approach to THB that includes all forms of exploitation and all victims, regardless of their nationality, shapes and constricts the government's actions. This is illustrated by the chronology of the legislative changes which have occurred in Spain. The first attempt to legislate on trafficking was undertaken using only an immigration framework. The 2009 amendment to the 2000 Immigration Law, introduces the reflection and recovery period for the first time in national law. However, the provision is aimed solely at paralyzing the deportation and removal process of undocumented migrants that are identified as victims (or potential victims) of trafficking with no regard to the "recovery" clause of that obligation pursuant to Directive 2004/81/EC (Article 11.6).

While the introduction of this amendment was welcome, it was extremely narrow in its scope. This was partly due to the fact that it only addressed trafficking of third country nationals and did not provide any protection to victims of trafficking from within the EU. As a result of civil society and NGO pressure, the Government became aware that a high number of trafficking victims in Spain were EU nationals who also needed the recovery and reflection period. Subsequently, the 2011 Immigration Regulation provided for the extension of the identification procedure to all the citizens of MS.

Over the years, we have witnessed how the State's approach to legislating on trafficking yields a "patchwork" of non-comprehensive measures to protect victims. Therefore, despite the numerous laws cited by government officials that can be applied to victims, there is a lack of a human rights gender based approach.

VI. Violation of the non-punishment clause from a gender perspective

Article 8 of the Directive creates an obligation on MS to guarantee victims of THB protection from prosecution or punishment for the criminal activities that they have been compelled to commit as a direct consequence of being under coercion. An analysis from a gender perspective of this article is crucial for its correct application.

First, a non-punishment clause interpretation from a gender perspective should extend to administrative penalties. Trafficked women for sexual exploitation face constant police harassment when they are forced to exercise prostitution in the streets. This is because in Spain, many cities have passed laws which regulate prostitution and soliciting in public places without any regard to potential victims of trafficking. These regulations are passed under the guise of improving security and appearance of city streets. These regulations are gender blind, leading to a disproportionate negative impact on women (indirect discrimination) that are potential trafficking victims leading to intersectional discrimination of these women. As a consequence, they are fined with administrative penalties that put at risk the renewal of their resident permits and further increase their debt with the traffickers (Morales Plaza, 2011).

Also, women with children may face additional rights violations through administrative sanctions both when not identified as victims of THB, but also when identified as such. Women's Link has documented cases where women have been deprived of custody of their children because the authorities consider that they are not "fit" to take care of them.

These women are offered protection measures, normally a recovery and reflection period, when identified as victims. In cases where women do not accept the period (most often because they do not self-identify as trafficking victims or because they are very afraid) the Prosecutors' Office together with the Child Protection Authorities often place their children in either childcare facilities or foster families. Some of these children may end up being adopted by a foster family. Often, the best interest of the child is not examined individually and is interpreted in light of the stereotyped idea that a trafficking victim for sexual exploitation cannot be a good mother, because she is merely seen as a "prostitute", hindering the exercise of these women's right to family life and to be mothers. Importantly, there is a lack of family shelters or other facilities where these women could go to stay with their children and receive support as a family.

At the same time, the implementation of the non-punishment clause with a gender perspective requires an understanding of how women and women's bodies are utilized by traffickers. The strategies employed by the mafias include controlling the reproductive capacity of women and also of their children. Trafficking networks often decide when women can get pregnant and when they cannot – frequently forcing them to undergo unsafe abortions. The mafias also determine what happens with the children of the trafficked women when they are indebted to the mafia. The mafias use young children – often babies--as a strategy to have the trafficked women cross borders, especially in the south of Spain (Women's Link, 2014; Women's Link, 2012b, Women's Link, 2009). Thus, women are often forced to give up their children or forced to cross borders with other women's children, as per the orders of the mafias. This is because heavily pregnant women and women carrying babies or children are referred to protection centres instead of to immigration detention centres and have better chances to stay in the country instead of being directly deported.

CASE STUDY 4– Maris Ossaro, a Nigerian national, reached Spain on a small boat known as a *patera* from Morocco. She was holding a baby who was not her son. Although there was evidence that she was a potential victim of THB, no identification assessment was carried out despite the fact that other women in the same boat were identified as trafficking victims, including the mother of the child she was carrying. Criminal proceedings were opened against her for the crime of smuggling. The judge in charge of the criminal investigations asked the police to investigate whether she had potentially been trafficked but the police just answered there were no evidence of this and no further investigation was conducted. Ms. Ossaro was sentenced to 9 months and 12 days in prison. There was no investigation as to whether she had been trafficked and no identification assessment was ever carried out. Her traffickers are still free and she is currently being sexually exploited in Spain.

Auto de la Sala Segunda del Tribunal Supremo de 20 de mayo de 2013, Recurso Nº 20162/2013

VII. Due process violations restricting victims' right to freedom of movement

Due to the deficient identification processes that take place in Spain combined with the application of an immigration control model, many women who are victims of THB are deprived of their freedom of movement when they are placed in immigration detention centres. As already stated, the police authorities tasked with identifying victims, focus on the enforcement of immigration laws and policies, rather than screening and identifying victims of THB. Therefore, in many cases victims are treated as undocumented migrants without recognition of the human rights violations they have (or are) suffering.

At the immigration detention centres many women suffer high levels of stress due to the fear of being returned to their countries of origin where they might face risk to their life or physical integrity. Women's Link has documented cases where women face stigma from their social environment and even from the authorities (Women's Link, 2012a).

CASE STUDY 5 Ms. A.B.M., from Uruguay, was trafficked by close relatives, who convinced her to travel to Italy, where she would supposedly work at a hotel, but instead she was violently forced into prostitution. She managed to escape and arrive in Spain, where her sister resided. She was detained in Gijón and sent to an immigration detention centre in Madrid.

Once there, she resisted a first attempt at deportation. She was terrified of being returned to her country, where she faced death threats from her traffickers, so she refused to board the plane. When she was returned to the immigration detention centre, she explained to the authorities that she was a victim of THB and asked for protection. She also offered to collaborate with the police to assist in an investigation of the traffickers. She was denied victim status and no investigation was initiated.

She was further subjected to a second deportation attempt –that she also resisted – where no individualized risk assessment was carried out, thus preventing the State authorities from adequately verifying whether there were reasons to expel her in observance of the principle of non-refoulement.

This case clearly demonstrates how the lack of proper identification leads to the violation of the victim's right to freedom of movement due to the use of detention centres in Spain. In this case a trafficking victim was detained for a total of 58 days.

(Sentencia del Tribunal Superior de Justicia de Madrid, Sala de lo Contencioso-Administrativo, Sección Novena, 687/13, de 15 de julio de 2013)

The Directive also establishes the rights of victims of THB to assistance measures such as medical treatment, including psychological assistance and counselling, information and translation and interpretation services, if necessary (Art. 11.5). In the specific case of child victims, additional support measures shall be taken, including physical and psychosocial

care, access to education and, where appropriate, the possibility to appoint a guardian or representative (art. 14).

In Spain, the failures to identify victims as set out above means that instead of being granted assistance and support to which they are entitled (Art. 11.2), the non-identified victims are either deported or released undocumented, despite the real risk of re-trafficking. This is illustrated by the case below.

CASE STUDY 5 (continues). As a consequence of ABM resisting the second deportation attempt, the police officers used disproportionate violence against her. She subsequently filed a complaint against the officer for the violence and the police officer filed a “counter” complaint. ABM was eventually released from the detention centre in Spain on the grounds that deportation was not feasible (allegedly due to the fact that she did not have a passport). Although the authorities were aware of her allegations of her status as a trafficking victim, the failure to identify her as such had a number of negative consequences. She was released but was not offered any documentation or protection, leaving her in a situation of high vulnerability. Furthermore, she was later sentenced to 6 months in prison for resisting a police officer. She now has a criminal record heightening her situation of vulnerability because it blocks her access to a residence permit.

(Sentencia 408/2014, del Juzgado de lo Penal nº 20 de Madrid, de 9 de diciembre. Juicio Oral nº 73/2014).

VIII. Consequences of the crime control model

Article 11.3 of the Directive states: “MS shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial.” However due to the emphasis on the criminal prosecution (under the crime control model), trafficking victims that are unable or unwilling to participate in criminal proceedings are often not given access to protection.

In Spain the authorities have a tendency to offer protection only in situations where a victim agrees to cooperate with the police. Victims of THB who come forward are asked to provide information so as to identify and prosecute their traffickers. Thus, even in the few cases where women are correctly identified as victims of THB, they are treated differently to victims of other crimes: no other victim is asked to choose between collaborating with the police and having their victim-status recognized. The obligation on trafficking victims to collaborate with the police fails to take into account a number of fears, including: traffickers taking reprisals against them or their families, being sent back to the trafficking network and being re-trafficked.

Even when the women are willing and able to participate in criminal proceedings, women still are often left unprotected. We have witnessed that the complexity of the issues means that many cases are not fully prosecuted. When the case does not go forward, for reasons outside of the control of the trafficking victims, the protection is withdrawn. This of course leads to a lack of ability to access compensation as is mandated by the Directive.

In addition to the pressure placed on victims to collaborate with the police before being granted victim status, victims of THB are currently inadequately informed of their rights. Indeed it is nearly impossible for many victims to fully understand the consequences of their identification as victims of trafficking in human beings. This is, in part, due to the problems discussed above. The exclusive competency of the police in assessing whether someone is a victim and the lack of a multidisciplinary team's presence during identification procedures means that the Spanish State is currently failing to comply with Article 11.5 of the Directive. As the Directive EU has recognised it is imperative that a victim has knowledge of the assistance and support measures that should be provided. This is currently not the case.

The alarmingly low number of women that accept the reflection period that is offered to them demonstrates the inadequacy of the procedures. Police officers often merely hand women a paper with the information about a reflection period when they have just arrived. This transaction is not accompanied with an in depth interview or any other mechanism to work with the woman so that she can understand the procedure. Due to diverse factors women often do not self-identify as trafficking victims in a first interview. At the same time, women are often very afraid of the consequences of speaking to the police. They also may be afraid of the police officers as they view them as a threat. The biggest threat to them is removal or deportation. Even on occasions when NGOs are called to participate in identification interviews, the procedures are rushed, and the women do not have time to enter into a relationship of trust with the interviewer. For example, in 2013, the police offered 736 reflection periods to trafficking victims and of those, 603 rejected the protection mechanism (EMN, 2013; Becerril Bustamante, 2014). Data from 2011, 2012 yield similar results (EMN, 2013). It is important to note, that since 2013, this information has not been compiled or made public.

The crime control model also means that the only way that a woman can effectively prove that she is a victim of trafficking is when a final judgment exists against her traffickers. This has been clearly demonstrated by the Supreme Court (creating binding precedent) when they failed to recognize the legitimacy of the identification of the police, as a valid document to prove that one of our clients was a trafficking victim:

CASE STUDY 3 (continued). After Ms. Ossaro served her sentence in prison, she was sent to an immigration detention centre in order to be deported to Nigeria. When she was in detention, she was finally identified as a victim of THB by the police, and granted a recovery and reflection period. Ms. Ossaro then filed a case at the Supreme Court (*Tribunal Supremo*) that sought to apply the non-punishment clause of the Directive that is also found in Spain's criminal code. In Spain, once there is a criminal conviction, the only court that may repeal it is the Supreme Court. In this case, the Supreme Court denied her request, because they did not find that the police document was valid legal proof of her status as a trafficking victim. Ms. Ossaro then filed for a review at the Constitutional Court, which did not admit her case. The case is currently pending at the European Court of Human Rights.

This case demonstrates that even where the police identify someone as a victim of trafficking other state actors are failing to comply with their obligations under the EU Directive, including the judiciary.

Ossaro v. Spain, Application no. 36769/14. Pending (not yet communicated to the State)

IX. Lack of access to international protection

The Directive reiterates that MS are obliged to ensure full compliance with the principle of *non-refoulement*. Victims of THB have the right to apply for asylum on grounds of gender persecution and should be granted international protection and not be deported when they have a well-founded fear of persecution in case of return. As the Directive states itself in Recital 10:

"(t)his Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention), and is in accordance with Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union".

In Spain, however, international protection is commonly conceived as incompatible with other protection mechanisms, such as the recovery and reflection period.

The body responsible for examining and deciding asylum claims and subsidiary protection (OAR) denies applications based on trafficking allegations both at the border and in territory on a regular basis, on the grounds that there is no relationship between trafficking and the legal basis for granting international protection. Their rationale is that as the agents of persecution are non-state actors and thus the lack of protection by the State of origin is not sufficiently proved. This is contrary to, and in violation of, clear international standards on this issue as set out by the *UNHCR Guidelines on the "Application of Article 1A(2) of the 1951 Convention or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked"* 7 April 2006.

Furthermore, the OAR often considers that these cases fall under the Immigration Law, and not within the protection that the Asylum Law provides.²⁸³ Almost all the decisions to deny asylum to THB victims lack a proper analysis of the allegations of trafficking made by the applicants and the risk assessment in case of return. This has been confirmed by research carried out in 2012 by the Ombudsperson in Spain (Defensora del Pueblo, 2012). The figures are clear in this respect: the first time that a victim of THB was granted asylum in Spain was as late as 2013 (CEAR, 2013), and since then, according to the Spanish Network Against Trafficking in Persons, only seven other women victims of THB have been granted international protection: five of them were granted refugee status and three subsidiary protection (Red Española contra la trata de personas, 2015).

At the same time, in 2015 the National Police indicated that in Spain 13,879 people were potential victims of trafficking, 10,835 were potential victims of trafficking for labour exploitation, 133 were victims of trafficking for sexual exploitation and 134 were victims of trafficking for labour.

X. Process and data collection from a gender perspective

The Directive is clear that the EU should continue to develop its work on methodologies and data collection methods to produce comparable statistics, in order to evaluate the results of anti-trafficking action. It also establishes Member States must appoint a national rapporteur or an equivalent mechanism to assess trends in THB, measure results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organizations active in this field.

Although Spain has appointed a National Rapporteur, it is important to note that this position is within the Home Office and the statistics gathered on trafficking are conflated with information about immigration, criminal investigations and prostitution. The Secretary for Security was appointed on the 3 April 2014 and is the National Rapporteur on Trafficking for Human Beings. At the same time, the government agency tasked with issues of gender violence and discrimination (*Delegación del Gobierno Contra la Violencia de Género*) does not gather any statistics or other data on trafficking.

Thus, it is clear that this provision of the Directive has not been transposed with a gender perspective. Therefore, the government is not able to properly monitor and evaluate any of its efforts in relation to trafficking with a gender perspective. Moreover, this leaves advocates in the field without the necessary tools to address the issues.

XI. Conclusion

As was recently pointed out by the UN Special Rapporteur on Torture:

“Human trafficking is a particularly egregious human rights violation and a form of gender-based violence specifically targeting girls and women for exploitation and placing them at high risk of

²⁸³ *Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria*, BOE de 31 de octubre de 2009. Available in Spanish at: www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf

physical and psychological abuse, trauma and disease. Systemic discrimination against women and girls, including lack of access to education, resources and employment, renders them especially vulnerable to trafficking. Trafficked women and girls are routinely subjected to confinement, severe physical and sexual abuse, humiliation and threats for the purposes of commercial sexual exploitation, domestic servitude, forced and bonded labour and organ removal. These practices unequivocally amount to torture and ill-treatment.”²⁸⁴

Despite efforts made by Spain since the adoption of the Directive, there continues to be an ineffective application of a gender perspective both in terms of legal and policy framework and in terms of implementation of measures required by the Directive. As has been demonstrated in this paper, Spain’s transposition of the Directive has not created an appropriate human rights framework to address trafficking and adequately protect and promote the rights of trafficking victims. This lack of a human rights framework is the basis for the Government’s inability to create the necessary infrastructure to apply a gender perspective. The framework is clearly lacking in terms of, *inter alia*, strategies to address trafficking for means other than sexual exploitation, appropriate protocols to identify girls that are trafficked to Spain and appropriate mechanisms to collect data. The failure to properly implement the Directive means that there is a lack of a gender perspective and inadequate structure in which identification is taking place. The direct result of this failure is the ongoing presence of obstacles for the recognition of trafficking victims and their access to rights.

²⁸⁴ Juan Méndez. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. 5 January 2016. A/HRC/31/57 at [40].

Bibliography

- CIE No. (2013) *¿Cuál es el delito? Informe de la campaña por el cierre de los Centros de Internamiento de Extranjeros: caso Zapadores*, Campaña por el cierre de los CIE (Valencia) (What's the crime? Report on the campaign for the closure of Immigration Detention Centres: The Zapadores Case.) Available in Spanish at <https://dl.dropboxusercontent.com/u/15631011/informeciesWEB.pdf>
- Cusack, S. (2014) *Amicus Curiae Brief CEDAW Communication No. 47/2012*.
- Dottridge, M. *Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009)*, European NGO's Observatory on Trafficking, Exploitation and Slavery, available at www.e-notes-observatory.org/wp-content/uploads/E-notes-report_Adobe-61.pdf
- Fernández (2015) 'Gender Stereotypes in Gender-Based Violence Court Proceedings: The CEDAW Committee's Role on the Elimination of Discrimination and Stereotyping,' *Oñati Socio-Legal Series*, Vol. 5, No. 2. (Available in Spanish only at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2611539).
- Kennedy, H. (1993) *Eve was framed: Women and British justice*. New York, NY: Vintage Books.
- Knaut, G. (2011), *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, UN Doc. A/66/289.
- Mendez, J. (2016), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. UN Doc. A/HRC/31/57.
- Morales Plaza, E. (2011) 'Prostitución Y Trata De Mujeres Con Fines De Explotación Sexual.' (Prostitution and Trafficking of Women for the purposes of Sexual Exploitation). Available in Spanish at www.inmujer.gob.es/publicacioneselectronicas/documentacion/Documentos/DE1218.pdf
- Moreau, S.R. (2004) 'The wrongs of unequal treatment', *University of Toronto Law Journal*, 54(3), pp. 291-326
- Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE). OSCE/ODIHR. (2004) *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* [online]. Available at: www.osce.org/odihr/13967?download=true
- Pueblos Unidos (2013) *Criminalizados, internados, expulsados. Informe anual 2013*. Criminalised, detained, deported. Annual Report 2013 (Available in Spanish) <https://cerremosloscics.files.wordpress.com/2011/12/informecie2013.pdf>
- Pueblos Unidos (2015) *Situación Actual de los Centros de Internamiento de Extranjeros en España y su adecuación al marco legal vigente*. (2015). (The situation of Immigration Detention Centres in Spain and its adequacy within the current legal framework) Available in Spanish at

www.icade.upcomillas.es/images/Clinica_Juridica_ICADE/Informe_situacion_actual_CIE_junio_15.pdf

Red Española contra la trata de personas (2015), *Informe de la Red Española contra la trata de personas para la Coordinadora Europea de Lucha contra la Trata en su visita oficial a España, 26 y 27 de febrero de 2015*. (Report of the Spanish Network against Trafficking in persons for the European Coordinator in the Fight against Trafficking in her official visit to Spain, 26 and 27 February 2015).

Roth (2016), "The implementation of Directive 2011/36/EU from a gender perspective: analysis of the situation in Finland. Invisible victims: Trafficking in Human Beings for the Purpose of Sexual Exploitation"

Servicio Jesuita a Migrantes Pueblos Unidos (2014) *CIEs y Expulsiones exprés. Informe anual* (CIE and fast-track deportations. Annual Report). Available at

<https://cerremosloscies.files.wordpress.com/2011/12/informecie2014.pdf>

Soledad Becerril Bustamante (2014), Comparecencia, de 11 de junio de 2014, de doña Soledad Becerril Bustamante, Defensora del Pueblo, ante la Subcomisión para el análisis y estudio de la trata de seres humanos con fines de explotación sexual constituida en el seno de la Comisión de Igualdad del Congreso de los Diputados. Available at

www.defensordelpueblo.es/wp-content/uploads/2015/05/2014_11_junio_Defensora_Trata.pdf

Spanish Commission of Refugee Aid (CEAR). (2013) 'CEAR Celebrates the First Time that Asylum is Granted to a Victim of Human Trafficking' 21 October 2013. Available at www.cear.es/tag/concede-asilo-trata

Spanish Ombudsperson (2012) *La trata de seres humanos en España: víctimas invisibles*, Madrid. (Human Trafficking in Spain: Invisible Victims). Available at www.defensordelpueblo.es/wp-content/uploads/2015/05/2012-09-Trata-de-seres-humanos-en-Espa%C3%B1a-v%C3%ADctimas-invisibles-ESP.pdf

US Department of State 'Trafficking in Persons Report 2011' (2011) Available at www.state.gov/j/tip/rls/tiprpt/2011/164233.htm

US Department of State 'Trafficking in Persons Report 2015' (July 2015) Available at www.state.gov/j/tip/rls/tiprpt/2015/

Women's Link Worldwide, (2009) *Migrant Women's Rights: an Invisible Reality*. Available at <http://en.calameo.com/books/004373773fee4885045ec>

Women's Link Worldwide (2012a) *Mujeres en los centros de internamiento de extranjeros (CIE). Realidades entre rejas* (Women in immigration detention centres (CIE). Reality from behind bars. (Available only in Spanish at

<http://es.calameo.com/books/0043737736fc8cbd03bd0>).

Women's Link Worldwide (2012b) *Migrant Women in Hiding: Clandestine Abortion in Morocco*. Available at <http://en.calameo.com/books/004373773e8bbcb1b0d2e>

Women's Link Worldwide, (2014) *Trafficking of Nigerian Women and Girls: Slavery across Borders and Prejudices*. Available at

<http://en.calameo.com/books/004373773069cca8ed099>

The different forms of trafficking in human beings (THB) are serious crimes affecting fundamental rights, health, social life, economy and justice. THB can be tackled effectively only through a coherent approach at the levels of legislation and executive powers and through strategic policy-making.

Taking into account the gender dimension of THB is essential to be effective in prosecution and prevention as well as in ensuring adequate support for the victims. The 2011 EU Anti-Trafficking Directive was a landmark piece of legislation in that respect.

The Ex-Post Impact Assessment Unit of the European Parliament has asked several groups of experts to analyse the implementation and application of the Directive, from a gender perspective, in 12 Member States. The contributions received underline an uneven implementation of the Directive's requirements across the EU Member States.

They emphasise the need to improve the identification of victims, which is key for granting them protection, to establish better training on the gender aspects of the different forms of human trafficking for front-line officers, to enhance cooperation between public administration and competent NGOs, and to expand prevention via public awareness campaigning and by the effective reduction in demand.

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