

PROTECTION SCHEMES FOR VICTIMS OF TRAFFICKING

**in Selected EU Member Countries,
Candidate and Third Countries**



IOM International Organization for Migration



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Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries

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Our research is based on: (a) previous reports and articles; (b) a review of collected information on the mechanisms available in the ten selected countries for the protection of victims of trafficking (legislation, policies, infrastructure; a review of the role of the different actors involved, voluntary return and reintegration schemes) and (c) a review of collected information on good practices regarding the protection of victims of trafficking in the countries reviewed. Information was primarily collected from written sources owing to the short time available. The main sources include, i.a., *The IOM Country Profiles for Europe* (2002) – Overview of Counter-trafficking Measures in 17 Countries with Respect to Prevention and Protection of Victims; Anti-Slavery International report (2002) – *Human Traffic, Human Rights: Redefining Victim Protection*, by Elaine Pearson, as well as UNICEF/UNHCR/OSCE-ODIHR (2002) *Trafficking in Human Beings in Southeastern Europe*, by Barbara Limanowska, OSCE Country Reports submitted to the Informal Group on Gender Equality and Anti-Trafficking in Human Beings, OSCE Human Dimension Implementation Meeting, September 2002 and STOP Brussels conference papers. Thanks are also due to Ilse Pinto-Dobernig for editing the manuscript.

The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.

Principle No. 1 of the Recommended Principles and Guidelines
on Human Rights and Human Trafficking
of the United Nations High Commissioner for Human Rights,
July 2002, E/2002/68/Add.1.

1. INTRODUCTION

1.1 THE HUMAN RIGHTS IMPERATIVE IN THE PREVENTION AND COMBATING OF TRAFFICKING IN HUMAN BEINGS

Trafficking in human beings constitutes a violation of human rights. At the individual level, it infringes a person's human dignity, personal liberty, freedom of movement, privacy and right of self-determination. At the societal level, trafficking in human beings violates the prohibition of slavery by subjecting trafficked person to slavery-like practices and compulsory work, and is to be equated with cruel and inhuman treatment.¹ As such it calls into question the fundamental principles of respect for human rights, the rule of law and democratic values. It is within the framework of these principles and values that the fight for the elimination of trafficking in human beings has to evolve. The human rights of victims of trafficking should become the guiding principle of all efforts to prevent and punish trafficking.

Trafficking in human beings is a criminal activity, which has been increasingly shown to be penetrated by transnational organized crime, often connected with other criminal activities such as drug trafficking and money laundering.

Human trafficking has recently assumed remarkable dimensions within and across borders of many states. The "movement" perspective of trafficking in human beings has particularly influenced the perception of human trafficking as a migration issue, often confused with the smuggling of migrants. In the interest of states to secure their borders and control migration, the formulation of legal instruments and countervailing measures against trafficking in human beings has occurred within the framework of migration, particularly with a view to security concerns in relation to "irregular/illegal migration". Furthermore, trafficking has often been seen in terms of prostitution, partly following from "traffic in persons" as at first defined with reference to exploitation of prostitution.²

These perceptions have changed significantly over recent years with the adoption of two protocols supplementing the *United Nations Convention Against Transnational Organized Crime, of 15 November 2000 (Transnational Crime Convention)*.³ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) and the Protocol Against Smuggling of Migrants by Land, Air and Sea (Smuggling Protocol) distinguish between the terms trafficking in persons and smuggling of migrants. The European Commission expressed the view that the existence of the two UN protocols highlighted the complexity of different forms of criminal movements of people operated by international criminal organizations,⁴ and that trafficking in human beings constituted a crime against a person.⁵

At first sight, the distinction between trafficking and smuggling appears to be clear. The key elements of a trafficking relationship are the threat or the use of force or other forms of coercion, abduction, fraud, deception or abuse of power. While smuggling implies a degree of consent between the transporting agent and the smuggled individual, trafficking implies an absence of such consent, at least during some stages of the trafficking process. These are the basic distinc-

tions in the two separate Palermo Protocols. In practice, however, it can be difficult to establish the degree of coercion. Only in the case of trafficked children is the situation unambiguous.⁶

Furthermore, there seems to be a growing realization that exploitation as the main purpose of trafficking in persons is not confined to sexual exploitation, since it also includes, at a minimum forced labour or service, slavery or practices similar to slavery, servitude and the removal of organs. However, trafficking for labour exploitation, in spite of efforts to move it higher up on political agenda, and numerous conventions, particularly the ILO Conventions,⁷ including its recent and widely ratified Worst Forms of Child Labour Convention, 1999, are less well understood.⁸

The aim of the Trafficking Protocol is to prevent and combat trafficking in persons and to protect and assist the victims of trafficking. As an instrument annexed to a crime prevention treaty,⁹ it is not primarily a human rights instrument. Yet, along with other instruments and changing conceptions and perceptions of trafficking, it has contributed to the acceptance that victims of trafficking in persons, who by definition are not in control of their fate, should not be seen as offenders but as victims. Consequently, in the development of anti-trafficking measures, the obligation of States to protect the human rights of victims of trafficking gained prominence and is clearly a matter of primordial importance in any anti-trafficking activity. The protection and assistance of victims plays a role beyond the merely humanitarian; the failure to attribute sufficient weight to the human rights dimension will reduce the chances of success in the fight against trafficking. It is more likely that this fight will succeed in both reducing the incidence of trafficking and improve the protection of those at risk when it is governed by the respect for human rights and interests of the victims. Therefore, a balance has to be struck between anti-trafficking measures and the protection of human rights.¹⁰

To successfully combat trafficking in persons a three-pronged approach involving the prevention of trafficking, the prosecution of traffickers and the protection of the human rights of victims of trafficking is recommended. In this context certain questions will need to be more forcefully addressed as, for instance, the conditions of both the push/supply and pull/demand side of trafficking in human beings, which, would lead to the formulation of sustainable development policies and cooperation in their implementation. Any proposed and adopted measures would also need to be sensitive to gender issues and the particular condition of minors. The strengthening of international bodies to manage the orderly movement of people would be a further step towards the realization of effective mechanisms to prevent and combat trafficking in people.¹¹

The European Conference on Preventing and Combating Trafficking in Human Beings, held from 18 to 20 September 2002 in Brussels, recognized the prevention and combating of trafficking in human beings as a *global* challenge for the twenty-first century. As a global phenomenon of various forms of exploitation, indeed too often “invisible exploitation”,¹² the fight for its elimination requires long-term global solutions.

In this endeavour, the Brussels Declaration on Preventing and Combating Trafficking in Human Beings invites the international community and institutions at local, regional and governmental levels, as well as international organizations (IOs), inter-governmental organizations (IGOs), non-governmental organizations (NGOs) and the institutions of the European Union (EU) to take the necessary next steps towards an unambiguous, comprehensive, multidisciplinary and coordinated response to fight this international phenomenon. This response, which should in-

volve actors from all fields concerned, must be consistent with and *indeed be put at the front of* the human rights standards, such as the Principles and Guidelines elaborated by the UN High Commissioner for Human Rights, and pay particular attention to trafficking in children by taking into account their best interests and the consistency with international instruments on the rights of the child.¹³

The specific aim of the Brussels Declaration is to further develop European and international cooperation. Its recommendations, standards and best practices specifically refer to mechanisms for cooperation, prevention of trafficking in human beings, victim protection and assistance, and police and judicial cooperation.

1.2 RESEARCH OBJECTIVE AND AIMS

The overall objective of this research is to contribute to the protective component of the fight against human trafficking, predominantly concerning *the human rights dimension and the protection of, and assistance to, victims of trafficking*. Bearing in mind the necessity of a comprehensive policy approach, it is a specific objective of this study to contribute towards draft recommendations and proposals of durable solutions concerning protection and assistance schemes, as well as future actions to be carried out relating to such schemes.

The specific aims of this research are threefold:

- to identify and analyse protection and assistance schemes for victims of trafficking in ten selected European states;
- to collect and analyse reliable information on good practices related to the protection of victims of trafficking in these countries;
- to evaluate the impact and propose action for the improvement of the protection schemes in terms of combating trafficking, as well as offering protection and assistance to the victims in countries of origin, transit and destination.

The research findings are expected to contribute to better awareness, practices and cooperation regarding the practical aspects of the protection schemes among all those who are actively involved in combating trafficking, as well as those who help victims of trafficking and, it is hoped, to the design of common standards in the protection of, and assistance to, victims of trafficking in persons.

1.3 SELECTION OF COUNTRIES AND METHODOLOGICAL APPROACH

The ten countries have been selected by the International Organization for Migration (IOM), Brussels. Six countries are Member States of the European Union (Austria, Belgium, Germany, Italy, Spain and the Netherlands), two are Candidate States (Czech Republic and Hungary) and two are the so-called Third Countries (Albania and Ukraine). While some of these countries are only beginning to implement protection and assistance mechanisms for victims of trafficking in

human beings, others already have some experience and have acquired extensive skills in the overall protection and assistance to this target group. Such a selection of countries thus enables comparisons as well as the identification of gaps and best practices.

The research is based on (a) the analysis of previous reports and articles, (b) the analysis of collected information on mechanisms available in the ten selected countries for the protection of victims of trafficking (legislation, policies, infrastructure; a review of the role of the different actors, voluntary return and reintegration schemes) and, (c) the analysis of collected information on good practices related to the protection of victims of trafficking in the selected countries. Time limitations meant that information was primarily collected from written sources.

The preliminary findings of this research were presented to the Seminar on Exchange of Information and Best Practices Regarding Protection Schemes for Victims of Trafficking in the EU Member States, and Selected Candidate and Third Countries, held in Madrid on 19 and 20 December 2002. The participants at the seminar provided valuable information, views and suggestions on the subject of protection and assistance to victims of trafficking in persons, and particularly on the situation in their respective countries.

1.4 STRUCTURE OF THE STUDY

The paper is organized into four sections. In the first section we present some current concepts and definitions of trafficking by international organizations and in international law, as well as in the national laws of the selected countries. In the second section we attempt to show current standards for victim protection at the international and EU levels, both the adopted and those in progress. In the third section we map out the situation in each of the selected states regarding the schemes for protection of victims in trafficking in persons, and provide an initial inventory of the legislative responses and actors for combating trafficking and the protection of victims.

Finally, we present some recommendations for the successful protection of victims of trafficking in the fields of social assistance, law enforcement, prosecution of traffickers and protection of human rights of victims of trafficking in persons and integration and reintegration of victims, as well as for better cooperation among actors involved in this protection. The recommendations are precise enough in terms of the protection and assistance to victims of trafficking, and broad enough so that they may be adapted to different national situations.

2. CONCEPTS AND DEFINITIONS OF TRAFFICKING

2.1 INTRODUCTION

While the concept of trafficking, in general meaning the illicit trade in goods, appears to be clear, the concept of trafficking in persons/human beings has been variously interpreted. The increasing scale of trafficking in human beings in the 1990s, and efforts to combat trafficking at national and international levels, brought into focus the need for clarification of the concept of trafficking to obtain a clearer, broader and commonly accepted definition. Whereas the international conventions of the first part of the twentieth century already provided specific definitions of “white slave traffic”, “traffic in women and children”, “slavery” and “forced labour”, “traffic in persons” was at first defined with reference to, and often conflated with, exploitation for prostitution.¹⁴ As a consequence, provisions against trafficking were either absent or left undefined and this led to divergent approaches in dealing with trafficking and, consequently, with victims of trafficking.

Renewed debate over the precise definition of the concept of “trafficking in persons” started in the second half of the 1990s. Various non- and inter-governmental organizations formulated their own definitions, moving away from the sole focus on prostitution, in order to address the urgency of problems associated with contemporary forms of trafficking in human beings.

More clearly than in the past, this debate has been linked to international migration. Several issues arose in this connection:

- Considerable confusion between trafficking and smuggling.
- The question whether trafficking should be considered a form of irregular/illegal migration.
- The general problem of separating regular from irregular migration.¹⁵

As states participating in various regional and global agreements and action plans have moved closer to a consensus on these concepts, there has been a growing insistence on a clear distinction between the concepts of trafficking and smuggling. At the global level, this process of differentiation is best demonstrated by the work of the Vienna Process during 1999 and 2000,¹⁶ leading to the United Nations Convention against Transnational Organized Crime.¹⁷ In principle, the smuggling of persons constitutes an illegal border crossing¹⁸ and is, therefore, a violation against the State. In contrast, trafficking in persons is a violation of the rights of the individual, and the victims of that crime are the trafficked persons themselves. Therefore the term “victim” is used throughout the Trafficking Protocol, whereas victim is only mentioned once in the Smuggling Protocol.¹⁹ Victims of trafficking are to be granted protection, yet: “There is little guidance in either instrument regarding how the identification process is to be undertaken and by whom. This is especially important because identifying an individual as a trafficked person carries different responsibilities for a State party than is the case if that person is identified as a smuggled migrant. It is hoped that State parties will address such issues in the near future.”²⁰

In order to assess how the obligations of states to protect victims of trafficking in persons are translated into action, particularly in the ten countries under review, and to identify major issues and gaps of implementation from a human rights perspective, it is helpful to know how various actors define trafficking in human beings. Several lists of current definitions of international organizations, including those developed in the European Union, are already available as, for example, the one provided by the Daphné Programme, set up by the European Commission.²¹

2.2 DEFINITIONS OF TRAFFICKING IN HUMAN BEINGS BY SELECTED INTERNATIONAL ORGANIZATIONS

The United Nations

On 15 November 2000, the UN General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Article 3 of the Protocol adopted the following definition of trafficking:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under 18 years of age.

International Organization for Migration (IOM)

Counter-trafficking constitutes one IOM’s six service areas, through which it operates to contribute to the prevention of trafficking and the protection of the rights of, and provide assistance to, victims of trafficking. IOM adheres to the UN definition of 2000, and already in 1999 adopted the following very similar definition in its trafficking policy documents:

- The illicit engagement (through recruitment, kidnapping or other means) and movement of a person within or across international borders,
- during which process the trafficker(s) obtain(s) economic or other profit by means of deception, coercion and/or other forms of exploitation under conditions that violate fundamental human rights.²²

International Labour Organization (ILO)

The ILO has adopted some Conventions relevant to the trafficking in human beings for involuntary servile work.

The Forced Labour Convention, 1930 (No. 29) defines “forced or compulsory labour” as follows: All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntary.²³

For trafficking in persons under the age of 18 (to whom the term child applies) the Worst Forms of Child Labour Convention, 1999 (182) is more relevant. The worst forms of child labour comprise:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.²⁴

The Organization for Security and Co-operation in Europe (OSCE)

In order to provide a common framework for discussing the problem of trafficking in the OSCE region, trafficking in human beings has been defined as:

All acts involved in the recruitment, abduction, transport (within or across borders), sale, transfer, harbouring or receipt of persons,

through the threat or use of force, deception, coercion (including abuse of authority), or debt bondage,
for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude, forced or bonded labour or in slavery-like conditions,
in a community other than the one in which the person lived at the time of the original deception, coercion or debt bondage.²⁵

The Global Alliance Against Trafficking in Women

The Global Alliance Against Trafficking in Women, the International Human Rights Law Group and the Foundation Against Trafficking in Women, together with numerous NGOs around the world, have developed a definition based on their long-standing experience in the field:

All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.²⁶

European Union

The Council Framework Decision on Combating Trafficking in Human Beings, adopted on 19 July 2002, contains a definition of trafficking for the purposes of labour and sexual exploitation. Article 1 states:

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

The recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

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

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

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

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

4. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.²⁷

Europol

Europol was given competence to combat trafficking in human beings, as well as sexual exploitation of children and child pornography, through the Europol Convention in 1995.²⁸ Traffic in human beings, as defined in the Annex to the Europol Convention,²⁹ has been supplemented by the Council Decision in December 1998 and reads as follows:

Traffic in human beings means the subjection of a person to the real and illegal sway of other persons by using violence or menace, or by abuse of authority or intrigue, especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include the production, sale or distribution of child-pornography material.³⁰

2.3 DEFINITIONS ADOPTED BY THE COUNTRIES REVIEWED

Albania

Law No. 8733 of 24 January 2001 states that trafficking in human beings and every act that is understood to be related to the trafficking of a human being can be prosecuted and punished under the Criminal Code. The law introduces specific articles and provides strict sanctions for trafficking and kidnapping.³¹ The definition of trafficking is close to the UN Trafficking Protocol definition.

Austria

Article 217 of the Criminal Code on Traffic in Human Beings states that: “Any person who leads an individual for purposes of indecent sexual practices, even if that individual is already involved in prostitution, to a country other than the country in which the individual holds citizenship or maintains his or her usual residence, or enlists that individual for that purpose, shall be punishable. Any person who entices an individual to go to another country with the intent of engaging in prostitution in a country other than the country in which the individual holds citizenship or maintains his or her usual residence, through deception regarding this plan or by force or through threats, or who transports the individual by force or through exploitation of the individual’s misapprehension with regard to this plan, shall also be punishable.”

This definition is focused on prostitution and conflated with the concept of smuggling.

Belgium

The law of 13 April 1995 on the Suppression of Trafficking of Human Beings and Child Pornography defines trafficking as a crime related to article 77bis of the Immigration Law, and articles 379 and 380bis of the Belgian Penal Code. Trafficking under Belgian law is taken to mean either commercial sexual exploitation or smuggling with the use of threat, violence, or abuse of the vulnerable or precarious position of a foreigner, which is also used to prosecute exploitation in cases not involving prostitution.³²

Yet, the COL12/99 Ministerial Directive defines trafficking as the illegal subjection of a person through the use of violence, threat, trickery, or by abuse of authority in order to exploit the prostitution of others, or by employing other forms of abuse or sexual violence, or the abuse of labour or labour conditions, which are a violation of human dignity. “Abuse of authority” is defined as any form of pressure, exercised in such a way that the victim has no other option than to submit thereto.

Thus, it is not clearly defined what is to be understood by trafficking in persons, with reference to a certain number of offences included in the Penal Code, which are components of trafficking in persons. These do not necessarily involve international trafficking in persons, nor do they necessarily imply exploitation of the victim. It provides for aggravating circumstances specific to trafficking for the purpose of incitement to immoral behaviour or prostitution.

Czech Republic

The main definition provided by the Czech legal system is found in the amended Article 246 of the Criminal Code, implemented by Act No. 134/2002 Coll., which came into force on 1 July 2002. It now covers “trafficking in humans for the purpose of sexual relations” regardless of whether this concerns a child, woman or man. The definition of the offence has been broadened by making it a crime to entice, hire or transport a person with the intention of sexual relations, not only to foreign countries but also from abroad. Trafficking in humans for non-sexual purposes, which is not expressly provided for under Art. 246 of the Criminal Code, is punishable as a criminal act under other provisions of the Criminal Code, which has special provisions concerning trafficking in children in relation to Art. 216a. Act No. 285/2002 Coll. on Donating, Removing and Transplanting Tissue and Organs and the Amendments to Certain Acts established a new form of criminal offence in the Criminal Code of unauthorized handling of tissues

or organs under Art. 209. The obligation to make trafficking in humans as defined in the Protocol a criminal offence should not cause difficulties for the Czech Republic. Existing legislation can accommodate most of the obligations contained in the Trafficking Protocol.

Germany

A definition of human trafficking is provided in sections 180b, 181 and 236 of the German Penal Code. According to Section 180b, whosoever, for his own material benefit exerts influence over another person and coerces this person to take up or continue in prostitution, shall be punished with imprisonment for up to 5 years or a fine. Whosoever, for his own material benefit, exerts influence over another person, in the knowledge of the helplessness associated with that person's presence in a foreign country, to induce the person to engage in sexual acts, which the person commits with or in front of third parties, or allows to be committed on the person by the third party, shall be similarly punished. In addition, anyone who exerts influence over another person in the knowledge of the helplessness associated with that person's presence in a foreign country; or, over a person under twenty-one years of age, to induce the person to take up or continue prostitution, or to get the person to take it up or continue it, shall be punished with imprisonment of between 6 months to 10 years.

On the other hand, Section 181(1) stipulates punishment in cases where force, threat, appreciable harm, or trickery is involved.

Finally, Section 236 deals specifically with the trafficking in children.

Hungary

Since 1 March 1999, Section 175/B of the Penal Code defines trafficking in human beings: "Any person who sells, purchases, conveys or receives another person or exchanges a person for another person, or appropriates one for such purpose for another party, commits a felony offence and shall be punishable with imprisonment of up to three years."

Preparatory acts for the trafficking are also a criminal offence.

In 2001, Act No. CXXI, in force since 1 April 2002, modified the definition in accordance with the definition of the UN Trafficking and Smuggling Protocols.

Italy

Italy has no specific legislation dealing with human trafficking, though the violations involved in human trafficking are sanctioned under Arts. 600 and 601 of the Italian Criminal Code. According to Article 600, a person who subjects another to slavery, or to a condition similar to slavery, shall be punished with a minimum of 5 to a maximum of 15 years imprisonment. The Penal Code does not further define "reduces another to slavery", but it may be presumed to accord with the definitions of the United Nations conventions to which Italy is a signatory, such as the Slavery Convention (1926) and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956).³³

The main jurisprudence evolving on the basis of Article 600 of the Italian Penal Code focuses mostly on cases where one person exerted illegitimate control over another person.

Spain

Specific anti-trafficking references can be found in the following articles of the Penal Code: 311, 312, 313, 318 and 515. Article 311, providing an overarching definition, states that whosoever, by deceit or abuse of a state of need, imposes or maintains work or social conditions on another person that infringe, suppress, or restrict legal rights, shall be subject to a penalty of between 6 months and 3 years imprisonment. If such conduct is carried on with violence or intimidation, then more severe penalties shall apply.

Other laws relevant to victims of trafficking in persons are:

- Law 19/1994 of 23 December 1994, on the statutory protection of witnesses;
- Article 59 of the Aliens Law 4/2000 of 11 January 2000, the revised Aliens Law 8/2000 of 22 December 2000, and
- Article 94 of the Royal Decree 864/2001.

According to the two latter articles, those foreigners who willingly cooperate as witnesses with the competent authorities will be exempt from administrative liability. Therefore, they will be granted the right to choose either to return to their country of origin or to acquire a temporary residence permit in Spain and the possibility to work and to achieve social integration.

The Netherlands

The Penal Code of the Netherlands distinguishes between trafficking in human beings (Art. 250a) and migrant smuggling (Art. 197a).

The article on the trafficking in human beings has been the subject of several amendments. The latest amendment of October 2000 made a clear distinction between regulating voluntary prostitution, on the one hand, and the criminalization of the exploitation of involuntary prostitution, on the other. All trafficking in both adults and children, irrespective of gender, is punishable. Following the exact wording of Article 250a, the trafficking in human beings is limited to trafficking for the purpose of sexual exploitation in prostitution. Thus, the definition of trafficking still needs to be extended to cover other forms of trafficking in human beings, as defined in the Palermo Protocol.

Ukraine

Article 149 of the new Penal Code of 2001 defines trafficking in human beings as the sale or any other form of paid transfer of a person, as well as any other illegal transaction with respect to a person, when that person crosses the national frontier, leaving or entering the country, illegally or legally, with or without the person's consent, with the aim of further selling or transferring for money the person to someone else for either sexual exploitation, involvement in commercial pornography (porno business), engaging in criminal activities, debt bondage, adoption for commercial purposes, use in armed conflict or the exploitation of the labour of that person.

The definition of trafficking is brought more closely in line with the Trafficking Protocol. However, the law is too uncertain and vague and this may impede its effective implementation.³⁴ There are concerns about the new definition of trafficking in human beings. The legislation does not cover all cases of trafficking and the requirement for trafficking to involve crossing a border

and “the aim of a further sale or paid transfer” is unnecessarily restrictive. Terms such as “sexual exploitation” and “porno business” have not previously appeared in the criminal law and are not defined. The law only targets those directly involved in sale or transfer, and ignores other intermediary roles.

2.4 WORKING DEFINITION FOR THE PURPOSE OF THIS STUDY

The actors involved in the anti-trafficking network have yet to reach a consensus on an operational definition of *trafficking in human beings*. In this connection it may already be said that neither the United Nations nor the European Union conceives of illegal adoptions as constituting a case of trafficking, nor does the latter include trafficking for the removal of human organs.

Trafficking in human beings

In this study we use the term *trafficking in persons* or *trafficking in human beings*, borrowing greatly from the definition given in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of November 2000. The all-encompassing term avoids the limitations of focusing only on women or slavery. Particularly, the Trafficking Protocol and the Transnational Crime Convention create a new international standard for the identification of trafficking in human beings, with special consideration for those who act as witnesses.

Trafficked persons

The term *trafficked persons* here means any person 18 years or above who is trafficked according to the above working definition of trafficking in human beings.³⁵

Child

By child or minor we mean any person under the age of 18, according to the standard laid down in Article 1 of the UN Convention on the Rights of the Child, 1989, and Article 3(d) of the Trafficking Protocol.

Victims of trafficking in persons or human beings

A victim of trafficking in persons or human beings is both the unwilling participant within the terms of the crime trafficking in persons or human beings and/or the victim of human rights violations inherent to trafficking, as well as any other violations and criminal offences against a person through acts to facilitate illegal immigration.³⁶ This definition borrows heavily from the Trafficking Protocol and the Transnational Crime Convention, as well as the Proposal for a Council Directive on the short-term residence permit issued to victims of acts to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities.³⁷

Victim protection and assistance

In this paper, victim protection and assistance covers both victims of trafficking in human beings and victim-witnesses. In victim protection and assistance we include measures as set forth in the relevant articles of the Trafficking Protocol and the Transnational Crime Convention, including the measures adopted and proposed in the European Union as listed in Section 4 of this paper, as well as the framework of victim protection and assistance of the Brussels Declaration on Preventing and Combating Trafficking in Human Beings.

3. COUNTRY CASE STUDIES

INTRODUCTORY NOTE

In this section, we shall assess the situation in selected countries – EU member states, as well as candidate and neighbouring states – to evaluate their legal systems and specific legal bases in respect of victims of trafficking in human beings.

The definition in each of victims of trafficking will be explained and compared with the international definitions already highlighted in Section 2 of this paper.

To enable the reader to compare the situation in each of the ten countries, we have described the general situation in respect of trafficking and the perception of the victims of trafficking to be protected in the introduction to each country report. This is followed by tables which list the main relevant legislative provisions, their implementation, victim protection and assistance, the actual and/or foreseen appropriate infrastructure as well as recent policy initiatives and the competent institutions working in the field of victim protection and assistance.

More general overarching recommendations applicable to the ten countries generally, are listed in section 5 of this paper.

ALBANIA

1. GENERAL INFORMATION ON THE SCOPE OF TRAFFICKING

Over the past ten years Albania has emerged as a major hub in the business of trafficking in human beings, both as a country of origin and of transit to western European countries, particularly the sex industry and, to a lesser extent, a country of destination for the Albanian market. Albanian gangs have gained a reputation for being among the world's most ruthless criminal networks involved in trafficking. In Vlorë, a "smuggler's paradise", records show that in 1998, 200 smuggling boats crammed the harbour daily, yet city records do not include any police reports concerning arrests for trafficking for prostitution. In 1999, UNICEF reported that Albanian gangs were abducting Kosovar refugee girls and trafficking them to brothels in Italy, where they were sold for US\$ 10,000 each. In 2001, for example, Italian police arrested more than 100 men suspected of running an international prostitution ring. Most of the suspects are reported to be Albanian, and they have been charged with homicide, membership in organized crime groups, trafficking drugs and people, and extortion.

Although it is difficult to determine the scope of the problem and to monitor the trends, there are three main categories of human beings being trafficked to, from or through Albania: Albanian women and girls for the purpose of sexual exploitation, foreign women and girls for sexual exploitation and Albanian children for forced labour, including begging, drug dealing and other street activities, such as washing car windows.

Various reports suggest that many Albanian girls and young women from all over Albania have been trafficked abroad. One source estimates that over the past ten years 100,000 Albanian women and girls have been abducted and/or tricked into prostitution and auctioned off into Western Europe,³⁸ many of them minors. The number of trafficked Albanian women fell owing to several reasons: the Albanian state and its people are more stabilized than during the last decade and there have been numerous activities by IOs, NGOs and the government to prevent and control trafficking in human beings. The Save the Children Albania report on trafficking in children from Albania (2000) and *Trafficking in Human Beings in Southeastern Europe* (2002) provide valuable information on trafficking in young girls for prostitution and of boys primarily for begging and cheap labour, and the identification of ways to resolve the problem of trafficked children.³⁹

Trafficked child victims come from all over Albania, generally from impoverished and dysfunctional families. The majority of trafficked children are from the Roma minority in Albania, although the problem cannot be seen as specific to one group. Some trafficked children leave the country with their parents who then abandon them; others are sent by their family to earn money or are sold by their parents to traffickers in Albania. Traffickers also transfer many abandoned children abroad. In November 2001, the Albanian Ministry of Labour and Social Affairs estimated that there were at least 6,000 Albanian children in Italian and 1,000 to 2,000 children in Greek orphanages. Besides, in destination countries many trafficked children are treated in the same way as adult illegal migrants. This means that a trafficked child victim can be arrested,

detained and kept in detention centres together with traffickers and other adult irregular migrants, and deported to the border and left there. The trafficking cycle can be, and often is, repeated. Children have also been abused, mistreated and raped by the guards and other inmates in detention centres.

Albania is also one of the main transit points for the trafficking of women and girls from Central and Eastern Europe. The women come mainly from Bulgaria, Moldova, Romania, Russia and Ukraine. Those who are trafficked onto Western Europe may be found in Italy, Greece, Austria, France, Britain, Germany, Belgium and Switzerland. During the past 6 months, following the official crackdown by the Albanian Government against speed-boat trafficking, the trend has shifted to the use of regular means of transport from Albanian air and sea ports, together with the widespread use of false documentation bought or forged in Albania.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of human trafficked persons Law no. 8733, of 24 January 2001, specifies that “trafficking of human beings, trafficking of females for prostitution, trafficking of children for the purpose of material profit or any other profit, is punished by 5 to 20 years of imprisonment or by life imprisonment”. Article 110/a refers to human trafficking, article 114/b treats the trafficking of women for prostitution, and article 128/b deals with the trafficking of children.

Criminalization and penalties Articles 113 and 114 of the Penal Code raised the punishment for trafficking from 10 to 25 years of imprisonment, and for trafficking in children from 15 to 25 years. There are also provisions for the confiscation of property used to commit a crime, the deportation of foreigners involved in criminal offences, and compensation for harm suffered by victims of crime.

Other provisions/laws affecting trafficking exist? According to the Albanian Criminal Code (Law No. 7895, 27 January 1995) prostitution is a “criminal act against morality and dignity” pursuant to Section 8, which specifies as criminal acts the practice of prostitution, indulging prostitution, using one’s premises for prostitution, homosexuality, pornography, desecrating graves, insulting, libel, trespassing on another’s privacy, spreading private secrets and violating the privacy of correspondence.

Labour law The 1993 Albanian Labour Code prohibits forced labour. The code sets the minimum age of employment at 16 years, though children of at least 14 may work in part-time jobs during summer vacations. The prohibition of forced labour is also stated in the Constitution, which explicitly provides that “no one may be

required to perform forced labour”. The prohibition does not apply in cases of “execution of a judicial decision, the performance of military service, or a service that results from an emergency situation or natural disaster that threatens human life and health” (Article 26).

Money laundering

Albania adopted a new law on money laundering in October 2000.

Anti-corruption

Legislation on the confiscation of assets gained through corruption is under review.

Bilateral and multilateral agreements

Albania-Italy agreement aimed to increase cooperation in the fight against illegal immigration. Under this agreement, Italian police will offer assistance to Albanian authorities in their efforts to combat all forms of organized crime.

An agreement between the Albanian Ministry of Public Order and the Greek Ministry of the Interior on cooperation and readmission of children.

Readmission agreements

The Albanian Government has concluded agreements with Germany, Italy and Greece for the establishment and operation of the International Anti-Trafficking Centre in Vlorë, with the participation of experts from these countries for a concerted fight against illegal trafficking.

Albania is also cooperating with neighbouring countries in the framework of the overall anti-trafficking operation “Labour”, initiated by the Albanian government in August 2002.

International conventions

Ratified:

- The ILO Convention (105) on the Abolition of Forced Labour.
- The ILO Convention (182) to Eliminate the Worst Forms of Child Labour.
- The United Nations (UN) Supplementary Convention on the Abolition of Slavery, the Slave-Trade, and Institutions and Practices Similar to Slavery.
- The United Nations Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air (July 2002).

Not ratified:

- The Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Prosecution of traffickers

According to the OSCE country report, in 2001 police arrested and charged 299 offenders in relation to trafficking, who were involved in trafficking male migrants and in trafficking of women

and children; for the first half of 2002 the number of arrested and charged offenders for similar activities was 347.

OSCE field stations observed that charges were pressed against only 10%. Three persons, involved in the same case, were charged with trafficking and received prison sentences of 7 and 9 years.

One of the reasons for the failure in prosecution is the corruption of the police and the judiciary. Young Albanian men who are involved in trafficking are usually a part of a larger organized crime network for drug or arms smuggling. In a majority of cases, local people living in the border areas are also involved in the trafficking of foreign women. Traffickers are well known in the community. NGOs have stated that they know the names of the people involved and are sure that these names are also well known to the police. The same sources talk about involvement of the local police in trafficking.

The OSCE survey has also shown a deficit of successful prosecutions compared to the number of arrests, as well as great variations in the rate of arrests in different areas in the country. Those areas with the strongest links to trafficking, are those with the lowest rates of arrest and prosecution.

OSCE also conducted an assessment of the Albanian Criminal Code and of its anti-trafficking provisions, and prepared an analysis of the existing law. They concluded that there was no need for new legislation, except where gaps existed, particularly in the area of the seizure of asset and witness protection. Partly as a result of this analysis, the Government's emphasis shifted from drafting new legislation to the better implementation of existing laws.

Ministry of Justice, prosecutors and the judges were also instructed by the Prime Minister to pay more attention to the prosecution and punishment of traffickers. In November 2001, the police, using the recently established Task Force Against Trafficking within the police (see below), initiated an action against traffickers by raiding places known for trafficking and arresting some of the traffickers.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons

Pre-screening procedure according to the Administrative Instruction No. 1382 of 8 February 2001 from the Ministry of Public Order (and the Memorandum of Understanding signed in 2001 between the Albanian government and the OSCE, UNHCR, IOM and ICMC) obliges the police to inform the pre-screening team, consisting of the participating organizations, of illegal foreign migrants and provides the means for an initial assessment of detained persons and, if necessary, intervention by the appropriate organization. Asylum seekers become the responsibility of UNCHR, stranded illegal migrants and victims of trafficking who

are willing to be repatriated are directed to the IOM shelter in Tirana. OSCE is informed.

IOM/ICMC reports that since the entry into force of the pre-screening procedure, by the end of 2002 the police have referred almost 400 intercepted foreigners to the focal point. The actual number of foreigners intercepted is, however, higher.

The Inter-Agency Referral System (IARS) is mainly meant for repatriation of foreign victims of trafficking (see below).

Many victims of trafficking are deported as irregular migrants. As reported by IOM/ICMC, there are also irregular readmission practices between Albania and its neighbours. The training of the police and the criminal police as well as of prosecutors and the judiciary is slowly changing attitudes and perceptions, consequently the number of referrals are increasing in all areas where such a training took place.

Legislation regarding victim-witness protection

Is there any victim-witness protection?

A law is in preparation. Until its adoption, the government has provided a provisional solution with two options.

The first option consists in the setting up of premises for the temporary protection of the witnesses in the regional police departments since the moment of their denunciation of the perpetrators up to the time when the court either ensures evidence or the charge is made public in the court (such premises are established in the Police Departments of the region of Fier, Korce, Tirana). IOM is reconstructing reception centres within six police stations where the victims of trafficking can stay while police procedures take place. The reception centres will be operational by 2003.

The second option consists in the provision of temporary protection to the witnesses in shelters set up by international organizations or NGOs in Albania. As a part of the Task Force IOM, together with other international organizations and NGOs, aims at finding effective means to protect witnesses. During 2002, two witnesses were taken into the protection of another country.

Immigration status of the trafficked person/victim

Witnesses can be exempt from deportation because of criminal proceedings.

Support and assistance

Measures

Medical examination, counselling and social services provided by IOM.

Infrastructure

NGO transit centre in Vlorë.
IOM shelter in Tirana accepts pre-screened victims where they can stay up to 3 months and are offered medical examinations, counselling and social services.
IOM Reintegration Centre for Albanian victims of trafficking is operational since February 2002.

Repatriation and reintegration

a) Repatriation of foreign victims of trafficking – The Inter-Agency Referral System (IARS)

Victims are assisted by local IOM offices. Particularly in the Balkans repatriation consists of transit assistance, legal information, assistance with the border police, accommodation, in some cases transportation to their homes and reunification with families, vocational training, psychological support medical treatment and legal assistance. NGO assistance is particularly important in finding foster care for minors, monitoring and follow-up.

In 2000, 125 women shelter and returned home through the IARS. Thirteen per cent were girls under the age of 18. Over 60 percent were from the Republic of Moldova and about 30% from Romania. During 2001, 77 women (from Moldova and Romania) were interviewed. In 2002, IOM facilitated the repatriation of 30 victims of trafficking and continuing to assist beneficiaries under the umbrella of the EU/HLWG project for the return and reintegration of third-country victims of trafficking and irregular migrants stranded in Albania.

Since April 2002, IARS developed a new Counter-trafficking Information System as a more comprehensive Regional Database system allows analytical and statistical caseload reporting. This system will be of great help in the management of the programme and will further provide the necessary tools to evaluate and improve regional strategies.

The Trafficking in Human Beings in Southeastern Europe (2002) report observes that 90 percent of referrals are coming from the police and IOM then makes its own assessment, taking into consideration whether the foreigner wants to return to his/her country of origin. In situations where women have not been trafficked but still want to return home, IOM is able to help them through the Programme for Stranded Migrants. IOM/ICMC, compiled eligibility criteria to identify victims of trafficking. IOM offers shelter (including medical assistance) to women and girls who are traumatized and do not want to be repatriated immediately. It gives them time to stabilize and whether to request repatriation and reintegration assistance in countries of origin or asylum through UNHCR.

b) Repatriation of Albanian victims of trafficking

Programmes for this category of victims have long been missing. Vlora Women's Hearth, a local NGO manages a shelter for foreign illegal migrants stopped while in transit through Albania has also received repatriated Albanian trafficked women and girls, mainly deported from Italy.

Recently IOs and IGOs have accorded more attention to local NGO capacity building to create a reintegration support network. IOM Return/Reintegration of Albanian Victims of Trafficking Programme is based on the voluntary return of the beneficiaries and ensures that all involved, including the police force and other referral sources, are fully aware of and respect the voluntary nature of the programme.

IOM has developed an effective regional return network through its offices in the Balkans and in Albania. Contacts and referral

sources (e.g. police, international and local NGOs, etc.) refer Albanian women to the project, as do members of the RSN, particularly those with established reception facilities in locations with significant trafficking activity, such as the Vlora Women's Hearth.

The assessment for the reunification with the family in often very complex domestic context includes:

- the victim's wish return to the family;
- the willingness of the family members to accept the victim home;
- the level of violence in the family;
- the likelihood of retaliation from the family or nearby trafficker/exploiter;
- the ability and willingness of the family to provide the necessary basic needs;
- the likelihood of re-trafficking if returned to the family.

Many beneficiaries are unable to go home and receive assistance in preparation for independent living. In that case the centre serves as transition period in view of eventual independent living.

Project for Reintegration Assistance to Albanian Victims of Trafficking through the Capacity Building of a National Reintegration Support Network (CNRS) started in December 2001.

OSCE Victims Assistance Team, IOM and Albanian Ministry of Public Order in November 2002 helped victims just returned from Italy. The assistance programme is to be expanded to involve local NGOs in the recovery and reintegration of returned victims

The OSCE/ODIHR hopes to expand the assistance programme to also involve the local NGOs that are best equipped to help the victims of trafficking. Trafficked women are also offered the possibility of joining IOM programmes to help them recover and reintegrate.

A recorded 437 women were repatriated to Albania in 2000 and 2001.

c) Repatriation of children victims of trafficking

The local NGO Help for Children is working on the reintegration of children coming from Greece, including:

- assessment of the situation in Greece, in cooperation with Greek authorities;
- monitoring of informal repatriation (by NGOs);
- reintegration of children into schools (special classes education, support in adaptation, vocational training);
- development of a legal model for the protection of trafficked children, and lobbying for children's rights.

Help for Children and Terre des Hommes are also working on the legal aspects of trafficking in children, including the consequences of the readmission agreements and the protection of Albanian unaccompanied minors. They advocate that the governments of countries of destination should develop and apply special measures concerning children as victims of trafficking in human beings, namely:

- legal and operative measures to ensure that a child victim of trafficking remains temporarily or permanently in the territory of the respective country, similar to the principle of non-refoulement regarding asylum seekers;
- provide assistance to children to ensure their physical and mental well-being;
- ensure the protection and safety of a child during the duration of stay in the country;
- seek information on the family, or legal representative, in the country of origin;
- take measures for the child's return and reintegration.

Both NGOs are also preparing coordinated repatriation procedures of trafficked children between Albania and Greece. The draft includes special measures that must be observed in compliance with the Convention on the Rights of the Child, while treating minors who are illegal migrants and victims of trafficking.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies

The National Strategy of the Fight Against Human Trafficking was adopted by Government Decree No. 674. The National Plan of Action and coordination (2002-2004) includes concrete actions against trafficking, determines the responsible agencies (the State Committee for the Fight Against Human Trafficking, which serves as a coordinating body) and presents a budget for all the activities, which include:

- Research on trafficking;
- services to protect trafficked persons, including shelters to be managed by NGOs with government support, and training the staff of the shelters;
- reintegration programmes for trafficked persons;
- general campaign on prevention and raising awareness supported by the Ministry of Education, including anti-HIV/AIDS education;
- educating women and children on protection against trafficking and exploitation;
- improving social and economic conditions for women;
- measures to prosecute and punish traffickers, including the amendment of laws and regulations and better law enforcement;
- strengthening of border controls.

The implementation of the National Strategy is to be carried out in three phases spread over a 3-year period.

Other governmental activities:

- The Division for Minors in the Ministry of Justice prepared analyses of the legal aspects of trafficking in children.

- New provisions for the protection of children – changes in the Adoption Law and Labour Code.
- National Strategy for Children based on the principles of the Rights of the Child Convention.
- Prevention of trafficking in children and implementation of the National Strategy to Combat Trafficking.
- The National Strategy for Women includes anti-trafficking measures and prevention activities, and measures to provide girls with a better education and to secure their right to education.
- Readmission agreements between Albania, Italy and Switzerland as well as the bilateral agreement between Albania and Greece on cooperation and readmission of children.
- Albania is a participant in the Southeast European Initiative (SECI), the Adriatic and Ionian Initiative and participates in the relevant activities/projects of the Stability Pact for South-eastern Europe, more specifically in those organized within the framework of the Stability Pact Task Force on Trafficking in Human Beings (SPTF).

Government institutions

- Ministry of Justice
- Ministry of Public Order. Other ministries involved in various programmes (see below)
- State Committee for Equal Opportunities
- State Committee to Combat Trafficking
- Task Force Against Trafficking within the police department created by the National Strategy Plan

International Organizations

OSCE/ODIHR is the coordinating body for international anti-trafficking efforts.
 UNCHR; UNICEF; IOM.
 In 2001, a Memorandum of Understanding was signed between the Albanian Government, OSCE, UNHCR and IOM.
 Stability Pact Task Force on Trafficking in Human Beings.

NGOs

International Catholic Migration Committee (ICMC). Terre des Hommes. Help for Children. Vatra. Vlora Women’s Hearth, local NGO, supported by Save the Children and USAID. Women’s Advocacy Centre, Tirana.

Programmes

a) Prevention and awareness-raising
 During 2001 and 2002, several education programmes to raise public awareness of the risk of trafficking and its social consequences were prepared and carried out by the Ministry of Education and Science, the Ministry of Labour and Social Affairs, the State Committee for the Fight Against Human Trafficking, the State Committee for Equal Opportunities, as well as international organizations such as IOM (an 18-month campaign), UNICEF, UNHCR, ILO-IPEC; NGOs such as Save the Children, the embassies of the US, the UK, the Netherlands, as well as local NGOs dealing with trafficking in human beings.

The OSCE Women's Rights and Anti-Trafficking Education Project (WRATE) began in November 2000.

Information campaigns/awareness-raising and educational activities (introduction of materials on trafficking in schools; training of teachers, TV and radio broadcasts, posters, leaflets) conducted by IOM during 2002-2003.

b) Training

Law enforcement officials such as police, prosecutors and judges have received specialized training.

Since June 2001, French experts, ICITAP and the US Embassy have been offering training courses for the police to raise their effectiveness in relation to fighting organized crime, in particular the trafficking of human beings.

Police and judiciary training organized by IOM in most regions of Albania, 2001-2002. Some 600 policemen received training on gender issues, domestic violence and counter trafficking.

A training of trainers programme, "Policing the Rights of Women", implemented by the OSCE Mission in Albania, the National Network Against Gender Violence and Trafficking, and IOM. Training has been made an integral part of the academic curriculum at the Police Institute.

Under the EU/HLWG-sponsored project for the return and reintegration of third-country trafficking victims and irregular migrants, two curricula for Police Training were produced: a) on border police centred on "counter trafficking and irregular migration" and on "counter-trafficking and gender violence".

A manual on "Albanian Investigative Police Procedures into Trafficking of Human Beings" was prepared by IOM in collaboration with the Ministry of Public Order and the Office of the Prosecutor General.

c) Victim protection

Project for reintegration assistance to Albanian victims of trafficking by strengthening a national reintegration support network (CNRS). The 24-month project seeks to build on the experiences and lessons learnt in the implementation of the IARS projects, with a special focus on, and understanding of, the differences in the processes of return and reintegration of Albanian victims of trafficking. It aims to establish an effective reintegration support network catering to the diverse needs of Albanian victims. Furthermore, the project aims to develop a systematic international referral mechanism.

Assistance programme for the protection, return and reintegration of trafficked women and children in Albania, Bosnia and Herzegovina, FYR of Macedonia, Kosovo, Serbia and Montenegro (PRTB). This 12-month project facilitates the orderly, safe and dignified return of trafficked women and children stranded in the Balkans. It also facilitates the collection of detailed data on trafficking in the region. IOM and other IOs, NGOs, governments (Switzerland, Bosnia and Herzegovina, Yugoslavia, Albania, the FYR of Macedonia), local law enforcement and social assistance

institutions. The project aims to assist victims in need of return and reintegration assistance with pre-departure counselling, and transportation to their home countries. On their arrival and depending on their needs, victims are temporarily lodged in safe shelters, if available. In cooperation with NGOs, psychological and social assistance services are offered to facilitate their reinsertion process into their families as well as access to vocational training and/or employment orientation courses.

d) Anti-trafficking operations

The anti-trafficking operation named “Labour” began in August 2002. This operation is considered to be a very important advance in the fight against organized crime and trafficking, involving also regional cooperation.

e) Regional cooperation

Several events were organized to establish and reinforce regional cooperation to combat trafficking, to share experiences and best practices and promote more efficient collaboration.

Regional workshops: IOM Tirana organized a workshop on Trafficking of Human Beings: International Law Enforcement Cooperation, in Kiev, and on Partnership and Cooperation for Combating Irregular Migration and Trafficking in Human Beings, in Sofia.

Regional seminars for journalists were organized by IOM Tirana: Human Trafficking in the media – Perceptions, Attitudes and Judgements, held in Sinaia Romania and Investigative Journalism and Trafficking in Human Beings, held in Tirana.

AUSTRIA

1. GENERAL OUTLINE OF THE SCOPE OF TRAFFICKING

Austria is a country of both destination and transit for trafficking in persons from Central and Eastern Europe, which concerns mainly women destined for prostitution and domestic work. As Vienna is a popular destination for sex tourists, most victims of trafficking are concentrated in Vienna. Although the number of registered women in prostitution has declined, prostitution by irregular and trafficked women has been on the rise. Most victims are trafficked into Austria from neighbouring countries (Hungary, Slovakia, the Czech Republic). Austria is also a transit area for migrants and traffickers to enter other EU countries, especially Italy.

Several traffickers in Austria have been prosecuted and convicted, the majority of whom were Austrians. In June 2001, Austrian police dismantled a human trafficking ring worth US\$ 7.4 million. Two ringleaders, a Czech and a Vietnamese, and 14 accomplices were arrested in the Czech Republic. Thirty other traffickers linked to the ring were arrested in Austria in December 2000.

On 9 December 2002, the Associated Press Agency reported that a former Austrian Olympic figure-skating gold medallist was sentenced to 18 months imprisonment on human trafficking charges. He was part of the gang involved in recruiting women from Belarus, Russia, Ukraine, Lithuania and other eastern countries under the pretence of lucrative jobs in Austria. Upon arrival, they were taken to brothels in the Austrian cities of Vienna, Graz and Salzburg, and their passports were confiscated.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of human trafficking exist?

Article 217 of the Penal Code (PC), Trafficking in Human Beings, is focused on prostitution and cross-border movements.

Criminalization and penalties

a) Article 217 (1), PC, provides for prison terms of between 6 months and 5 years for any person who forces another person into prostitution in another country, irrespective of the victim's age or gender and regardless of whether the victim has already been involved in prostitution. If the crime is committed for profit, the penalty is imprisonment for 1 to 10 years. Article 217 (2) also penalizes any person who, through deceit, coercion, force, dangerous threats, or exploitation of a victim's mistake, brings

another into the country for the purpose of prostitution. The penalty in this case is imprisonment for between 1 and 10 years. b) The Penal Code also prohibits prostitution-related activities, including procuring (Art. 213), promoting prostitution (Art. 215), pandering (Art. 216, which provides for more severe penalty if the person obtaining regular income from the prostitution of others is a member of an organized group), publishing advertisements leading to illicit sexual practices (Art. 219: “Any person who publishes an advertisement intended to lead to illicit sexual practices and that, by its content, causes unjustifiable nuisance, shall be punished by imprisonment of up to six months or a fine”), public, illicit sexual practices (Art. 218). The “sexual intercourse with minors” (Art. 206), indecency with minors (Art. 207) and pornographic illustration with minors (Art. 207a) are prohibited.

Other laws affecting trafficked persons

An amendment to the Aliens Act (July 1, 2000) provides for up to 2 years imprisonment for the exploitation of aliens (Art. 105). Fictitious marriages are an offence under the Aliens Act. Penalties are also provided for the marriage broker who promoted or arranged the marriage.

Labour law

The Labour Law prohibits forced labour and fixes the minimum age for legal employment at 15 years.

Money laundering

Money laundering was made a criminal offence in 1993. The Banking Act of 1994 places financial institutions under an obligation to report suspicious monetary transactions. The Money Laundering Reporting Unit was created to monitor suspicious transaction reports.

Anti-corruption

Corruption is a criminal offence. Austria ratified the OECD Convention on Bribery of Foreign Public Officials, which came into force 19 July 1999 and ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 20 May 1999. Austria signed the Council of Europe Criminal Law Convention.

Extraterritorial jurisdiction

Austrian criminal law applies irrespective of the criminal law in the country where the crime occurs if Austrian interests are involved, in cases of “slave trade” (Art. 104), “exploitation and trafficking in human beings” (Art. 104(a)) and trafficking in human beings (Art. 217). The same applies also to crimes of sexual intercourse with minors (Art. 206), indecency with minors (Art. 107) and pornographic illustrations with minors (Art.207a) in cases where the perpetrator or the victim is an Austrian citizen or has his/her habitual residence in Austria.

Bilateral treaties

Austria has concluded a number of readmission agreements with countries of origin and transit of illegal migrants. There is nothing specific in the area of victim protection.

International conventions

Ratified:

- ILO Convention (105) concerning the Abolition of Forced Labour;
- UN Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery;
- Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.

Not ratified:

- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children.
- ILO Convention (182) concerning the Elimination of the Worst Forms of Child Labour.
- UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Austria observes:

- the UN Palermo Protocol on Trafficking 2000;
- the EU Framework Decision on Trafficking in Human Beings;
- the EU Framework Decision on combating sexual exploitation of children and child pornography;
- the European Convention on Mutual Assistance in Criminal Matters 1959 (Additional Protocols of 1978 and 2001);
- the European Convention on Extradition 1957 (Additional Protocol of 1975);
- the EU Convention on Mutual Legal Assistance on Criminal Matters between the Member States 2000 (Additional Protocol of 2001);

Austria is a member of the Schengen Group, the Trafficking Expert Group (Europol), the Trafficking Expert Group (Interpol), EuroJust, Police Chiefs Task Force.

Prosecution of traffickers

The Trafficking in Persons Report (2002) states that all cases are investigated and prosecuted. Many convictions have been handed down by the Austrian courts.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons

Residence rights.

The Aliens Act provides for protective residence permits to be granted to victims willing to testify against traffickers.

Legislation regarding victim-witness protection

Is there any victim-witness protection?

Victim-witness protection is provided on a statutory basis. Paragraph 22 of the Security Police Law provides for physical protection and change of identity for vulnerable witnesses. The provision applies to high-profile cases where the evidence of the

witness is essential. The decision to award such status is taken jointly by the prosecutor and the Ministry of the Interior.

Immigration status of the trafficked person/victim

A short-term permit of stay may be granted under Art. 8 of the Aliens Law. In practice this is only seldom the case where trafficking victims are concerned, and requires clear evidence of a high safety risk to the victim.

Ex officio residence permits may be granted to trafficked individuals (Art. 217, PC) who are prepared to testify in court as witnesses in order to assure the prosecution of the perpetrator(s), or who intend to file civil law claims against the perpetrator(s), for the duration of the court proceedings.

Legal remedy and compensation

A child who has become a victim of a criminal or sexual offence may claim civil damages from the perpetrator of the crime under Section 1328 of the Civil Code (CC).

Support and assistance

Measures

Right to psychological, health and legal support to *ex officio* residence holders.

Infrastructure

The Intervention Centre for Victims of Trafficking in Women in Vienna was established by the Ministry of the Interior and the Ministry of Social Affairs in 1997. Victims of trafficking can get help to obtain an *ex officio* residence permit. The centre also provides emergency accommodation in cases where law enforcement authorities abstain from pre-deportation detention.

Since 1985, there are child protection centres for the special psychological rehabilitation of any victimized and sexually abused children (Art.195, PC).

The Federal Government and local governments also fund NGOs to provide services to victims and conduct studies on the problem. Each federal province has at least one women's shelter, funded by local authorities, to assist victims of trafficking.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies

- Awareness-raising campaigns at national and international level.
- Establishment of contacts with countries of origin to facilitate prosecution of suspected traffickers and to disband trafficking rings.
- Active work with IGOs and regional organizations.
- Funding of research and of NGOs' prevention efforts and counselling.

Government institutions

The Ministry of the Interior created an inter-ministerial working group to encourage victims to provide evidence (1995).

The Federal Bureau for Criminal Affairs is expected to establish a division dedicated solely to the fight against trafficking and smuggling of human beings.
Ministry of Social Affairs.

IGOs, IOs

The Austrian government is active in all UN, EU, OSCE and other international efforts involved in combating trafficking.

NGOs

NGOs funded by the government as well as local governments.
Ludwig Boltzman Institute für Menschenrechte (Ministry of the Interior).
Project “Combating Trafficking in Women and Forced Prostitution – A Comparative Legal Study and Network-building Initiative (1999).

Programmes

The Austrian government plays an active role in all UN, EU, OSCE and other international efforts to combat trafficking.

BELGIUM⁴⁰

1. GENERAL INFORMATION ON THE SCOPE OF TRAFFICKING

Belgium is a country of both destination and transit for trafficking in persons, primarily from Sub-Saharan Africa (Nigeria, Democratic Republic of Congo, Rwanda, Côte d'Ivoire, Gabon, Ghana), Central and Eastern Europe (Albania, Bulgaria, Poland, Hungary, Romania, former Yugoslavia) and Asia (especially China). The victims from the first two regions are usually young women aged 21 to 30, and teenage girls most often under the age of 18, all of whom are destined for prostitution. Victims from the latter region often include young men destined for labour in restaurants and sweatshops. Other instances of male trafficking include a number of boys at the ages of 12 or 13, who were brought from West Africa and Latin America by soccer agents to Belgium with false documents (IOM, 2002). Those who fail to gain a soccer contract were sometimes abandoned by their agents and ended up on the streets.

According to the 1998 report by the Centre for Equal Opportunity and Opposition to Racism, there was a marked increase in trafficking in humans forced into prostitution and slave labour. The report noted at least 150 cases of people having escaped some form of exploitation, and in 88 cases out of the 150, women and children testified that they had been forced into prostitution. The victims reporting to the Centre had come from Albania, Bulgaria, China, Hungary, Liberia, Nigeria, Poland, Sudan and Thailand.

While Brussels is considered the European centre for the trade of children into prostitution, many of the victims of trafficking throughout Europe under the age of 18 are kidnapped by gangs. For example, various reports indicate that some of the trafficked Albanian girls were only 14 years old, while some of the Hungarian girls were as young as 13.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of trafficking in human beings exist?

The Belgian law does not specifically define trafficking in human beings, and refers to certain offences covered by the Penal Code (PC) which amount to trafficking in human beings, without necessarily implying either trans-border trafficking or the victim's sexual exploitation.

The main definition is found in the Penal Code (PC) under "Corruption of minors and prostitution".

Criminalization and penalties

The act of trafficking in human beings is a criminal offence under the Law on the Suppression of Trafficking of Human Beings and

Child Pornography of 13 April 1995. Art. 77bis penalizes the procured entry into Belgium of a foreigner under violence, intimidation, coercion or deception, or by abusing a foreigner's vulnerability because of his or her irregular status or precarious situation, pregnancy, disease or disability. This law not only sanctions the offence of trafficking for the purpose of debauchery or prostitution, but also aims to combat the exploitation of foreigners generally. Thus, Article 77bis provides for imprisonment of 1 to 5 years and a fine for anyone who, either directly or indirectly, takes advantage of a foreigner's vulnerability because of his or her irregular or precarious status, and either sells, rents or allows the use of premises with the intention of realizing exorbitant profits (para. 1bis). If such conduct constitutes a regular activity the fine is increased accordingly. The penalty for anyone acting as a member of an organized gang is 15 to 20 years imprisonment and a fine.

Although prostitution is not illegal in Belgium, certain activities are criminal offences under Article 380 (PC): Article 380(1) prohibits the engaging, enticing, coercing, or holding of a person who is not of legal age for the purposes of prostitution or debauchery; Article 380(2) penalizes the keeping of a house for immoral activities or prostitution; Art. 380(3) provides for sanctions for the selling, renting, or the making available of rooms or any other premises for prostitution and the realization of abnormal profits and Article 380 (4) sanctions the exploitation of the prostitution or the debauchery of others with a fine and up to 5 years imprisonment. If there are aggravating circumstances, such as the use of violence, the abuse of a person's vulnerability, fraud, threats, etc., a prison term of 10 to 15 years is provided for. If such acts are committed by an organized gang or a member of a gang, Article 381 provides for imprisonment of between 15 and 20 years.

The corruption of youth is a criminal offence. Article 379 (PC) provides that any person who, to satisfy the passions of another, violates public morals by inciting, furthering, or facilitating the corruption or debauchery of a minor, of either sex, shall be subject to a fine and imprisonment. Depending on the age of the victim and the circumstances of the offence, the penalties are increased. Exploiting the prostitution or debauchery of a minor under the age of 10 is punishable by a fine and imprisonment of 15 to 20 years (Article 380). The penalties imposed may also include the prohibition to operate a drinking establishment, an employment agency, a tobacco or smoking shop, a café offering live performances, a public ballroom, a massage parlour, or a manicure salon (Article 382). The court may also order the closure of the establishment in which the offence was committed (Article 382). A previous conviction for the corruption of a minor can preclude a convicted offender from teaching minors in public or private institutions (Article 382). The Law on the Protection of Young People allows the juvenile court to take appropriate protective measures in cases involving persons under the age of 18.

Immigration law

Article 77bis of the Immigration Law of 15 December 1980, deals with admission to the territory of the Kingdom of Belgium, transit or residence. It provides for penalties for anyone who causes a foreigner to enter, transit or reside in the country, and for subjecting a foreigner, directly or indirectly, to fraudulent practices, violence, threats, or any form of coercion, or for taking advantage of a foreigner's vulnerability because of the irregular status in the country, or pregnancy, illness, infirmity and physical or mental disability. Such acts are sanctioned by imprisonment of 1 to 5 years. If committed as part of an organized gang the penalty is increased to between 10 and 15 years imprisonment.

Labour law

Forced or compulsory labour is prohibited by law. The minimum age for employment is 15 years.

Money laundering

The Act of 17 July 1990, amended on 7 April 1995, deals with money laundering.

Several measures to prevent financial transactions from being used for money laundering were introduced by the Act of 11 January 1993, and supplemented on 11 July 1994 and 7 April 1995.

The Financial Intelligence Processing Unit (CTIF-CFI) monitors its implementation.

Anti-corruption

Corruption is a criminal offence.

Belgium ratified the OECD Convention on Bribery of Foreign Public Officials (in force since 25 September 1999).

On 27 July 1999, Belgium ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Belgium signed the Council of Europe Criminal Law Convention.

Extraterritorial jurisdiction

Belgium has ratified the European Convention on Mutual Assistance in Criminal Matters, and upholds the principle of the universality of crimes against humanity involving trafficking.

Article 10b of the Penal Code provides for the prosecution in Belgium of Belgian and foreign nationals in Belgium for offences related to satisfying the passions of others, for offences involving the satisfaction of their own passions, if the act was committed against the person of a minor below the age of 16. Likewise, Belgian or foreign perpetrators of offences in Belgium may be prosecuted for acts committed abroad, even if no constituent part of that offence took place in Belgium. However, the offence must also be punishable in the country where it was committed for a Belgian court to be seized of it.

Article 8 of the Penal Code provides that a Belgian who has committed a sexual offence against a person of either sex below the age of 16, by corruption or prostitution outside the territory of the Kingdom of Belgium, may be prosecuted in Belgium, even if the Belgian authorities have received no complaint or official notice from the authority of the foreign country where the crime was committed.

International conventions

Ratified:

- ILO Convention (105) Concerning the Abolition of Forced Labour;
- The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;
- Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Not ratified:

- UN Convention on transnational crime and the two annexed Protocols on smuggling and trafficking.

Not signed:

- ILO Convention (182) to Eliminate the Worst Forms of Child Labour;
- UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Belgium has adhered to the following Conventions regarding judicial and police cooperation:

- UN Palermo Protocol on Trafficking (Articles 9, 10 & 11);
- UN Convention on the Rights of the Child (Articles 5, 6, 7 & 10);
- EU Framework Decision on Trafficking in Persons (Article 6);
- EU Framework Decision on combating sexual exploitation of children and child pornography (Article 10);
- European Convention on Mutual Assistance in Criminal Matters, 1959 (Additional Protocols of 1978 and 2001);
- Benelux Treaty;
- European Convention on Extradition, 1957 (Additional Protocol 1975);
- EU Convention on Mutual Legal Assistance in Criminal Matters, and the Additional Protocol, 2001;
- Schengen Agreement.

Belgium is a member of the Trafficking Expert Group, Europol; the Trafficking Expert Group, Interpol; of EuroJust and of the Police Chiefs Task Force.

Prosecution of traffickers

No information is available on the number of prosecutions under the current anti-trafficking law. 116 cases were recorded from 1 January 1998 to 30 June 1999.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons

A departmental circular of 7 July 1994 sets out the conditions and the procedure to obtain a residence permit. The Circular is further

clarified by the directives of 13 January 1997. The victim's application is submitted to the Aliens Office by the shelter assisting the victim. Law enforcement officials should inform victims of trafficking of their right to a reflection delay.

Legislation regarding victim-witness protection

Is there any victim-witness protection?

Although there is no specific statute yet, the Commission for the Protection of Witnesses can, in keeping with the principles of subsidiarity and proportionality, grant, in cases defined by law, a witness under threat and the members of her family and relatives, ordinary or special protective measures, if necessary, and insofar as the witness is in danger as a result of her declarations. Financial support may also be granted.

Immigration status of the trafficked person/victim

If a victim files a complaint after a 45-day "reflection delay" (suspended expulsion order) a 3-month "declaration of arrival" may be issued.

This may be followed by a 6-month Certificate of Registration in the Immigration Register, which depends on the prosecutor's decision to initiate legal proceedings and is renewed until the end of criminal proceedings. The victim may also be granted a work permit.

Permanent residence status may be granted, normally after trial. STOP procedure may be applicable under the 1994 Circular if the case has been closed and the victim has been in the country for at least 2 years. The main objective is social integration.

Measures

A number of protection measures are available.

In the course of criminal investigation all efforts are to be taken to protect victims, including their relocation in the country.

There is a right to legal assistance in criminal proceedings, generally arranged by specialized centres.

Evidentiary protection: A witness can testify without the presence of the accused (Art. 73 (CP)). The testimony of a minor under the age of 15 may be conducted outside the court room (Art. 83).

A law on the anonymity of the witness (2002) distinguishes between partial and full anonymity.

Help with physical and psychological recovery:

- housing,
- education,
- financial assistance,
- medical care,
- right to seek employment.

Legal redress and compensation: Article 55 (CP) allows a victim to claim damages. A trafficking victim can link a claim for damages to the criminal court action or may bring a separate civil claim. This applies to specialized centres as well.

Infrastructure

The Centre for Equal Opportunities and Opposition to Racism, Royal Decree 1995, Article 10, coordinates and promotes

cooperation between the different private services specialized in assisting victims of international trafficking in human beings. The Centre sets performance standards for the three regional NGOs referred to as specialized centres assisting trafficked persons, Payoke, Pag-Asa and Sürya based in Antwerp, Brussels and Liège, respectively.

Repatriation and reintegration

If the victim wishes to return home, the specialized centre contacts IOM to organize the voluntary repatriation of the victim. If necessary, the victim's family will be contacted, as well as local organizations to provide for the reception and possible assistance at home (reintegration projects, training).

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies

Government plan of action to fight human trafficking. The Plan involves the Federal Department of Justice, of Foreign Affairs, of Interior, of Labour and Employment, of Social Affairs and the Departments for Social and Labour Inspection. A Taskforce on Trafficking in Persons, created in the Prime Minister's Office drew up the guidelines for the cooperation between the various departments concerned, while the Federal Justice Department ensures and reports annually on its implementation. Under the Plan the assistance to victims and socio-psychological and legal aid is provided for. It also foresees the monthly control of high-risk sectors and locations, in coordination with the Ministry of Labour and Social Affairs and special liaison magistrates.

Government institutions

In early 1990, Belgium set up appropriate structures at both federal and local level to deal with the trafficking in human beings. The most significant are:

- The Federal Police Unit dealing with trafficking in human beings, Directorate-General for the Judicial Police, set up in 1992. It is responsible for the identification of criminal gangs and networks involved in trafficking in human beings and the employment of irregular migrants, and the necessary follow-up activities.
- The Board of Public Prosecutors, created in 1997, oversees the implementation and coordination of the policy measures adopted to assist victims of trafficking.
- The Federal Department of Public Prosecution is the prime interlocutor for the Directorate-General for the Federal Police Department for Criminal Investigations, which includes a unit dealing with trafficking in human beings.
- Liaison magistrates in each judicial district cooperate among themselves and with the aid associations in the field responsible for providing shelter to the victims.

The Centre for Equal Opportunity and Opposition to Racism coordinates the various activities carried out by the ministries, prosecutors, police and immigration officials dealing with trafficking. It also sets performance standards for the three regional NGOs which act as specialized centres to assist victims of trafficking (Payoke, Pag-Asa and Sürya based in Antwerp, Brussels and Liege, respectively).

A sub-commission recommended the appointment of a special national coordinator on trafficking to improve the efficiency of the different federal services concerned, and to act as intermediary between the regions, the communities and the Centre for Equal Opportunities and Opposition to Racism.

The Aliens Office is responsible for issuing permits to victims of trafficking.

The inspection departments of the Ministry of Labour and Employment and the Ministry of Social Affairs conduct targeted checks on the use of foreign labour and, in particular, on all forms of exploitation of labour.

An interdepartmental committee coordinates anti-trafficking activities in all three regions and with neighbouring states.

IGOs, IOs

IOM

NGOs

Three government-funded regional NGOs (Payoke, Pag-Asa and Sürya) provide aid and shelter to all victims. Multidisciplinary teams of social workers, educators and criminologists assist these associations and provide medical, administrative, legal and psychological assistance.

The European Centre for Missing and Sexually Exploited Children, operating under the name of Child Focus, is a foundation under Belgian law recognized as being of public utility. At both national and international level its mission is, on the one hand, to provide active support in the investigation of disappearance, abduction or sexual exploitation of children and, on the other hand, to prevent and combat these phenomena. Child Focus supports and encourages the investigation and the legal measures, ensures follow-up to the cases that are entrusted to it and participates in the counselling of victims. It collaborates on a complementary basis with the official and private actors involved.

Programmes

The government provides financial assistance for the dissemination of information in the countries of origin. Such projects include the pilot project for the return and reintegration of victims of trafficking in persons, proposed by the IOM (2001), which aims to gather and disseminate information on the services available to victims of trafficking in order to set up mechanisms and procedures for a dignified return.

In this context, the Belgian government agreed to subsidize another pilot project whose main activities consisted in providing advice and assistance to victims to facilitate their return and social rehabilitation/reintegration in their countries of origin.

CZECH REPUBLIC

1. GENERAL INFORMATION ON THE SCOPE OF THE PROBLEM

The Czech Republic's geographical location makes it a country of origin, transit and destination for trafficked persons, mainly for women from Moldova, Russia, Romania, Bulgaria, Ukraine, Belarus, the Balkans and Asia who are trafficked to Western Europe for sexual exploitation. Czech girls are trafficked into forced prostitution to and from the former Soviet Union, Africa, Asia, the Middle East as well as to Western Europe. The high level of trafficking of women in the Czech Republic has several reasons, as *La Strada Czech Republic* has shown. Some of the more important ones are the unequal labour opportunities for men and women, the low legislative awareness and the absence of information.

A relatively smaller number of Czech men are also trafficked to the United States mainly for coerced illegal work.

Since the end of the cold war, the gap between the rich and poor has widened and parts of the Czech Republic are mired in poverty, lack of education and high unemployment. This situation is particularly prevalent in North Moravia and Northern Bohemia. Prostitution *per se* is not illegal in the Czech Republic and sexual exploitation is very difficult to prove.

The level of violence of criminal groups involved in human trafficking is increasing. Most of the criminal groups involved in human trafficking in the Czech Republic come from countries of the former Soviet Union and are very often involved in other criminal activities.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law enforcement

Does a definition of human trafficking exist?

The Czech Republic has no general provision on human trafficking, but the Criminal Code (140/1961) refers to trafficking in human beings for the purpose of sexual intercourse and to trafficking in children.

Criminalization and penalties

Act No. 134/2002 Coll. implements an amendment to Art. 246 of the Penal Code regarding trafficking in women, which now covers trafficking in humans for the purpose of sexual relations regardless of whether this concerns a child, woman or man: (1) "Whosoever entices, hires or transports a person to or from a foreign country, with the intention that this person be used for sexual relations, will be punished by imprisonment of between

one and five years” (effective 1 July 2002). Thus this criminal offence now includes Trafficking Humans for the Purpose of Sexual Relations. The definition of the offence has also been broadened making it a crime to entice, hire or transport a person with the intention of sexual relations, not only to foreign countries but also from abroad. Article 246 (2) provides for a prison term of 3 to 8 years if the offence is committed by an organized criminal group for profit against anyone below the age of 18, or for the purpose of prostitution. Article 246 (3) provides for a prison term of between 5 to 12 years if the offender causes severe injury to health, or some other serious harm to the person’s health or well-being, or death.

Labour law

The law prohibits forced or compulsory labour. According to the Labour Code (Law No. 65/1965) the minimum age of employment is 15 years. Employment of foreigners is regulated by the Employment Act (Law No. 1/1991), which requires a residence permit and a work permit. The Labour Code mandates a written employment contract detailing the specifics of the employment relationship.

Money laundering

The Proceeds of Crime Act (Law No. 61/1996, effective 1 July 1996) requires financial institutions to report “unusual transactions”.

Section 251 of the Penal Code does not explicitly penalize money laundering as a criminal offence. However, it does criminalize the “handling and receiving” of stolen goods. In 1995, the section was amended to include money laundering as a separate offence. Section 252a of the Criminal Code concerns the proceeds from criminal activity.

Anti-corruption

The Criminal Code makes the acceptance of a bribe (para. 160), active bribery (para. 161), indirect bribery (requesting/accepting or offering a bribe as a reward for influencing a public official) a punishable criminal offence.

The Czech Republic has ratified the Council of Europe Criminal Law Convention.

On 21 January 2000, the Czech Republic ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Extra-territorial jurisdiction

The Czech Republic ratified the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters.

Bilateral treaties

The Czech Republic is currently negotiating bilateral mutual legal assistance agreements.

International conventions

Ratified:

- ILO Convention (105) on the Abolition of Forced Labour;
- ILO Convention (182) to Eliminate the Worst Forms of Child Labour;

- The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.
- The Convention on Money laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

Not ratified:

- The Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography;
- The UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, signed in December 2002.

2. 2 Victim protection and assistance

Victim protection and assistance

Is there any victim-witness protection?

It is provided in the “Witness protection Law”.

Section 55, subsection 2 of the Code of Penal Procedure (Law No. 141/1961, as amended) establishes that if it is apparent that the witness, or persons close to the witness are being subjected to threats to their health or security in relation to their testifying against the traffickers, their identity may remain undisclosed. Personal data may be recorded separately from the trial documents and accessible only to those involved in the criminal proceedings concerned.

Section 2, subsection 1, para. a) of the Czech Police Act (283/1991) mandates the police to ensure the security of the person and property of the witness.

Obligatory Advice issued by the President of the Czech Police, No. 159/2001 lays down the procedure to be followed to ensure the short-term protection of such persons (no more than 60 days).

Act No. 137/2001 concerning the special protections of witness and other subjects in connection with criminal proceeding foresees various protection measures, including a change of residence and assists with the reintegration in a new social setting.

Immigrant status of the victim-witness

The law on the stay of foreigners in the territory of the Czech Republic (326/1999) specifies conditions for the entry, stay and travel of foreigners to and from the Czech Republic. Even though this law does not expressly regulate the position of foreigners who become victims of trafficking in human beings in the Czech Republic, it is possible to apply Article 35 para. 1(a), concerning the grant of visa to enable a victim of trafficking to stay in the Czech Republic. It is granted by the police to a foreigner who is prevented from leaving the country due to an obstacle beyond his or her control. Under Article 36 of the Act on Resident Aliens, the

police will fix the term of validity of a visa sanctioning a stay for a period considered necessary, up to a maximum of 365 days. Under Article 37 of the Act, a foreigner to whom a visa has been granted under Article 35 para. 1(a) is, on request, obliged to demonstrate that the obstacle to leaving the country continues to exist. Article 38 of the Act lists the documents which a foreigner must submit concerning a request for a visa to be granted sanctioning a stay. If the foreigner cannot submit such documents, for reasons beyond his or her control, a notarized affirmation can be submitted instead.

Measures of support and assistance	Shelter, medical and psychological assistance, clothing, food and assistance to return or reintegrate by NGOs and IOs.
Legal redress and compensation	The Code of Penal Procedure (Law No. 141/1961, as amended) allows a victim of a crime to file a civil complaint for civil compensation (Article 43).
Repatriation and reintegration	The government provides funds to several NGOs and international aid organizations to provide shelter, medical and psychological assistance, clothing, food and assistance for victims of trafficking for their reintegration into Czech society.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies	Media and education campaign.
Government institutions	The Crime Prevention Department of the Ministry of Interior focuses on policy making. In addition, a special unit dealing with organized crime was set up in 1995 to focus on trafficking in human beings, particularly women and children. Those working for the Office for Drug Control and Crime Prevention are responsible for managing victim protection and assistance
IGOs, IOs	IOM workshops for officials in cooperation with the Ministry of Interior.
NGOs	There are several government-funded initiatives. The government refers victims to IOs and NGOs. La Strada has been working with victims and training social workers and other professionals to work in this field in the Czech Republic since 1995. Various psychological and pedagogical experts and police assisting victims also collaborate with La Strada. They operate a hotline for victims (government funded). Other NGOs also working in this field include: Ceska katolicka charita, which provides shelters and social assistance; Sance, Rozkos bez rizika, Poradna Jana, Magdalenium protect victims of human trafficking as one component of their activities.

Programmes

The UNDCCP project will focus on how the criminal justice systems of the Czech Republic responds to foreign women trafficked abroad and repatriated. The project will emphasize the necessary cooperation between the criminal justice system, other agencies and civil society in order to find ways to prevent and combat trafficking in human beings and, in particular, the involvement of organized crime groups. Support to victims and witnesses is a key element in this project.

GERMANY

1. GENERAL INFORMATION ON THE SCOPE OF THE PROBLEM

Germany is primarily a country of destination but also a transit country for women and minors trafficked for the purpose of sexual exploitation. The vast majority of victims come from the former Soviet Union and Eastern Europe, particularly from Lithuania, Russia, Ukraine, Poland, Czech Republic and Latvia. Some victims also come from Africa and Asia.

Most trafficked persons enter Germany on a 3-month tourist visa. After the expiration of their visas, they continue to stay in Germany and, in the case of trafficked adults, work illegally.

In the cases of nationals who do not need a visa to enter Germany, particularly from candidate states, a certain number enter with false passports. Further progress towards other EU countries is relatively easy. A certain number also arrive in Germany as the spouse of German nationals, and subsequently find themselves exploited and forced into prostitution. Others enter illegally at night via border crossings.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of human trafficking exist? Yes, there is a definition in sections 180b, 181 and 236 of the German Penal Code.

Criminalization and penalties

Section 180b (1): Trafficking in Human Beings

- 1) Whosoever, for his own material benefit and knowingly exerts influence on another person to induce that person to take up or continue in prostitution, shall be punished with imprisonment for up to 5 years or a fine. Whoever, for his own material benefit, exerts influence on another person, in the knowledge of that person's vulnerability, to induce the person to engage in sexual acts, which the person commits on or in front of third person or allows to be committed on the person by the third person, shall be similarly punished.
- 2) Whosoever exerts influence:
 - (a) on another person in the knowledge of that person's vulnerability related to that person's stay in a foreign country; or,
 - (b) on a person under 21 years of age, to induce the person to take up or continue prostitution or to get the person to take

it up or continue it, shall be punished with imprisonment of between 6 months to 10 years.

- 3) In cases under subsection (2) an attempt shall also be punishable.

Section 181 (1)

- 1) Whosoever:
 - (a) with force, threat or appreciable harm, or trickery induces another person to take up or continue prostitution;
 - (b) recruits another person through trickery or abducts a person against that person's will by threat of appreciable harm or trickery, in the knowledge of the helplessness associated with the person's stay in a foreign country, in order to get the person to commit sexual acts on or in front of a third person, or allows them to be committed on the person by a third person; or,
 - (c) professionally recruits another person, in the knowledge of the helplessness associated with the person's stay in a foreign country, in order to induce the person to take up or continue prostitution, shall be punished with imprisonment of between 1 to 10 years.
- 2) In less serious cases, the punishment shall be imprisonment of between 6 months to 5 years.

Section 236: Trafficking in Children

Imprisonment of 6 to 10 years shall be imposed, if the perpetrator:

- 1) acts for profit, professionally or as a member of a gang, which has combined for the continued commission of trafficking in children; or
- 2) by the act places the child or the procured person in serious danger to his or her physical or emotional development.

Anti-corruption

Corruption is a punishable act under the Criminal Code. Germany ratified the OECD Convention on Bribery of Foreign Public Officials. This Convention came into force in Germany on 15 February 1999. It signed the Council of Europe Criminal Law Convention.

Bilateral treaties

It is a member of the Baltic Sea Task Force.

International conventions

Ratified:

- Optional Protocol to the 1989 New York Convention on the Rights of the Child.
- ILO Conventions:
- ILO Convention of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- ILO Convention (29) Concerning Abolition of Forced Labour;
- ILO Convention (105) Concerning the Abolition of Forced Labour.
- The UN Convention on the Rights of the Child (1989).

- The Optional Protocols of New York, 2000, to the Convention on the Rights of the Child, concerning, respectively, the sale of children, child prostitution and child pornography and the involvement of children in armed conflict.
- The governmental action plan of the Stockholm World Congress on the trafficking and sexual exploitation of children, promoted by UNICEF and ECPAT in 1996.
- The UN protocol to prevent, suppress and punish the trafficking in persons, especially of women and children (Palermo Protocol) in support of the UN Conventions against Transnational Organized Crime of 15 November 2000.
- The International Covenant on Civil and Political Rights (ICCPR).
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT).
- The International Covenant on Economic, Cultural and Social Rights (ICESCR).
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (SCAS).
- EU Framework Decision on Trafficking in Persons.
- EU Framework Decision on Combating Sexual Exploitation of Children and Child Pornography.
- EU Convention on Mutual Legal Assistance on Criminal Matters between the Member States, 2000, and the Additional Protocol of 2001.

Signed:

- UN Convention on transnational crime and the two annexed Protocols on smuggling and trafficking, respectively.
- The Statute of the International Criminal Court, which includes enslavement in its list of crimes against humanity.
- Slavery Convention.
- The Optional Protocols of New York (2000) to the Convention on the Rights of the Child, concerning, respectively, the sale of children, child prostitution and child pornography and the involvement of children in armed conflict.
- The UN protocol to prevent, suppress and punish the trafficking in persons, especially of women and children (Palermo Protocol) in support of the UN Conventions against Transnational Organized Crime of 15 November 2000. CTOC and protocols will be ratified in 2003.

Germany adheres to:

- The guidelines set out in the common action by the EU Council for the fight against trafficking in human beings and the sexual exploitation of children;
- The European Council of Tampere Conclusions of October 1999;

- The European Council of Santa Maria de Feira of 19-20 June 2000.

The German Federal Ministry of the Interior also participates in the STOP programme. Germany is also member of Europol, Eurojust, Police Chiefs Task Force.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons

Residence rights for at least 4 weeks to give the victim time to decide whether to testify against the trafficker, and the prosecutor time to investigate whether the testimony is needed and to have time to prepare an orderly return.

- a) Temporary residence on the basis of Aliens Act of 9 October 2000;
- b) Permanent residence on the basis of extreme risk.
 - Right to a lawyer in criminal proceedings.
 - Protection from reprisals and police protection.
 - In-court evidentiary protection.
 - Right to information on court proceedings.
 - Legal redress and compensation.

Legislation regarding victim-witness protection

Is there any victim-witness protection?

There is a joint police-prosecutor decision on whether a victim-witness will gain access to the protection programme, subject to the following criteria of eligibility:

- the witness is a trafficking victim and is prepared to make a statement and to testify;
- the indispensability of her evidence;
- the level of risk to the witness; and
- the willingness to be included in the programme.

Furthermore, since most victim-witnesses do not fit into the existing witness protection programmes, police and counselling centres have developed a special cooperation model for the protection of victim-witnesses of trafficking in human beings.

Immigration Law

A new German Immigration Law is about to be adopted and is expected to come into force in 2003.

Immigrant status of the victim-witness

Under the current Aliens Act of 9 October 2000, Section 53, victims can obtain a temporary residence permit for at least 4 weeks to decide to testify or to prepare to return home.

Cooperating victims can obtain temporary residence permits for the duration of the proceedings.

In cases of extreme risk, the witness may be able to qualify for a permanent residence permit.

Support and assistance

Measures	<p>Temporary residence of at least 4 weeks for victims of trafficking when there are valid grounds not to expel as provided for under Section 53 of the Act concerning the Entry and Residence of Aliens in the Territory of the Federal Republic (Aliens Act) of October 2000.</p> <p>NGO/IGO collaboration to assist victims of trafficking is well organized. Substantial financial aid is given by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.</p>
Infrastructure	<p>Various organizations provide the following assistance to trafficked persons:</p> <ul style="list-style-type: none">• specialized shelters;• counselling;• medical services;• legal assistance;• information on their rights and the implications of acting as witnesses;• language;• education and vocational training courses for those acting as witnesses;• financial assistance.
Legal redress and compensation	<p>Claims may be filed in a separate civil action against the trafficker. The civil procedure is time consuming and can take several years. Even if successful, its enforcement is difficult.</p> <p>If a civil claim is granted, the victim still has to enforce the court order. The court would usually order the seizure of the person's salary or part of the property, but since traffickers do not often have a declared regular income this does not help.</p> <p>Furthermore, victims of trafficking are entitled to compensation based on the law on compensation of victims of violence (Decree by the Federal Ministry of Labour of March 5, 2001).</p>
Repatriation and reintegration	<p>A grace period of at 28 days is allowed in order to give victims time to prepare to return to their home country and to decide whether they want to cooperate with the German authorities as a witness for the prosecution. Cooperation between the authorities and specialized advisory services, as well as IOM, at home and abroad ensures assistance and a safe return of victims of trafficking.</p>

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies	<p>The victim-witness protection is very much oriented towards the victim participating as a witness and helping the police in convicting the traffickers.</p>
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Government institutions

The main competence in this field lies with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The ministries of Internal Affairs, of Justice and of Foreign Affairs also play an important role. Other ministries such as the Ministry for Economic Cooperation and Development, the Ministry of Health and the Ministry for Labour are also actively involved. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth collaborates also with the Federal Criminal Police Office.

IGOs, IOs

Collaboration with IOM and the OSCE.

NGOs

Network of NGOs supporting victims.
NGOs collaborate with national authorities and IGOs to strengthen their action.
There is a specific joint police-NGO response.

Programmes

Development of programmes between Länder Police and NGOs for the protection of victims/witnesses.
Joint training workshops involving 12 police officers and 12 NGO members to enhance trust, understanding and the effectiveness of the counter-trafficking network.
National Working Group of the Federal Government is active since 1997 to combat trafficking in women. It includes NGOs working in the trafficking field.
The Working Group on Trafficking in Women has been responsible for the distribution of pamphlets in the main countries of origin, giving information on witness protection in the national language.

HUNGARY

1. GENERAL INFORMATION ON THE SCOPE OF THE PROBLEM

Given its geographical situation and its general economic context, Hungary functions as a country of origin, of transit and of final destination of victims of trafficking. Hungarian women and girls are trafficked to destinations in Western Europe, including France, Germany and Italy. Some are promised summer jobs as waitresses, but are then usually transported with false documents and forced into prostitution. Its position along one of the most heavily used access routes for trafficking into Europe makes Hungary an important transit country. Women and girls are trafficked for sexual exploitation mostly from Romania, Ukraine, Moldova, Poland, Yugoslavia and China to and through Hungary to Austria, Germany, Spain, the Netherlands, Italy, France, Switzerland and the US. Men trafficked for labour through Hungary to EU countries come from Iraq, Pakistan, Bangladesh and Afghanistan. Hungary is also a known receiver country for trafficked women from Romania and Ukraine. According to several NGOs, the number of Russian women being trafficked into Hungary has significantly increased since 1990.

According to the Hungarian Ministry of Justice the number of separated children is increasing and the number of unaccompanied minors among asylum seekers coming from non-EU countries has steadily grown since 1997. They are often smuggled into Hungary together with their parents, but minors are also inserted to “test the asylum possibilities”, or as couriers for family reunification in Hungary. Migrant children also come from the neighbouring states in the non-visa framework, and overstay. These children are frequently exploited, including by their own parents (they are forced to beg in the streets as handicapped persons) or are sold by family members from Romania.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of trafficking in human beings exist?

Section 175/B of the Penal Code defines trafficking in human beings as: “Any person who sells, purchases, conveys or receives another person or exchanges a person for another person, or appropriates one for such purpose for another party, commits a felony and shall be punishable with imprisonment of up to three years” (Section 175/B (1)).

Act No. CXXI, in force since 1 April 2002, adapted the definition in accordance with the UN Trafficking and Smuggling Protocols.

Criminalization and penalties

The prescribed punishment shall be imprisonment of between 1 to 5 years if the criminal act is committed against a person

deprived of personal freedom, against a person under the age of 18, for the purpose of forced labour, for sodomy or sexual intercourse, or to involuntarily engage in such with another person (section 175/B (2)). If the criminal act involves two of the cases described in Subsection (2), or if the criminal act is committed as part of a criminal organization against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, the punishment shall be imprisonment of between 2 to 8 years (section 175/B (3)). It increases to between 5 to 10 years if the criminal act involves three of the cases described in Subsection (2), or if the criminal act is committed against a person deprived of personal freedom, as part of a criminal organization, or against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator (section 175/B (4)). The punishment shall be imprisonment of between 10 to 15 years or life imprisonment if the criminal act is committed for the purpose of forced labour and sodomy or sexual intercourse, or to involuntarily engage in such with another person against a person deprived of personal freedom, as part of a criminal organization or against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom (section 175/B(5)).

Any person making preparations to engage in trafficking in human beings is guilty of an offence and shall be punishable with imprisonment of up to 2 years (section 175/B(6)).

Other laws used to prosecute traffickers

An amendment to the Aliens Law provides for immediate expulsion from the country of foreign traffickers.

Prostitution is legal, as Section 204 of the Criminal Code penalizing prostitution was abrogated in 1993. The exploitation of others, however, remained a crime. Therefore it was necessary to give a definition of prostitution as: A person who has “sexual intercourse or fornicates striving to make regular profit” (Criminal Code (210 A)).

The Criminal Code punishes pandering (1 to 5 years imprisonment), living on the earnings of prostitution and promoting prostitution (up to 3 years). Endangering a minor by seriously affecting his or her moral development is also considered a felony if the act is committed by a person in charge of the education, supervision or care of the minor.

Act LXIX of 1999 on Violation of Administrative Rules contains three sections related to prostitution:

- soliciting;
- invitation to engage in act of prostitution;
- offering and advertizing sexual services.

Recently, the Penal Code was amended to include crimes relating to child pornography. Besides the Penal Code there are no specific laws or prevention programmes against the abuse of children.

Money laundering

Law No. 26 of 1996 on the Prevention of Money Laundering imposes an obligation on the part of economic organizations and

financial service organizations to report suspected money laundering and identify those individuals who are involved in such crime.

Anti-corruption

Act No. 4/1978 of the (often amended) Hungarian Criminal Code specifies that:

Corrupt practices (accepting bribes) are committed by an official who asks for, or accepts, advantage or a promise thereof in relation to his or her official activities, or makes an agreement with a person asking or offering such advantage.

Changes to the Criminal Code in recent years have sought to deter bribery among public officials by:

- increasing the penalty for senior officials to 2 to 8 years imprisonment (Article 250);
- obligating official persons to report corruption, and
- granting immunity to a party to a bribery if s/he subsequently reports the act, turns in the received undue favour and discloses the circumstances (Article 255/A).

Hungary has ratified the Council of Europe Criminal Law Convention.

On 4 December 1998, Hungary ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Extra-territorial jurisdiction

In 1996 Hungary ratified the European Convention on Mutual Assistance in Criminal Matters and passed the Act on International Legal Assistance in Criminal Matters.

Bilateral agreements

Bilateral agreements on the fight against organized crime.

International conventions

Hungary has ratified the ILO Convention (105) on the Abolition of Forced Labour; the ILO Convention (182) to Eliminate the Worst Forms of Child Labour; the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and signed the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.

Hungary has not ratified the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography or the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Hungary is a EU candidate country and has signed cooperation agreements with Interpol, Europol, and SECI. New acts on international police cooperation are under preparation.

Establishment of the International Law Enforcement Cooperation Centre (NEBEK).

Prosecutions of traffickers

According to the Trafficking in Persons Report (2002), a growing number of trafficking cases was investigated and prosecuted in 2001.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons/victims

Residence rights.

The Act 39/2001 on an alien's entry into and residence in Hungary provides the Alien Police with the opportunity to grant a residence permit on humanitarian grounds to foreigners who cooperate with the criminal justice authorities to discover offenders of trafficking in human beings. The issuing of the residence permit is based on the proposal of the crime prosecution authorities (Section 15 (1) (c)).

Legislation regarding victim-witness protection

Is there any victim-witness protection?

The regulation of victim-witness protection has been implemented in several stages. The first related documents date back to 1999:

- Government Decree No. 34/1999 on personal protection;
- Government Resolution 1074/ 1999 on protection of victims of crime and their relatives touches on the issue of sexual exploitation of women and children.

Witness Protection Act LXXXV on the Protection Programme for Participants of Criminal Procedures and Persons cooperating with the criminal justice introduced the first ever witness protection programme in Hungary (2001).

It also grants physical protection to witnesses as a supplementary measure.

It is applicable to the cooperating defendant, the witness – including the victim of trafficking, if s/he gives evidence— and relatives and other relevant persons. Foreign nationals may be included in the programme.

Government decree 209/ 2001 on the compensation of the victims of violent crime.

Immigration status of the trafficked person/victim

The Aliens Act 39/2001 allows short-term relief from deportation to victims of trafficking who cooperate with police and prosecutors. Ex officio residence permit may be granted.

Support and assistance

Measures

The Witness Protection Programme Act provides for a range of safety measures:

- a) personal protection – when physical protection is given it is based on an agreement with the endangered persons in compliance with civil law and during this period special measures are applied and psychological, social, financial, humanitarian and legal assistance is required;
- b) protection of home and property;
- c) rapid assistance in case of danger;

- d) change of identity and documentation, relocation and
- e) in-court protection for witnesses giving evidence.

The purpose of the programme is to provide protection to the participants of the criminal proceedings, the persons actively supporting the criminal proceedings and the persons close to them, who may be in danger because of their relations and require increased state protection. In accordance with the degree of the danger to the person in question, the Act pursues the further objective of applying special measures to combat crime, in particular organized crime, and to effectively pursue crime prosecution and criminal justice.

The Protection Programme constitutes for the witness, victims and the accused party participating in the criminal proceedings, as well as their next of kin and other persons close to the endangered person, an organized form of protection which may not be provided within the framework of personal protection:

- a) provided by the police under civil law and on the basis of an agreement with the endangered person, and
- b) in the course of which it is necessary to apply special measures (Section 16) and, for the purpose of promoting the social reintegration of the person in question, to provide mental, social, economic, human and legal support (para. 1 of Section 1).

The Protection Programme may be applied during as well as after the close of criminal proceedings. In relation to a crime of a serious nature, an agreement may be concluded with witnesses, injured persons or accused parties participating in the criminal proceedings, and cooperating with the authority according to the requirements prescribed by the law. Crimes of a serious nature include organized crime, terrorism, blackmail, money laundering, trafficking in drugs and arms, prostitution, paedophilia as well as crimes committed in relation to the above against the life or physical integrity of other persons.

For the prevention of unlawful acts against the life, physical integrity or personal freedom of the person involved, the following special protective measures may be applied:

- a) change of the place of residence or, if persons participating in the Programme are in detention, to transport them to another law-enforcement institution;
- b) provision of personal protection;
- c) suspension of data retrieval in registers, and the reporting of any request for information regarding such data;
- d) change of name;
- e) change of personal identity;
- f) participation in international cooperation.

Infrastructure

Victim Protection Office (at the Ministry of Interior) with regional network and Victim Protection Fund. Information brochures on victim protection have been placed in every police station. The Office operates branches in 42 locations. They provide psychological and legal support for victims and safeguard their rights.

Nevertheless, specialized services designed specifically for trafficking victims are rare.

Protection Programme for Participants of Criminal Procedures and Persons Cooperating with Criminal Justice-Witness Protection Unit.

Work against violence and trafficking, and assist victims in cooperation with NGOs.

Nane runs a hotline since 2001, supported by the fund For a Safe Hungary, IOM and foreign governments.

The White Ring Association directly supports victims of trafficking in human beings in the form of legal, psychological, financial and other assistance.

Repatriation and reintegration

Hungarian consular officials are not empowered to provide any legal or financial assistance to Hungarian victims abroad.

NGOs cooperate with IOM in the rehabilitation and support of repatriated victims of trafficking, who were forced into prostitution.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies

The Hungarian government works with international NGOs and a women's rights organization on preventive programmes for teenagers in schools. It also gives some financial assistance to prevention programmes, and through the public fund For a Safe Hungary to a women's rights organization.

Government institutions

The National Council on Crime Prevention is responsible for the coordination between ministries of work related to trafficking in human beings. Created in 1995, the Council functions as an interdepartmental organization bringing together representatives from various ministries, the police force, the Supreme Court and from NGOs.

The following institutions are involved in the protection of victims of trafficking:

- The National Crime Prevention Council, responsible for assistance to victims of trafficking and the coordination and communication among other actors involved.
- The Ministry of Interior, Deputy State Secretariat Responsible for Crime Prevention, National Crime Prevention Centre.
- The Office for the Protection of Victims coordinates the tasks regarding the prevention of victims in the Ministry of Interior. It has branches in 42 localities.
- Witness Protection Unit (within the police).
- The Ministry of Social and Family Affairs coordinates assistance to victims, training and support to NGOs.

IGOs, IOs

IOM/EU/Hungarian Government Mass Information Campaign (October 1999-October 2000). The project aimed at the raising of awareness, institutional capacity building, the establishment of a coordination mechanism among government officials, consular officers and local NGOs.

IOM set up a Secondary School Education Programme against Trafficking in Human Beings (February 2001-January 2002) with the aim to include trafficking in official school curricula.

The Council of Europe PACO Networking project (2001-) is a contribution to the Stability Pact Anti-corruption Initiative (SPAI) and the Stability Pact Initiative Against Organized Crime (SPOC). It also includes the fight against trafficking.

NGOs

NANE (Women Against Violence) combats violence against women and children.

Hungarian Helsinki Committee. White Ring Association, member of the European Forum for Victim Protection; Association of Hungarian Prostitutes.

Programmes

Protection Programme for Participants of Criminal Proceedings and Persons Cooperating in Criminal Justice. The programme is an organized form of protection of witnesses, victims and defendants in criminal proceedings. It protects family members and other closely associated persons who might be at risk. It is implemented by the Witness Protection Unit in the police.

ITALY⁴¹

1. GENERAL INFORMATION ON THE SCOPE OF TRAFFICKING

Italy's long coastline and its role as a major entry point to the EU make it a significant transit and destination country for trafficking of persons from the Balkans, Eastern Europe, China and some African countries.

As investigation and prosecution of trafficking is limited to the national territory, preventive measures aimed at combating trafficking only affect the last link in the chain of a much wider criminal network. Trafficking tends to be confused with exploitation for prostitution and is rarely seen as an activity carried on by organized criminal groups.

There are contradictions between immigration laws affecting undocumented migrants, generally, and those affecting trafficked persons. These inconsistencies prevent many trafficked persons from qualifying under Article 18 of Legislative Decree No. 286/98, which allows the granting of a special entry permit for victims, and provides for their participation in a social and integration assistance programme.

When apprehended, undocumented migrants in Italy are typically given an order to leave the country within 15 days,⁴² following which they are subject to deportation. In migrant cases that involve an unresolved question of identity, the subjects are directed to reception centres to await the determination of their country of origin. There is no legal obligation for the police to provide information to migrants (who could have been trafficked) regarding either the existence of Article 18 or about possible access to helpful NGOs. Nor is there any legal obligation for the police to conduct interviews to ascertain if migrants might have been trafficked. The process of granting Article 18 status to trafficked women has often been delayed or prevented altogether on the grounds that the women had previously been served a deportation order. The grant to stay and the insertion in a social protection programme does not imply an obligation for the victim to inform the police.

The negotiation of readmission agreements between Italy and several countries has so far failed to take into consideration the individual experiences of trafficked persons.

Statistics released by the Ministry of the Interior show that 1,044 permits were issued between 1999 and 2000, of which 74 were issued to minors. The Ministry for Equal Opportunities reported that on 31 December 2001, there were 744 Article 18-permits currently valid, of which 651 had been issued to females.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of human trafficking exist?	Italy has no special legislation dealing only with human trafficking. However, the Italian Criminal Code sanctions violations committed as part of the trafficking activity.
Criminalization and penalties	Violations connected with human trafficking are sanctioned under articles 600 and 601 of the Italian Penal Code. According to Article 600, any person who reduces another to slavery, or to a condition similar to slavery, can be served a prison sentence of a minimum of 5 to a maximum of 15 years. The Penal Code does not provide an interpretation of the expression “reduces another to slavery”, but this can be deduced from definitions in the United Nations Conventions to which Italy is a signatory, such as the Slavery Convention (1926) and the United Nations Supplementary Convention on the Abolition of the Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956). ⁴³ The main jurisprudence evolving on the basis of article 600 of the Italian Penal Code focuses mostly on cases where one person exerts illegitimate control over another person.
Other laws affecting trafficked persons	Article 12 of the Immigration Law 286 of July 25, 1998 (facilitation of illegal migration), and articles 605 (kidnapping), 416 (criminal association) and 416bis (involvement with <i>mafia</i> -type organized criminal associations) of the Penal Code also affect the position of trafficked persons, as they can be used to prosecute traffickers. A definition of servitude is provided by the amended article 600, which presupposes a continuous state of deprivation of freedom and, depending on the facts of the case and the victim’s experiences and personal circumstances, force them to render either labour or sexual services. ⁴⁴
Labour law	Under Article 18 of the Immigration Law there is a right to education, training and employment. Civil claims may be lodged under the labour law for reduced or non-payment of wages or health and safety labour violations, but to date these have generally been unsuccessful. The victim of trafficking has to show a passport to obtain a work permit.
Anti-corruption	The Italian Penal Code recognizes corruption as a punishable act. Italy ratified the OECD Convention on Bribery of Foreign Public Officials (effective 13 February 2001). Italy signed the Council of Europe Criminal Law Convention.
Bilateral treaties	Readmission agreements with the main sending countries of irregular migrants. Nothing specific in the area of victim protection can be found in the texts.

International conventions

Signed:

- UN Convention on transnational crime and the two annexed Protocols on smuggling and trafficking, respectively.
- The Statute of the International Criminal Court, which includes enslavement in its list of crimes against humanity.
- Slavery Convention.

Ratified:

- Optional Protocol to the 1989 New York Convention on the Rights of the Child.
- ILO Convention of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- ILO Convention (29) Concerning Abolition of Forced Labour.
- ILO Convention (105) Concerning the Abolition of Forced Labour.
- UN Convention on the Rights of the Child of 1989.
- Optional Protocols of New York to the Convention on the Rights of the Child, concerning, respectively, the sale of children, child prostitution and child pornography and the involvement of children in armed conflict.
- The governmental action plan of the Stockholm World Congress on the trafficking and sexual exploitation of children, promoted by UNICEF and ECPAT in 1996.
- The UN Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially of Women and Children (Palermo Protocol) in support of the UN Conventions against Transnational Organized Crime of 15 November 2000.
- The International Covenant on Civil and Political Rights (ICCPR).
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- The International Covenant on Economic, Cultural and Social Rights (ICESCR).
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (SCAS).
- EU Framework Decision on Trafficking in Persons.
- EU Framework Decision on Combating Sexual Exploitation of Children and Child Pornography.
- EU Convention on Mutual Legal Assistance on Criminal Matters between the Member States, 2000, and the Additional Protocol of 2001.

Italy also applies:

- The guidelines set out in the common action by the EU Council for the fight against trafficking in human beings and the sexual exploitation of children.

- The European Council of Tampere Conclusions of October 1999.
- The European Council of Santa Maria de Feira of 19-20 June 2000.

Moreover, the Italian Ministry of the Interior also participates in the STOP programme; and Italy is a member of Europol, Eurojust, Police Chiefs Task Force.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons

The procedure directly affecting trafficked persons is Article 18 of the Immigration Law that foresees a temporary residence right. Temporary residence permits are extended to all trafficked persons and not only to those who declare their intent to collaborate with the police. This makes Italy quite unique. Permits on the basis of Article 18 are issued to two categories of persons: those who would like to testify against the traffickers, and those who are solely involved in social assistance and social integration programmes.

Legislation regarding victim-witness protection

Is there any victim-witness protection?

Witness protection is available since 2001 to all witnesses collaborating with the police. There is no special provision for the protection of victim-witnesses of trafficking. However protection to victims can be offered on the basis of Article 18, which provides for a temporary residence status for victims of trafficking in Italy. Trafficked persons maybe escorted by police when the authorities consider it a priority as in the case of accompanying trafficked persons to court to testify.⁴⁵ This article does not provide any protection for relatives in the country of origin. Special evidence given in pre-trial hearing is a main means of protecting the safety of a victim-witness. Both the victim and/or the prosecutor may ask for this protection on the basis of articles 392 and 394 of the Penal Code. This method involves a closed hearing and is used in cases where manipulation of the evidence is an issue.

Immigration law

Article 18 of the Immigration Law, of July 25, 1998 applies.

Immigration status of the victim-witness

First, a temporary residence on the basis of Article 18 of the Immigration Law 286/98 may be granted. Subsequently, depending on the circumstances, a permanent residence permit could be issued to the victim of trafficking.

In the first instance, the temporary residence permit based on Article 18 of the Penal Code grants to victims of trafficking a right to stay on Italian soil for a period of 6 months. This permit may be

renewed should the person concerned be deemed at risk. The holder of such a permit must attend social assistance and reintegration programmes organized by numerous NGOs and local councils throughout Italy. During their stay, victims of trafficking can access social services and educational institutions. They can register as job seekers with the public employment bureau and have facilitated access to employment.

The specificity of Italy's situation is that the temporary permit issued to victims of trafficking is independent of their testifying against the perpetrators of trafficking, though, they would be encouraged to do so. This permit can be obtained either via the social assistance office or from the law enforcement agent of the district, be it the Prosecutor's Office or the district head of police. The permit may be obtained by making a simple statement explaining the situation to the police or at the social assistance bureau, without the need to make a full and sworn statement before the decision is taken by the victim of crime to collaborate with the police and the criminal proceedings. The permit can be renewed for a further year if the permit holder assists the prosecution, or attends an education programme or employed on the date of expiry. Depending on the circumstances, a victim of trafficking may be granted indefinite leave to remain in Italy.

The initial temporary permit does not oblige the holder to return to the country of origin on expiry. If after 18 months the person concerned can show a promise of employment (if not a formal work contract) and can demonstrate a degree of integration in Italian society, an indefinite leave to remain may be granted.

Support and assistance

Measures

- specialized shelters organized by NGOs;
- counselling;
- medical assistance;
- legal assistance;
- information on the rights and the implications of acting as witnesses;
- right to compensation as a civil party who has suffered harm as a result of a crime, if the trafficker is condemned;
- language and integration courses;
- right to participate in education and training programmes;
- facilitated access to employment.

Infrastructure

Italy does not provide assistance directly to the victims, but rather finances NGOs to provide the required social support and assistance. Funding is normally granted to NGOs under the umbrella of social integration of victims trafficked for prostitution. There are five different types of shelters:

- for persons who have just applied for temporary assistance;
- for persons who are staying for a longer period of time;
- for women who are at greater risk;

- for persons with a family; and
- for persons living with a friend/partner.

Legal redress and compensation

A civil action for compensation can be lodged at the time of the criminal proceedings. The victim thus becomes also the civil claimant in the trial and the criminal court judge must foresee civil consequences for the claims sustained by the victim. Compensation may then be granted to the victim if the trafficker is found guilty.

Repatriation and reintegration

Initiatives include assistance to victims with their return to their place of origin, their initial reception in shelters, initiatives to facilitate reinsertion in their place of origin and the monitoring of this process. These initiatives were predominantly applied in the case of victims trafficked from Romania, Ukraine, Moldova, Bulgaria, Albania, Poland, Estonia, Belarus, Russia, the Czech Republic, the Republic of Slovakia, FRY and Hungary.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies

Awareness-raising campaigns in Italy as well as in countries of origin.

Government institutions

Three ministries are involved in the policy design as well as the funding of initiatives related to the protection of victims of traffic in Italy:

- the Ministry of Foreign Affairs;
- the Italian Department for Equal Opportunities, within the framework of Prime Minister’s Office, which coordinates the inter-ministerial Commission responsible for the implementation of Article 18 of Legislative Decree No. 286/98;
- the Ministry of the Interior supervises a project with IOM’s help for the assisted voluntary repatriation and reintegration of women, victims of trafficking, min their country of origin.

IGOs, IOs

- UNICEF/IRC Florence.
- IOM/Italian Cooperation Initiative, adopts measures to counteract trafficking in human beings, in particular women and minors, from southeastern Europe.
- IOM/Minister of Interior, assists the assisted voluntary return of victims of trafficking to the countries of origin.
- IOM-Nigeria Programme, involves measures to combat trafficking in Nigerian women and minors and the prevention of HIV/AIDS and other STDs.
- UNICEF/Italian Cooperation Initiative for action in the EAPRO area.
- UNICEF/Italian Cooperation Initiative for action in Central America and the Caribbean.

NGOs

Fifty-seven NGOs receive government funding to assist with the protection and social assistance to victims of trafficking in Italy. The focus is particularly on women and minors.

Programmes

Information programme for Albania – awareness-raising campaign (1997-1999).

Measures to prevent and combat the trafficking in women and minors for the purpose of sexual exploitation – an information and awareness-raising campaign (1999-2000).

Return and reinsertion of female victim of trafficking from Kosovo (1999-2000).

Measures to combat the trafficking in human beings, especially women and children, from and through the Balkan and Adriatic regions (2000-2001) – this included also support for victims of trafficking.

THE NETHERLANDS⁴⁶

1. GENERAL INFORMATION ON THE SCOPE OF THE PROBLEM

The Netherlands is both a country of destination and of transit from the following regions: Sub-Saharan Africa, Central and Eastern Europe and Asia. Financial assistance, shelter and temporary residence permits fall within the protection available to victims who are willing to testify against their exploiters.

The B9 Regulation allots time, in the form of a 3-month reflection period, for trafficked persons to recover from their experience, whether or not they choose to press charges. Although this regulation is an important element regarding victim protection, in practice, the implementation of the delay procedure remains problematic. A certain conceptual gap exists between the application of protection measures for trafficked persons and the perception by authorities as to what is required for a speedy, effective investigation and prosecution. A victim's right to remain in the Netherlands, offered specifically to those trafficked in the sex industry, remains limited to individuals willing to testify, or who risk serious reprisal against themselves or their families if they testify. The extremely narrow grounds for granting permanent residence means that most victim-witnesses are indeed only protected for the purposes of the trial and not on a longer-term basis.

According to the National Rapporteur Office, at least 756 police reports were filed concerning trafficking between 1995 and June 2000. 71% of cases went to trial and 88% resulted in convictions, 85% of them in prison sentences. The length of a criminal case varies between a few months to several years.

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of human trafficking exist?

Article 250a of the Dutch Penal Code is the main provision dealing with trafficking. However, Dutch penal legislation regarding trafficking in human beings is limited to trafficking for the purpose of sexual exploitation in prostitution.

Criminalization and Penalties

Article 250a covers:

- the transportation of persons across borders for the purpose of exploitation in prostitution;
- placing and holding individuals in prostitution by means of coercion or deception;

- placing and holding minors in prostitution, and
- making profits from such exploitation.

Penalties include imprisonment for a maximum 6 years and/or a fine of EUR 45,000 (in aggravating circumstances a maximum of 8 or even 10 years imprisonment may be handed down).

The jurisprudence deals mainly with force, coercion or deception involved in forced prostitution. However, it is planned to change the trafficking article to include other elements following the ratification of the UN Trafficking Protocol.

Other relevant articles of the Penal Code which may be used to prosecute traffickers include Article 242 (sexual violence/rape), Article 231 (forged travel documents) Article 140 (participation in a criminal organization), Articles 282 and 283 (deprivation of freedom), Article 284 (coercion), Article 285a (threats/intimidation), Article 300 (abuse), Article 317 (extortion), Article 326 (fraud). Article 274 regarding slave trading is used very rarely.⁴⁷

Other laws affecting trafficked persons

B9 Regulation – Residence status.

The main objective of the B9 Regulation (2000) (formerly B17 (1998)) is, first, to facilitate the investigation and prosecution in trafficking cases and, second, to provide protection to the victims. The B9 Regulation allows victims of trafficking a period of rest prior to confirming whether they wish or not to collaborate with the police. Undocumented migrants working in the sex industry should be informed by the competent law enforcement agents of their right to a period of recovery.

Should the victim decide to collaborate with the police and testify against the perpetrators of trafficking before the expiry of the reflection delay, s/he will be granted a temporary permit to stay for the time of the criminal investigation and trial. This permit does not restrict the witness to remain in the Netherlands for the duration of the trial. If victims of trafficking do not wish to collaborate with the police or the trial is over, they are generally requested to leave the Netherlands unless they have applied for permanent residence on humanitarian grounds. Following the expiry of a B9 temporary residence permit, the holder of such a permit may apply for a permanent residence permit on humanitarian grounds particularly where a real risk of reprisals, of prosecution in the country of origin, for example for prostitution, and/or lack of possibility of reintegration into society in the country of origin can be shown.⁴⁸

Labour law

Recently a draft law was presented to include other forms of socio-economic labour exploitation. It was felt to be important to distinguish between irregular labour and forced labour. Only when a situation is comparable with slavery is exploitation regarded to fall within the meaning of trafficking in human beings. The ban on brothels was lifted on 1 October 2000 to allow better control over and regulation of (legal) prostitution so as to strengthen initiatives against the organization of involuntary prostitution (exploitation) and to protect minors from (commercial) sexual abuse. Forced prostitution remains punishable under Dutch law (Article 250a, Penal Code).

Anti-corruption

Corruption is recognized in the Penal Code as a punishable act. The Netherlands ratified the OECD Convention on Bribery of Foreign Public Officials, effective 13 March 2001. The Netherlands has ratified the Council of Europe Criminal Law Convention.

International Conventions

Signed:

- UN Convention on Transnational Crime and the two annexed Protocols on smuggling and trafficking, respectively.
- The Statute of the International Criminal Court, which includes enslavement in its list of crimes against humanity.
- Slavery Convention.

Ratified:

- Optional Protocol to the 1989 New York Convention on the Rights of the Child.
- ILO Convention of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- ILO Convention (29) Concerning Abolition of Forced Labour.
- ILO Convention (105) Concerning the Abolition of Forced Labour.
- The UN Convention on the Rights of the Child of 1989.
- The Optional Protocols of New York, 2000, to the Convention on the Rights of the Child, concerning, respectively, the sale of children, child prostitution and child pornography and the involvement of children in armed conflict.
- The governmental action plan of the Stockholm World Congress on the trafficking and sexual exploitation of children, promoted by UNICEF and ECPAT in 1996.
- The UN Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially of Women and Children (Palermo Protocol) in support of the UN Conventions against Transnational Organized Crime of 15 November 2000.
- The International Covenant on Civil and Political Rights (ICCPR).
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- The International Covenant on Economic, Cultural and Social Rights (ICESCR).
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (SCAS).
- EU Framework Decision on Trafficking in Persons.
- EU Framework Decision on Combating Sexual Exploitation of Children and Child Pornography.
- EU Convention on Mutual Legal Assistance on Criminal Matters between the Member States, 2000, and the Additional Protocol of 2001.

The Netherlands observes:

- The guidelines set out in the common action by the Council for the fight against trafficking in human beings and the sexual exploitation of children.
- The European Council of Tampere Conclusions of October 1999.
- The European Council of Santa Maria de Feira of 19-20 June 2000.

Moreover, the Ministry of Interior also participates in the STOP programme; and the Netherlands is a member of Europol, Eurojust, Police Chiefs Task Force.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons

- a) Residence rights if they accept to help law enforcement agents to prosecute the perpetrators of trafficking in human beings:
 - i) temporary residence on the basis of the B9 Regulation;
 - ii) permanent residence on the basis of humanitarian and compassionate grounds.
- b) right to a lawyer in criminal proceedings;
- c) protection from reprisals and police protection;
- d) court evidentiary protection;
- e) right to information on court proceedings, and
- f) legal redress and compensation.

Legislation regarding victim -witness protection

Is there any victim-witness protection?

For victims willing to testify against their exploiters.

Immigration Law

The B9 residence permit is applicable to victims of human trafficking.

Immigration status of the victim-witness

i) Temporary residence:

The B9 residence permit enables the victim to remain temporarily in the Netherlands and to receive a certain degree of protection. However, this procedure is not easy to access. Studies conducted by Anti-Slavery International⁴⁹ show that around 70% of trafficked women do not choose to benefit from the rest period open to them. This may imply that either the rest period is not actually granted to the victims, or that pressure is applied by police to make them collaborate before the end of the rest period.

Anti-Slavery International⁵⁰ is concerned that the residence permit might be used to push victims of trafficking to stay in the Netherlands to give evidence rather than in accordance with their wish to return to their country of origin. If this were to be demonstrated, it would be a violation of the B9 residence permit,

which allows the person to leave Dutch territory following the submission of their report on their case.

ii) Permanent residence which may be granted on the basis of humanitarian and compassionate grounds:

The actual number of permanent residence permits granted is not readily available. However, looking at the National Rapporteur on Trafficking, it would correspond to roughly 5% of the overall number of applications.

The humanitarian factor in the B9 permit is rather narrow and only few cases have succeeded. Thus, those who testify, but do not qualify to stay on humanitarian grounds, have to return home. Victim-witnesses who dread returning may, therefore, be tempted to look to illegal means to remain in the country.

Support and assistance

Measures

a) Right to defence in criminal proceedings.⁵¹

The victim can pursue civil proceedings in parallel with the criminal trial for compensation. This would also confer various other rights on the victim. The victim may also ask the prosecutor to summon witnesses and experts for the civil suit. However, in practice, the joining of a civil case to the criminal proceedings may not be so straightforward.

b) Right to a rest period prior to collaborating with the police.

Assistance and support are extended to trafficked persons as soon as they receive a B9 permit. The assistance and services available are the same under the reflection delay. If there is a delay in granting a residence permit, this would also compromise eligibility for financial assistance, housing, free legal assistance and non-emergency medical care.

Victims of trafficking are housed in shelters and housing provided by STV (Stichting Tegen Vrouwenhandel – Foundation against trafficking in women) as well as a number of NGOs. However, there is no specific shelter for trafficked women as it is felt that such accommodation could put the trafficked women and the staff at risk.⁵² Following the issue of the B9 permit the file is transferred to the Reception of Asylum Seekers Agency (COA) where the trafficked person will be accommodated. Delays may be experienced in the payment of the first financial instalment. If the victim does not decide to collaborate within the set time, support may be cut off except in emergencies.

A holder of a B9 permit can neither work nor take up education or training opportunities, though some shelters organize language courses or allow the women to carry out voluntary work.

Infrastructure

The issuing of the resident permit under the B9 Regulation is handled by the Immigration and Naturalization Service (IND), which depends on the Ministry of Justice. The IND cooperates with the police and the public prosecutor, and several regional contact officers have been appointed. A national rapporteur has

been appointed to maintain an annual record on trafficking in human beings.

NGOs provide:

- specialized shelters;
- counselling;
- medical services;
- legal assistance;
- information on the rights and implications of acting as witnesses;
- language training.

Legal redress and compensation

The victim has three options:⁵³

- a) To join a civil action to the criminal proceedings for compensation. This is at the discretion of the judge and/or the prosecutor. The compensation will be drawn from the trafficker's assets. The enforcement of such orders will be exclusively at the hands of the state.
- b) To have recourse to a separate civil action only. However, this may be problematic because of the lengthy procedure and the difficulty in actually getting compensation even if the case is won. The victim has to enforce the court order. The court would normally order the seizure of the trafficker's salary; however, the perpetrators of such crime do not normally declare a regular income.
- c) To claim compensation from the Government Fund for Victims of Violent Crime. This is independent of the trafficker's assets, or a civil claim. Any victim of crime can submit a claim to this fund, and this tends to be the most effective means of securing at least some compensation for trafficked persons.

Only few claims for compensation are actually brought, mainly because of the complexity of the bureaucratic procedures involved. The actual amounts obtained tend to be minimal.

Repatriation and reintegration

Most victims of trafficking are afraid to return to their country as they have no protection beyond the Netherlands territory. Once out of the Netherlands the trafficking victims may find themselves in a vulnerable situation and exposed to their traffickers on the one hand and, on the other, in the case of some countries of origin, the prejudice of their own countrymen (including their own family) owing to their involvement in trafficking and, as the case may be, prostitution. This can be dangerous for unaccompanied minors as well as for women returning to certain countries. An assisted return is called for.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies

The policies to combat human trafficking focus on counteracting the sexual exploitation of mainly women and minors.

Government institutions

The Immigration and Naturalization Service (IND), which depends on the Ministry of Justice, is competent to issue a residence permit following the suspension of a deportation order on the basis of the B9 Regulation.

Different kinds of cooperation have been set up:

- A nationwide police project group has been created with the objective to exchange policy and operational information; pursue a uniform approach to human trafficking cases and data collection on trafficking in human beings.
- A national public prosecutor was appointed, with responsibility also for trafficking in human beings. Tasks include the coordination of efforts in this field and to function as a focal point for information. In addition, regional public prosecutors specialized in these matters were appointed. Within the IND office, regional contact officers on trafficking in human beings have been appointed.

IGOs, IOs

A National Rapporteur has been appointed in the Netherlands. The Rapporteur is independent and has access to a variety of information, including police and prosecutor's files and records, and he exchanges information with other rapporteurs in other states.

NGOs

STV – Stichting Tegen Vrouwenhandel (Foundation against trafficking in women) is the coordinating NGO on trafficking in the Netherlands. It is officially designated to provide support services to trafficked women. STV deals on average with 300 cases of trafficked women per year. Various NGOs in the Netherlands are supported by STV and are organized in regional networks to provide shelter and assistance.

NIDOS is a foundation that assists with the protection of unaccompanied minors and is responsible for guardianship, in particular for unaccompanied asylum seekers, some of whom were related to trafficking cases.

AMOC is an NGO which operates several support projects for young males, mostly from Eastern Europe, who are drug addicts and involved in prostitution.

Programmes

It is not clear whether there are any government programmes in this field apart from the National Rapporteur and some infrastructures created under the competence of the Ministry of Justice. The State Fund for Victims of Violent Crime is a source for compensation for victims of trafficking.

SPAIN

1. GENERAL INFORMATION ON THE SCOPE OF THE PROBLEM

Spain is primarily a destination country for trafficked persons; primarily women between the ages of 18 to 30, trafficked for prostitution from Latin America (Colombia, Ecuador, Dominican Republic, Brazil), Africa (Nigeria, Guinea, Sierra Leone) and Eastern Europe.

2. DESCRIPTION OF THE SITUATION

2.2 Law and law enforcement

Prevention of trafficking – law and law enforcement

Does a definition of human trafficking exist?

There is specific anti-trafficking legislation: Articles 311, 312, 313, 318 and 515 of the Penal Code (PC).

Criminalization and penalties

Article 311 (PC)

Whosoever, by deceit or abuse of a state of need, imposes or maintains working or social security conditions that are in violation of legal rights shall be subject to a penalty of between 6 months to 3 years imprisonment. If this is carried out with violence or intimidation, then stricter penalties apply.

Article 312(1) (PC) – Illegal trafficking in labour as above

The penalty is 6 months to 3 years imprisonment.

Article 312(2) (PC)

Whosoever employs a foreigner without a work permit in conditions in violation of labour laws, or offers irregular employment or conditions or, by deceit, causes foreigners to abandon their employment shall be subject to a penalty of between 6 months to 3 years imprisonment.

Article 313(1) (PC)

Whosoever, by any means encourages or favours illegal immigration of workers to Spain shall be subject to a penalty of between 6 months and 3 years imprisonment.

Article 313(2) (PC)

Whosoever, by deceptive means, encourages or favours a person's emigration to another country – penalty between 6 months and 3 years imprisonment.

Article 318 (1)bis (PC)

Whosoever encourages, favours or facilitates illegal trafficking in persons from, in transit or destined for Spain for the purpose of

sexual exploitation shall be subject to a penalty of between 6 months and 3 years imprisonment.

Article 318(2) (PC)

If the above is carried out for gain, or by the use of violence, intimidation, deceit or abuse of the victim's state of need shall be subject to a penalty of between 2 to 4 years imprisonment.

Article 318(3) (PC)

Stricter penalties shall apply if the life or the health of the victim is endangered or if the victim is a minor.

Article 318 (5) (PC)

Stricter penalties shall apply if the offender is a member of a criminal organization.

Article 515 (PC)

Penalizes unlawful associations that promote illegal trafficking in persons.

Other laws affecting trafficked persons

Law 19/1994 of 23 December 1994, offering statutory witness protection.
Article 59 of the Aliens Law 4/2000 of 11 January 2000.
The revised Aliens Law 8/2000 of 22 December 2000.
Article 94 of the Royal Decree 864/2001.

Labour law

Victims who are granted the right to stay are authorized to work.

Anti-corruption

The Penal Code recognizes corruption as a punishable act. Spain is a signatory to the Council of Europe Criminal Law Convention (not yet ratified).

Extra-territorial jurisdiction

The rules governing extraterritoriality have been adjusted in accordance with the principle of universality of offences involving the corruption of minors. The principle of double incrimination no longer applies in cases where it is not required under an international treaty or a legislative act of an organization of which Spain is a member.

International Conventions

Signed:

- UN Convention on Transnational Crime and the two annexed Protocols on smuggling and trafficking, respectively.
- The Statute of the International Criminal Court, which includes enslavement in its list of crimes against humanity.
- Slavery Convention.

Ratified:

- Optional Protocol to the 1989 New York Convention on the Rights of the Child.
- ILO Convention of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- ILO Convention (29) Concerning Abolition of Forced Labour.
- ILO Convention (105) Concerning the Abolition of Forced Labour.

- UN Convention on the Rights of the Child of 1989.
- Optional Protocols of New York, 2000, to the Convention on the Rights of the Child, concerning, respectively, the sale of children, child prostitution and child pornography and the involvement of children in armed conflict.
- Governmental action plan of the Stockholm World Congress on the trafficking and sexual exploitation of children, promoted by UNICEF and ECPAT in 1996.
- UN protocol to prevent, suppress and punish the trafficking in persons, especially of women and children – (Palermo Protocol) in support of the UN Conventions against Transnational Organized Crime of 15 November 2000.
- International Covenant on Civil and Political Rights.
- Convention on the Elimination of All Forms of Discrimination Against Women.
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- International Covenant on Economic, Cultural and Social Rights).
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery.
- EU Framework Decision on Trafficking in Persons.
- EU Framework Decision on combating sexual exploitation of children, and child pornography.
- EU Convention on Mutual Legal Assistance on Criminal Matters between the Member States, 2000, and the Additional Protocol of 2001.

Spain also applies:

- The guidelines set out in the common action by the EU Council for the fight against trafficking in human beings and the sexual exploitation of children.
- The European Council of Tampere Conclusions of October 1999.
- The European Council of Santa Maria de Feira of 19-20 June 2000.
- The Ministry of Interior also participates in the STOP programme.
- Spain is also Member of Europol, Eurojust, Police Chiefs Task Force.

2.2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons

- a) residence rights if they testify against the traffickers.
 - i) temporary residence on the basis of Article 59 of the Aliens Law 4/2000 of 11 January 2000; the revised Aliens Law 8/

2000 of 22 December 2000; Article 94 of the Royal Decree 864/2001.

- ii) permanent residence on the basis of extreme risk.
- b) right to a lawyer in criminal proceedings;
- c) protection from reprisals, and police protection;
- d) in-court evidentiary protection;
- e) right to information on court proceedings;
- f) legal redress and compensation.

Legislation regarding victim-witness protection

Is there any victim-witness protection?

Law 19/1994 of 23 December 1994.
The protection afforded under this law shall be agreed by the judicial authorities in cases where a true and serious risk exists in relation to a victim-witness.

Immigration law

Article 59 of the Aliens Law 4/2000 of 11 January 2000.
The revised Aliens Law 8/2000 of 22 December 2000.
Article 94 of the Royal Decree 864/2001.

Immigration status of the victim-witness

To protect victim-witnesses, the law allows temporary residence for undocumented persons to cooperate with law enforcement for the prosecution of migrant traffickers until the end of the trial, or as long as the authorities deem their presence to be necessary. Victims who are granted the right to stay are authorized to work and to travel. After the end of the trial, the victim is given the option to remain in Spain or return home.

Support and assistance

Measures

Medical assistance is available from governmental and NGO sources, although undocumented migrants are not eligible for government assistance other than emergency care. The government provides some funding to religious organizations and NGOs for shelters for rape victims, medical services (including counseling), and legal services.

The Autonomous Community of Madrid and the European Commission provided funding for a best practices guide for journalists covering prostitution and trafficking in women.

A number of NGOs provide support for the victims of sexual exploitation, although there appears to be only one NGO dealing solely and specifically with victims of trafficking. This NGO – Proyecto Esperanza (Project Hope) provides assistance with medical and legal services and acts as a liaison with law enforcement agencies for victims who are willing to testify against traffickers. Project Hope receives many referrals directly from the police.

In 2000, the Campaign against Trafficking in Women, a coalition of NGOs with support from the Ministry of Labour, published a booklet on the problems of trafficking.

Infrastructure	NGOs and religious organizations are to some extent funded by the government to assist also victims of traffic in persons.
Legal redress and compensation	Trafficked persons can join a civil action for damages to the case against the trafficker in the criminal court. The criminal court judge must take into consideration the civil consequences of the harm sustained by the victim and decide on the civil claim for compensation if the defendant is found guilty. Legal aid in the way of free legal counselling and representation is provided to help the victim to seek legal redress, though the chances for compensation are quite slim.
Repatriation and reintegration	Victims of trafficking are granted temporary residence to collaborate as witnesses against the traffickers. This is prolonged to the end of the legal proceedings against the trafficker and then they can decide whether to be repatriated or not. Repatriation is in cooperation with the authorities and specialized advisory services, such as IOM, at home and abroad to ensure assistance and a safe return of victims of trafficking.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies	The victim-witness protection is oriented towards the victim's participation as a witness in helping the police in convicting the traffickers. The fight against trafficking in Spain is targeted as part of a wider plan to control immigration.
Government institutions	The following ministries share competence in dealing with human trafficking and the protection of victims: Ministry of Interior and the Ministry of Labour. In addition, the Ministry of Interior chairs an interagency committee on all immigration issues, including trafficking. The Ministries for Foreign Affairs, Health, Education, the Treasury and the Ministry of Labour are also on the committee.
IGOs, IOs	The government cooperates with IOM.
NGOs	NGO networks supporting victims. NGOs collaborate with national authorities and IGOs to strengthen their action. The police cooperates with NGOs.
Programmes	Spain cooperates with other governments, especially those of source countries, in the investigation and prosecution of trafficking cases, primarily through Interpol and Europol. The Ministry of Labour supported an NGO to produce a pamphlet reviewing the problem of trafficking intended to raise the visibility of trafficking among Spanish society. The government specifically targets trafficking as part of its broader plan to control irregular migration. For example, the

police actively pursue and prosecute gangs who use false identity documents for immigrant smuggling of all kinds, including trafficking. Within the Ministry of Interior, the national police has primary responsibility for all matters pertaining to immigration, including trafficking. Regional authorities also participate in fighting organized criminal activities, including trafficking. In addition, the Ministry of Interior chairs an interagency committee on all immigration issues, including trafficking. The ministries of Foreign Affairs, Health, Education, the Treasury and the Ministry of Labour are also on the committee.

The main police school gives courses on trafficking issues, such as the recognition of fake documents and the best ways to identify traffickers.

UKRAINE⁵⁴

1. GENERAL INFORMATION ON THE SCOPE OF THE PROBLEM

Trafficking in human beings is a relatively new phenomenon in Ukraine, but by now it has assumed enormous dimensions. Ukraine is predominantly a country of origin for trafficking in human beings, particularly women. Given its situation and history, the incidence of trafficking in human beings in, through and from Ukraine may be expected to escalate further.

Hundreds of thousands of Ukrainian women and children have been trafficked for sexual exploitation or domestic work to Western, Central and Eastern Europe, the Middle East and elsewhere. In March 2001, Ukraine estimated that 400,000 of its women had been sold into prostitution in the last decade, from both urban and rural areas. An IOM report refers to 420,000 women having been trafficked out of the country.⁵⁵ They had responded to advertisements for waitresses, dancers, or domestic workers, but most of them ended up forced into prostitution. In addition to responding to advertisements for employment abroad, Ukrainian women have been looking for other means of leaving their country, and the number of women brought to the United States as mail-order brides has also been growing. The success of the mail-order bride industry is demonstrated by the growing numbers of fiancée visas, which have reached almost 2,000 per year.

In addition, Ukraine is also used as a transit country for girls trafficked from Russia, India, Pakistan and Central Asia to Western Europe.⁵⁶ Due to an alarmingly high number of cases of parents abandoning their children, illegal international adoption has become difficult to control.⁵⁷

2. DESCRIPTION OF THE SITUATION

2.1 Law and law enforcement

Law and law enforcement

Does a definition of trafficking in human beings exist?

Trafficking in human beings is defined in the Ukrainian Criminal Code, Article 149. The offence is described as the sale or other form of paid transfer of a person, as well as any other illegal transaction with respect to a person, when that person crosses the Ukrainian border either leaving or entering the country. This may occur illegally or legally, with or without the person's consent, with the aim of further selling or transferring for money the person to someone else for either sexual exploitation, involvement in commercial pornography (porno business), engagement in criminal activities, debt bondage, adoption for commercial purposes, use in armed conflict, or the exploitation of the labour of that person.⁵⁸

Criminalization and penalties

A prison sentence of 3 to 8 years is served to those guilty of trafficking in human beings. If the same acts are committed against a minor, involve several persons, are part of a regular activity or occur with the collusion of officials or persons in a position of authority over the trafficked person, the sentence is increased to between 5 and 12 years imprisonment and the confiscation of property.

Other laws used to prosecute traffickers

Activities related to prostitution are forbidden by Article 303 of the Criminal Code. Prostitution is characterized through the various avenues of coercion, deception, threat, violence, destruction or damage to property, blackmail or fraud, all punishable by 1 to 3 years imprisonment (Article 303(2)). If organized group activity is involved, penalties are increased to between 3 and 5 years imprisonment. The term is raised to between 5 and 7 years if an organized group is making a profit from prostitution. Various other articles of the Criminal Code can be interpreted as being applicable to traffickers, such as pimping (Art. 302), fraud (Art. 190) and sequestration (Art. 146). Persons who participate in prostitution (mainly women) are fined or have to contribute time to community service (Article 303(1)).

Labour Law

Article 43 of the Constitution prohibits forced labour.

Anti-corruption

In February 1999, the Licensing Chamber of Ukraine, the State Employment Centre of Ukraine and the Ministry of Labour and Social Policy issued an order authorizing the suspension of licenses for businesses that arrange for work abroad when they were found to be in violation of Ukrainian law. The order targets employment agencies only. A certain number of licences were suspended, but apparently none because of connections with trafficking. The order has not been considered effective in addressing trafficking since it prompted criminal groups to act as tourist agencies rather than employment agencies. Travel or tourist agents are often fronts for traffickers and have little trouble obtaining passports and visas for victims in less time than is generally required. The connection of such businesses with corrupt officials may therefore be presumed. Although the committee responsible for inspecting registered travel agencies suspects that some of them are involved in the trafficking business, it is not empowered to suspend their licences. Moreover, many suspicious travel agencies operate without licences. However there has been no official investigation of the practices of these firms.

International Conventions

- Ratified:*
- ILO Convention (105) concerning the Abolition of Forced Labour;
- ILO Convention (182) concerning the Elimination of the Worst Forms of Child Labour;
- United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

- Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.

Not ratified:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The UN Convention against Trans-national Organized Crime and the supplementary UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (signed in December 2002).

Prosecution of traffickers

From January 1998 to 25 November, 2002, 298 criminal cases were filed under Article 149 and its predecessor Article 124, and 52 cases have resulted in convictions, 40 are still pending appeal and 12 have been affirmed. There are no recorded prosecutions for trafficking into the Ukraine.

2. 2 Victim protection and assistance

Victim protection and assistance

Procedures affecting trafficked persons/victims

Ukrainian law does not foresee residence status as a form of protection. However, there is a witness protection law of 1994, extending protection to those victims who collaborate with the prosecution to incriminate the perpetrators of trafficking.

Legislation regarding victim-witness protection

Is there any victim-witness protection?

Testifying against an offender is the key to protection for victims. The Law on Provision of Safety for Persons Acting in Trials of 1994 extends safety and protection to those victims willing to testify as witnesses against their offenders.

Immigration status of the trafficked person/victim

Trafficking has not yet become a major issue in Ukraine. Thus, migrants who might be trafficked have no recourse to legal provisions that provide any kind of residence status in Ukraine. To date there are no recorded prosecutions for trafficking into Ukraine.

Support and protection

Measures

The 1994 Law on Provision of Safety for Persons Acting in Trials defines a range of safety measures, including:

- personal protection,
- protection of home and property,
- rapid assistance in case of danger,
- use of surveillance, telephone taps,

- change of identity and documentation and relocation,
- legal assistance,
- in-court protection for witnesses,
- closed trials, anonymity and confidentiality,
- right to information throughout the trial,
- right to compensation,
- a period of rest prior to collaboration with the law enforcement agents.

Infrastructure

There is an official department for witness protection; however, mechanisms for witness protection are still weak. Officials lack the training and understanding of the special needs of trafficking witnesses. Moreover, there seems to be a widespread feeling that trafficked women are not really victims in need of protection. Special shelters to protect the witnesses are used in the course of the investigation and trial in only a few trafficking cases. These shelters are not run by the government but by NGOs.

Repatriation and reintegration

Medical, psychological and legal assistance for victims of offences linked to trafficking in human beings are to be provided by newly established reintegration centres (Comprehensive Plan 2002-2005 (see below)).

Social assistance is available from these centres for trafficked persons returning to Ukraine, to include not only the services referred to, but also dissemination of information to victims regarding temporary employment opportunities.

A number of trafficked persons who contact the police to report traffickers fail to be considered or qualified as either trafficked persons or victims of crime, and are thus not referred to NGOs. To overcome this inadequacy, La Strada has developed an application form for the police to hand to trafficked persons at the time of first contact. The form explains the availability of NGO assistance to a trafficked person. The method has proven successful not only in encouraging or enabling trafficked persons to contact NGOs, but also in terms of better cooperation with and between law-enforcement bodies.

2.3 Policy initiatives and institutions

Policy initiatives and institutions

Policies

The Comprehensive Programme on Prevention of Trafficking in Women and Children was introduced in 1999 by Decree 1768, but its implementation proved ineffective partly because of the programme's focus on prostitution and the apparently weak government commitment to the programme, specifically the lack of funding. Some aspects of the national programme were in fact implemented through funding provided by the European Commission and USAID.

The Comprehensive Programme to Counteract Trafficking in Human Beings 2002-2005, adopted by decree 766 of 5 June 2001, was developed by and involves a working group of NGOs, intergovernmental organizations and government officials to deal with all forms of trafficking. It proposes a range of measures:

- reintegration centres
- medical assistance
- psychological and
- legal assistance to victims of trafficking.

Government institutions

a) Prevention and detection of trafficking

In 2000, a special unit was created within the Criminal Investigation Department of the Ministry of Interior.

In 2000, special Regional Interior Affairs Departments units were created.

In 2001 the investigation of offences was transferred from the prosecutor to police investigators (under the Code of Criminal Procedure).

b) Protection and assistance to victims

Provided by the Ministries of Interior, Foreign Affairs, Youth and Family Affairs, Labour and Social Policy as well as the State Committee on State Border Protection.

c) National Coordination Council for Prevention of Trafficking in People under the Ombudsman of the Ukrainian Parliament.

IGOs, IOs

IOM; OSCE; ODIHR

NGOs

La Strada (Ukraine), operating since 1997.

Winrock International Ukraine.

Women for Women Centres in Lviv, Donetsk and Dnipropetrovsk.

Programmes

Combating Trafficking in Women in Ukraine: Protection and Reintegration (CTPR)

IOM, OSCE/ODIHR, Ukrainian authorities and local NGOs are addressing issues of public awareness, prosecution and criminalization by supporting law enforcement and judicial structures and protection and reintegration assistance through support to victims of trafficking who are returning/have returned to Ukraine. The aim is to strengthen the capacity of relevant authorities and civil society to assist victims of trafficking more effectively.

The OSCE Project Coordinator in Ukraine and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) serve as focal points both for a national strategy and for international cooperation, jointly with IOM and the European Commission. It is aimed at giving technical assistance to support the National Coordination Council against Trafficking. Special emphasis is placed on anti-trafficking legislation and enforcement. Another task is to support counselling hotlines, established in five major cities in Ukraine. Ukraine's first free national telephone hotline, operated by La Strada, started on 18 November 2002.

4. WHERE DO WE STAND WITH VICTIM PROTECTION?⁵⁹

4.1 INTRODUCTION

The current models of protection offered to trafficked persons too often accord major priority to the needs of law enforcement over the rights of victims of trafficking. Often protection still means repression of a victim's rights. Victim protection needs to be redefined and reworked to support and empower those who have been trafficked. Protection of victims per se is not the same as protection of a victim's human rights and human dignity. The challenge for governments is to assume their obligations under international law and make protection of all human rights a reality for trafficked persons who escape their situation.⁶⁰

Also, the term "witness" as used in this paper, refers to witnesses who are victims of trafficking and who need protection for that very reason. Trafficking is a fundamental issue of human rights violation, whereby all victims, and not only witnesses or potential witnesses, need protection of their human rights.

In this report we chose to be guided by the international community's latest decision in the Trafficking Protocol and Transnational Crime Convention and have used their provisions as a benchmark. These treaties are the most significant international instruments dealing with trafficking in persons to date, and they clearly set out measures to protect victims and witnesses. While the provisions regarding protection are not binding on State parties, they do set a minimum standard for States to abide by.

4.2 TRANSNATIONAL CRIME CONVENTION

Article 24 of the Convention addresses the protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation of witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:
 - (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity or whereabouts of such persons.
 - (b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology, such as video links or other adequate means.

3. State Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25 of the Convention covers assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.
2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.
3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

4.3 TRAFFICKING PROTOCOL

Part Two of the Trafficking Protocol (Articles 6-8) indicates more clearly what constitutes appropriate measures under Article 25 (1) in the context of trafficking for the protection of victims. They concern assistance and protection of victims of trafficking, their status in receiving countries and their repatriation.

Article 6 provides for assistance and protection of victims of trafficking

1. In appropriate cases, and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, education and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7 covers the status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8 covers the repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national, or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party, shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Furthermore, comprehensive policies, programmes and other measures should be established in order to prevent a recurrence of victimization.⁶¹

The focus on the victim is also important in the training of law enforcement, immigration or other relevant officials, and should be sensitive to the rights of the victims, and include protection from the traffickers, human rights and child- and gender-sensitive issues and encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.⁶²

4.4 VICTIM-WITNESS PROTECTION IN THE EUROPEAN UNION

The European Union's approach against trafficking in human beings has been focused mainly on law enforcement issues, such as creating standard penalties for trafficking and associated crimes. The recognition that trafficking victims have suffered grievous human rights abuse has given rise to certain obligations on the part of governments to protect against and penalize such violations.

Recently, the Brussels Declaration on Preventing and Combating Trafficking in Human Beings aimed to create a roadmap of best practices and called again on governments to adopt concrete measures, *inter alia*, in the field of victim protection and assistance, by establishing standards for immediate victim assistance, the victim-as-witness status, and protection and the social re-integration of the victim.⁶³

4.4.1 The Council Framework Decision on combating trafficking in human beings

The Council Framework Decision addresses the substantive criminal law aspects of trafficking and provides little protection for trafficking victims.⁶⁴ Article 7, Protection and Assistance to Victims, states:

1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.
2. Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (1).
3. Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to.

4.4.2 Legislative proposal on short-term permits of stay for victims of trafficking and victims of action to facilitate illegal immigration

While there is a focus on the special vulnerability of children as victims of trafficking, the framework decision does not provide any concrete protection measures. These are partly addressed in separate documents. In February 2002, the European Commission issued a legislative Proposal for a Council Directive on the short-term residence permit issued to victims of acts to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities.⁶⁵

Although facilitating illegal immigration (i.e. smuggling) and trafficking in human beings are two separate offences, the proposal reflects the fact that the two crimes often overlap in practice. The Commission thus recognizes a continuum of trafficking and smuggling, but the two forms are seen as part of a more general problem: the increase in illegal immigration. The notion of victim of trafficking in human beings does not present any difficulties (featuring as it does in the Trafficking Protocol). The concept of victim of acts to facilitate illegal immigration has a very specific meaning in that it does not cover all those who seek assistance for illegal immigration, only those who might be reasonably regarded as victims who have suffered harm, for example having their lives endangered or sustaining physical injury.⁶⁶

The aim of this proposal is to offer temporary residence permits for victims prepared to give evidence, subject to their cooperation with the competent authorities against those suspected of having committed the crimes in question. The permit would be issued to third-country victims, who have suffered harm directly by action to facilitate illegal immigration or trafficking in human beings. Victims are defined as adults or possibly minors who fulfil certain conditions laid down in domestic law.⁶⁷

The scope of the Directive is limited to the issuing of a residence permit. Though the residence permit itself offers de facto protection against deportation, the proposal is not a victim-protection or a witness-protection measure as this is neither its aim nor its legal basis.⁶⁸ Victim protection and witness protection are matters falling under national or EU law. The proposal, like the Framework Decision, refers to the Framework Decision of 15 March 2001 on the status of victims in criminal proceedings⁶⁹ and the Council Resolution of 23 November 1995 on the protection of witnesses in the framework of the fight against international organized crime⁷⁰ as adequately covering the victim and witness protection needs of trafficking victims, and calls on member states to ensure proper and effective protection of witnesses before, during and after trials. Such protection should, if necessary, be extended to the parents, children and other close relatives of witnesses also.

However, neither of these documents was adopted with a view to the special needs of victims of trafficking. Moreover, neither they nor the proposed directive applies to victims who do not cooperate with the authorities in the context of criminal proceedings. This means that those trafficking victims who cannot or will not cooperate with authorities could be subject to arrest, detention and deportation. As emphasized by Human Rights Watch, “this approach punishes the trafficking victim, categorizing her or him solely as an undocumented migrant subject to expulsion, without any recognition that he or she is a victim of serious rights abuse”.⁷¹ Furthermore, this approach gives rise to two categories of victims, without any attention to the need for protection common to all of them.⁷²

Summing up it may be said that in the European anti-trafficking regime there remains a serious gap in terms of specific protection measures for all victims. The general protections included in existing decisions and resolutions noted above do not fill the legal vacuum regarding victims who do not cooperate with authorities in criminal proceedings and are left without any protection. The absence of such protection for all victims of trafficking in human beings fails to meet the standards for protection of trafficking victims outlined in the Trafficking Protocol. That, however, may also be criticized for falling short of creating a basic human rights framework, as it is expressed in terms of “governments shall endeavour” and “shall consider”. This, in our view, represents a missed opportunity to directly link the fight against trafficking to a human rights framework. The EU Framework Decision on combating trafficking in human beings leaves this point optional. The same will occur if the EU countries fail to adopt the European Commission’s proposal for the Short-term Permit for Victims of Trafficking and Illegal Immigration.

4.5 A NEED TO INSTITUTIONALIZE GOOD PRACTICES

Existing research indicates that, for a variety of reasons, trafficking victims often will not, or cannot, cooperate with the authorities. Many trafficked persons do not want to give evidence against the traffickers because they fear retaliation from them or from corrupt officials in the country of origin, including fear for their and their family’s physical safety both in the country of destination and of origin. Others fear that they themselves will be prosecuted as illegal immigrants and often trafficked women are treated more like criminals than victims, and face arrest, detention and expulsion as illegal aliens and/or prostitutes. Some victims, even if they manage to escape from their situation, do not also escape their debt.⁷³ Moreover, many victims of trafficking never have an opportunity to testify since migrants are apprehended, detained and deported as a matter of first course, their status as undocumented migrants trumping their status

as victims of trafficking.⁷⁴ In her 2000 Report on trafficking in women and girls, the United Nations Special Rapporteur on Violence Against Women stated that, “in the overwhelming majority of countries of destination, deportation remains the primary mechanism for dealing with undocumented immigrants, including trafficked persons”.⁷⁵

The short-term residence permit is an essential starting point, nevertheless some trafficking victims may view the incentives to cooperate with the authorities with some scepticism, as they understand that many so-called protection measures are only temporary and do not provide the type of safety and security they will need in the longer term. Not only are the permits reserved only for those victims deemed “useful” to the authorities; there is only a limited guarantee that a permit will be renewed.⁷⁶

Anti-slavery International⁷⁷ recommends that an important part of this protection has been to ensure that all persons who are suspected of being trafficked have at least a 3-month delay to reflect, as is the case in the Netherlands. The delay allows trafficked persons to remain in the country legally during which to recover and consider their options. Three months is a reasonable time to take fully informed decisions about what they want to do next, and whether they want to pursue civil or criminal action against the trafficker. The reflection delay must be accompanied by access to the specialized services of a non-governmental organization able to ensure that appropriate housing, legal, medical, psychological and material assistance is provided.

There is a need for documents authorizing temporary residence to be issued immediately (within 24 hours), such as in Belgium, to ensure trafficked persons have access to these services straight away. In countries such as Italy and the United States the slow processing of residence permits means that many trafficked persons depend on the good will of individuals and organizations to take care of them. All states need to fund shelters for trafficked persons, and provide and fund appropriate victim and witness protection. Currently, countries such as Belgium, the Netherlands, Poland, Thailand, the UK and the US only allow those victims who are willing to assist with investigations and prosecutions the right of temporary stay. This may go counter to international human rights principles, such as the principle of *non-refoulement*.

A better approach would be to ensure that temporary residence status is available to all trafficked persons who have suffered serious abuse in the countries of destination, or would suffer harm if they were to return home, or who are assisting in the investigation or prosecution of traffickers. Keeping the issues separate also ensures that receiving residence status will not be used to discredit a victim’s testimony at a trafficker’s trial.

Adequate victim protection measures means ensuring that police provide protection from reprisals and that victims are given access to a range of measures and different levels of protection, both formal and informal. In terms of giving evidence at trials, countries should ensure that victim-witnesses are able to give evidence safely, and seek to reduce the secondary trauma that victims often suffer in a courtroom, such as through the use of sworn statements, recorded testimonials, video-links and pre-trial hearings. Witness protection measures must balance the rights of the defendant to a fair trial, with the rights of victims not to be traumatized or exposed to danger again through testifying. Informal measures such as the provision of separate areas in courtrooms for victim witnesses to prevent a possible confrontation by friends or family of the trafficker are equally important.

In civil law countries, it is important to provide the victims with their own lawyer to represent them in the criminal case. Anti-Slavery International⁷⁸ found that cases where victim rights were protected, and there was a successful conviction, were predominantly such where the trafficked person had legal representation. Lawyers play an important role in all countries in ensuring that the rights of trafficked persons are protected, particularly their right to information about court proceedings and an assurance that a trafficked person is recognized as a victim of crime. Moreover, it is important to ensure that victims have access to legal redress and compensation. Compensation for lost earnings, as well as for harm suffered, was an important way of vindicating the rights of victims, making the process of going through a criminal trial worthwhile, as well as addressing their financial needs.

As stated previously, there is a growing awareness at all levels of the need for a human rights framework to combat trafficking more effectively. Cases of best practice in terms of successfully protecting a victim's rights exist where there has been a genuine understanding and goodwill on the part of the authorities involved. Successful cases have generally been characterized by the presence of committed teams of law enforcement officials, prosecutors, lawyers and service providers, who displayed sensitivity to the needs and rights of trafficked persons. There is now a need to institutionalize the good practices observed.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 GENERAL

The recommendations listed in this chapter are based on the findings of this study on the protection of the victims of trafficking in human beings in the countries reviewed. The recommendations also take into account the conclusions arrived at by the seminar on *Exchange of Information and Best Practices Regarding the Protection of Victims of Trafficking in Human Beings (THB) in the EU Member States and Selected Candidate and Third Countries*, held in Madrid, Spain, from 19 to 20 December, 2002. The seminar was the concluding event of the project for which this study serves as the project report.

Overall, both the study and the seminar made it clear that in assisting victims of trafficking the fundamental approach should aim at the protection of human rights. Accordingly, governments, intergovernmental organizations and non-governmental organizations should raise the awareness of society in general regarding the human rights violations suffered by trafficked persons, and relate the protection and assistance measures to such experiences.

It is felt that the following three areas of protection are inseparable if the protection of victims of trafficking is to be effectively realized:

- **social assistance;**
- **law enforcement – prosecution of traffickers and protection of human rights of trafficked persons;**
- **integration/reintegration of victims.**

Such support should be made available to all victims of trafficking in human beings without any distinction based in the type of trafficking. Whether provided by governments, international organizations or NGOs, the support should include, among others:

- specialized shelters in the first instance, with the possibility to have access to housing at a later stage;
- medical services and counselling;
- legal assistance;
- information on their rights and the implication of victims acting as witnesses;
- language and vocational training courses;
- cultural induction courses;
- financial assistance; and
- assistance to find work.

The legal recognition by the countries of destination of the trafficked person's right to either return or stay, seek work or access to education and training, would go a long way towards helping victims of gross human rights violations to recover and regain their personal and economic independence.

5.2 SPECIFIC RECOMMENDATIONS: ARRANGEMENTS FOR RESIDENCE AND WORK PERMITS

The obligations under the 1951 Geneva Refugee Convention, and the European Convention on Human Rights should guide the procedures adopted concerning victims of trafficking.

Access to basic support and assistance in the country where they are at the time should be provided to victims of trafficking as rapidly as possible, including the granting of a temporary residence permit. The deportation of the victims to the country of origin should be stayed until the circumstances of the case have been clarified and all other measures considered.

The victims should be offered a rest period during which they could decide whether or not to denounce the trafficker, whether to return to their country of origin or seek ways of remaining in the host country, and this independently of whether they are participating as witnesses in any legal proceedings against the traffickers.

Leave to stay for at least the duration of a trial in which the victim participates as a witness should be extended to victims of trafficking, together with appropriate protection if they are at risk from the traffickers or their associates during the time of the investigation/prosecution of the traffickers.

Based on an assessment of each case and the human rights implications, victims of trafficking who have been legally resident in the country already for some time should be given the opportunity of requesting permanent residence.

5.3 LAW ENFORCEMENT AND PROTECTION OF VICTIMS AS WITNESSES

National legal systems should provide for the recognition of human rights violations in cases of trafficking in human beings. To this end, the United Nations Convention Against Transnational Organized Crime, adopted by the UN General Assembly on 15 November 2000, and the related UN Protocol Against Trafficking in Persons, Especially of Women and Children should be ratified by the largest number of states possible, and trafficking acknowledged as a criminal offence.⁷⁹

Victims of trafficking in human beings should have access to free legal advice. Lawyers should be present during the interviews conducted by law enforcement officials, and ensure that the trafficked person be recognized as a victim of a crime and not a consenting party, and is acknowledged as an injured party in civil courts, and given access to civil remedies.

The competent government agencies should develop guidelines to ensure that in interviewing undocumented migrants the appropriate questions are asked to ensure that victims of trafficking can be identified as such, and proper support offered to all those in need.

Law enforcement agents should be trained to help them understand the complexity and vulnerability of the victim's position. To this end, the presence of an official interpreter during the interview should also be provided for to ensure a proper understanding and protection of the victim's rights.

The identity and status as a victim of trafficking in human beings of the person involved should not be disclosed to the authorities of the country of origin without the victim's knowledge and consent. This is particularly important when there are concerns over the corruption of local officials or in relation to social stigmatization and exclusion of those trafficked into prostitution.

The victims of trafficking in human beings should, at the earliest possible opportunity, be informed of all the available protection measures for witnesses in prosecutions against traffickers. Measures should be introduced to prevent and minimize the causing of any further trauma to the victim through the court proceedings. The right to confidentiality should be safeguarded. Criminal courts should be instructed to provide informal protection to the victim-witnesses against intimidation.

Law enforcement officials who come into contact with individuals who are believed to be victims of trafficking, should refer such persons to a specialized centre or NGO that are better able to assess their mental and physical health needs and to inform them of their legal rights such as the possibility of applying for asylum, residence and work permits.

Authorities and other support personnel should inform victims of trafficking of the consequences of testifying, such as the possibility of secondary trauma, reprisals, or seeing their trafficker and his/her associates in court. This should be clearly explained at the time the victim is asked to testify against the trafficker. The victims should also be fully informed on the progress of the trial. In addition, a reflection delay of no less than 30 days should be granted together with the right to access basic aid and support services during that period.

The possibility of establishing victims and witness protection schemes jointly by countries of destination and of origin, and the possibility for regional witness protection systems in which a number of states could cooperate in providing safe accommodation and protection for trafficked victim-witnesses, should be investigated.

5.4 RETURN AND REINTEGRATION

Victims of trafficking should not be immediately returned to the country of origin when it may be reasonably suspected that they may suffer further harm through stigmatization and discrimination, or risk reprisals. To the extent possible, return should be voluntary. The possibility of applying for permanent residence should be provided for if there is a real risk to the life of the victim of trafficking upon return to the country of origin. Immigration services should support and avail themselves of existing voluntary repatriation programmes being offered by a number of organizations involved in the return process. For example, the International Organization for Migration (IOM) in cooperation with other agencies, coordinates such programmes together with a comprehensive support approach for the victim's reintegration and recovery.

After their return victims of trafficking should be provided access to local NGOs for support and assistance. Also, they should receive adequate protection by the local institutions in the event that they are again contacted by their traffickers or threatened with reprisals.

5.5 INSTITUTIONAL ARRANGEMENTS

There is a need for specialized centres with expertise in child care for minors who have become victims of trafficking. Special attention needs to be given to school-bound children to protect them from traffickers when they go to classes.

The **systematic collection of statistics** on trafficking cases on a national and also wider scale would facilitate counter-trafficking efforts. Such statistics should include information on nationality, age and other socio-economic indicators (family relations, training, employment situation in the country of origin etc.) of trafficked persons, as well as a register of the number and the category of residence permits issued to persons trafficked, and of the number of persons who start judicial proceedings (criminal or civil) against their traffickers.

The **systematic registration of children** at birth in countries of origin would clearly facilitate and hasten the realization of the disappearance of a child and help to implement an international investigation. The Convention on the Rights of the Child should be a guiding principle, even in countries where it has not yet been ratified.

Networking is of crucial importance both for the policy dialogue between the agencies involved and relevant European institutions, as well as among the national actors involved in developing policy and practice. Authorities, international organizations, non-governmental organizations and other actors involved in providing assistance, return and reintegration to victims of trafficking should further strengthen and expand cooperation networks and information exchanges to ensure the delivery of timely and practical assistance and the widest possible dissemination of information of best practices. Cooperation from other actors, such as consulates and embassies of the countries concerned, is of great importance in return and reintegration.

A **pilot study** needs to be carried out to test the feasibility of enacting a European database for missing persons in cooperation with Interpol and Europol. This would also include recorded details of missing persons that are believed to be the victims of trafficking. Such a database would be of critical importance in the context of unaccompanied minors that become victims of child trafficking.

ENDNOTES

1. All are basic principles of the most important human rights documents, e.g. the 1948 Universal Declaration of Human Rights (UN General Assembly, 10 December, Decision No. 217A (III)), the 1996 International Covenant on Civil and Political Rights (UN General Assembly, 16 December, Decision No. 2200 A (XXI).) and the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) as well as the Charter of Fundamental Rights of the European Union (Official Journal of the European Communities, 2000/C 364/1, 18 December 2000). See also Council of Europe action in the field of trafficking in human beings for the purpose of sexual exploitation: an emphasis on victim protection, Division Equality Between Women and Men, DG II, Council of Europe, September, 2002.
2. See the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.
3. UN General Assembly, A/RES/55/25, 8 January 2001.
4. COM(2000) 854 final /2, 2001/0024 (CNS), 2001/0025 (CNS) Brussels, 21/12/2000, Explanatory memorandum, p. 8, emphasis added.
5. *Ibid.*
6. Article 3 of the "Trafficking protocol".
7. Among them the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105).
8. See Forced Labour, Child Labour and Human Trafficking in Europe: an ILO Perspective Technical paper for the EU/IOM STOP "European Conference on Preventing and Combating Trafficking in Human Beings", 18-20 September 2002, Brussels, Belgium Special Action Programme to Combat Forced Labour (SAP-FL) and International Programme on the Elimination of Child Labour (IPEC), International Labour Office, Geneva, September 2002.
9. The United Nations Convention Against Transnational Organized Crime.
10. See among others P. Sörensen, *New Perspectives and Policies on Protection of Victims*, EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings: A Global Challenge for the Twenty-first Century, 18-20 September, 2002, Brussels.
11. See below, p. 83, Return and reintegration, para. 13.
12. Cf. Brussels Declaration on Preventing and Combating Trafficking in Human Beings: 8.
13. *Ibid.*: 2, emphasis added.
14. See the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.
15. See also F. Medved and P. Cullen, 2002, "Counteracting human trafficking: an analysis of European policy", in M. Anderson and J. Apap (eds.) *Police and Justice Co-operation and the New European Borders*, Kluwer International, The Hague: 183-218.
16. Ad Hoc Committee on the Elaboration of a Convention against Transnational Crime established by UN General Assembly resolution 53/111 of 9 December 1998. See UN General Assembly, AC/254/4/Add.3/Rev.4 and AC.254/4/Add.1/Rev.3.
17. UN General Assembly, A/RES/55/25.
18. See Protocol against Smuggling in Migrants by Land, Air and Sea, Article 3 (a).
19. See Article 15 (2).
20. "Smuggling and trafficking in persons and the protection of their human rights", Note by the Secretary-General, E/CN.4/Sub.2/2001/26, 5 July 2001, p. 3.
21. The Programme is coordinated by the Comité contre l'esclavage moderne (CCEM), and involves IOM (based in Brussels, Paris, Vienna, Rome and Athens), Pag-Asa, Payoke, Differenza Donna, Associazione On the Road and Servizio Migranti Caritas, www.victims-of-trafficking.org/UK/index.html.
22. See International Organization for Migration (IOM): *Trafficking in Migrants: Policy and Responses*, May 1999.
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24. Article 3.
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28. Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), (95/C 316/01), Official Journal C 316, 27. 11. 1995, p. 1.
29. *Ibid.*, Annex referred to in Article 2.
30. Council Decision of 3 December 1998 supplementing the definition of the form of crime ‘traffic in human beings’ in the Annex to the Europol Convention, Official Journal C 26, 30. 01. 1999, p. 21, Article 1.
31. IOM/ICMC: II Research Report on Third Country National Trafficking Victims in Albania, January 2001-December 2001, p.12.
32. See also E. Pearson, *Human Traffic, Human Rights: Redefining Victim Protection*, Anti-Slavery International, UK, 2002: 88.
33. *Ibid.*: 137.
34. See, e. g., *Trafficking in Women: Moldova and Ukraine, Minnesota Advocates for Human Rights*, December 2000: 34-39.
35. Cf. Anti-Slavery International, 2002: 25.
36. The question of terminology in the context of trafficking is not unproblematic and much effort has gone into establishing an understanding of trafficked persons when referring to trafficked persons as victims. See, e.g., E. Kelly, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, IOM Migration Research Series No. 11, November 2002.
37. COM (2002) 71 final, Brussels, 11 February 2002.
38. Barbara Limanowska, *Trafficking in Human Beings in Southeastern Europe*, UNICEF/ UNHCR/ OSCE-ODIHR, 2002: 125.
39. Limanowska, *op.cit.*; Daniel Renton, *Child Trafficking in Albania*, Save the Children report, Tirana, 2000.
40. The analysis in this chapter is mainly based on E. Pearson, *op.cit.*
41. The analysis in this chapter is substantially based on E. Pearson, *op.cit.*
42. *Ibid.*: 146-7.
43. *Ibid.*: 137.
44. *Ibid.*, p.140
45. *Ibid.*, p. 148.
46. *Ibid.*
47. *Ibid.*: 66.
48. *Ibid.*: 67-8.
49. *Ibid.*: 71-72.
50. *Ibid.*
51. *Ibid.*: 78.
52. *Ibid.*
53. *Ibid.*: 81.
54. *Ibid.*
55. IOM, Information Campaign against Trafficking in Women from Ukraine: Research Report 1998, p. 16.
56. ECPAT, *Five Years After Stockholm*, p. 148
57. In 1995, there was a moratorium on international adoptions. However, it is not clear whether it still exists.
58. See also Pearson, *op.cit.*, based on research conducted by Inna Shvab of International Women’s Rights Centre La Strada, Ukraine, p. 199.
59. The analysis in this chapter is substantially based on Pearson, *op.cit.*
60. *Ibid.*: 4-5.
61. See Article 9 (b).

62. See Article 10.
63. This legal instrument, adopted in 2002, will be implemented in all Member States of the Union as well as in the candidate countries. It stipulates, inter alia, that the penalty for trafficking in any Member State must be not be less than 8 years imprisonment if committed in circumstances endangering the life of the victim, against a victim who was particularly vulnerable, by the use of violence or causing serious harm, or within the context of criminal organization. See also Medved and Cullen, 2002.
65. Brussels, 11. 02. 2002, COM(2002) 71 final 2002/0043 (CNS).
66. Cf. Article 1 of the Proposal for a Council Directive, COM(2002) 71 final.
67. See Article 3. Several concerns have been expressed by various organizations, among them Save the Children as well as the European Parliament. The Commission's proposal, whilst respecting subsidiarity, will introduce a precedent that trafficked children arriving in different member states are treated differently, which is contrary to the EU's stated common asylum policy. Where Member States have excluded children from the proposal this may mean that traffickers are more likely to target children since these would be less likely to participate in collaborating with the authorities in criminal proceedings if they are excluded from short-term permit benefit.
68. *Ibid.*, paras 2-3.
69. *Official Journal*, L 82, 22 March 2001: 1.
70. *Official Journal*, C 327, 7 December 1995: 5.
71. The Human Rights Dimension of EU Immigration Policy: Lessons from Member States, Human Rights Watch Statement on the Occasion of the Academy of European Law Conference: "State of Play on European Immigration and Asylum Policy: Patching Up Tampere", Trier, April 25-26, 2002: 8.
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73. See E. Pearson, *The need for effective witness protection in the prosecution of traffickers: A human rights framework for witness protection*, Anti-Slavery International, The First Pan-African Regional Conference on Trafficking in Persons Abuja, Nigeria 19-23 February 2001.
74. See, among others, Human Rights Watch Memorandum, Trafficking of Migrant Women for Forced Prostitution into Greece, July 2001, at <http://www.hrw.org/backgrounder/eca/greece/index.htm>
75. Quoted in Pearson, *op.cit.*, p. 3.
76. See Article 16.
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78. *Ibid.*: 4.
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